

# SENATE BILL NO. 1074

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR HUDSON.

4021S.011

KRISTINA MARTIN, Secretary

## AN ACT

To repeal sections 217.147, 217.151, 217.703, 558.041, and 559.016, RSMo, and to enact in lieu thereof two new sections relating to criminal sentencing.

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

Section A. Sections 217.147, 217.151, 217.703, 558.041,  
2 and 559.016, RSMo, are repealed and two new sections enacted in  
3 lieu thereof, to be known as sections 217.151 and 559.016, to  
4 read as follows:

217.151. 1. As used in this section, the following  
2 terms shall mean:

3 (1) "Extraordinary circumstance", a substantial flight  
4 risk or some other extraordinary medical or security  
5 circumstance that dictates restraints be used to ensure the  
6 safety and security of a pregnant offender in her third  
7 trimester, a postpartum offender forty-eight hours  
8 postdelivery, the staff of the correctional center or  
9 medical facility, other offenders, or the public;

10 (2) "Labor", the period of time before a birth during  
11 which contractions are present;

12 (3) "Postpartum", the period of recovery immediately  
13 following childbirth, which is six weeks for a vaginal birth  
14 or eight weeks for a cesarean birth, or longer if so  
15 determined by a physician or nurse;

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

16           (4) "Restraints", any physical restraint or other  
17 device used to control the movement of a person's body or  
18 limbs.

19           2. Unless extraordinary circumstances exist as  
20 determined by a corrections officer, a correctional center  
21 shall not use restraints on a pregnant offender in her third  
22 trimester during transportation to and from visits to health  
23 care providers or court proceedings, or during medical  
24 appointments and examinations, labor, delivery, or forty-  
25 eight hours postdelivery.

26           3. In the event a corrections officer determines that  
27 extraordinary circumstances exist and restraints are  
28 necessary, the corrections officer shall fully document in  
29 writing within forty-eight hours of the incident the reasons  
30 he or she determined such extraordinary circumstances  
31 existed, the type of restraints used, and the reasons those  
32 restraints were considered the least restrictive available  
33 and the most reasonable under the circumstances. Such  
34 documents shall be kept on file by the correctional center  
35 for at least ten years from the date the restraints were  
36 used.

37           4. Any time restraints are used on a pregnant offender  
38 in her third trimester or on a postpartum offender forty-  
39 eight hours postdelivery, the restraints shall be the least  
40 restrictive available and the most reasonable under the  
41 circumstances. In no case shall leg, ankle, or waist  
42 restraints or any mechanical restraints be used on any such  
43 offender, and if wrist restraints are used, such restraints  
44 shall be placed in the front of such offender's body to  
45 protect the offender and unborn child in the case of a  
46 forward fall.

47           5. If a doctor, nurse, or other health care provider  
48 treating the pregnant offender in her third trimester or the  
49 postpartum offender forty-eight hours postdelivery requests  
50 that restraints not be used, the corrections officer  
51 accompanying such offender shall immediately remove all  
52 restraints.

53           6. Pregnant offenders shall be transported in vehicles  
54 equipped with seatbelts.

55           7. [The sentencing and corrections oversight  
56 commission established under section 217.147 and] The  
57 advisory committee established under section 217.015 shall  
58 conduct biannual reviews of every report written on the use  
59 of restraints on a pregnant offender in her third trimester  
60 or on a postpartum offender forty-eight hours postdelivery  
61 in accordance with subsection 3 of this section to determine  
62 compliance with this section. The written reports shall be  
63 kept on file by the department for ten years.

64           8. The chief administrative officer, or equivalent  
65 position, of each correctional center shall:

66           (1) Ensure that employees of the correctional center  
67 are provided with training, which may include online  
68 training, on the provisions of this section [and section  
69 217.147]; and

70           (2) Inform female offenders, in writing and orally, of  
71 any policies and practices developed in accordance with this  
72 section upon admission to the correctional center, including  
73 policies and practices in any offender handbook, and post  
74 the policies and practices in locations in the correctional  
75 center where such notices are commonly posted and will be  
76 seen by female offenders, including common housing areas and  
77 health care facilities.

78           9. The provisions of this section shall apply only to  
79 the department of corrections.

