

SECOND REGULAR SESSION

# HOUSE BILL NO. 2246

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BARNES.

5925H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 217.362, 217.735, 558.019, 559.106, 559.115, and 566.125, RSMo, and to enact in lieu thereof nine new sections relating to sexual offenses against children, with an effective date.

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

Section A. Sections 217.362, 217.735, 558.019, 559.106, 559.115, and 566.125, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 217.362, 217.735, 558.019, 559.106, 559.115, 566.015, 566.125, 568.200, and 573.015, to read as follows:

217.362. 1. The department of corrections shall design and implement an intensive long-term program for the treatment of chronic nonviolent offenders with serious substance abuse addictions who have not pleaded guilty to or been convicted of a dangerous felony as defined in section 556.061.

2. Prior to sentencing, any judge considering an offender for this program shall notify the department. The potential candidate for the program shall be screened by the department to determine eligibility. The department shall, by regulation, establish eligibility criteria and inform the court of such criteria. The department shall notify the court as to the offender's eligibility and the availability of space in the program. Notwithstanding any other provision of law to the contrary, except as provided for in section 558.019, if an offender is eligible and there is adequate space, the court may sentence a person to the program which shall consist of institutional drug or alcohol treatment for a period of at least twelve and no more than twenty-four months, as well as a term of incarceration. The department shall determine the nature, intensity, duration, and completion criteria of the education, treatment, and aftercare

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 portions of any program services provided. Execution of the offender's term of incarceration  
16 shall be suspended pending completion of said program. Allocation of space in the program may  
17 be distributed by the department in proportion to drug arrest patterns in the state. If the court is  
18 advised that an offender is not eligible or that there is no space available, the court shall consider  
19 other authorized dispositions.

20 3. Upon successful completion of the program, the board of probation and parole shall  
21 advise the sentencing court of an offender's probationary release date thirty days prior to release.  
22 If the court determines that probation is not appropriate the court may order the execution of the  
23 offender's sentence.

24 4. If it is determined by the department that the offender has not successfully completed  
25 the program, or that the offender is not cooperatively participating in the program, the offender  
26 shall be removed from the program and the court shall be advised. Failure of an offender to  
27 complete the program shall cause the offender to serve the sentence prescribed by the court and  
28 void the right to be considered for probation on this sentence.

29 5. An offender's first incarceration in a department of corrections program pursuant to  
30 this section prior to release on probation shall not be considered a previous prison commitment  
31 for the purpose of determining a minimum prison term pursuant to the provisions of section  
32 558.019, **unless the offender was committed as a result of being found guilty of an offense**  
33 **under chapter 566, 568, or 573 when the offense was sexual in nature and against a victim**  
34 **who was less than seventeen years of age, in which case the incarceration shall be**  
35 **considered a prior prison commitment.**

217.735. 1. Notwithstanding any other provision of law to the contrary, the board shall  
2 supervise an offender for the duration of his or her natural life when the offender has been found  
3 guilty of an offense under:

4 (1) Section 566.030, 566.032, 566.060, 566.062, 566.067, 566.083, 566.100, 566.151,  
5 566.212, 566.213, 568.020, 568.080, or 568.090 based on an act committed on or after August  
6 28, 2006; or

7 (2) Section 566.068, 566.069, 566.210, 566.211, 573.200, or 573.205 based on an act  
8 committed on or after January 1, 2017, against a victim who was less than fourteen years old and  
9 the offender is a prior sex offender as defined in subsection 2 of this section.

10 2. For the purpose of this section, a prior sex offender is a person who has previously  
11 pleaded guilty to or been found guilty of an offense contained in chapter 566 or violating section  
12 568.020 when the person had sexual intercourse or deviate sexual intercourse with the victim,  
13 or violating subdivision (2) of subsection 1 of section 568.045.

14 3. Subsection 1 of this section applies to offenders who have been granted probation, and  
15 to offenders who have been released on parole, conditional release, or upon serving their full

16 sentence without early release. Supervision of an offender who was released after serving his  
17 or her full sentence will be considered as supervision on parole.

18 4. A mandatory condition of lifetime supervision of an offender under this section is that  
19 the offender be electronically monitored. Electronic monitoring shall be based on a global  
20 positioning system or other technology that identifies and records the offender's location at all  
21 times.

