

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 657
98TH GENERAL ASSEMBLY

1514H.02C

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 first-time offenders who have been convicted of certain dangerous felonies, with a penalty provision.

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
2 assembly, second regular session and section 558.019 as enacted by senate bill no. 628, ninety-
3 sixth general assembly, second regular session, are repealed and one new section enacted in lieu
4 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
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 be applicable to all classes
6 of felonies except those set forth in chapter 579, or in chapter 195 prior to January 1, 2017, and
7 those otherwise excluded in subsection 1 of this section. For the purposes of this section, "prison
8 commitment" means and is the receipt by the department of corrections of an offender after
9 sentencing. For purposes of this section, prior prison commitments to the department of
10 corrections shall not include an offender's first incarceration prior to release on probation under
11 section 217.362 or 559.115. Other provisions of the law to the contrary notwithstanding, any
12 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 offender who has been convicted of the dangerous felonies of assault in the**
35 **first degree or robbery in the first degree and who is under the age of seventy and has no**
36 **previous commitments with the department of corrections for any felony offense shall serve**
37 **at least fifty percent of the sentence imposed by the court. Any such offender who is**
38 **paroled and thereafter has his or her parole revoked due to conduct which would be**
39 **punished as a felony under the laws of this state, or of conduct under the laws of any state**
40 **or of the United States which, if committed within this state, would be a felony shall not be**
41 **released until he or she has served the remainder of his or her original sentence as imposed**
42 **by the court.**

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

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

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

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

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

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

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

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

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

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

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

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

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

93 (2) Offender treatment programs;

94 (3) Mandatory community service;

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

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

97 9. The provisions of this section shall apply only to offenses occurring on or after August
98 28, 2003.

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

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

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

115 13. Nothing in this section shall be construed to allow the sentencing advisory
116 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 been convicted of the dangerous**
34 **felonies of arson in the first degree, assault in the first degree, and robbery in the first**
35 **degree and who is under the age of seventy and has no previous commitments with the**
36 **department of corrections for any felony offense shall serve at least fifty percent of the**
37 **sentence imposed by the court.**

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42 crimes committed at or near the same time which is over seventy-five years shall be calculated
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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.
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56 commission at the pleasure of the governor.

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59 various circuit courts with respect to the length of sentences imposed and the use of probation
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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
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69 report the feasibility of these options in Missouri.

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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
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