          559.016. 1. Unless terminated as provided in section  
2 559.036 [or modified under section 217.703], the terms  
3 during which each probation shall remain conditional and be  
4 subject to revocation are:

5           (1) A term of years not less than one year and not to  
6 exceed five years for a felony;

7           (2) A term not less than six months and not to exceed  
8 two years for a misdemeanor;

9           (3) A term not less than six months and not to exceed  
10 one year for an infraction.

11          2. The court shall designate a specific term of  
12 probation at the time of sentencing or at the time of  
13 suspension of imposition of sentence. [Such term may be  
14 modified by the division of probation and parole under  
15 section 217.703.]

16          3. The court may extend a period of probation,  
17 however, no more than one extension of any probation may be  
18 ordered except that the court may extend the total time on  
19 probation by one additional year by order of the court if  
20 the defendant admits he or she has violated the conditions  
21 of his or her probation or is found by the court to have  
22 violated the conditions of his or her probation. Total time  
23 on any probation term, including any extension, shall not  
24 exceed the maximum term as established in subsection 1 of  
25 this section plus one additional year if the defendant  
26 admits or the court finds that the defendant has violated  
27 the conditions of his or her probation.

          [217.147. 1. There is hereby created the  
2 "Sentencing and Corrections Oversight

Commission". The commission shall be composed of thirteen members as follows:

(1) A circuit court judge to be appointed by the chief justice of the Missouri supreme court;

(2) Three members to be appointed by the governor with the advice and consent of the senate, one of whom shall be a victim's advocate, one of whom shall be a representative from the Missouri Sheriffs' Association, and one of whom shall be a representative of the Missouri Association of Counties;

(3) The following shall be ex officio, voting members:

(a) The chair of the senate judiciary committee, or any successor committee that reviews legislation involving crime and criminal procedure, who shall serve as co-chair of the commission and the ranking minority member of such senate committee;

(b) The chair of the appropriations-public safety and corrections committee of the house of representatives, or any successor committee that reviews similar legislation, who shall serve as co-chair and the ranking minority member of such house committee;

(c) The director of the Missouri state public defender system, or his or her designee who is a practicing public defender;

(d) The executive director of the Missouri office of prosecution services, or his or her designee who is a practicing prosecutor;

(e) The director of the department of corrections, or his or her designee;

(f) The chairman of the board of probation and parole, or his or her designee;

(g) The chief justice of the Missouri supreme court, or his or her designee.

2. Beginning with the appointments made after August 28, 2012, the circuit court judge member shall be appointed for four years, two of the members appointed by the governor shall be appointed for three years, and one member appointed by the governor shall be appointed for

two years. Thereafter, the members shall be appointed to serve four-year terms and shall serve until a successor is appointed. A vacancy in the office of a member shall be filled by appointment for the remainder of the unexpired term.

3. The co-chairs are responsible for establishing and enforcing attendance and voting rules, bylaws, and the frequency, location, and time of meetings, and distributing meeting notices, except that the commission's first meeting shall occur by February 28, 2013, and the commission shall meet at least twice each calendar year.

4. The duties of the commission shall include:

(1) Monitoring and assisting the implementation of sections 217.703, 217.718, and subsection 4 of section 559.036, and evaluating recidivism reductions, cost savings, and other effects resulting from the implementation;

(2) Determining ways to reinvest any cost savings to pay for the continued implementation of the sections listed in subdivision (1) of this subsection and other evidence-based practices for reducing recidivism; and

(3) Examining the issue of restitution for crime victims, including the amount ordered and collected annually, methods and costs of collection, and restitution's order of priority in official procedures and documents.

5. The department, board, and office of state courts administrator shall collect and report any data requested by the commission in a timely fashion.

6. The commission shall issue a report to the speaker of the house of representatives, senate president pro tempore, chief justice of the Missouri supreme court, and governor on December 31, 2013, and annually thereafter, detailing the effects of the sections listed in subdivision (1) of subsection 4 and providing the data and analysis demonstrating those effects. The report may also recommend ways to

91 reinvest any cost savings into evidence-based  
92 practices to reduce recidivism and possible  
93 changes to sentencing and corrections policies  
94 and statutes.