22 5. In appropriate cases as determined by a risk assessment, the board may terminate the  
23 supervision of an offender who is being supervised under this section when the offender is  
24 sixty-five years of age or older, **unless the offender has been found guilty of an offense listed**  
25 **under subdivision (2) of subsection 1 of this section or an offense under subdivision (1) of**  
26 **subsection 1 of this section against a victim who was less than seventeen years of age.**

27 6. In accordance with section 217.040, the board may adopt rules relating to supervision  
28 and electronic monitoring of offenders under this section.

558.019. 1. This section shall not be construed to affect the powers of the governor  
2 under Article IV, Section 7, of the Missouri Constitution. This statute shall not affect those  
3 provisions of section 565.020, section 566.125, or section 571.015, which set minimum terms  
4 of sentences, or the provisions of section 559.115, relating to probation.

5 2. The provisions of subsections 2 to 5 of this section shall be applicable to all classes  
6 of felonies except those set forth in chapter 579, or in chapter 195 prior to January 1, 2017, and  
7 those otherwise excluded in subsection 1 of this section. For the purposes of this section, "prison  
8 commitment" means and is the receipt by the department of corrections of an offender after  
9 sentencing. For purposes of this section, prior prison commitments to the department of  
10 corrections shall not include an offender's first incarceration prior to release on probation under  
11 section 217.362 or 559.115, **unless the offender was committed as a result of being found**  
12 **guilty of an offense under chapter 566, 568, or 573 when the offense was sexual in nature**  
13 **and against a victim who was less than seventeen years of age, in which case the**  
14 **incarceration shall be considered a prior prison commitment.** Other provisions of the law  
15 to the contrary notwithstanding, any offender who has been found guilty of a felony other than  
16 a dangerous felony as defined in section 556.061 and is committed to the department of  
17 corrections shall be required to serve the following minimum prison terms:

18 (1) If the offender has one previous prison commitment to the department of corrections  
19 for a felony offense, the minimum prison term which the offender must serve shall be forty  
20 percent of his or her sentence or until the offender attains seventy years of age, and has served  
21 at least thirty percent of the sentence imposed, whichever occurs first;

22 (2) If the offender has two previous prison commitments to the department of corrections  
23 for felonies unrelated to the present offense, the minimum prison term which the offender must

24 serve shall be fifty percent of his or her sentence or until the offender attains seventy years of  
25 age, and has served at least forty percent of the sentence imposed, whichever occurs first;

26 (3) If the offender has three or more previous prison commitments to the department of  
27 corrections for felonies unrelated to the present offense, the minimum prison term which the  
28 offender must serve shall be eighty percent of his or her sentence or until the offender attains  
29 seventy years of age, and has served at least forty percent of the sentence imposed, whichever  
30 occurs first.

31 3. Other provisions of the law to the contrary notwithstanding, any offender who has  
32 been found guilty of a dangerous felony as defined in section 556.061 and is committed to the  
33 department of corrections shall be required to serve a minimum prison term of eighty-five  
34 percent of the sentence imposed by the court or until the offender attains seventy years of age,  
35 and has served at least forty percent of the sentence imposed, whichever occurs first.

36 4. For the purpose of determining the minimum prison term to be served, the following  
37 calculations shall apply:

38 (1) A sentence of life shall be calculated to be thirty years;

39 (2) Any sentence either alone or in the aggregate with other consecutive sentences for  
40 offenses committed at or near the same time which is over seventy-five years shall be calculated  
41 to be seventy-five years.

42 5. For purposes of this section, the term "minimum prison term" shall mean time  
43 required to be served by the offender before he or she is eligible for parole, conditional release  
44 or other early release by the department of corrections.

45 6. (1) A sentencing advisory commission is hereby created to consist of eleven  
46 members. One member shall be appointed by the speaker of the house. One member shall be  
47 appointed by the president pro tem of the senate. One member shall be the director of the  
48 department of corrections. Six members shall be appointed by and serve at the pleasure of the  
49 governor from among the following: the public defender commission; private citizens; a private  
50 member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members  
51 shall be appointed by the supreme court, one from a metropolitan area and one from a rural area.  
52 All members shall be appointed to a four-year term. All members of the sentencing commission  
53 appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory  
54 commission at the pleasure of the governor.

