

SCS HB 301 -- PRISONER RE-ENTRY PROGRAM AND SEXUAL OFFENSES

(Vetoed by the Governor)

This bill changes the laws regarding certain sexual offenses and sexually violent offenders and establishes a prisoner re-entry program for certain offenders.

JUVENILES ON THE SEXUAL OFFENDER REGISTRY

Beginning August 28, 2013, the information of a sexual offender whose offense was committed when he or she was younger than 18 years of age cannot be listed on the State Highway Patrol's Sexual Offender Registry website and any offender currently on the website who was required to register as a sexual offender based on an offense that occurred when he or she was younger than 18 years of age must be immediately removed from the website.

The bill allows any person on the sexual offender registry who was a juvenile certified as an adult and convicted of a felony under Chapter 566, RSMo, regarding sexual offenses, that was equal to or more severe than aggravated sexual abuse under federal law or any person 14 years of age or older at the time of the offense who was adjudicated for an offense that was equal to or more severe than aggravated sexual abuse under federal law to file a petition for removal from the registry. The petition cannot be filed until five years have passed from the later of the date the offender was found guilty of the offense requiring registration or the date the offender was released from custody for the offense. If the person was convicted outside of Missouri, he or she must be a resident of Missouri for at least five years before filing the petition. The court must grant the petition and enter an order directing the removal of the offender's name and information from the registry unless it finds that the offender has been adjudicated of or has charges pending for failure to register or for a subsequent sexual offense that would require registration that occurred after the date the person initially registered; has not successfully completed any required period of supervised release, probation, or parole; or has not been a Missouri resident for at least five years. If the petition is not granted solely because he or she had pending charges for failure to register or an additional offense that requires registration and the charges are subsequently dismissed or he or she is acquitted of the charges, the person may file a new petition at any time after the dismissal or acquittal. If the denial is based on a finding of guilt for an offense that would require registration, no successive petition can be filed. If the denial is based on a finding of guilt for failure to register, the person may file a new petition after five years. If the denial is based on the petitioner not completing a required

period of supervised release, probation, or parole, the person may file a new petition at any time after successfully completing the period of release, probation, or parole. Beginning August 28, 2013, regardless of whether an offender's petition is granted under these provisions, the information regarding any person whose offense was committed when he or she was younger than 18 years of age must be immediately removed from the patrol's sexual offender website and any local law enforcement website allowed under Section 589.402.

SEXUAL OFFENSES

The bill:

- (1) Renames the crime of forcible rape to rape in the first degree and specifies that a person commits the crime if he or she has sexual intercourse with an individual who is incapacitated, incapable of consent, or lacks the capacity to consent or by the use of forcible compulsion;
- (2) Renames the crime of forcible sodomy to sodomy in the first degree and specifies that a person commits the offense if he or she has deviate sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent or by the use of forcible compulsion;
- (3) Renames the crime of sexual assault to rape in the second degree;
- (4) Renames the crime of deviate sexual assault to sodomy in the second degree;
- (5) Renames the crime of sexual abuse to sexual abuse in the first degree and specifies that a person commits the offense if he or she subjects another person to sexual contact when that person is incapacitated, incapable of consent, or lacks the capacity to consent or by the use of forcible compulsion;
- (6) Renames the crime of "sexual misconduct in the second degree" to "sexual misconduct in the first degree";
- (7) Renames the crime of "sexual misconduct in the third degree" to "sexual misconduct in the second degree";
- (8) Renames the crime of "sexual misconduct" to "sexual abuse in the second degree";
- (9) Specifies that a real estate broker's or salesperson's license must also be revoked and an applicant must also not be issued a

license if the licensee or applicant has pleaded guilty to, entered a plea of nolo contendere to, or been found guilty of rape in the first or second degree, forcible rape, sodomy in the first or second degree, or sexual abuse in the first or second degree;

(10) Specifies that a prosecution for rape in the first degree, attempted rape in the first degree, sodomy in the first degree, or attempted sodomy in the first degree may be commenced at any time;

(11) Defines the terms "domestic violence," "family," and "household member" as they apply to certain information that an insurance company cannot disclose to be the same as they are defined in Section 455.010;

(12) Specifies that a prosecution for an unlawful sexual offense involving a person 18 years old or younger must be commenced within 30 years after the victim reaches the age of 18 unless the prosecution is for rape in the first degree, attempted rape in the first degree, sodomy in the first degree, or attempted sodomy in the first degree, in which case the prosecution may be commenced at any time;

(13) Includes being in a drug-induced state or for any other reason being manifestly unable or known by the actor to be unable to make a reasonable judgment to the list of those who are incapable of giving consent to sexual activity; and

(14) Repeals the provision which specifies that a person is not incapacitated with respect to an act committed upon him or her if he or she became unconscious, unable to appraise the nature of the person's conduct, or unable to communicate unwillingness to an act after consenting to the act.

