

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 739
96TH GENERAL ASSEMBLY

4209L.03C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 454.475 and 558.019, RSMo, and to enact in lieu thereof two new sections relating to administrative child support decisions.

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

Section A. Sections 454.475 and 558.019, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 454.475 and 558.019, to read as follows:

454.475. 1. Hearings provided for in this section shall be conducted pursuant to chapter
2 536 by administrative hearing officers designated by the Missouri department of social services.
3 The hearing officer shall provide the parents, the person having custody of the child, or other
4 appropriate agencies or their attorneys with notice of any proceeding in which support
5 obligations may be established or modified. The department shall not be stayed from enforcing
6 and collecting upon the administrative order during the hearing process and during any appeal
7 to the courts of this state, unless specifically enjoined by court order.

8 2. If no factual issue has been raised by the application for hearing, or the issues raised
9 have been previously litigated or do not constitute a defense to the action, the director may enter
10 an order without an evidentiary hearing, which order shall be a final decision entitled to judicial
11 review as provided in sections 536.100 to 536.140.

12 3. After full and fair hearing, the hearing officer shall make specific findings regarding
13 the liability and responsibility, if any, of the alleged responsible parent for the support of the
14 dependent child, and for repayment of accrued state debt or arrearages, and the costs of
15 collection, and shall enter an order consistent therewith. In making the determination of the
16 amount the parent shall contribute toward the future support of a dependent child, the hearing
17 officer shall consider the factors set forth in section 452.340.

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 4. If the person who requests the hearing fails to appear at the time and place set for the
19 hearing, upon a showing of proper notice to that [parent] **person**, the hearing officer shall enter
20 findings and order in accordance with the provisions of the notice [and finding of support
21 responsibility] **or motion** unless the hearing officer determines that no good cause therefor
22 exists.

23 5. In contested cases, the findings and order of the hearing officer shall be the decision
24 of the director. Any parent or person having custody of the child adversely affected by such
25 decision may obtain judicial review pursuant to sections 536.100 to 536.140 by filing a petition
26 for review in the circuit court of proper venue within thirty days of mailing of the decision.
27 Copies of the decision or order of the hearing officer shall be mailed to any parent, person having
28 custody of the child and the division within fourteen days of issuance.

29 6. If a hearing has been requested, and upon request of a parent, a person having custody
30 of the child, the division or a IV-D agency, the director shall enter a temporary order requiring
31 the provision of child support pending the final decision or order pursuant to this section if there
32 is clear and convincing evidence establishing a presumption of paternity pursuant to section
33 210.822. In determining the amount of child support, the director shall consider the factors set
34 forth in section 452.340. The temporary order, effective upon filing pursuant to section 454.490,
35 is not subject to a hearing pursuant to this section. The temporary order may be stayed by a court
36 of competent jurisdiction only after a hearing and a finding by the court that the order fails to
37 comply with rule 88.01.

38 **7. After written notice and an opportunity to respond to all parties:**

39 **(1) Any administrative decision or order issued under this section containing**
40 **clerical mistakes arising from oversight or omission, except proposed administrative**
41 **modifications of judicial orders, may be corrected by an agency administrative hearing**
42 **officer at any time upon their own initiative or written motion filed by the division or any**
43 **party to the action. Proposed administrative modifications of judicial orders may be**
44 **corrected by an agency administrative hearing officer prior to the filing of the proposed**
45 **administrative modification of a judicial order with the court that entered the underlying**
46 **judicial order as required in section 454.496. No correction shall be made during the**
47 **court's review of the administrative decision, order, or proposed order as authorized under**
48 **sections 536.100 to 536.140;**

49 **(2) Any administrative decision or order or proposed administrative modification**
50 **of judicial order issued under this section containing errors arising from mistake, surprise,**
51 **fraud, misrepresentation, excusable neglect or inadvertence, may be corrected prior to**
52 **being filed with the court by an agency administrative hearing officer upon their own**
53 **initiative or by written motion filed by the division or any party to the action. No decision,**

54 **order, or proposed administrative modification of judicial order may be corrected after**
55 **ninety days from the mailing of the administrative decision, order, or proposed order or**
56 **during the court's review of the administrative decision, order, or proposed order as**
57 **authorized under sections 536.100 to 536.140;**

