

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 969, 673 & 855

91ST GENERAL ASSEMBLY

Reported from the Committee on Civil and Criminal Jurisprudence, February 25, 2002, with recommendation that the Senate Committee Substitute do pass.

3880S.07C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 217.690, 556.061, 589.400, 589.417 and 632.483, RSMo, relating to sexual offenses, and to enact in lieu thereof seven new sections relating to the same subject, with penalty provisions and an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 217.690, 556.061, 589.400, 589.417 and 632.483, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 217.690, 556.061, 566.145, 589.400, 589.417, 589.430 and 632.483, to read as follows:

217.690. 1. When in its opinion there is reasonable probability that an offender of a correctional center can be released without detriment to the community or to himself, the board may in its discretion release or parole such person except as otherwise prohibited by law. All paroles shall issue upon order of the board, duly adopted.

2. Before ordering the parole of any offender, the board shall have the offender appear before a hearing panel and shall conduct a personal interview with him, unless waived by the offender. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered a reduction of sentence or a pardon. An offender shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every offender while on parole shall remain in the legal custody of the department but shall be subject to the orders of the board.

3. The board shall adopt rules not inconsistent with law, in accordance with section

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

217.040, with respect to the eligibility of offenders for parole, the conduct of parole hearings or conditions to be imposed upon paroled offenders. Whenever an order for parole is issued it shall recite the conditions of such parole.

4. When considering parole for an offender with consecutive sentences, the minimum term for eligibility for parole shall be calculated by adding the minimum terms for parole eligibility for each of the consecutive sentences, except the minimum term for parole eligibility shall not exceed the minimum term for parole eligibility for an ordinary life sentence.

5. Any offender under a sentence for first degree murder who has been denied release on parole after a parole hearing shall not be eligible for another parole hearing until at least three years from the month of the parole denial; however, this subsection shall not prevent a release pursuant to subsection 4 of section 558.011, RSMo.

6. Parole hearings shall, at a minimum, contain the following procedures:

(1) The victim or person representing the victim who attends a hearing may be accompanied by one other person;

(2) The victim or person representing the victim who attends a hearing shall have the option of giving testimony in the presence of the inmate or to the hearing panel without the inmate being present;

(3) The victim or person representing the victim may call or write the parole board rather than attend the hearing;

(4) The victim or person representing the victim may have a personal meeting with a board member at the board's central office; [and]

(5) The judge, prosecuting attorney or circuit attorney and a representative of the local law enforcement agency investigating the crime shall be allowed to attend the hearing or provide information to the hearing panel in regard to the parole consideration; **and**

(6) The board shall evaluate information listed in the juvenile sex offender registry pursuant to section 211.425, provided the offender is less than twenty-one years of age, as it impacts the safety of the community.

7. The board shall notify any person of the results of a parole eligibility hearing if the person indicates to the board a desire to be notified.

8. The board may, at its discretion, require any offender seeking parole to meet certain conditions during the term of that parole so long as said conditions are not illegal or impossible for the offender to perform. These conditions may include an amount of restitution to the state for the cost of that offender's incarceration.

9. Nothing contained in this section shall be construed to require the release of an offender on parole nor to reduce the sentence of an offender heretofore committed.

10. Beginning January 1, 2001, the board shall not order a parole unless the offender has obtained a high school diploma or its equivalent, or unless the board is satisfied that the

offender, while committed to the custody of the department, has made an honest good-faith effort to obtain a high school diploma or its equivalent; provided that the director may waive this requirement by certifying in writing to the board that the offender has actively participated in mandatory education programs or is academically unable to obtain a high school diploma or its equivalent.

