

FIRST REGULAR SESSION

HOUSE BILL NO. 1144

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES STEVENSON (Sponsor), FLOOK, JONES (89), BROWN (73),
ROORDA AND KANDER (Co-sponsors).

2495L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 217.362, 558.019, and 559.115, RSMo, and to enact in lieu thereof three new sections relating to drug offenses, with penalty provisions.

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

Section A. Sections 217.362, 558.019, and 559.115, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 217.362, 558.019, and 559.115, to read as follows:

217.362. 1. The department of corrections shall design and implement an intensive long-term program for the treatment of chronic nonviolent offenders with serious substance abuse addictions who have not pleaded guilty to or been convicted of a dangerous felony as defined in section 556.061, RSMo, **or any offense for which the offender is not eligible for probation or parole, and who has:**

(1) **Pled guilty to or been found guilty of two prior felonies; or**

(2) **Completed a program under section 217.785 or section 559.115, RSMo, for an offense involving methamphetamine, its salts, isomers, and salts of isomers, or a methamphetamine precursor drug as defined in section 195.010, RSMo, and has subsequently:**

(a) **Pled guilty to or been found guilty of violating the provisions of chapter 195, RSMo; or**

(b) **Violated the terms of probation and whose controlled substance abuse was a precipitating or contributing factor in the commission of the probation violation.**

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.

15 2. Prior to sentencing, any judge considering an offender for this program shall notify
16 the department. The potential candidate for the program shall be screened by the department to
17 determine eligibility. The department shall, by regulation, establish eligibility criteria and inform
18 the court of such criteria. The department shall notify the court as to the offender's eligibility and
19 the availability of space in the program. Notwithstanding any other provision of law to the
20 contrary, except as provided for in section 558.019, RSMo, if an offender is eligible and there
21 is adequate space, the court may sentence a person to the program which shall consist of
22 institutional drug or alcohol treatment for a period of at least twelve and no more than
23 twenty-four months, as well as a term of incarceration. The department shall determine the
24 nature, intensity, duration, and completion criteria of the education, treatment, and aftercare
25 portions of any program services provided. Execution of the offender's term of incarceration
26 shall be suspended pending completion of said program. Allocation of space in the program may
27 be distributed by the department in proportion to drug arrest patterns in the state. If the court is
28 advised that an offender is not eligible or that there is no space available, the court shall consider
29 other authorized dispositions.

30 3. Upon successful completion of the program, the board of probation and parole shall
31 advise the sentencing court of an offender's probationary release date thirty days prior to release.
32 If the court determines that probation is not appropriate the court may order the execution of the
33 offender's sentence.

34 4. If it is determined by the department that the offender has not successfully completed
35 the program, or that the offender is not cooperatively participating in the program, the offender
36 shall be removed from the program and the court shall be advised. Failure of an offender to
37 complete the program shall cause the offender to serve the sentence prescribed by the court and
38 void the right to be considered for probation on this sentence.

39 [5. An offender's first incarceration in a department of corrections program pursuant to
40 this section prior to release on probation shall not be considered a previous prison commitment
41 for the purpose of determining a minimum prison term pursuant to the provisions of section
42 558.019, RSMo.]

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, RSMo, section 558.018 or section 571.015, RSMo, which set
4 minimum terms of sentences, or the provisions of section 559.115, RSMo, 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, RSMo, and] those otherwise excluded in
7 subsection 1 of this section. For the purposes of this section, "prison commitment" means and
8 is the receipt by the department of corrections of an offender after sentencing. For purposes of

9 this section, prior prison commitments to the department of corrections shall not include
10 commitment to a regimented discipline program established pursuant to section 217.378, RSMo,
11 **or an offender's first incarceration, prior to release on probation, in a department of**
12 **corrections' program established under section 217.785 or section 559.115, RSMo, for an**
13 **offense involving methamphetamine, its salts, isomers, and salts of isomers, or a**
14 **methamphetamine precursor drug as defined in section 195.010, RSMo.** Other provisions
15 of the law to the contrary notwithstanding, any offender who has pleaded guilty to or has been
16 found guilty of a felony other than a dangerous felony as defined in section 556.061, RSMo, and
17 is committed to the department of corrections shall be required to serve the following minimum
18 prison terms:

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

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

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

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

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

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

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

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

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

57 (2) The commission shall study sentencing practices in the circuit courts throughout the
58 state for the purpose of determining whether and to what extent disparities exist among the
59 various circuit courts with respect to the length of sentences imposed and the use of probation
60 for offenders convicted of the same or similar crimes and with similar criminal histories. The
61 commission shall also study and examine whether and to what extent sentencing disparity among
62 economic and social classes exists in relation to the sentence of death and if so, the reasons
63 therefor sentences are comparable to other states, if the length of the sentence is appropriate, and
64 the rate of rehabilitation based on sentence. It shall compile statistics, examine cases, draw
65 conclusions, and perform other duties relevant to the research and investigation of disparities in
66 death penalty sentencing among economic and social classes.

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

- 72 (a) The nature and severity of each offense;
73 (b) The record of prior offenses by the offender;
74 (c) The data gathered by the commission showing the duration and nature of sentences
75 imposed for each crime; and
76 (d) The resources of the department of corrections and other authorities to carry out the
77 punishments that are imposed.

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

81 (5) The commission shall publish and distribute its recommendations on or before July
82 1, 2004. The commission shall study the implementation and use of the recommendations until
83 July 1, 2005, and return a report to the governor, the speaker of the house of representatives, and
84 the president pro tem of the senate. Following the July 1, 2005, report, the commission shall
85 revise the recommended sentences every two years.

