

FIRST REGULAR SESSION

SENATE BILL NO. 74

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAY.

Pre-filed December 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0661S.011

AN ACT

To repeal sections 217.760 and 558.019, RSMo, and to enact in lieu thereof two new sections relating to prison terms.

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

Section A. Sections 217.760 and 558.019, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 217.760 and 558.019, to read as follows:

217.760. 1. In all felony cases and class A misdemeanor cases, the basis of which misdemeanor cases are contained in chapters 565 and 566 and section 577.023, at the request of a circuit judge of any circuit court, the division of probation and parole shall assign one or more state probation and parole officers to make an investigation of the person convicted of the crime or offense before sentence is imposed. In all felony cases in which the recommended sentence established by the sentencing advisory commission pursuant to subsection [6] 7 of section 558.019 includes probation but the recommendation of the prosecuting attorney or circuit attorney does not include probation, the division of probation and parole shall, prior to sentencing, provide the judge with a report on available alternatives to incarceration. If a presentence investigation report is completed then the available alternatives shall be included in the presentence investigation report.

2. The report of the presentence investigation or preparole investigation shall contain any prior criminal record of the defendant and such information about his or her characteristics, his or her financial condition, his or her social history, the circumstances affecting his or her behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 defendant, information concerning the impact of the crime upon the victim, the
20 recommended sentence established by the sentencing advisory commission and
21 available alternatives to incarceration including opportunities for restorative
22 justice, as well as a recommendation by the probation and parole officer. The
23 officer shall secure such other information as may be required by the court and,
24 whenever it is practicable and needed, such investigation shall include a physical
25 and mental examination of the defendant.

558.019. 1. This section shall not be construed to affect the powers of the
2 governor under Article IV, Section 7, of the Missouri Constitution. This statute
3 shall not affect those provisions of section 565.020, section 566.125, or section
4 571.015, which set minimum terms of sentences, or the provisions of section
5 559.115, relating to probation.

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

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

24 (2) If the offender has two previous prison commitments to the
25 department of corrections for felonies unrelated to the present offense, the
26 **department may require the offender to serve a** minimum prison term
27 [which the offender must serve shall be] **of** fifty percent of his or her sentence or
28 until the offender attains seventy years of age, and has served at least forty
29 percent of the sentence imposed, whichever occurs first;

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

35 3. Other provisions of the law to the contrary notwithstanding, any
36 offender who has been found guilty of a dangerous felony as defined in section
37 556.061 and is committed to the department of corrections [shall] **may** be
38 required to serve a minimum prison term of eighty-five percent of the sentence
39 imposed by the court or until the offender attains seventy years of age, and has
40 served at least forty percent of the sentence imposed, whichever occurs first.

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

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

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

47 5. **(1) Any person, except for a person who was found guilty of**
48 **the offense of murder in the first degree or of any sex offense under**
49 **chapter 566, meeting the following qualifications shall be eligible for**
50 **a parole hearing at a time set by the court:**

51 **(a) There was no heinous motive involved in the crime;**

52 **(b) The person has been a model prisoner; and**

53 **(c) The crime did not involve physical harm or the threat of**
54 **violence to another person.**

55 **(2) For purposes of this subsection, "heinous" means any crime**
56 **that is hateful or shockingly evil.**

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

60 [6.] 7. (1) A sentencing advisory commission is hereby created to consist
61 of eleven members. One member shall be appointed by the speaker of the
62 house. One member shall be appointed by the president pro tem of the
63 senate. One member shall be the director of the department of corrections. Six
64 members shall be appointed by and serve at the pleasure of the governor from
65 among the following: the public defender commission; private citizens; a private

66 member of the Missouri Bar; the board of probation and parole; and a
67 prosecutor. Two members shall be appointed by the supreme court, one from a
68 metropolitan area and one from a rural area. All members shall be appointed to
69 a four-year term. All members of the sentencing commission appointed prior to
70 August 28, 1994, shall continue to serve on the sentencing advisory commission
71 at the pleasure of the governor.

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

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

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

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

94 (6) The circuit and associate circuit courts of this state, the office of the
95 state courts administrator, the department of public safety, and the department
96 of corrections shall cooperate with the commission by providing information or
97 access to information needed by the commission. The office of the state courts
98 administrator will provide needed staffing resources.

99 [7.] 8. Courts shall retain discretion to lower or exceed the sentence
100 recommended by the commission as otherwise allowable by law, and to order
101 restorative justice methods, when applicable.

102 **[8.] 9.** If the imposition or execution of a sentence is suspended, the court
103 may order any or all of the following restorative justice methods, or any other
104 method that the court finds just or appropriate:

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

107 (2) Offender treatment programs;

108 (3) Mandatory community service;

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

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

111 **[9.] 10.** The provisions of this section shall apply only to offenses
112 occurring on or after August 28, 2003.

113 **[10.] 11.** Pursuant to subdivision (1) of subsection **[8] 9** of this section,
114 the court may order the assessment and payment of a designated amount of
115 restitution to a county law enforcement restitution fund established by the county
116 commission pursuant to section 50.565. Such contribution shall not exceed three
117 hundred dollars for any charged offense. Any restitution moneys deposited into
118 the county law enforcement restitution fund pursuant to this section shall only
119 be expended pursuant to the provisions of section 50.565.

120 **[11.] 12.** A judge may order payment to a restitution fund only if such
121 fund had been created by ordinance or resolution of a county of the state of
122 Missouri prior to sentencing. A judge shall not have any direct supervisory
123 authority or administrative control over any fund to which the judge is ordering
124 a person to make payment.

125 **[12.] 13.** A person who fails to make a payment to a county law
126 enforcement restitution fund may not have his or her probation revoked solely for
127 failing to make such payment unless the judge, after evidentiary hearing, makes
128 a finding supported by a preponderance of the evidence that the person either
129 willfully refused to make the payment or that the person willfully, intentionally,
130 and purposefully failed to make sufficient bona fide efforts to acquire the
131 resources to pay.

132 **[13.] 14.** Nothing in this section shall be construed to allow the
133 sentencing advisory commission to issue recommended sentences in specific cases
134 pending in the courts of this state.