PRISONER RE-ENTRY PROGRAM

A prisoner re-entry program is established within the Department of Corrections to assist offenders who have served their full sentences without early release and are locating to the City of St. Louis upon release. Subject to appropriations, moneys for the program must be appropriated to the department which must transfer the funds to the City of St. Louis's Department of Health and Human Services which will administer the fund. The city must be responsible for the issuance of a request for proposals to organizations with demonstrated experience in providing re-entry services, including facilitating connections to providers of housing and employment services and physical health, mental health, substance abuse, and other social services. The city and the selected contractor must be jointly responsible to the department for ensuring that the services are provided and must provide the

department with all data and records necessary to oversee and measure the effectiveness of the program. The department director is authorized to enter into contracts as are necessary and proper for the implementation of the program.

DEPARTMENT OF CORRECTIONS PROGRAMS

Currently, the Department of Corrections must provide a report and recommendations for terms and conditions of probation to the court after 100 days of incarceration if the department determines that an offender is not successful in a program. The court must then release the offender on probation or order the offender to remain incarcerated to serve the sentence imposed. The bill specifies that if the department determines the offender has not successfully completed a 120-day program, the offender must be removed from the program and the court advised of the removal. The department may recommend the terms and conditions of probation. The court has the power to grant probation or order the execution of the offender's sentence. The court must consider other authorized dispositions if the court is advised that an offender is not eligible for placement in a 120-day program. Except when an offender has been found to be a predatory sexual offender, the court must request the department to conduct a sexual offender assessment if the defendant has pled guilty or been found guilty of a class B sexual abuse felony. The bill repeals a provision requiring the court to request certain offenders be placed in the sexual offender assessment unit of the department and requires the department to provide to the court a report on the offender and may provide recommendations for terms and conditions of an offender's probation. The sexual offender assessment must not be considered a 120-day program. The bill specifies the process for granting probation to an offender who has completed the assessment.

SEXUALLY VIOLENT OFFENDERS

The bill revises the definition of "sexually violent offense" for purposes of civil commitment to include sexual abuse in the first degree; sexual assault in the first degree; deviate sexual assault in the first degree; the act of abuse of a child involving sexual contact, a prohibited sexual act, sexual abuse, or sexual exploitation of a minor; or any felony offense that contains elements substantially similar to these offenses.

Currently, a sexually violent predator who has been civilly committed is allowed to petition the court for conditional release over the objections of the Director of the Department of Mental Health. The petition must be served upon the court that committed the person, the department director, the head of the facility housing the offender, and the Attorney General. The bill requires

the petition to also be served to the prosecuting attorney of the jurisdiction into which the committed person is to be released.

The Department of Corrections must provide, upon request, access by the chief of the local law enforcement agency to the information gathered by the global positioning system or other technology used to monitor a person who has been granted conditional release from the department upon the determination by a court or jury that he or she is not likely to commit acts of sexual violence if released when the person is being electronically monitored and remains in the county, city, town, or village where the releasing facility is located. The information obtained must be closed and cannot be disclosed to any person outside the agency except upon an order of the court supervising the conditional release.

The bill specifies that it is the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "sexually violent offense" to include, but not be limited to, holdings in *Robertson v. State*, 392 S.W.3d 1 (Mo. App. W.D., 2012); and *State ex rel. Whitaker v. Satterfield*, 386 S.W.3d 893 (Mo. App. S.D., 2012), and all cases citing, interpreting, applying, or following those cases. These provisions are to be applied retroactively.

The provisions of the bill regarding the revision of the definition of "dangerous felony" in Section 556.061 and the provisions regarding sexually violent offenses in Section 632.480 contain an emergency clause.