

SECOND REGULAR SESSION

HOUSE BILL NO. 1318

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ELLINGER.

4129L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 558.019, RSMo, and to enact in lieu thereof one new section relating to minimum sentencing for certain felony offenders.

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Section A. Section 558.019, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 558.019, to read as follows:

558.019. 1. This section shall not be construed to affect the powers of the governor under Article IV, Section 7, of the Missouri Constitution. This statute shall not affect those provisions of section 565.020, section 558.018 or section 571.015, which set minimum terms of sentences, or the provisions of section 559.115, relating to probation.

2. The provisions of subsections 2 to 5 of this section shall be applicable to all classes of felonies except those set forth in chapter 195, and those otherwise excluded in subsection 1 of this section. For the purposes of this section, "prison commitment" means and is the receipt by the department of corrections of an offender after sentencing. For purposes of this section, prior prison commitments to the department of corrections shall not include commitment to a regimented discipline program established pursuant to section 217.378. Other provisions of the law to the contrary notwithstanding, any offender who has pleaded guilty to or has been found guilty of a felony other than a dangerous felony as defined in section 556.061 and is committed to the department of corrections shall be required to serve the following minimum prison terms:

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

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 (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; **except that, for all sentences imposed subject to this subsection which occurred**
33 **on or after August 28, 1994, any such offender who has no previous prison commitments**
34 **with the department of corrections for any felony offense and is a first-time dangerous**
35 **felony offender shall serve at least fifty percent of the sentence imposed by the court or**
36 **until the offender attains seventy years of age, and has served at least forty percent of the**
37 **sentence imposed, 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 if sentences are comparable to other states, if the length of the sentence is appropriate,
64 and 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 study alternative sentences, prison work programs, work
68 release, home-based incarceration, probation and parole options, and any other programs and
69 report the feasibility of these options in Missouri.

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

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

76 (6) The circuit and associate circuit courts of this state, the office of the state courts
77 administrator, the department of public safety, and the department of corrections shall cooperate
78 with the commission by providing information or access to information needed by the
79 commission. The office of the state courts administrator will provide needed staffing resources.

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

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

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

88 (2) Offender treatment programs;

89 (3) Mandatory community service;

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

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

92 9. The provisions of this section shall apply only to offenses occurring on or after August
93 28, 2003.

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

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

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

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

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