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

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

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

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

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

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

104 (2) Offender treatment programs;

105 (3) Mandatory community service;

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

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

108 9. The provisions of this section shall apply only to offenses occurring on or after August
109 28, 2003.

110 10. Pursuant to subdivision (1) of subsection 8 of this section, the court may order the
111 assessment and payment of a designated amount of restitution to a county law enforcement
112 restitution fund established by the county commission pursuant to section 50.565, RSMo. Such
113 contribution shall not exceed three hundred dollars for any charged offense. Any restitution

114 moneys deposited into the county law enforcement restitution fund pursuant to this section shall
115 only be expended pursuant to the provisions of section 50.565, RSMo.

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

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

559.115. 1. Neither probation nor parole shall be granted by the circuit court between
2 the time the transcript on appeal from the offender's conviction has been filed in appellate court
3 and the disposition of the appeal by such court.

4 2. Unless otherwise prohibited by subsection 5 **or** 6 of this section, a circuit court only
5 upon its own motion and not that of the state or the offender shall have the power to grant
6 probation to an offender anytime up to one hundred twenty days after such offender has been
7 delivered to the department of corrections but not thereafter. The court may request information
8 and a recommendation from the department concerning the offender and such offender's behavior
9 during the period of incarceration. Except as provided in this section, the court may place the
10 offender on probation in a program created pursuant to section 217.777, RSMo, or may place the
11 offender on probation with any other conditions authorized by law.

12 3. The court may recommend placement of an offender in a department of corrections
13 one hundred twenty-day program. Upon the recommendation of the court, the department of
14 corrections shall determine the offender's eligibility for the program, the nature, intensity, and
15 duration of any offender's participation in a program and the availability of space for an offender
16 in any program. When the court recommends and receives placement of an offender in a
17 department of corrections one hundred twenty-day program, the offender shall be released on
18 probation if the department of corrections determines that the offender has successfully
19 completed the program except as follows. Upon successful completion of a treatment program,
20 the board of probation and parole shall advise the sentencing court of an offender's probationary
21 release date thirty days prior to release. The court shall release the offender unless such release
22 constitutes an abuse of discretion. If the court determined that there is an abuse of discretion,
23 the court may order the execution of the offender's sentence only after conducting a hearing on
24 the matter within ninety to one hundred twenty days of the offender's sentence. If the court does

25 not respond when an offender successfully completes the program, the offender shall be released
26 on probation. Upon successful completion of a shock incarceration program, the board of
27 probation and parole shall advise the sentencing court of an offender's probationary release date
28 thirty days prior to release. The court shall follow the recommendation of the department unless
29 the court determines that probation is not appropriate. If the court determines that probation is
30 not appropriate, the court may order the execution of the offender's sentence only after
31 conducting a hearing on the matter within ninety to one hundred twenty days of the offender's
32 sentence. If the department determines that an offender is not successful in a program, then after
33 one hundred days of incarceration the circuit court shall receive from the department of
34 corrections a report on the offender's participation in the program and department
35 recommendations for terms and conditions of an offender's probation. The court shall then
36 release the offender on probation or order the offender to remain in the department to serve the
37 sentence imposed.

38 4. If the department of corrections one hundred twenty-day program is full, the court may
39 place the offender in a private program approved by the department of corrections or the court,
40 the expenses of such program to be paid by the offender, or in an available program offered by
41 another organization. If the offender is convicted of a class C or class D nonviolent felony, the
42 court may order probation while awaiting appointment to treatment.

43 5. Except when the offender has been found to be a predatory sexual offender pursuant
44 to section 558.018, RSMo, the court shall request that the offender be placed in the sexual
45 offender assessment unit of the department of corrections if the defendant has pleaded guilty to
46 or has been found guilty of sexual abuse when classified as a class B felony.

47 **6. In any case when the offender has pled guilty to or been found guilty of violating**
48 **sections 195.211 to 195.223, RSMo, when classified as a class A or B felony and when such**
49 **offense involves methamphetamine, its salts, isomers, and salts of isomers, or a**
50 **methamphetamine precursor drug as defined in section 195.010, RSMo, no offender shall**
51 **be eligible for parole or probation until he or she has served a minimum of one hundred**
52 **twenty days imprisonment in the department of corrections.**

53 7. Unless the offender is being granted probation pursuant to successful completion of
54 a one hundred twenty-day program the circuit court shall notify the state in writing when the
55 court intends to grant probation to the offender pursuant to the provisions of this section. The
56 state may, in writing, request a hearing within ten days of receipt of the court's notification that
57 the court intends to grant probation. Upon the state's request for a hearing, the court shall grant
58 a hearing as soon as reasonably possible. If the state does not respond to the court's notice in
59 writing within ten days, the court may proceed upon its own motion to grant probation.

60 [7.] **8.** An offender's first incarceration for one hundred twenty days for participation in
61 a department of corrections program prior to release on probation shall not be considered a
62 previous prison commitment for the purpose of determining a minimum prison term under the
63 provisions of section 558.019, RSMo.

64 [8.] **9.** Notwithstanding any other provision of law, probation may not be granted
65 pursuant to this section to offenders who have been convicted of murder in the second degree
66 pursuant to section 565.021, RSMo; forcible rape pursuant to section 566.030, RSMo; forcible
67 sodomy pursuant to section 566.060, RSMo; statutory rape in the first degree pursuant to section
68 566.032, RSMo; statutory sodomy in the first degree pursuant to section 566.062, RSMo; child
69 molestation in the first degree pursuant to section 566.067, RSMo, when classified as a class A
70 felony; abuse of a child pursuant to section 568.060, RSMo, when classified as a class A felony;
71 an offender who has been found to be a predatory sexual offender pursuant to section 558.018,
72 RSMo; or any offense in which there exists a statutory prohibition against either probation or
73 parole.

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