556.061. In this code, unless the context requires a different definition, the following shall apply:

(1) "Affirmative defense" has the meaning specified in section 556.056;

(2) "Burden of injecting the issue" has the meaning specified in section 556.051;

(3) "Commercial film and photographic print processor", any person who develops exposed photographic film into negatives, slides or prints, or who makes prints from negatives or slides, for compensation. The term commercial film and photographic print processor shall include all employees of such persons but shall not include a person who develops film or makes prints for a public agency;

(4) "Confinement":

(a) A person is in confinement when such person is held in a place of confinement pursuant to arrest or order of a court, and remains in confinement until:

a. A court orders the person's release; or

b. The person is released on bail, bond, or recognizance, personal or otherwise; or

c. A public servant having the legal power and duty to confine the person authorizes his release without guard and without condition that he return to confinement;

(b) A person is not in confinement if:

a. The person is on probation or parole, temporary or otherwise; or

b. The person is under sentence to serve a term of confinement which is not continuous, or is serving a sentence under a work-release program, and in either such case is not being held in a place of confinement or is not being held under guard by a person having the legal power and duty to transport the person to or from a place of confinement;

(5) "Consent": consent or lack of consent may be expressed or implied. Assent does not constitute consent if:

(a) It is given by a person who lacks the mental capacity to authorize the conduct charged to constitute the offense and such mental incapacity is manifest or known to the actor; or

(b) It is given by a person who by reason of youth, mental disease or defect, or intoxication, is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(c) It is induced by force, duress or deception;

(6) "Criminal negligence" has the meaning specified in section 562.016, RSMo;

(7) "Custody", a person is in custody when the person has been arrested but has not been delivered to a place of confinement;

(8) "Dangerous felony" means the felonies of arson in the first degree, assault in the first degree, **attempted forcible rape, attempted forcible sodomy**, forcible rape, forcible sodomy, kidnapping, murder in the second degree and robbery in the first degree;

(9) "Dangerous instrument" means any instrument, article or substance, which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury;

(10) "Deadly weapon" means any firearm, loaded or unloaded, or any weapon from which a shot, readily capable of producing death or serious physical injury, may be discharged, or a switchblade knife, dagger, billy, blackjack or metal knuckles;

(11) "Felony" has the meaning specified in section 556.016;

(12) "Forcible compulsion" means either:

(a) Physical force that overcomes reasonable resistance; or

(b) A threat, express or implied, that places a person in reasonable fear of death, serious physical injury or kidnapping of such person or another person;

(13) "Incapacitated" means that physical or mental condition, temporary or permanent, in which a person is unconscious, unable to appraise the nature of such person's conduct, or unable to communicate unwillingness to an act. A person is not incapacitated with respect to an act committed upon such person if he or she became unconscious, unable to appraise the nature of such person's conduct or unable to communicate unwillingness to an act, after consenting to the act;

(14) "Infraction" has the meaning specified in section 556.021;

(15) "Inhabitable structure" has the meaning specified in section 569.010, RSMo;

(16) "Knowingly" has the meaning specified in section 562.016, RSMo;

(17) "Law enforcement officer" means any public servant having both the power and duty to make arrests for violations of the laws of this state, and federal law enforcement officers authorized to carry firearms and to make arrests for violations of the laws of the United States;

(18) "Misdemeanor" has the meaning specified in section 556.016;

(19) "Offense" means any felony, misdemeanor or infraction;

(20) "Physical injury" means physical pain, illness, or any impairment of physical condition;

(21) "Place of confinement" means any building or facility and the grounds thereof wherein a court is legally authorized to order that a person charged with or convicted of a crime be held;

(22) "Possess" or "possessed" means having actual or constructive possession of an object with knowledge of its presence. A person has actual possession if such person has the object on

his or her person or within easy reach and convenient control. A person has constructive possession if such person has the power and the intention at a given time to exercise dominion or control over the object either directly or through another person or persons. Possession may also be sole or joint. If one person alone has possession of an object, possession is sole. If two or more persons share possession of an object, possession is joint;

(23) "Public servant" means any person employed in any way by a government of this state who is compensated by the government by reason of such person's employment, any person appointed to a position with any government of this state, or any person elected to a position with any government of this state. It includes, but is not limited to, legislators, jurors, members of the judiciary and law enforcement officers. It does not include witnesses;