55 (2) The commission shall study sentencing practices in the circuit courts throughout the  
56 state for the purpose of determining whether and to what extent disparities exist among the  
57 various circuit courts with respect to the length of sentences imposed and the use of probation  
58 for offenders convicted of the same or similar offenses and with similar criminal histories. The  
59 commission shall also study and examine whether and to what extent sentencing disparity among

60 economic and social classes exists in relation to the sentence of death and if so, the reasons  
61 therefor, if sentences are comparable to other states, if the length of the sentence is appropriate,  
62 and the rate of rehabilitation based on sentence. It shall compile statistics, examine cases, draw  
63 conclusions, and perform other duties relevant to the research and investigation of disparities in  
64 death penalty sentencing among economic and social classes.

65 (3) The commission shall study alternative sentences, prison work programs, work  
66 release, home-based incarceration, probation and parole options, and any other programs and  
67 report the feasibility of these options in Missouri.

68 (4) The governor shall select a chairperson who shall call meetings of the commission  
69 as required or permitted pursuant to the purpose of the sentencing commission.

70 (5) The members of the commission shall not receive compensation for their duties on  
71 the commission, but shall be reimbursed for actual and necessary expenses incurred in the  
72 performance of these duties and for which they are not reimbursed by reason of their other paid  
73 positions.

74 (6) The circuit and associate circuit courts of this state, the office of the state courts  
75 administrator, the department of public safety, and the department of corrections shall cooperate  
76 with the commission by providing information or access to information needed by the  
77 commission. The office of the state courts administrator will provide needed staffing resources.

78 7. Courts shall retain discretion to lower or exceed the sentence recommended by the  
79 commission as otherwise allowable by law, and to order restorative justice methods, when  
80 applicable.

81 8. If the imposition or execution of a sentence is suspended, the court may order any or  
82 all of the following restorative justice methods, or any other method that the court finds just or  
83 appropriate:

84 (1) Restitution to any victim or a statutorily created fund for costs incurred as a result  
85 of the offender's actions;

86 (2) Offender treatment programs;

87 (3) Mandatory community service;

88 (4) Work release programs in local facilities; and

89 (5) Community-based residential and nonresidential programs.

90 9. The provisions of this section shall apply only to offenses occurring on or after August  
91 28, 2003.

92 10. Pursuant to subdivision (1) of subsection 8 of this section, the court may order the  
93 assessment and payment of a designated amount of restitution to a county law enforcement  
94 restitution fund established by the county commission pursuant to section 50.565. Such  
95 contribution shall not exceed three hundred dollars for any charged offense. Any restitution

96 moneys deposited into the county law enforcement restitution fund pursuant to this section shall  
97 only be expended pursuant to the provisions of section 50.565.

98 11. A judge may order payment to a restitution fund only if such fund had been created  
99 by ordinance or resolution of a county of the state of Missouri prior to sentencing. A judge shall  
100 not have any direct supervisory authority or administrative control over any fund to which the  
101 judge is ordering a person to make payment.

102 12. A person who fails to make a payment to a county law enforcement restitution fund  
103 may not have his or her probation revoked solely for failing to make such payment unless the  
104 judge, after evidentiary hearing, makes a finding supported by a preponderance of the evidence  
105 that the person either willfully refused to make the payment or that the person willfully,  
106 intentionally, and purposefully failed to make sufficient bona fide efforts to acquire the resources  
107 to pay.

108 13. Nothing in this section shall be construed to allow the sentencing advisory  
109 commission to issue recommended sentences in specific cases pending in the courts of this state.

559.106. 1. Notwithstanding any statutory provision to the contrary, when a court grants  
2 probation to an offender who has been found guilty of an offense in:

3 (1) Section 566.030, 566.032, 566.060, 566.062, 566.067, 566.083, 566.100, 566.151,  
4 566.212, 566.213, 568.020, 568.080, or 568.090, based on an act committed on or after August  
5 28, 2006; or

6 (2) Section 566.068, 566.069, 566.210, 566.211, 573.200, or 573.205 based on an act  
7 committed on or after January 1, 2017, against a victim who was less than fourteen years of age  
8 and the offender is a prior sex offender as defined in subsection 2 of this section;

9

10 the court shall order that the offender be supervised by the board of probation and parole for the  
11 duration of his or her natural life.

