

FIRST REGULAR SESSION

# HOUSE BILL NO. 389

103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CASTEEL.

1503H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 558.019, 566.030, 566.151, and 571.015, RSMo, and to enact in lieu thereof four new sections relating to minimum prison terms, with penalty provisions.

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

Section A. Sections 558.019, 566.030, 566.151, and 571.015, RSMo, are repealed  
2 and four new sections enacted in lieu thereof, to be known as sections 558.019, 566.030,  
3 566.151, and 571.015, to read as follows:

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 ~~[or]~~, **section 566.030**, section 566.125, **or section 566.151**,  
4 which set minimum terms of sentences, or the provisions of section 559.115, relating to  
5 probation.

6 2. The provisions of subsections 2 to 5 of this section shall only be applicable to the  
7 offenses contained in sections 565.021, 565.023, 565.024, 565.027, 565.050, 565.052,  
8 565.054, 565.072, 565.073, 565.074, 565.090, 565.110, 565.115, 565.120, 565.153, 565.156,  
9 565.225, 565.300, ~~[566.030,]~~ 566.031, 566.032, 566.034, 566.060, 566.061, 566.062,  
10 566.064, 566.067, 566.068, 566.069, 566.071, 566.083, 566.086, 566.100, 566.101,  
11 566.103, 566.111, 566.115, 566.145, ~~[566.151,]~~ 566.153, 566.203, 566.206, 566.209,  
12 566.210, 566.211, 566.215, 568.030, 568.045, 568.060, 568.065, 568.175, 569.040,  
13 569.160, 570.023, 570.025, 570.030 when punished as a class A, B, or C felony, 570.145  
14 when punished as a class A or B felony, 570.223 when punished as a class B or C felony,  
15 571.020, 571.030, 571.070, 573.023, 573.025, 573.035, 573.037, 573.200, 573.205, 574.070,  
16 574.080, 574.115, 575.030, 575.150, 575.153, 575.155, 575.157, 575.200 when punished 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.

17 class A felony, 575.210, 575.230 when punished as a class B felony, 575.240 when punished  
18 as a class B felony, 576.070, 576.080, 577.010, 577.013, 577.078, 577.703, 577.706, 579.065,  
19 and 579.068 when punished as a class A or B felony. For the purposes of this section, "prison  
20 commitment" means and is the receipt by the department of corrections of an offender after  
21 sentencing. For purposes of this section, prior prison commitments to the department of  
22 corrections shall not include an offender's first incarceration prior to release on probation  
23 under section 217.362 or 559.115. Other provisions of the law to the contrary  
24 notwithstanding, any offender who has been found guilty of a felony other than a  
25 dangerous felony as defined in section 556.061 and is committed to the department of  
26 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] **If the offender has no previous prison commitment to the**~~  
41 **department of corrections for a felony offense, the minimum prison term the offender**  
42 **shall serve is seventy-five percent of the offender's sentence; and**

43 **(2) If the offender has one or more prison commitments to the department of**  
44 **corrections for a felony offense unrelated to the present offense, the minimum prison**  
45 **term the offender shall serve is eighty percent of the offender's sentence.**

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

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

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

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

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

60 6. An offender who was convicted of, or pled guilty to, a felony offense other than  
61 those offenses listed in subsection 2 of this section prior to August 28, [2019] 2025, shall no  
62 longer be subject to the minimum prison term provisions under subsection 2 of this section,  
63 and shall be eligible for parole, conditional release, or other early release by the department of  
64 corrections according to the rules and regulations of the department.

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

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

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

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

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

95 (6) The circuit and associate circuit courts of this state, the office of the state courts  
96 administrator, the department of public safety, and the department of corrections shall  
97 cooperate with the commission by providing information or access to information needed by  
98 the commission. The office of the state courts administrator will provide needed staffing  
99 resources.

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

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

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

108 (2) Offender treatment programs;

109 (3) Mandatory community service;

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

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

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

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

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

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

          566.030. 1. A person commits the offense of rape in the first degree if he or she has  
2 sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the  
3 capacity to consent, or by the use of forcible compulsion. Forcible compulsion includes the  
4 use of a substance administered without a victim's knowledge or consent which renders the  
5 victim physically or mentally impaired so as to be incapable of making an informed consent  
6 to sexual intercourse.