(24) "Purposely" has the meaning specified in section 562.016, RSMo;

(25) "Recklessly" has the meaning specified in section 562.016, RSMo;

(26) "Ritual" or "ceremony" means an act or series of acts performed by two or more persons as part of an established or prescribed pattern of activity;

(27) "Serious emotional injury", an injury that creates a substantial risk of temporary or permanent medical or psychological damage, manifested by impairment of a behavioral, cognitive or physical condition. Serious emotional injury shall be established by testimony of qualified experts upon the reasonable expectation of probable harm to a reasonable degree of medical or psychological certainty;

(28) "Serious physical injury" means physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body;

(29) "Sexual conduct" means acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification;

(30) "Sexual contact" means any touching of the genitals or anus of any person, or the breast of any female person, or any such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person;

(31) "Sexual performance", any performance, or part thereof, which includes sexual conduct by a child who is less than seventeen years of age;

(32) "Voluntary act" has the meaning specified in section 562.011, RSMo.

566.145. 1. A person commits the crime of sexual contact with an inmate if such person is an employee of, or assigned to work in, any jail, prison or correctional facility and such person has sexual intercourse or deviate sexual intercourse with an inmate or resident of the facility.

2. Sexual contact with an inmate is a class C felony.

589.400. 1. Sections 589.400 to 589.425 shall apply to:

(1) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to committing, or attempting to commit, [an] **a felony** offense of chapter 566, RSMo; or

(2) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to committing, or attempting to commit one or more of the following offenses: kidnapping; promoting prostitution in the first degree; promoting prostitution in the second degree; promoting prostitution in the third degree; incest; abuse of a child; used a child in a sexual performance; **a misdemeanor offense pursuant to chapter 566, RSMo**; or promoting sexual performance by a child; and committed or attempted to commit the offense against a victim who is a minor, defined for the purposes of sections 589.400 to 589.425 as a person under eighteen years of age; or

(3) Any person who, since July 1, 1979, has been committed to the department of mental health as a criminal sexual psychopath; or

(4) Any person who, since July 1, 1979, has been found not guilty as a result of mental disease or defect of any offense listed in subdivision (1) or (2) of this subsection; or

(5) Any person who is a resident of this state and has been or is required to register in another state or has been or is required to register under federal or military law; or

(6) Any person who has been or is required to register in another state or has been or is required to register under federal or military law and who works or attends school or training on a full-time or on a part-time basis in Missouri. Part-time in this subdivision means for more than fourteen days in any twelve-month period.

2. Any person **who resides in any county or in any city not within a county of the state and** to whom sections 589.400 to 589.425 apply shall **register, by September 10, 2002, with the chief law enforcement official of the county or city not within a county in which such person resides. Any person who is released from custody and who then or thereafter resides in any county or in any city not within a county of the state and to whom sections 589.400 to 589.425 apply shall,** within ten days of [coming into any] **such release or becoming such a resident of any county or any city not within a county of the state,** register with the chief law enforcement official of the county **or city not within a county of the state** in which such person resides. The chief law enforcement official shall forward a copy of the registration form required by section 589.407 to a city, town or village law enforcement agency located within the county **or city not within a county of the state** of the chief law enforcement official, if so requested. Such request may ask the chief law enforcement official to forward copies of all registration forms filed with such official. The chief law enforcement official may forward a copy of such registration form to any city, town or village law enforcement agency, if so requested.

3. The registration requirements of sections 589.400 through 589.425 are lifetime

registration requirements unless all offenses requiring registration are reversed, vacated or set aside or unless the registrant is pardoned of the offenses requiring registration.