12 2. For the purpose of this section, a prior sex offender is a person who has previously  
13 been found guilty of an offense contained in chapter 566, or violating section 568.020, when the  
14 person had sexual intercourse or deviate sexual intercourse with the victim, or of violating  
15 subdivision (2) of subsection 1 of section 568.045.

16 3. When probation for the duration of the offender's natural life has been ordered, a  
17 mandatory condition of such probation is that the offender be electronically monitored.  
18 Electronic monitoring shall be based on a global positioning system or other technology that  
19 identifies and records the offender's location at all times.

20 4. In appropriate cases as determined by a risk assessment, the court may terminate the  
21 probation of an offender who is being supervised under this section when the offender is  
22 sixty-five years of age or older, **unless the offender has been found guilty of an offense listed**

23 **under subdivision (2) of subsection 1 of this section or an offense under subdivision (1) of**  
24 **subsection 1 of this section against a victim who was less than seventeen years of age.**

559.115. 1. Neither probation nor parole shall be granted by the circuit court between  
2 the time the transcript on appeal from the offender's conviction has been filed in appellate court  
3 and the disposition of the appeal by such court.

4 2. Unless otherwise prohibited by subsection 8 of this section, a circuit court only upon  
5 its own motion and not that of the state or the offender shall have the power to grant probation  
6 to an offender anytime up to one hundred twenty days after such offender has been delivered to  
7 the department of corrections but not thereafter. The court may request information and a  
8 recommendation from the department concerning the offender and such offender's behavior  
9 during the period of incarceration. Except as provided in this section, the court may place the  
10 offender on probation in a program created pursuant to section 217.777, or may place the  
11 offender on probation with any other conditions authorized by law.

12 3. The court may recommend placement of an offender in a department of corrections  
13 one hundred twenty-day program under this subsection or order such placement under subsection  
14 4 of section 559.036. Upon the recommendation or order of the court, the department of  
15 corrections shall assess each offender to determine the appropriate one hundred twenty-day  
16 program in which to place the offender, which may include placement in the shock incarceration  
17 program or institutional treatment program. When the court recommends and receives placement  
18 of an offender in a department of corrections one hundred twenty-day program, the offender shall  
19 be released on probation if the department of corrections determines that the offender has  
20 successfully completed the program except as follows. Upon successful completion of a  
21 program under this subsection, the board of probation and parole shall advise the sentencing  
22 court of an offender's probationary release date thirty days prior to release. The court shall  
23 follow the recommendation of the department unless the court determines that probation is not  
24 appropriate. If the court determines that probation is not appropriate, the court may order the  
25 execution of the offender's sentence only after conducting a hearing on the matter within ninety  
26 to one hundred twenty days from the date the offender was delivered to the department of  
27 corrections. If the department determines the offender has not successfully completed a one  
28 hundred twenty-day program under this subsection, the offender shall be removed from the  
29 program and the court shall be advised of the removal. The department shall report on the  
30 offender's participation in the program and may provide recommendations for terms and  
31 conditions of an offender's probation. The court shall then have the power to grant probation or  
32 order the execution of the offender's sentence.

33 4. If the court is advised that an offender is not eligible for placement in a one hundred  
34 twenty-day program under subsection 3 of this section, the court shall consider other authorized

35 dispositions. If the department of corrections one hundred twenty-day program under subsection  
36 3 of this section is full, the court may place the offender in a private program approved by the  
37 department of corrections or the court, the expenses of such program to be paid by the offender,  
38 or in an available program offered by another organization. If the offender is convicted of a class  
39 C, class D, or class E nonviolent felony, the court may order probation while awaiting  
40 appointment to treatment.

