

SENATE BILL NO. 787

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BEAN AND SENATOR ESLINGER.

3871S.01I

ADRIANE D. CROUSE, Secretary

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Section A. Section 558.019, RSMo, is repealed and one new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

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

7 2. The provisions of subsections 2 to 5 of this
8 section shall **[only]** be applicable to **[the offenses**
9 **contained in sections 565.021, 565.023, 565.024, 565.027,**
10 **565.050, 565.052, 565.054, 565.072, 565.073, 565.074,**
11 **565.090, 565.110, 565.115, 565.120, 565.153, 565.156,**
12 **565.225, 565.300, 566.030, 566.031, 566.032, 566.034,**
13 **566.060, 566.061, 566.062, 566.064, 566.067, 566.068,**
14 **566.069, 566.071, 566.083, 566.086, 566.100, 566.101,**
15 **566.103, 566.111, 566.115, 566.145, 566.151, 566.153,**
16 **566.203, 566.206, 566.209, 566.210, 566.211, 566.215,**
17 **568.030, 568.045, 568.060, 568.065, 568.175, 569.040,**
18 **569.160, 570.023, 570.025, 570.030** when punished as a class

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

19 A, B, or C felony, 570.145 when punished as a class A or B
20 felony, 570.223 when punished as a class B or C felony,
21 571.020, 571.030, 571.070, 573.023, 573.025, 573.035,
22 573.037, 573.200, 573.205, 574.070, 574.080, 574.115,
23 575.030, 575.150, 575.153, 575.155, 575.157, 575.200 when
24 punished as a class A felony, 575.210, 575.230 when punished
25 as a class B felony, 575.240 when punished as a class B
26 felony, 576.070, 576.080, 577.010, 577.013, 577.078,
27 577.703, 577.706, 579.065, and 579.068 when punished as a
28 class A or B felony] **all classes of felonies except those**
29 **set forth in chapter 579, or in chapter 195 prior to January**
30 **1, 2017, and those otherwise excluded in subsection 1 of**
31 **this section.** For the purposes of this section, "prison
32 commitment" means and is the receipt by the department of
33 corrections of an offender after sentencing. For purposes
34 of this section, prior prison commitments to the department
35 of corrections shall not include an offender's first
36 incarceration prior to release on probation under section
37 217.362 or 559.115. Other provisions of the law to the
38 contrary notwithstanding, any offender who has been found
39 guilty of a felony other than a dangerous felony as defined
40 in section 556.061 and is committed to the department of
41 corrections shall be required to serve the following minimum
42 prison terms:

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

49 (2) If the offender has two previous prison
50 commitments to the department of corrections for felonies

51 unrelated to the present offense, the minimum prison term
52 which the offender must serve shall be fifty percent of his
53 or her sentence or until the offender attains seventy years
54 of age, and has served at least forty percent of the
55 sentence imposed, whichever occurs first;

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

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

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

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

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

79 5. For purposes of this section, the term "minimum
80 prison term" shall mean time required to be served by the
81 offender before he or she is eligible for parole,

82 conditional release or other early release by the department
83 of corrections.

84 6. [An offender who was convicted of, or pled guilty
85 to, a felony offense other than those offenses listed in
86 subsection 2 of this section prior to August 28, 2019, shall
87 no longer be subject to the minimum prison term provisions
88 under subsection 2 of this section, and shall be eligible
89 for parole, conditional release, or other early release by
90 the department of corrections according to the rules and
91 regulations of the department.]

92 7.] (1) A sentencing advisory commission is hereby
93 created to consist of eleven members. One member shall be
94 appointed by the speaker of the house. One member shall be
95 appointed by the president pro tem of the senate. One
96 member shall be the director of the department of
97 corrections. Six members shall be appointed by and serve at
98 the pleasure of the governor from among the following: the
99 public defender commission; private citizens; a private
100 member of the Missouri Bar; the board of probation and
101 parole; and a prosecutor. Two members shall be appointed by
102 the supreme court, one from a metropolitan area and one from
103 a rural area. All members shall be appointed to a four-year
104 term. All members of the sentencing commission appointed
105 prior to August 28, 1994, shall continue to serve on the
106 sentencing advisory commission at the pleasure of the
107 governor.

108 (2) The commission shall study sentencing practices in
109 the circuit courts throughout the state for the purpose of
110 determining whether and to what extent disparities exist
111 among the various circuit courts with respect to the length
112 of sentences imposed and the use of probation for offenders
113 convicted of the same or similar offenses and with similar

114 criminal histories. The commission shall also study and
115 examine whether and to what extent sentencing disparity
116 among economic and social classes exists in relation to the
117 sentence of death and if so, the reasons therefor, if
118 sentences are comparable to other states, if the length of
119 the sentence is appropriate, and the rate of rehabilitation
120 based on sentence. It shall compile statistics, examine
121 cases, draw conclusions, and perform other duties relevant
122 to the research and investigation of disparities in death
123 penalty sentencing among economic and social classes.

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

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

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

137 (6) The circuit and associate circuit courts of this
138 state, the office of the state courts administrator, the
139 department of public safety, and the department of
140 corrections shall cooperate with the commission by providing
141 information or access to information needed by the
142 commission. The office of the state courts administrator
143 will provide needed staffing resources.

144 [8.] 7. Courts shall retain discretion to lower or
145 exceed the sentence recommended by the commission as

146 otherwise allowable by law, and to order restorative justice
147 methods, when applicable.

148 [9.] 8. If the imposition or execution of a sentence
149 is suspended, the court may order any or all of the
150 following restorative justice methods, or any other method
151 that the court finds just or appropriate:

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

155 (2) Offender treatment programs;

156 (3) Mandatory community service;

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

158 (5) Community-based residential and nonresidential
159 programs.

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

162 10. Pursuant to subdivision (1) of subsection [9] 8
163 of this section, the court may order the assessment and
164 payment of a designated amount of restitution to a county
165 law enforcement restitution fund established by the county
166 commission pursuant to section 50.565. Such contribution
167 shall not exceed three hundred dollars for any charged
168 offense. Any restitution moneys deposited into the county
169 law enforcement restitution fund pursuant to this section
170 shall only be expended pursuant to the provisions of section
171 50.565.

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

178 12. A person who fails to make a payment to a county
179 law enforcement restitution fund may not have his or her
180 probation revoked solely for failing to make such payment
181 unless the judge, after evidentiary hearing, makes a finding
182 supported by a preponderance of the evidence that the person
183 either willfully refused to make the payment or that the
184 person willfully, intentionally, and purposefully failed to
185 make sufficient bona fide efforts to acquire the resources
186 to pay.

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

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