

FIRST REGULAR SESSION

HOUSE BILL NO. 339

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COOK.

0692H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

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

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Section A. Sections 217.760 and 558.019, RSMo, are repealed and two new sections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

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

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 commission and available alternatives to incarceration including opportunities for restorative
 19 justice, as well as a recommendation by the probation and parole officer. The officer shall
 20 secure such other information as may be required by the court and, whenever it is practicable
 21 and needed, such investigation shall include a physical and mental examination of the
 22 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 of this section shall ~~[only]~~ be applicable to ~~[the~~
 6 ~~offenses contained in sections 565.021, 565.023, 565.024, 565.027, 565.050, 565.052,~~
 7 ~~565.054, 565.072, 565.073, 565.074, 565.090, 565.110, 565.115, 565.120, 565.153, 565.156,~~
 8 ~~565.225, 565.300, 566.030, 566.031, 566.032, 566.034, 566.060, 566.061, 566.062, 566.064,~~
 9 ~~566.067, 566.068, 566.069, 566.071, 566.083, 566.086, 566.100, 566.101, 566.103, 566.111,~~
 10 ~~566.115, 566.145, 566.151, 566.153, 566.203, 566.206, 566.209, 566.210, 566.211, 566.215,~~
 11 ~~568.030, 568.045, 568.060, 568.065, 568.175, 569.040, 569.160, 570.023, 570.025, 570.030~~
 12 ~~when punished as a class A, B, or C felony, 570.145 when punished as a class A or B felony,~~
 13 ~~570.223 when punished as a class B or C felony, 571.020, 571.030, 571.070, 573.023,~~
 14 ~~573.025, 573.035, 573.037, 573.200, 573.205, 574.070, 574.080, 574.115, 575.030, 575.150,~~
 15 ~~575.153, 575.155, 575.157, 575.200 when punished as a class A felony, 575.210, 575.230~~
 16 ~~when punished as a class B felony, 575.240 when punished as a class B felony, 576.070,~~
 17 ~~576.080, 577.010, 577.013, 577.078, 577.703, 577.706, 579.065, and 579.068 when punished~~
 18 ~~as a class A or B felony] all classes of felonies except those set forth in chapter 579, or in~~
 19 **chapter 195 prior to January 1, 2017, and those otherwise excluded in subsection 1 of**
 20 **this section.** For the purposes of this section, "prison commitment" means and is the receipt
 21 by the department of corrections of an offender after sentencing. For purposes of this section,
 22 prior prison commitments to the department of corrections shall not include an offender's first
 23 incarceration prior to release on probation under section 217.362 or 559.115. Other
 24 provisions of the law to the contrary notwithstanding, any offender who has been found guilty
 25 of a felony other than a dangerous felony as defined in section 556.061 and is committed to
 26 the department of corrections shall be required to serve the following minimum prison terms:
 27 (1) If the offender has one previous prison commitment to the department of
 28 corrections for a felony offense, the minimum prison term which the offender must serve shall
 29 be forty percent of his or her sentence or until the offender attains seventy years of age, and
 30 has served at least thirty percent of the sentence imposed, whichever occurs first;
 31 (2) If the offender has two previous prison commitments to the department of
 32 corrections for felonies unrelated to the present offense, the minimum prison term which the

33 offender must serve shall be fifty percent of his or her sentence or until the offender attains
34 seventy years of age, and has served at least forty percent of the sentence imposed, whichever
35 occurs first;

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

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

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

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

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

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

55 6. ~~[An offender who was convicted of, or pled guilty to, a felony offense other than
56 those offenses listed in subsection 2 of this section prior to August 28, 2019, shall no longer
57 be subject to the minimum prison term provisions under subsection 2 of this section, and shall
58 be eligible for parole, conditional release, or other early release by the department of
59 corrections according to the rules and regulations of the department.~~

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

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

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

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

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

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

95 ~~[8-]~~ 7. Courts shall retain discretion to lower or exceed the sentence recommended by
96 the commission as otherwise allowable by law, and to order restorative justice methods, when
97 applicable.

98 ~~[9-]~~ 8. If the imposition or execution of a sentence is suspended, the court may order
99 any or all of the following restorative justice methods, or any other method that the court
100 finds just or appropriate:

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

103 (2) Offender treatment programs;

104 (3) Mandatory community service;

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

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

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

109 10. Pursuant to subdivision (1) of subsection [9] 8 of this section, the court may order
110 the assessment and payment of a designated amount of restitution to a county law
111 enforcement restitution fund established by the county commission pursuant to section
112 50.565. Such contribution shall not exceed three hundred dollars for any charged offense.
113 Any restitution moneys deposited into the county law enforcement restitution fund pursuant
114 to this section shall only be expended pursuant to the provisions of section 50.565.

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

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

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

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