41 5. Except when the offender has been found to be a predatory sexual offender pursuant  
42 to section 566.125, the court shall request the department of corrections to conduct a sexual  
43 offender assessment if the defendant has been found guilty of sexual abuse when classified as  
44 a class B felony. Upon completion of the assessment, the department shall provide to the court  
45 a report on the offender and may provide recommendations for terms and conditions of an  
46 offender's probation. The assessment shall not be considered a one hundred twenty-day program  
47 as provided under subsection 3 of this section. The process for granting probation to an offender  
48 who has completed the assessment shall be as provided under subsections 2 and 6 of this section.

49 6. Unless the offender is being granted probation pursuant to successful completion of  
50 a one hundred twenty-day program the circuit court shall notify the state in writing when the  
51 court intends to grant probation to the offender pursuant to the provisions of this section. The  
52 state may, in writing, request a hearing within ten days of receipt of the court's notification that  
53 the court intends to grant probation. Upon the state's request for a hearing, the court shall grant  
54 a hearing as soon as reasonably possible. If the state does not respond to the court's notice in  
55 writing within ten days, the court may proceed upon its own motion to grant probation.

56 7. An offender's first incarceration under this section prior to release on probation shall  
57 not be considered a previous prison commitment for the purpose of determining a minimum  
58 prison term under the provisions of section 558.019, **unless the offender was committed as a**  
59 **result of being found guilty of an offense under chapter 566, 568, or 573 when the offense**  
60 **was sexual in nature and against a victim who was less than seventeen years of age, in**  
61 **which case the incarceration shall be considered a prior prison commitment.**

62 8. Notwithstanding any other provision of law, probation may not be granted pursuant  
63 to this section to offenders who have been convicted of murder in the second degree pursuant  
64 to section 565.021; forcible rape pursuant to section 566.030 as it existed prior to August 28,  
65 2013; rape in the first degree under section 566.030; forcible sodomy pursuant to section 566.060  
66 as it existed prior to August 28, 2013; sodomy in the first degree under section 566.060;  
67 [statutory rape in the first degree pursuant to section 566.032; statutory sodomy in the first degree  
68 pursuant to section 566.062; child molestation in the first degree pursuant to section 566.067  
69 when classified as a class A felony;] abuse of a child pursuant to section 568.060 when classified  
70 as a class A felony; **any offense under chapter 566, 568, or 573 when the offense was sexual**



71 **in nature and against a victim who was less than seventeen years of age;** or an offender who  
72 has been found to be a predatory sexual offender pursuant to section 566.125; or any offense in  
73 which there exists a statutory prohibition against either probation or parole.

**566.015. No person found guilty of an offense under this chapter or an attempt to  
2 commit an offense under this chapter, when the offense was against a victim less than  
3 seventeen years of age, shall be granted a suspended imposition of sentence or suspended  
4 execution of sentence.**

566.125. 1. The court shall sentence a person to an extended term of imprisonment if  
2 it finds the defendant is a persistent sexual offender and has been found guilty of attempting to  
3 commit or committing the following offenses:

- 4 (1) Statutory rape in the first degree or statutory sodomy in the first degree;
- 5 (2) Rape in the first degree or sodomy in the first degree;
- 6 (3) Forcible rape;
- 7 (4) Forcible sodomy;
- 8 (5) Rape;
- 9 (6) Sodomy.

10 2. A "persistent sexual offender" is one who has previously been found guilty of  
11 attempting to commit or committing:

- 12 (1) Any of the offenses listed in subsection 1 of this section;
- 13 (2) **Any other offense of chapter 566, 568, or 573 when the offense was sexual in**  
14 **nature and against a victim who was less than seventeen years of age;** or [one who has  
15 previously been found guilty of]
- 16 (3) An offense in any other jurisdiction which would constitute any of the offenses listed  
17 in **this** subsection [1 of this section].

18 3. The term of imprisonment for one found to be a persistent sexual offender shall be  
19 imprisonment for life without eligibility for probation or parole. Subsection 4 of section 558.019  
20 shall not apply to any person imprisoned under this subsection, and "imprisonment for life" shall  
21 mean imprisonment for the duration of the person's natural life.

22 4. The court shall sentence a person to an extended term of imprisonment as provided  
23 for in this section if it finds the defendant is a predatory sexual offender and has been found  
24 guilty of committing or attempting to commit any of the offenses listed in subsection 1 of this  
25 section or committing child molestation in the first or second degree or sexual abuse when  
26 classified as a class B felony.