589.417. 1. Except for the specific information listed in subsection 2 of this section, the complete statements, photographs and fingerprints required by sections 589.400 to 589.425 shall not be subject to the provisions of chapter 610, RSMo, and are not public records as defined in section 610.010, RSMo, and shall be available only to courts, prosecutors and law enforcement agencies, **and to members of the public pursuant to section 589.430.**

2. Notwithstanding any provision of law to the contrary, the chief law enforcement official of the county **or city not within a county of the state** shall maintain, for all offenders registered in such county **or city not within a county of the state**, a complete list of the names, addresses and crimes for which such offenders are registered. Any person may request such list from the chief law enforcement official of the county **or city not within a county of the state.**

3. Law enforcement agencies and their employees, state officials, the departments of public safety, corrections, mental health, social services and their employees, independent contractors and staff acting at the direction of these agencies shall be immune from liability in carrying out the provisions of this section and section 589.430, except in instances of gross negligence or willful misconduct.

589.430. 1. As used in this section, the following terms mean:

(1) "Director", the director of the department of corrections;

(2) "Local law enforcement agencies", all law enforcement agencies that have jurisdiction in the location where the sex offender resides, is employed, carries on a vocation, or is a student;

(3) "Sex offender", any person required to register pursuant to the provisions of section 589.400.

2. A sex offender shall be assessed on the basis of the offender's risk to commit any act that would require an offender to comply with the provisions of sections 589.400 to 589.425. An assessment of a sex offender shall be conducted in each of the following circumstances:

(1) All offenders required to register under this chapter that register on or before September 10, 2002 that have not been previously assessed;

(2) The department of corrections releases the offender for supervision in the community;

(3) The department of corrections releases the offender from confinement due to completion of sentence or at the direction of a court;

(4) The department of corrections accepts the offender for supervision in the community upon court order;

(5) The department of corrections is advised by the department of another state that the offender is residing, employed, carrying on a vocation, or is a student in this state.

3. The risk assessment shall be conducted at least ninety days prior to the offender being released into the community by the department of corrections, or as soon as practicable after the department is aware that the offender should be assessed pursuant to subsection 1 of this section.

4. In making a risk assessment, the department of corrections shall use a risk assessment instrument that considers at a minimum the following factors: the number and nature of sexual offenses committed by the offender; the age of the offender and the victim at the time of the offense; the relationship between the offender and the victim and the degree of vulnerability of the victim; whether force or any weapon was used by the offender in committing the offense; the degree and nature of injury to the victim; and the offender's response to any treatment program that addressed the offender's sexually deviant behavior.

5. Depending on the level of risk determined by the department of corrections, notice shall be provided in accordance with this section and any notice guidelines developed by a notice guideline committee appointed by the director. The notice guideline committee shall be comprised of at least twelve members representing the departments of corrections, public safety, mental health, elementary and secondary education and social services as well as persons with experience in victim's issues, treatment of sex offenders and law enforcement. The committee members shall serve at the discretion of the director and shall receive no compensation but shall be reimbursed by the department of corrections for actual and necessary expenses incurred in the performance of their duties. In developing notice guidelines, the committee shall have access to records of the department of corrections. Any records reviewed by the committee shall remain confidential, and any meeting of the committee at which such confidential records are reviewed shall be a closed meeting, as defined in chapter 610, RSMo.

6. If the sex offender is determined to be low risk, the department of corrections shall notify known victims pursuant to notice guidelines and the departments of public safety and social services with the results of the risk assessment. The department of corrections shall also forward the results of the risk assessment to all local law enforcement agencies. In response to a question by any member of the public regarding whether or not a particular low risk person is registered with the registry of offenders maintained pursuant to sections 589.400 to 589.425, the departments of corrections and public safety and local law enforcement agencies shall

verbally disclose whether or not the subject of the inquiry is registered, the offense for which the offender was convicted, and the location and telephone number of the local office of the department of corrections providing supervision.

7. If the sex offender is determined to be a moderate risk, the department of corrections shall notify known victims pursuant to notice guidelines and the departments of public safety and social services with the results of the risk assessment. The department of corrections shall also forward the results of the risk assessment to all local law enforcement agencies. The local law enforcement agencies are authorized to provide notice to local schools and day care centers in the area of the offender's residence, employment, or place of study in accordance with notice guidelines developed by the notice committee. In response to a question by any member of the public regarding moderate risk sex offenders required to register pursuant to sections 589.400 to 589.425, the departments of corrections and public safety and local law enforcement agencies shall disclose verbally or through written notice the names of offenders and any known aliases, descriptions of the offenders, the offenders' addresses, the nature of the offenders' convictions, and the location and telephone number of the local office of the department of corrections providing supervision over the offenders.

