

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1014

95TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, April 8, 2010, with recommendation that the Senate Committee Substitute do pass.

5235S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 221.105 and 566.067, RSMo, and to enact in lieu thereof four new sections relating to crime, with penalty provisions, an expiration date for a certain section and an emergency clause for certain sections.

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

Section A. Sections 221.105 and 566.067, RSMo, are repealed and four
2 new sections enacted in lieu thereof, to be known as sections 217.023, 221.105,
3 559.015, and 566.067, to read as follows:

**217.023. 1. For the period of July 1, 2008, to June 30, 2009, the
2 department of corrections shall determine for each county the average
3 end of month population of persons committed from the county to the
4 department for a nonviolent offense.**

5 **2. Notwithstanding any other provision of law to the contrary,
6 eighty-five percent of the number calculated under subsection 1 of this
7 section shall be the maximum number of persons from each county that
8 shall be serving a sentence of imprisonment for a nonviolent offense
9 with the department of corrections for a nonviolent offense at any one
10 time. For purposes of this section, a "sentence of imprisonment in the
11 department of corrections" shall include offenders sentenced under
12 sections 217.362 and 559.115. The department shall calculate and
13 provide such number to each county prior to August 28, 2010. A county
14 may choose to exceed the maximum number of commitments permitted
15 if it reimburses the state at a rate determined by the department of
16 corrections as the cost of incarceration for each additional individual.**

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

17 As an alternative to reimbursing the state for the cost of incarcerating
18 a person when the maximum number of incarcerated nonviolent
19 offenders has been exceeded, the county may, at its own expense,
20 incarcerate the person in a county or municipal jail located in this
21 state. Under such circumstance, the county shall not be eligible to
22 receive reimbursement from the state under section 221.105 and may,
23 if necessary, make mutually agreeable arrangements with another
24 county to incarcerate such person outside of the county or municipality
25 where he or she was sentenced.

26 3. The general assembly shall appropriate any annualized
27 savings generated from the implementation of this section as provided
28 by this subsection. One-half shall revert to the general revenue fund
29 of the state. One-sixth shall be appropriated to the department of
30 corrections for any costs associated with community supervision, one-
31 sixth shall be appropriated to the drug court resource fund established
32 under section 478.009, and one-sixth shall be appropriated to the
33 "County Corrections Stabilization Fund" established under subsection
34 4 of this section.

35 4. There is hereby created in the state treasury the "County
36 Corrections Stabilization Fund". The state treasurer shall be custodian
37 of the fund and may approve disbursements from the fund in
38 accordance with sections 30.170 and 30.180. Money in the fund shall be
39 used by the counties to fund the probation services and housing, by the
40 county, of inmates who would otherwise be incarcerated in the
41 department of corrections. The department of corrections shall
42 administer the fund and disburse the money to reimburse the actual
43 costs of incarceration incurred under subdivision (3) and (4) of
44 subsection 3 of section 221.105 of each county that complies with the
45 maximum number of permitted commitments provided under
46 subsection 2 of this section. If insufficient moneys are available, the
47 department shall pay each county a pro rata share of the amount
48 available in the fund. If additional moneys are available in the fund
49 after the eligible counties' costs of incarceration under section 221.105
50 are paid, each county shall receive a pro rata share of the money in the
51 fund based on the percentage of the total number of nonviolent
52 offenders who are reduced in the department of corrections because of
53 implementation of this section for which the county is

54 **responsible. Notwithstanding the provisions of section 33.080 to the**
55 **contrary, any moneys remaining in the fund at the end of the biennium**
56 **shall not revert to the credit of the general revenue fund. The state**
57 **treasurer shall invest moneys in the fund in the same manner as other**
58 **funds are invested. Any interest and moneys earned on such**
59 **investments shall be credited to the fund.**

60 **5. The department of corrections, on a monthly basis or upon**
61 **request of a prosecuting or circuit attorney, shall provide the**
62 **prosecuting or circuit attorney with a list of persons incarcerated in**
63 **the department of corrections for nonviolent offenses from such county,**
64 **including the risk assessment and parole release guidelines utilized by**
65 **the board of probation and parole for each individual, the list of**
66 **offenses of which the individual was found guilty of or pleaded guilty**
67 **to, and the person's conditional and board release date.**

68 **6. The provisions of this section shall expire August 28, 2013,**
69 **except that the savings resulting from implementation of this section**
70 **during the year ending on August 28, 2013, shall be calculated and**
71 **distributed as provided in subsection 3 of this section after such date.**

221.105. 1. The governing body of any county and of any city not within
2 a county shall fix the amount to be expended for the cost of incarceration of
3 prisoners confined in jails or medium security institutions. The per diem cost of
4 incarceration of these prisoners chargeable by the law to the state shall be
5 determined, subject to the review and approval of the department of corrections.

6 2. When the final determination of any criminal prosecution shall be such
7 as to render the state liable for costs under existing laws, it shall be the duty of
8 the sheriff to certify to the clerk of the circuit court or court of common pleas in
9 which the case was determined the total number of days any prisoner who was
10 a party in such case remained in the county jail. It shall be the duty of the
11 county commission to supply the cost per diem for county prisons to the clerk of
12 the circuit court on the first day of each year, and thereafter whenever the
13 amount may be changed. It shall then be the duty of the clerk of the court in
14 which the case was determined to include in the bill of cost against the state all
15 fees which are properly chargeable to the state. In any city not within a county
16 it shall be the duty of the superintendent of any facility boarding prisoners to
17 certify to the chief executive officer of such city not within a county the total
18 number of days any prisoner who was a party in such case remained in such

19 facility. It shall be the duty of the superintendents of such facilities to supply the
20 cost per diem to the chief executive officer on the first day of each year, and
21 thereafter whenever the amount may be changed. It shall be the duty of the chief
22 executive officer to bill the state all fees for boarding such prisoners which are
23 properly chargeable to the state. The chief executive may by notification to the
24 department of corrections delegate such responsibility to another duly sworn
25 official of such city not within a county. The clerk of the court of any city not
26 within a county shall not include such fees in the bill of costs chargeable to the
27 state. The department of corrections shall revise its criminal cost manual in
28 accordance with this provision.

