

FIRST REGULAR SESSION

# SENATE BILL NO. 178

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Pre-filed December 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0673S.01I

## AN ACT

To amend chapter 566, RSMo, by adding thereto three new sections relating to criminal offenses of a sexual nature, with penalty provisions.

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

Section A. Chapter 566, RSMo, is amended by adding thereto three new sections, to be known as sections 566.127, 566.129, and 566.131, to read as follows:

**566.127. 1. As used in this section, the following terms shall mean:**

**(1) "Predatory sexual offense", statutory rape in the first degree, statutory sodomy in the first degree, rape in the first degree, sodomy in the first degree, forcible rape, forcible sodomy, rape, sodomy, child molestation in the first degree when classified as a class A or B felony, child molestation in the second degree when classified as a class A or B felony, sexual abuse when classified as a class B felony, sexual abuse in the first degree when classified as a class B felony, or an attempt to commit any of these offenses, or the commission of an offense in another jurisdiction that if committed in this state would constitute the commission of any of the listed offenses;**

**(2) "Predatory sexual offender", any person who has committed an act which would constitute a predatory sexual offense, whether or not the act resulted in a conviction, or has committed an act or acts against more than one victim which would constitute an offense or offenses listed in this section, whether or not the defendant was charged with an additional offense or offenses as a result of such act or acts.**

**2. The court shall sentence a person to life without eligibility for**

21 probation or parole if it finds the defendant is a predatory sexual  
22 offender. Subsection 4 of section 558.019 shall not apply to any person  
23 imprisoned under this subsection for the purposes of determining the  
24 minimum prison term or the length of sentence as defined or used in  
25 such subsection. Notwithstanding any other provision of law, in no  
26 event shall a person found to be a predatory sexual offender receive a  
27 final discharge from parole.

28 3. Notwithstanding any provision of law to the contrary, the  
29 department of corrections, or any division thereof, may not furlough an  
30 individual found to be and sentenced as a persistent sexual offender or  
31 a predatory sexual offender.

32 4. The punishment imposed pursuant to this section shall be in  
33 addition to any punishment provided by law for the offense, of which  
34 the defendant has been previously found guilty, or the act which would  
35 constitute an offense, whether or not the act was charged or resulted  
36 in a conviction.

566.129. 1. As used in this section, the following terms mean:

2 (1) "Sexual offense", any offense under chapter 566, or an attempt  
3 to commit any of these offenses, or the commission of an offense in  
4 another jurisdiction that if committed in this state would constitute the  
5 commission of any of the listed offenses;

6 (2) "Persistent sexual offender", a person who has been found  
7 guilty of two or more sexual offenses;

8 (3) "Prior sexual offender", a person who has been found guilty  
9 of one sexual offense.

10 2. No court shall suspend the imposition of sentence as to a prior  
11 or persistent sexual offender pursuant to this section nor sentence such  
12 person to pay a fine in lieu of a term of imprisonment, section 557.011  
13 to the contrary notwithstanding, nor shall such person be eligible for  
14 parole or probation until such person has served a minimum of three  
15 years' imprisonment.

16 3. The court shall find the defendant to be a prior sexual  
17 offender or persistent sexual offender, if:

18 (1) The indictment or information, original or amended, or the  
19 information in lieu of an indictment pleads all essential facts  
20 warranting a finding that the defendant is a prior sexual offender or  
21 persistent sexual offender; and

22           **(2) Evidence is introduced that establishes sufficient facts**  
23 **pleaded to warrant a finding beyond a reasonable doubt the defendant**  
24 **is a prior sexual offender or persistent sexual offender; and**

25           **(3) The court makes findings of fact that warrant a finding**  
26 **beyond a reasonable doubt by the court that the defendant is a prior**  
27 **sexual offender or persistent sexual offender.**

28           **4. In a jury trial, such facts shall be pleaded, established and**  
29 **found prior to submission to the jury outside of its hearing.**

