

FIRST REGULAR SESSION

HOUSE BILL NO. 1194

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COOK.

2175H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 558.019, RSMo, and to enact in lieu thereof one new section relating to criminal sentencing.

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

Section A. Section 558.019, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 558.019, to read as follows:

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

2. The provisions of subsections 2 to 5 of this section shall **[only]** be applicable to **[the offenses contained in sections 565.021, 565.023, 565.024, 565.027, 565.050, 565.052, 565.054, 565.072, 565.073, 565.074, 565.090, 565.110, 565.115, 565.120, 565.153, 565.156, 565.225, 565.300, 566.030, 566.031, 566.032, 566.034, 566.060, 566.061, 566.062, 566.064, 566.067, 566.068, 566.069, 566.071, 566.083, 566.086, 566.100, 566.101, 566.103, 566.111, 566.115, 566.145, 566.151, 566.153, 566.203, 566.206, 566.209, 566.210, 566.211, 566.215, 568.030, 568.045, 568.060, 568.065, 568.175, 569.040, 569.160, 570.023, 570.025, 570.030 when punished as a class A, B, or C felony, 570.145 when punished as a class A or B felony, 570.223 when punished as a class B or C felony, 571.020, 571.030, 571.070, 573.023, 573.025, 573.035, 573.037, 573.200, 573.205, 574.070, 574.080, 574.115, 575.030, 575.150, 575.153, 575.155, 575.157, 575.200 when punished as a class A felony, 575.210, 575.230 when punished as a class B felony, 575.240 when punished as a class B felony, 576.070, 576.080, 577.010, 577.013, 577.078, 577.703, 577.706, 579.065, and 579.068 when punished as a class A or B felony]** all

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.

18 **classes of felonies except those set forth in chapter 579, or in chapter 195 prior to January**
19 **1, 2017, and those otherwise excluded in subsection 1 of this section.** For the purposes of this
20 section, "prison commitment" means and is the receipt by the department of corrections of an
21 offender after sentencing. For purposes of this section, prior prison commitments to the
22 department of corrections shall not include an offender's first incarceration prior to release on
23 probation under section 217.362 or 559.115. Other provisions of the law to the contrary
24 notwithstanding, any offender who has been found guilty of a felony other than a dangerous
25 felony as defined in section 556.061 and is committed to the department of corrections shall be
26 required to serve the following minimum prison terms:

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

31 (2) If the offender has two previous prison commitments to the department of corrections
32 for felonies unrelated to the present offense, the minimum prison term which the offender must
33 serve shall be fifty percent of his or her sentence or until the offender attains seventy years of
34 age, and has served at least forty percent of the sentence imposed, whichever occurs first;

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

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

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

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

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

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

54 6. ~~[An offender who was convicted of, or pled guilty to, a felony offense other than those~~
55 ~~offenses listed in subsection 2 of this section prior to August 28, 2019, shall no longer be subject~~
56 ~~to the minimum prison term provisions under subsection 2 of this section, and shall be eligible~~
57 ~~for parole, conditional release, or other early release by the department of corrections according~~
58 ~~to the rules and regulations of the department.~~

59 ~~7.]~~ (1) A sentencing advisory commission is hereby created to consist of eleven
60 members. One member shall be appointed by the speaker of the house. One member shall be
61 appointed by the president pro tem of the senate. One member shall be the director of the
62 department of corrections. Six members shall be appointed by and serve at the pleasure of the
63 governor from among the following: the public defender commission; private citizens; a private
64 member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members
65 shall be appointed by the supreme court, one from a metropolitan area and one from a rural area.
66 All members shall be appointed to a four-year term. All members of the sentencing commission
67 appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory
68 commission at the pleasure of the governor.

69 (2) The commission shall study sentencing practices in the circuit courts throughout the
70 state for the purpose of determining whether and to what extent disparities exist among the
71 various circuit courts with respect to the length of sentences imposed and the use of probation
72 for offenders convicted of the same or similar offenses and with similar criminal histories. The
73 commission shall also study and examine whether and to what extent sentencing disparity among
74 economic and social classes exists in relation to the sentence of death and if so, the reasons
75 therefor, if sentences are comparable to other states, if the length of the sentence is appropriate,
76 and the rate of rehabilitation based on sentence. It shall compile statistics, examine cases, draw
77 conclusions, and perform other duties relevant to the research and investigation of disparities in
78 death penalty sentencing among economic and social classes.

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

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

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

88 (6) The circuit and associate circuit courts of this state, the office of the state courts
89 administrator, the department of public safety, and the department of corrections shall cooperate

90 with the commission by providing information or access to information needed by the
91 commission. The office of the state courts administrator will provide needed staffing resources.

92 ~~[8.]~~ 7. Courts shall retain discretion to lower or exceed the sentence recommended by
93 the commission as otherwise allowable by law, and to order restorative justice methods, when
94 applicable.

95 ~~[9.]~~ 8. If the imposition or execution of a sentence is suspended, the court may order any
96 or all of the following restorative justice methods, or any other method that the court finds just
97 or appropriate:

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

100 (2) Offender treatment programs;

101 (3) Mandatory community service;

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

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

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

106 10. Pursuant to subdivision (1) of subsection ~~[9]~~ 8 of this section, the court may order
107 the assessment and payment of a designated amount of restitution to a county law enforcement
108 restitution fund established by the county commission pursuant to section 50.565. Such
109 contribution shall not exceed three hundred dollars for any charged offense. Any restitution
110 moneys deposited into the county law enforcement restitution fund pursuant to this section shall
111 only be expended pursuant to the provisions of section 50.565.

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

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

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

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