29 3. The actual costs chargeable to the state, including those incurred for
30 a prisoner who is incarcerated in the county jail, **regardless of whether or not**
31 **a warrant has been issued**, because:

32 (1) The prisoner's parole or probation has been revoked or because the
33 prisoner has, or allegedly has, violated any condition of the prisoner's parole or
34 probation, and such parole or probation is a consequence of a violation of a state
35 statute[, or];

36 (2) The prisoner is a fugitive from the Missouri department of corrections
37 [or];

38 (3) **The prisoner is otherwise held at the request of the Missouri**
39 **department of corrections [regardless of whether or not a warrant has been**
40 **issued], including instances when the prisoner is found guilty of or**
41 **pleads guilty to a state offense for which he or she is sentenced to a**
42 **term of imprisonment in the department of corrections but receives**
43 **credit for the time he or she served in the county jail prior to the**
44 **sentencing for such offense; or**

45 (4) **The prisoner is held in a county jail for a state offense on a**
46 **sentence or portion of a sentence following a plea or finding of guilt or**
47 **is incarcerated under section 559.026;**

48 shall be the actual cost of incarceration not to exceed[:

49 (1) Until July 1, 1996, seventeen dollars per day per prisoner;

50 (2) On and after July 1, 1996, twenty dollars per day per prisoner;

51 (3) On and after July 1, 1997,] up to thirty-seven dollars and fifty cents
52 per day per prisoner, subject to appropriations, but not less than the amount
53 appropriated in the previous fiscal year. **The counties shall be reimbursed**
54 **for the actual cost of incarceration incurred under subdivision (3) or**

55 (4) of this subsection from the county corrections stabilization fund
56 established under section 217.023 when there are available moneys in
57 such fund.

559.015. 1. Notwithstanding any other provision of law to the
2 contrary, the sentencing court shall have the authority to receive the
3 prosecuting or circuit attorney's motion and make a recommendation
4 to the board of probation and parole as provided by this section.

5 2. When a county has reached or is nearing its maximum number
6 of permitted incarcerations of nonviolent offenders in the department
7 of corrections under section 217.023, the prosecuting or circuit attorney
8 may file a motion with the sentencing court recommending a specific
9 person currently incarcerated be granted parole. The motion shall
10 specify why the particular individual has been chosen by the
11 prosecuting or circuit attorney for recommended release and how the
12 space would be better utilized by incarcerating another
13 individual. Victims for which notification is mandatory or those who
14 request notification shall receive notification of the motion filed from
15 the court and shall be granted the opportunity to be heard on such
16 motion by the court. The court shall make a recommendation to the
17 board of probation and parole that such person be granted parole
18 unless the court finds good cause that such person should remain
19 incarcerated.

20 3. The board of probation and parole shall make a decision
21 granting or denying the parole of such individual within thirty days of
22 receiving the sentencing court's recommendation. Notwithstanding the
23 provisions of section 217.690 to the contrary, no hearing shall be
24 required prior to the board's decision. If the board decides to deny the
25 recommended parole, the county shall be permitted to commit an
26 additional person to the department of corrections without additional
27 costs or penalty to the county under section 217.023. The board of
28 probation and parole may select nonviolent offenders for early release
29 upon their admission to a drug, DWI, or treatment court under chapter
30 487, upon agreement of the drug court commissioner or judge. Any
31 such offender shall thereafter be subject to the jurisdiction of the drug
32 court commissioner or judge as if on original probation.

33 4. The provisions of this section shall expire August 28, 2013.

566.067. 1. A person commits the crime of child molestation in the first

2 degree if he or she subjects another person who is less than fourteen years of age
3 to sexual contact.

4 2. Child molestation in the first degree is a class B felony unless:

5 (1) The actor has previously **pleaded guilty to or** been [convicted]
6 **found guilty** of an offense under this chapter, **or has pleaded guilty to or**
7 **been found guilty of an offense in another jurisdiction that would**
8 **constitute an offense under this chapter**, or in the course thereof the actor
9 inflicts serious physical injury, displays a deadly weapon or deadly instrument
10 in a threatening manner, or the offense is committed as part of a ritual or
11 ceremony, in which case the crime is a class A felony; or

12 (2) The victim is a child less than twelve years of age and:

13 (a) The actor has previously been convicted of an offense under this
14 chapter; or

15 (b) In the course thereof the actor inflicts serious physical injury, displays
16 a deadly weapon or deadly instrument in a threatening manner, or if the offense
17 is committed as part of a ritual or ceremony, in which case, the crime is a class
18 A felony and such person shall serve his or her term of imprisonment without
19 eligibility for probation or parole.

Section B. Because of the need to efficiently house Missouri's inmate
2 population and effectively protect the citizens of this state, the enactment of
3 section 217.023, the repeal and reenactment of section 221.105, and the
4 enactment of section 559.015 of this act are deemed necessary for the immediate
5 preservation of the public health, welfare, peace and safety, and is hereby
6 declared to be an emergency act within the meaning of the constitution, and the
7 enactment of section 217.023, the repeal and reenactment of section 221.105, and
8 the enactment of section 559.015 of this act shall be in full force and effect upon
9 its passage and approval.

✓