

FIRST REGULAR SESSION

# HOUSE BILL NO. 491

## 98TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE ENGLISH.

1292H.011

D. ADAM CRUMBLISS, Chief Clerk

---

### AN ACT

To repeal section 558.019 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session and section 558.019 as enacted by senate bill no. 628, ninety-sixth general assembly second regular session, and to enact in lieu thereof one new section relating to minimum sentencing for certain felony offenders.

---

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

Section A. Section 558.019 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session and section 558.019 as enacted by senate bill no. 628, ninety-sixth general assembly second regular session, RSMo, are repealed and one new section enacted in lieu thereof, to be known as section 558.019, to read as follows: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, section 566.125, or section 571.015, which set minimum terms of sentences, or the provisions of section 559.115, 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 579, or in chapter 195 prior to January 1, 2017, 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 an offender's first incarceration prior to release on probation under section 217.362 or 559.115. Other provisions of the law to the contrary notwithstanding, any offender who has been found guilty of a felony other than a dangerous felony as defined in

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.

13 section 556.061 and is committed to the department of corrections shall be required to serve the  
14 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 serve shall be forty  
17 percent of his or her sentence or until the offender attains seventy years of age, and has served  
18 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 serve shall be fifty percent of his or her sentence or until the offender attains seventy years of  
22 age, and has served at least forty percent of the sentence imposed, whichever occurs first;

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

28 3. Other provisions of the law to the contrary notwithstanding, any offender who has  
29 been found guilty of a dangerous felony as defined in section 556.061 and is committed to the  
30 department of corrections shall be required to serve a minimum prison term of eighty-five  
31 percent of the sentence imposed by the court or until the offender attains seventy years of age,  
32 and has served at least forty percent of the sentence imposed, whichever occurs first; **except**  
33 **that, for all sentences imposed subject to this subsection which occurred on or after August**  
34 **28, 1994, any such offender who has no previous prison commitments with the department**  
35 **of corrections for any felony offense and is a first-time dangerous felony offender shall**  
36 **serve at least fifty percent of the sentence imposed by the court or until the offender attains**  
37 **seventy years of age, and has served at least forty percent of the sentence imposed,**  
38 **whichever occurs first.**

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

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

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

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

48           6. (1) A sentencing advisory commission is hereby created to consist of eleven  
49 members. One member shall be appointed by the speaker of the house. One member shall be  
50 appointed by the president pro tem of the senate. One member shall be the director of the  
51 department of corrections. Six members shall be appointed by and serve at the pleasure of the  
52 governor from among the following: the public defender commission; private citizens; a private  
53 member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members  
54 shall be appointed by the supreme court, one from a metropolitan area and one from a rural area.  
55 All members shall be appointed to a four-year term. All members of the sentencing commission  
56 appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory  
57 commission at the pleasure of the governor.

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

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

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

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

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

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

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

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

89           (2) Offender treatment programs;

90           (3) Mandatory community service;

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

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

93           9. The provisions of this section shall apply only to offenses occurring on or after August  
94 28, 2003.

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

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

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

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

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

5           2. The provisions of subsections 2 to 5 of this section shall be applicable to all classes  
6 of felonies except those set forth in chapter 195, and those otherwise excluded in subsection 1  
7 of this section. For the purposes of this section, "prison commitment" means and is the receipt

8 by the department of corrections of an offender after sentencing. For purposes of this section,  
9 prior prison commitments to the department of corrections shall not include commitment to a  
10 regimented discipline program established pursuant to section 217.378. Other provisions of the  
11 law to the contrary notwithstanding, any offender who has pleaded guilty to or has been found  
12 guilty of a felony other than a dangerous felony as defined in section 556.061 and is committed  
13 to the department of corrections shall be required to serve the following minimum prison terms:

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

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

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

27 3. Other provisions of the law to the contrary notwithstanding, any offender who has  
28 pleaded guilty to or has been found guilty of a dangerous felony as defined in section 556.061  
29 and is committed to the department of corrections shall be required to serve a minimum prison  
30 term of eighty-five percent of the sentence imposed by the court or until the offender attains  
31 seventy years of age, and has served at least forty percent of the sentence imposed, whichever  
32 occurs first; **except that, for all sentences imposed subject to this subsection which occurred**  
33 **on or after August 28, 1994, any such offender who has no previous prison commitments**  
34 **with the department of corrections for any felony offense and is a first-time dangerous**  
35 **felony offender shall serve at least fifty percent of the sentence imposed by the court or**  
36 **until the offender attains seventy years of age and has served at least forty percent of the**  
37 **sentence imposed, whichever occurs first.**

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

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

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

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

47           6. (1) A sentencing advisory commission is hereby created to consist of eleven  
48 members. One member shall be appointed by the speaker of the house. One member shall be  
49 appointed by the president pro tem of the senate. One member shall be the director of the  
50 department of corrections. Six members shall be appointed by and serve at the pleasure of the  
51 governor from among the following: the public defender commission; private citizens; a private  
52 member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members  
53 shall be appointed by the supreme court, one from a metropolitan area and one from a rural area.  
54 All members shall be appointed to a four-year term. All members of the sentencing commission  
55 appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory  
56 commission at the pleasure of the governor.

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

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

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

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

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

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

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

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

88           (2) Offender treatment programs;

89           (3) Mandatory community service;

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

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

92           9. The provisions of this section shall apply only to offenses occurring on or after August  
93 28, 2003.

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

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

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

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

✓