30           **5. In a trial without a jury or upon a plea of guilty, the court may**  
31 **defer the proof in findings of such facts to a later time, but prior to**  
32 **sentencing.**

33           **6. The defendant shall be accorded full rights of confrontation**  
34 **and cross-examination, with the opportunity to present evidence, at**  
35 **such hearings.**

36           **7. The defendant may waive proof of the facts alleged.**

37           **8. Nothing in this section shall prevent the use of presentence**  
38 **investigations or commitments.**

39           **9. At the sentencing hearing both the state and the defendant**  
40 **shall be permitted to present additional information bearing on the**  
41 **issue of sentence.**

42           **10. The findings of guilt shall be prior to the date of commission**  
43 **of the present offense.**

44           **11. The court shall not instruct the jury as to the range of**  
45 **punishment or allow the jury, upon a finding of guilt, to assess and**  
46 **declare the punishment as part of its verdict in cases of prior sexual**  
47 **offenders or persistent sexual offenders.**

48           **12. Evidence of prior convictions shall be heard and determined**  
49 **by the trial court out of the hearing of the jury prior to the submission**  
50 **of the case to the jury, and shall include but not be limited to evidence**  
51 **of convictions received by a search of the records of the Missouri**  
52 **uniform law enforcement system maintained by the Missouri state**  
53 **highway patrol. After hearing the evidence, the court shall enter its**  
54 **findings thereon.**

55           **13. The court shall sentence a person who has been found to be**  
56 **a prior sexual offender to the authorized term of imprisonment for the**  
57 **class one class step higher than the offense for which the person was**  
58 **found guilty.**

59           14. The court shall sentence a person who has been found to be  
60 a persistent sexual offender to the authorized term of imprisonment for  
61 the class two steps higher than the offense for which the person was  
62 found guilty. A person found to be a persistent sexual offender who is  
63 found guilty of a class B felony shall be sentenced to the authorized  
64 term of imprisonment for a class A felony. A person found to be a prior  
65 or persistent sexual offender who is found guilty of a class A felony  
66 shall be sentenced to life imprisonment without the eligibility for  
67 probation or parole.

          566.131. When determining whether a defendant is a predatory  
2 sexual offender:

3           (1) Prior finding of guilt shall be pleaded and proven in the same  
4 manner required by the provisions of section 558.021;

5           (2) Acts which would constitute an offense that were not charged  
6 or did not result in a conviction shall be pleaded and proven as follows:

7           (a) In a trial without a jury or upon a plea of guilty, the acts  
8 shall be pleaded and proven in the same manner required by the  
9 provisions of section 558.021. The court may defer the proof and  
10 finding establishing the defendant is a predatory sexual offender to a  
11 later time, but prior to sentencing. The facts required to prove the  
12 defendant is a predatory sexual offender may be established by judicial  
13 notice of prior testimony or the plea of guilty;

14           (b) Notwithstanding any other provisions of law to the contrary,  
15 where an offense is submitted to the jury, the trial shall proceed in  
16 multiple stages. If the jury at the first stage of a trial finds the  
17 defendant guilty of the submitted offense, the second stage of the trial  
18 shall proceed. The issue at the second stage of the trial shall be  
19 whether the defendant is a predatory sexual offender. The state shall  
20 be the first to proceed. The court shall instruct the jury. The attorneys  
21 may argue the issue of whether the defendant is a predatory sexual  
22 offender to the jury, and the state shall have the right to open and close  
23 the argument. The jury shall determine whether the defendant is a  
24 predatory sexual offender beyond a reasonable doubt. If the jury  
25 determines that the defendant is a predatory sexual offender, the court  
26 shall not seek an advisory verdict from the jury. If the jury determines  
27 that the defendant is not a predatory sexual offender, a third stage of  
28 the trial shall proceed. The issue at the third stage of the trial shall be

29 **the punishment to be assessed and declared. The third stage of the**  
30 **trial shall proceed in the same manner required by the provisions of**  
31 **section 557.036.**

✓

Unofficial

Bill

Copy