58 **(3) Any administrative decision or order or proposed administrative modification**
59 **of judicial order, issued under this section may be vacated by an agency administrative**
60 **hearing officer upon their own initiative or by written motion filed by the division or any**
61 **party to the action, if the administrative hearing officer determines that the decision or**
62 **order was issued without subject matter jurisdiction, without personal jurisdiction, or**
63 **without affording the parties due process. An administrative order or proposed**
64 **administrative modification of a judicial order may only be vacated prior to being filed**
65 **with the court. No decision, order, or proposed administrative modification of a judicial**
66 **order may be vacated after ninety days from the mailing of the administrative decision,**
67 **order, or proposed administrative modification of a judicial order or during the court's**
68 **review of the administrative decision, order, or proposed order as authorized under**
69 **sections 536.100 to 536.140.**

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 558.018 or section 571.015, which set minimum terms of
4 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 195, and those otherwise excluded in subsection 1
7 of this section. For the purposes of this section, "prison commitment" means and is the receipt
8 by the department of corrections of an offender after sentencing. For purposes of this section,
9 prior prison commitments to the department of corrections shall not include commitment to a
10 regimented discipline program established pursuant to section 217.378. Other provisions of the
11 law to the contrary notwithstanding, any offender who has pleaded guilty to or has been found
12 guilty of a felony other than a dangerous felony as defined in section 556.061 and is committed
13 to the department of corrections shall be required to serve the following minimum prison terms:

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

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

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

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

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

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

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

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

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

42 6. (1) A sentencing advisory commission is hereby created to consist of eleven
43 members. One member shall be appointed by the speaker of the house. One member shall be
44 appointed by the president pro tem of the senate. One member shall be the director of the
45 department of corrections. Six members shall be appointed by and serve at the pleasure of the
46 governor from among the following: the public defender commission; private citizens; a private
47 member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members
48 shall be appointed by the supreme court, one from a metropolitan area and one from a rural area.
49 All members shall be appointed to a four-year term. All members of the sentencing commission
50 appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory
51 commission at the pleasure of the governor.

52 (2) The commission shall study sentencing practices in the circuit courts throughout the
53 state for the purpose of determining whether and to what extent disparities exist among the
54 various circuit courts with respect to the length of sentences imposed and the use of probation
55 for offenders convicted of the same or similar crimes and with similar criminal histories. The

56 commission shall also study and examine whether and to what extent sentencing disparity among
57 economic and social classes exists in relation to the sentence of death and if so, the reasons
58 therefor sentences are comparable to other states, if the length of the sentence is appropriate, and
59 the rate of rehabilitation based on sentence. It shall compile statistics, examine cases, draw
60 conclusions, and perform other duties relevant to the research and investigation of disparities in
61 death penalty sentencing among economic and social classes.

62 (3) [The commission shall establish a system of recommended sentences, within the
63 statutory minimum and maximum sentences provided by law for each felony committed under
64 the laws of this state. This system of recommended sentences shall be distributed to all
65 sentencing courts within the state of Missouri. The recommended sentence for each crime shall
66 take into account, but not be limited to, the following factors:

67 (a) The nature and severity of each offense;

68 (b) The record of prior offenses by the offender;

69 (c) The data gathered by the commission showing the duration and nature of sentences
70 imposed for each crime; and

71 (d) The resources of the department of corrections and other authorities to carry out the
72 punishments that are imposed.

73 (4) [The commission shall study alternative sentences, prison work programs, work
74 release, home-based incarceration, probation and parole options, and any other programs and
75 report the feasibility of these options in Missouri.

76 [(5) The commission shall publish and distribute its recommendations on or before July
77 1, 2004. The commission shall study the implementation and use of the recommendations until
78 July 1, 2005, and return a report to the governor, the speaker of the house of representatives, and
79 the president pro tem of the senate. Following the July 1, 2005, report, the commission shall
80 revise the recommended sentences every two years.

81 [(6) (4) The governor shall select a chairperson who shall call meetings of the
82 commission as required or permitted pursuant to the purpose of the sentencing commission.

83 [(7) (5) The members of the commission shall not receive compensation for their duties
84 on the commission, but shall be reimbursed for actual and necessary expenses incurred in the
85 performance of these duties and for which they are not reimbursed by reason of their other paid
86 positions.

87 [(8) (6) The circuit and associate circuit courts of this state, the office of the state courts
88 administrator, the department of public safety, and the department of corrections shall cooperate
89 with the commission by providing information or access to information needed by the
90 commission. The office of the state courts administrator will provide needed staffing resources.

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

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

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

99 (2) Offender treatment programs;

100 (3) Mandatory community service;

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

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

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

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

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

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

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

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