95 7. The department of corrections shall  
96 provide administrative support to the commission  
97 to carry out the duties of this section.

98 8. No member shall receive any  
99 compensation for the performance of official  
100 duties, but the members who are not otherwise  
101 reimbursed by their agency shall be reimbursed  
102 for travel and other expenses actually and  
103 necessarily incurred in the performance of their  
104 duties.

105 9. The provisions of this section shall  
106 automatically expire on August 28, 2018.]

[217.703. 1. The division of probation  
2 and parole shall award earned compliance credits  
3 to any offender who is:

4 (1) Not subject to lifetime supervision  
5 under sections 217.735 and 559.106 or otherwise  
6 found to be ineligible to earn credits by a  
7 court pursuant to subsection 2 of this section;

8 (2) On probation, parole, or conditional  
9 release for an offense listed in chapter 579, or  
10 an offense previously listed in chapter 195, or  
11 for a class D or E felony, excluding sections  
12 565.225, 565.252, 566.031, 566.061, 566.083,  
13 566.093, 568.020, 568.060, offenses defined as  
14 sexual assault under section 589.015, deviate  
15 sexual assault, assault in the second degree  
16 under subdivision (2) of subsection 1 of section  
17 565.052, endangering the welfare of a child in  
18 the first degree under subdivision (2) of  
19 subsection 1 of section 568.045, and any offense  
20 of aggravated stalking or assault in the second  
21 degree under subdivision (2) of subsection 1 of  
22 section 565.060 as such offenses existed prior  
23 to January 1, 2017;

24 (3) Supervised by the division of  
25 probation and parole; and

(4) In compliance with the conditions of supervision imposed by the sentencing court or board.

2. If an offender was placed on probation, parole, or conditional release for an offense of:

(1) Involuntary manslaughter in the second degree;

(2) Assault in the second degree except under subdivision (2) of subsection 1 of section 565.052 or section 565.060 as it existed prior to January 1, 2017;

(3) Domestic assault in the second degree;

(4) Assault in the third degree when the victim is a special victim or assault of a law enforcement officer in the second degree as it existed prior to January 1, 2017;

(5) Statutory rape in the second degree;

(6) Statutory sodomy in the second degree;

(7) Endangering the welfare of a child in the first degree under subdivision (1) of subsection 1 of section 568.045; or

(8) Any case in which the defendant is found guilty of a felony offense under chapter 571;

the sentencing court may, upon its own motion or a motion of the prosecuting or circuit attorney, make a finding that the offender is ineligible to earn compliance credits because the nature and circumstances of the offense or the history and character of the offender indicate that a longer term of probation, parole, or conditional release is necessary for the protection of the public or the guidance of the offender. The motion may be made any time prior to the first month in which the person may earn compliance credits under this section or at a hearing under subsection 5 of this section. The offender's ability to earn credits shall be suspended until the court or board makes its finding. If the court or board finds that the offender is eligible for earned compliance credits, the credits shall begin to accrue on the first day of the next calendar month following the issuance of the decision.



70           3. Earned compliance credits shall reduce  
71 the term of probation, parole, or conditional  
72 release by thirty days for each full calendar  
73 month of compliance with the terms of  
74 supervision. Credits shall begin to accrue for  
75 eligible offenders after the first full calendar  
76 month of supervision or on October 1, 2012, if  
77 the offender began a term of probation, parole,  
78 or conditional release before September 1, 2012.

79           4. For the purposes of this section, the  
80 term "compliance" shall mean the absence of an  
81 initial violation report or notice of citation  
82 submitted by a probation or parole officer  
83 during a calendar month, or a motion to revoke  
84 or motion to suspend filed by a prosecuting or  
85 circuit attorney, against the offender.

