

FIRST REGULAR SESSION

HOUSE BILL NO. 765

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ROBERTS.

1841H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 558.016, 558.019, 571.015, and 571.070, RSMo, and to enact in lieu thereof four new sections relating to the prevention of violent crimes, with penalty provisions.

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

Section A. Sections 558.016, 558.019, 571.015, and 571.070, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 558.016, 558.019,
3 571.015, and 571.070, to read as follows:

558.016. 1. The court may sentence a person who has been found guilty of an offense
2 to a term of imprisonment as authorized by section 558.011 or to a term of imprisonment
3 authorized by a statute governing the offense if it finds the defendant is a prior offender or a
4 persistent misdemeanor offender. The court may sentence a person to an extended term of
5 imprisonment if:

6 (1) The defendant is a persistent offender or a dangerous offender, and the person is
7 sentenced under subsection 7 of this section;

8 (2) The statute under which the person was found guilty contains a sentencing
9 enhancement provision that is based on a prior finding of guilt or a finding of prior criminal
10 conduct and the person is sentenced according to the statute; or

11 (3) A more specific sentencing enhancement provision applies that is based on a prior
12 finding of guilt or a finding of prior criminal conduct.

13 2. A "prior offender" is one who has been found guilty of one felony.

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.

14 3. A "persistent offender" is one who has been found guilty of two or more felonies
15 committed at different times **or one who has been found guilty of a dangerous felony as**
16 **defined under section 556.061.**

17 4. A "dangerous offender" is one who:

18 (1) Is being sentenced for a felony during the commission of which he knowingly
19 murdered or endangered or threatened the life of another person or knowingly inflicted or
20 attempted or threatened to inflict serious physical injury on another person; and

21 (2) Has been found guilty of a class A or B felony or a dangerous felony.

22 5. A "persistent misdemeanor offender" is one who has been found guilty of two or
23 more offenses, committed at different times that are classified as A or B misdemeanors under
24 the laws of this state.

25 6. The findings of guilt shall be prior to the date of commission of the present offense.

26 7. The court shall sentence a person, who has been found to be a persistent offender or
27 a dangerous offender, and is found guilty of a class B, C, D, or E felony to the authorized term
28 of imprisonment for the offense that is one class higher than the offense for which the person
29 is found guilty.

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[~~7~~] **or** section 566.125[~~7~~;~~or section 571.015~~], which set minimum
4 terms 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. For the purposes of this section, "prison commitment" means and is
19 the receipt by the department of corrections of an offender after sentencing. For purposes of
20 this section, prior prison commitments to the department of corrections shall not include an
21 offender's first incarceration prior to release on probation under section 217.362 or 559.115.

22 Other provisions of the law to the contrary notwithstanding, any offender who has been found
23 guilty of a felony other than a dangerous felony as defined in section 556.061 and is
24 committed to the department of corrections shall be required to serve the following minimum
25 prison terms:

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

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

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

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

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

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

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

51 5. 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
53 release or other early release by the department of corrections.

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

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

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

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

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

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

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

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

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

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

102 (2) Offender treatment programs;

103 (3) Mandatory community service;

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

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

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

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

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

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

571.015. 1. Any person who commits any felony under the laws of this state by, with,
2 or through the use, assistance, or aid of a dangerous instrument or deadly weapon is also
3 guilty of the offense of armed criminal action. **The offense of armed criminal action shall**
4 **be an unclassified felony** and, upon conviction, shall be punished by imprisonment by the
5 department of corrections for a term of not less than three years [~~and not to exceed fifteen~~
6 ~~years~~], unless the person is unlawfully possessing a firearm, in which case the term of

7 imprisonment shall be for a term of not less than five years. The punishment imposed
8 pursuant to this subsection shall be in addition to and consecutive to any punishment provided
9 by law for the crime committed by, with, or through the use, assistance, or aid of a dangerous
10 instrument or deadly weapon. No person convicted under this subsection shall be eligible for
11 ~~[parole,] probation, conditional release, or suspended imposition or execution of sentence [for~~
12 ~~a period of three calendar years].~~

13 2. Any person convicted of a second offense of armed criminal action under
14 subsection 1 of this section shall be punished by imprisonment by the department of
15 corrections for a term of not less than five years ~~[and not to exceed thirty years]~~, unless the
16 person is unlawfully possessing a firearm, in which case the term of imprisonment shall be for
17 a term not less than fifteen years. The punishment imposed pursuant to this subsection shall
18 be in addition to and consecutive to any punishment provided by law for the crime committed
19 by, with, or through the use, assistance, or aid of a dangerous instrument or deadly weapon.
20 No person convicted under this subsection shall be eligible for ~~[parole,] probation,~~
21 ~~conditional release, or suspended imposition or execution of sentence [for a period of five~~
22 ~~calendar years].~~

23 3. Any person convicted of a third or subsequent offense of armed criminal action
24 under subsection 1 of this section shall be punished by imprisonment by the department of
25 corrections for a term of not less than ten years, unless the person is unlawfully possessing a
26 firearm, in which case the term of imprisonment shall be no less than fifteen years. The
27 punishment imposed pursuant to this subsection shall be in addition to and consecutive to any
28 punishment provided by law for the crime committed by, with, or through the use, assistance,
29 or aid of a dangerous instrument or deadly weapon. No person convicted under this
30 subsection shall be eligible for ~~[parole,] probation, conditional release, or suspended~~
31 ~~imposition or execution of sentence [for a period of ten calendar years].~~

571.070. 1. A person commits the offense of unlawful possession of a firearm if such
2 person knowingly has any firearm in his or her possession and:

3 (1) Such person has been convicted of a felony under the laws of this state, or of a
4 crime under the laws of any state or of the United States which, if committed within this state,
5 would be a felony; or

6 (2) Such person is a fugitive from justice, is habitually in an intoxicated or drugged
7 condition, or is currently adjudged mentally incompetent.

8 2. Unlawful possession of a firearm is a class ~~[D]~~ C felony, unless a person has been
9 convicted of a dangerous felony as defined in section 556.061 **or the person has a prior**
10 **conviction for unlawful possession of a firearm**, in which case it is a class ~~[C]~~ B felony.

11 3. The provisions of subdivision (1) of subsection 1 of this section shall not apply to
12 the possession of an antique firearm.

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