8. If the sex offender is determined to be high risk, the department of corrections shall notify known victims pursuant to notice guidelines and the departments of public safety and social services with the results of the risk assessment. The department shall also forward the results of the risk assessment to all local law enforcement agencies. The local law enforcement agencies are authorized to provide notice to local schools, day care centers and neighbors in the area of the offender's residence, employment, or place of study in accordance with notice guidelines developed by the notice committee. In response to a question by any member of the public regarding high risk sex offenders required to register pursuant to sections 589.400 to 589.425, the departments of corrections and public safety and local law enforcement agencies shall disclose verbally or through written notice the names of offenders and any known aliases, a description of the offenders, the offenders' addresses, the nature of the offenders' convictions, a copy or access to recent photographs of the offenders, and a description of any motor vehicles owned or operated by the offenders along with license numbers and the locations and telephone numbers at the local office of the department of corrections providing supervision over the offenders.

632.483. 1. When it appears that a person may meet the criteria of a sexually violent predator, **has pled guilty or been found guilty of any sexual offense pursuant to**

chapter 556, RSMo, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team established in subsection 4 of this section. Written notice shall be given:

(1) Within three hundred sixty days prior to the anticipated release from a correctional center of the department of corrections of a person who has been convicted of a sexually violent offense, except that in the case of persons who are returned to prison for no more than one hundred eighty days as a result of revocation of postrelease supervision, written notice shall be given as soon as practicable following the person's readmission to prison;

(2) At any time prior to the release of a person who has been found not guilty by reason of mental disease or defect of a sexually violent offense; or

(3) At any time prior to the release of a person who was committed as a criminal sexual psychopath pursuant to section 632.475 and statutes in effect before August 13, 1980.

2. The agency with jurisdiction shall inform the attorney general and the multidisciplinary team established in subsection 4 of this section of the following:

(1) The person's name, identifying factors, anticipated future residence and offense history; and

(2) Documentation of institutional adjustment and any treatment received or refused, including the Missouri sexual offender program.

3. The agency with jurisdiction, its employees, officials, members of the multidisciplinary team established in subsection 4 of this section, members of the prosecutor's review committee appointed as provided in subsection 5 of this section and individuals contracting or appointed to perform services hereunder shall be immune from liability for any conduct performed in good faith and without gross negligence pursuant to the provisions of sections 632.480 to 632.513.

4. The director of the department of mental health and the director of the department of corrections shall establish a multidisciplinary team consisting of no more than seven members, at least one from the department of corrections and the department of mental health, and which may include individuals from other state agencies to review available records of each person referred to such team pursuant to subsection 1 of this section. The team, within thirty days of receiving notice, shall assess whether or not the person meets the definition of a sexually violent predator. The team shall notify the attorney general of its assessment.

5. The prosecutors coordinators training council established pursuant to section 56.760, RSMo, shall appoint a five-member prosecutors' review committee composed of a cross section of county prosecutors from urban and rural counties. No more than three shall be from urban counties, and one member shall be the prosecuting attorney of the county in which the person was convicted or committed pursuant to chapter 552, RSMo. The committee shall review the records of each person referred to the attorney general pursuant to subsection 1 of this section. The prosecutors' review committee shall make a determination of whether or not the

person meets the definition of a sexually violent predator. The determination of the prosecutors' review committee or any member pursuant to this section or section 632.484 shall not be admissible evidence in any proceeding to prove whether or not the person is a sexually violent predator. The assessment of the multidisciplinary team shall be made available to the attorney general and the prosecutors' review committee.

Section B. Because immediate action is necessary to revise the statute of limitations for certain sexual offenses, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.

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