86           5. Credits shall not accrue during any  
87 calendar month in which a violation report,  
88 which may include a report of absconder status,  
89 has been submitted, the offender is in custody,  
90 or a motion to revoke or motion to suspend has  
91 been filed, and shall be suspended pending the  
92 outcome of a hearing, if a hearing is held. If  
93 no hearing is held, or if a hearing is held and  
94 the offender is continued under supervision, or  
95 the court or board finds that the violation did  
96 not occur, then the offender shall be deemed to  
97 be in compliance and shall begin earning credits  
98 on the first day of the next calendar month  
99 following the month in which the report was  
100 submitted or the motion was filed. If a hearing  
101 is held, all earned credits shall be rescinded  
102 if:

103           (1) The court or board revokes the  
104 probation or parole or the court places the  
105 offender in a department program under  
106 subsection 4 of section 559.036; or

107           (2) The offender is found by the court or  
108 board to be ineligible to earn compliance  
109 credits because the nature and circumstances of  
110 the violation indicate that a longer term of  
111 probation, parole, or conditional release is  
112 necessary for the protection of the public or  
113 the guidance of the offender.

Earned credits, if not rescinded, shall continue to be suspended for a period of time during which the court or board has suspended the term of probation, parole, or release, and shall begin to accrue on the first day of the next calendar month following the lifting of the suspension.

6. Offenders who are deemed by the division to be absconders shall not earn credits. For purposes of this subsection, "absconder" shall mean an offender under supervision whose whereabouts are unknown and who has left such offender's place of residency without the permission of the offender's supervising officer and without notifying of their whereabouts for the purpose of avoiding supervision. An offender shall no longer be deemed an absconder when such offender is available for active supervision.

7. Notwithstanding subsection 2 of section 217.730 to the contrary, once the combination of time served in custody, if applicable, time served on probation, parole, or conditional release, and earned compliance credits satisfy the total term of probation, parole, or conditional release, the board or sentencing court shall order final discharge of the offender, so long as the offender has completed restitution and at least two years of his or her probation, parole, or conditional release, which shall include any time served in custody under section 217.718 and sections 559.036 and 559.115.

8. The award or rescission of any credits earned under this section shall not be subject to appeal or any motion for postconviction relief.

9. At least twice a year, the division shall calculate the number of months the offender has remaining on his or her term of probation, parole, or conditional release, taking into consideration any earned compliance credits, and notify the offender of the length of the remaining term.

10. No less than sixty days before the date of final discharge, the division shall notify the sentencing court, the board, and, for probation cases, the circuit or prosecuting attorney of the impending discharge. If the sentencing court, the board, or the circuit or prosecuting attorney upon receiving such notice does not take any action under subsection 5 of this section, the offender shall be discharged under subsection 7 of this section.

11. Any offender who was sentenced prior to January 1, 2017, to an offense that was eligible for earned compliance credits under subsection 1 or 2 of this section at the time of sentencing shall continue to remain eligible for earned compliance credits so long as the offender meets all the other requirements provided under this section.

12. The application of earned compliance credits shall be suspended upon entry into a treatment court, as described in sections 478.001 to 478.009, and shall remain suspended until the offender is discharged from such treatment court. Upon successful completion of treatment court, all earned compliance credits accumulated during the suspension period shall be retroactively applied, so long as the other terms and conditions of probation have been successfully completed.]

[558.041. 1. Any offender committed to the department of corrections, except those persons committed pursuant to subsection 7 of section 558.016, or subsection 3 of section 566.125, may receive additional credit in terms of days spent in confinement upon recommendation for such credit by the offender's institutional superintendent when the offender meets the requirements for such credit as provided in subsections 3 and 4 of this section. Good time credit may be rescinded by the director or his or her designee pursuant to the divisional policy issued pursuant to subsection 3 of this section.

15           2. Any credit extended to an offender  
16 shall only apply to the sentence which the  
17 offender is currently serving.

18           3. The director of the department of  
19 corrections shall issue a policy for awarding  
20 credit. The policy may reward an inmate who has  
21 served his or her sentence in an orderly and  
22 peaceable manner and has taken advantage of the  
23 rehabilitation programs available to him or  
24 her. Any violation of institutional rules or  
25 the laws of this state may result in the loss of  
26 all or a portion of any credit earned by the  
27 inmate pursuant to this section.

28           4. The department shall cause the policy  
29 to be published in the code of state regulations.

30           5. No rule or portion of a rule  
31 promulgated under the authority of this chapter  
32 shall become effective unless it has been  
33 promulgated pursuant to the provisions of  
34 section 536.024.]

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