

FIRST REGULAR SESSION

# HOUSE BILL NO. 38

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HIGDON.

0061H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

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

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*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Section A. Sections 217.760 and 558.019, RSMo, are repealed and two new sections  
2 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  
2 misdemeanor cases are contained in chapters 565 and 566 and section 577.023, at the request of  
3 a circuit judge of any circuit court, the board shall assign one or more state probation and parole  
4 officers to make an investigation of the person convicted of the crime or offense before sentence  
5 is imposed. In all felony cases in which the recommended sentence established by the sentencing  
6 advisory commission pursuant to subsection [6] 7 of section 558.019 includes probation but the  
7 recommendation of the prosecuting attorney or circuit attorney does not include probation, the  
8 board of probation and parole shall, prior to sentencing, provide the judge with a report on  
9 available alternatives to incarceration. If a presentence investigation report is completed then  
10 the available alternatives shall be included in the presentence investigation report.

11 2. The report of the presentence investigation or preparole investigation shall contain any  
12 prior criminal record of the defendant and such information about his or her characteristics, his  
13 or her financial condition, his or her social history, the circumstances affecting his or her  
14 behavior as may be helpful in imposing sentence or in granting probation or in the correctional  
15 treatment of the defendant, information concerning the impact of the crime upon the victim, the  
16 recommended sentence established by the sentencing advisory commission and available  
17 alternatives to incarceration including opportunities for restorative justice, as well as a

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 recommendation by the probation and parole officer. The officer shall secure such other  
19 information as may be required by the court and, whenever it is practicable and needed, such  
20 investigation shall include a physical and mental examination of the defendant.

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 566.125, or section 571.015, which set minimum terms  
4 of sentences, or the provisions of section 559.115, relating to probation.

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

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

19 (2) If the offender has two previous prison commitments to the department of corrections  
20 for felonies unrelated to the present offense, the minimum prison term which the offender ~~[must]~~  
21 **may be required to** serve ~~[shall be]~~ **is** fifty percent of his or her sentence or until the offender  
22 attains seventy years of age, and has served at least forty percent of the sentence imposed,  
23 whichever occurs first;

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

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

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

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

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

40           **5. (1) Any person, except for a person who was found guilty of first degree murder**  
41 **or of any sex offense under chapter 566, meeting the following qualifications shall be**  
42 **eligible for a parole hearing:**

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

44           **(b) The person is capable of rehabilitation;**

45           **(c) The person has been a model prisoner;**

46           **(d) The crime did not involve physical harm or the threat of violence to another**  
47 **person; and**

48           **(e) The crime did not involve a firearm.**

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

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

54           ~~[6-]~~ **7. (1)** A sentencing advisory commission is hereby created to consist of eleven  
55 members. One member shall be appointed by the speaker of the house. One member shall be  
56 appointed by the president pro tem of the senate. One member shall be the director of the  
57 department of corrections. Six members shall be appointed by and serve at the pleasure of the  
58 governor from among the following: the public defender commission; private citizens; a private  
59 member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members  
60 shall be appointed by the supreme court, one from a metropolitan area and one from a rural area.  
61 All members shall be appointed to a four-year term. All members of the sentencing commission  
62 appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory  
63 commission at the pleasure of the governor.

64           **(2)** The commission shall study sentencing practices in the circuit courts throughout the  
65 state for the purpose of determining whether and to what extent disparities exist among the  
66 various circuit courts with respect to the length of sentences imposed and the use of probation  
67 for offenders convicted of the same or similar offenses and with similar criminal histories. The  
68 commission shall also study and examine whether and to what extent sentencing disparity among  
69 economic and social classes exists in relation to the sentence of death and if so, the reasons

70 therefor, if sentences are comparable to other states, if the length of the sentence is appropriate,  
71 and the rate of rehabilitation based on sentence. It shall compile statistics, examine cases, draw  
72 conclusions, and perform other duties relevant to the research and investigation of disparities in  
73 death penalty sentencing among economic and social classes.

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

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

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

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

87 ~~[7:]~~ **8.** Courts shall retain discretion to lower or exceed the sentence recommended by  
88 the commission as otherwise allowable by law, and to order restorative justice methods, when  
89 applicable.

90 ~~[8:]~~ **9.** If the imposition or execution of a sentence is suspended, the court may order any  
91 or all of the following restorative justice methods, or any other method that the court finds just  
92 or appropriate:

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

95 (2) Offender treatment programs;

96 (3) Mandatory community service;

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

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

99 ~~[9:]~~ **10.** The provisions of this section shall apply only to offenses occurring on or after  
100 August 28, 2003.

101 ~~[10:]~~ **11.** Pursuant to subdivision (1) of subsection 8 of this section, the court may order  
102 the assessment and payment of a designated amount of restitution to a county law enforcement  
103 restitution fund established by the county commission pursuant to section 50.565. Such  
104 contribution shall not exceed three hundred dollars for any charged offense. Any restitution

105 moneys deposited into the county law enforcement restitution fund pursuant to this section shall  
106 only be expended pursuant to the provisions of section 50.565.

107 ~~[11:]~~ **12.** A judge may order payment to a restitution fund only if such fund had been  
108 created by ordinance or resolution of a county of the state of Missouri prior to sentencing. A  
109 judge shall not have any direct supervisory authority or administrative control over any fund to  
110 which the judge is ordering a person to make payment.

111 ~~[12:]~~ **13.** A person who fails to make a payment to a county law enforcement restitution  
112 fund may not have his or her probation revoked solely for failing to make such payment unless  
113 the judge, after evidentiary hearing, makes a finding supported by a preponderance of the  
114 evidence that the person either willfully refused to make the payment or that the person willfully,  
115 intentionally, and purposefully failed to make sufficient bona fide efforts to acquire the resources  
116 to pay.

117 ~~[13:]~~ **14.** Nothing in this section shall be construed to allow the sentencing advisory  
118 commission to issue recommended sentences in specific cases pending in the courts of this state.

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