          2. The offense of rape in the first degree or an attempt to commit rape in the first  
8 degree is a felony for which the authorized term of imprisonment is life imprisonment or a  
9 term of years not less than five years, unless:

10           (1) The offense is an aggravated sexual offense, in which case the authorized term of  
11 imprisonment is life imprisonment or a term of years not less than fifteen years;

12           (2) The person is a persistent or predatory sexual offender as defined in section  
13 566.125 and subjected to an extended term of imprisonment under said section;

14           (3) The victim is a child less than twelve years of age, in which case the required term  
15 of imprisonment is life imprisonment without eligibility for probation or parole until the  
16 offender has served not less than thirty years of such sentence or unless the offender has  
17 reached the age of seventy-five years and has served at least fifteen years of such sentence,  
18 unless such rape in the first degree is described under subdivision (4) of this subsection; or

19           (4) The victim is a child less than twelve years of age and such rape in the first degree  
20 or attempt to commit rape in the first degree was outrageously or wantonly vile, horrible or  
21 inhumane, in that it involved torture or depravity of mind, in which case the required term of  
22 imprisonment is life imprisonment without eligibility for probation, parole or conditional  
23 release.

24           3. Subsection 4 of section 558.019 shall not apply to the sentence of a person who has  
25 been found guilty of rape in the first degree or attempt to commit rape in the first degree when  
26 the victim is less than twelve years of age, and "life imprisonment" shall mean imprisonment  
27 for the duration of a person's natural life for the purposes of this section.

28           4. No person found guilty of rape in the first degree or an attempt to commit rape in  
29 the first degree shall be granted a suspended imposition of sentence or suspended execution of  
30 sentence.

31           **5. Notwithstanding any provision of law to the contrary, any person found guilty**  
32 **of rape in the first degree or an attempt to commit rape in the first degree under this**  
33 **section shall be required to serve one hundred percent of the sentence imposed by the**  
34 **court.**

566.151. 1. A person twenty-one years of age or older commits the offense of enticement of a child if he or she persuades, solicits, coaxes, entices, or lures whether by words, actions or through communication via the internet or any electronic communication, any person who is less than fifteen years of age for the purpose of engaging in sexual conduct.

2. It is not a defense to a prosecution for a violation of this section that the other person was a peace officer masquerading as a minor.

3. Enticement of a child or an attempt to commit enticement of a child is a felony for which the authorized term of imprisonment shall be not less than five years and not more than thirty years. No person convicted under this section shall be eligible for parole, probation, conditional release, or suspended imposition or execution of sentence [~~for a period of five calendar years~~].

**4. Notwithstanding any provision of law to the contrary, any person convicted of enticement of a child or an attempt to commit enticement of a child under this section shall be required to serve one hundred percent of the sentence imposed by the court.**

571.015. 1. Any person who commits any felony under the laws of this state by, with, or through the use, assistance, or aid of a dangerous instrument or deadly weapon is also guilty of the offense of armed criminal action; the offense of armed criminal action shall be an unclassified felony and, upon conviction, shall be punished by imprisonment by the department of corrections for a term of not less than three years and not to exceed fifteen years, unless the person is unlawfully possessing a firearm, in which case the term of imprisonment shall be for a term of not less than five years. The punishment imposed pursuant to this subsection shall be in addition to and consecutive to any punishment provided by law for the crime committed by, with, or through the use, assistance, or aid of a dangerous instrument or deadly weapon. No person convicted under this subsection shall be eligible for parole, probation, conditional release, or suspended imposition or execution of sentence [~~for a period of three calendar years~~]. **Notwithstanding any provision of law to the contrary, any person convicted under this subsection shall be required to serve one hundred percent of the sentence imposed by the court.**

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

24 years]. **Notwithstanding any provision of law to the contrary, any person convicted**  
25 **under this subsection shall be required to serve one hundred percent of the sentence**  
26 **imposed by the court.**

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

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