

FIRST REGULAR SESSION

HOUSE BILL NO. 133

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FALLERT (Sponsor), FISCHER (107), SCHIEFFER,
ROORDA AND KOMO (Co-sponsors).

0170L.03I

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 prison terms.

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Section A. Section 558.019, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 558.019, to read as follows: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, RSMo, section 558.018 or section 571.015, RSMo, which set minimum terms of sentences, or the provisions of section 559.115, RSMo, 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, RSMo, 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, RSMo. 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, RSMo, and is committed to the department of corrections shall be required to serve the following minimum prison terms:

(1) If the offender has **[one]** **no** previous prison commitment to the department of corrections for a felony offense, the minimum prison term which the offender must serve shall

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 be forty percent of his or her sentence, or until the offender attains seventy years of age[,] and
18 has served at least thirty percent of the sentence imposed, whichever occurs first;

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

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

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

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

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

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

44 6. (1) A sentencing advisory commission is hereby created to consist of eleven
45 members. One member shall be appointed by the speaker of the house. One member shall be
46 appointed by the president pro tem of the senate. One member shall be the director of the
47 department of corrections. Six members shall be appointed by and serve at the pleasure of the
48 governor from among the following: the public defender commission; private citizens; a private
49 member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members
50 shall be appointed by the supreme court, one from a metropolitan area and one from a rural area.
51 All members shall be appointed to a four-year term. All members of the sentencing commission

52 appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory
53 commission at the pleasure of the governor.

54 (2) The commission shall study sentencing practices in the circuit courts throughout the
55 state for the purpose of determining whether and to what extent disparities exist among the
56 various circuit courts with respect to the length of sentences imposed and the use of probation
57 for offenders convicted of the same or similar crimes and with similar criminal histories. The
58 commission shall also study and examine whether and to what extent sentencing disparity among
59 economic and social classes exists in relation to the sentence of death and if so, the reasons
60 therefor, **if** sentences are comparable to other states, if the length of the sentence is appropriate,
61 and the rate of rehabilitation based on sentence. [It] **The commission** shall compile statistics,
62 examine cases, draw conclusions, and perform other duties relevant to the research and
63 investigation of disparities in death penalty sentencing among economic and social classes.

64 (3) The commission shall establish a system of recommended sentences, within the
65 statutory minimum and maximum sentences provided by law for each felony committed under
66 the laws of this state. This system of recommended sentences shall be distributed to all
67 sentencing courts within the state of Missouri. The recommended sentence for each crime shall
68 take into account, but not be limited to, the following factors:

69 (a) The nature and severity of each offense;

70 (b) The record of prior offenses by the offender;

71 (c) The data gathered by the commission showing the duration and nature of sentences
72 imposed for each crime; and

73 (d) The resources of the department of corrections and other authorities to carry out the
74 punishments that are imposed.

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

78 (5) [The commission shall publish and distribute its recommendations on or before July
79 1, 2004. The commission shall study the implementation and use of the recommendations until
80 July 1, 2005, and return a report to the governor, the speaker of the house of representatives, and
81 the president pro tem of the senate. Following the July 1, 2005, report,] The commission shall
82 revise the recommended sentences every two years.

83 (6) 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 (7) The members of the commission shall not receive compensation for their duties on
86 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 paid
88 positions.

89 (8) 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 cooperate
91 with the commission by providing information or access to information needed by the
92 commission. The office of the state courts administrator will provide needed staffing resources.

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

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

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

101 (2) Offender treatment programs;

102 (3) Mandatory community service;

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

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

105 9. The provisions of this section shall apply only to offenses occurring on or after August
106 28, 2003.

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

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

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

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