27 5. For purposes of this section, a "predatory sexual offender" is a person who:

- 28 (1) Has previously been found guilty of committing or attempting to commit any of the  
29 offenses listed in subsection 1 of this section, or committing [child molestation in the first or

30 second degree, or] sexual abuse when classified as a class B felony, **or committing any other**  
31 **offense of chapter 566, 568, or 573 when the offense was sexual in nature and against a**  
32 **victim who was less than seventeen years of age; or**

33 (2) Has previously committed an act which would constitute an offense listed in  
34 subsection 4 of this section, whether or not the act resulted in a conviction; or

35 (3) Has committed an act or acts against more than one victim which would constitute  
36 an offense or offenses listed in subsection 4 of this section, whether or not the defendant was  
37 charged with an additional offense or offenses as a result of such act or acts.

38 6. A person found to be a predatory sexual offender shall be imprisoned for life with  
39 eligibility for parole, however subsection 4 of section 558.019 shall not apply to persons found  
40 to be predatory sexual offenders for the purposes of determining the minimum prison term or the  
41 length of sentence as defined or used in such subsection. Notwithstanding any other provision  
42 of law, in no event shall a person found to be a predatory sexual offender receive a final  
43 discharge from parole.

44 7. Notwithstanding any other provision of law, the court shall set the minimum time  
45 required to be served before a predatory sexual offender is eligible for parole, conditional release  
46 or other early release by the department of corrections. The minimum time to be served by a  
47 person found to be a predatory sexual offender who:

48 (1) Has previously been found guilty of committing or attempting to commit any of the  
49 offenses listed in subsection 1 of this section and is found guilty of committing or attempting to  
50 commit any of the offenses listed in subsection 1 of this section shall be any number of years but  
51 not less than thirty years;

52 (2) Has previously been found guilty of [child molestation in the first or second degree]  
53 **committing any offense of chapter 566, 568, or 573, except an offense listed in subsection**  
54 **1 of this section, when the offense was sexual in nature and against a victim who was less**  
55 **than seventeen years of age**, or sexual abuse when classified as a class B felony and is found  
56 guilty of attempting to commit or committing any of the offenses listed in subsection 1 of this  
57 section shall be any number of years but not less than fifteen years;

58 (3) Has previously been found guilty of committing or attempting to commit any of the  
59 offenses listed in [subsection 1] **subdivision (1) of subsection 5** of this section[, or committing  
60 child molestation in the first or second degree, or sexual abuse when classified as a class B  
61 felony] shall be any number of years but not less than fifteen years;

62 (4) Has previously been found guilty of [child molestation in the first degree or second  
63 degree] **any offense of chapter 566, 568, or 573, except an offense listed in subsection 1 of**  
64 **this section, when the offense was sexual in nature and against a victim who was less than**  
65 **seventeen years of age**, or sexual abuse when classified as a class B felony, and is found guilty

66 of [child molestation in the first or second degree, or sexual abuse when classified as a class B  
67 felony] **an offense listed in this subdivision** shall be any number of years but not less than  
68 fifteen years;

69 (5) Is found to be a predatory sexual offender pursuant to subdivision (2) or (3) of  
70 subsection 5 of this section shall be any number of years within the range to which the person  
71 could have been sentenced pursuant to the applicable law if the person was not found to be a  
72 predatory sexual offender.

73 8. Notwithstanding any provision of law to the contrary, the department of corrections,  
74 or any division thereof, may not furlough an individual found to be and sentenced as a persistent  
75 sexual offender or a predatory sexual offender.

**568.200. No person found guilty of an offense under this chapter or an attempt to  
2 commit an offense under this chapter, when the offense was sexual in nature and against  
3 a victim less than seventeen years of age, shall be granted a suspended imposition of  
4 sentence or suspended execution of sentence.**

**573.015. No person found guilty of an offense under this chapter or an attempt to  
2 commit an offense under this chapter, when the offense was against a victim less than  
3 seventeen years of age, shall be granted a suspended imposition of sentence or suspended  
4 execution of sentence.**

Section B. This act shall become effective January 1, 2017.

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