

SECOND REGULAR SESSION

# SENATE BILL NO. 815

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR COLEMAN.

Read 1st time January 5, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

3203S.011

## AN ACT

To repeal section 558.019, RSMo, and to enact in lieu thereof one new section relating to sentencing discretion.

*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Section A. Section 558.019, RSMo, is repealed and one new section  
2 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  
2 governor under article IV, section 7, of the Missouri Constitution. This statute  
3 shall not affect those provisions of section 565.020, RSMo, section 558.018 or  
4 section 571.015, RSMo, which set minimum terms of sentences, or the provisions  
5 of section 559.115, RSMo, relating to probation.

6 2. (1) The provisions of subsections 2 to 5 of this section shall be  
7 applicable to all classes of felonies except those set forth in chapter 195, RSMo,  
8 and those otherwise excluded in subsection 1 of this section. For the purposes of  
9 this section, "prison commitment" means and is the receipt by the department of  
10 corrections of an offender after sentencing. For purposes of this section, prior  
11 prison commitments to the department of corrections shall not include  
12 commitment to a regimented discipline program established pursuant to section  
13 217.378, RSMo. Other provisions of the law to the contrary notwithstanding, any  
14 offender who has pleaded guilty to or has been found guilty of a felony other than  
15 a dangerous felony as defined in section 556.061, RSMo, and is committed to the  
16 department of corrections shall be required to serve [the following minimum  
17 prison terms:

18 (1) If the offender has one previous prison commitment to the department  
19 of corrections for a felony offense, the minimum prison term which the offender

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

20 must serve shall be forty percent of his or her sentence or until the offender  
21 attains seventy years of age, and has served at least thirty percent of the  
22 sentence imposed, whichever occurs first;

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

28 (3) If the offender has three or more previous prison commitments to the  
29 department of corrections for felonies unrelated to the present offense, the  
30 minimum prison term which the offender must serve shall be eighty percent of  
31 his or her sentence or until the offender attains seventy years of age, and has  
32 served at least forty percent of the sentence imposed, whichever occurs first.] a  
33 **sentence as imposed by the judge of the sentencing court. However, the**  
34 **board of probation and parole shall have discretion to review the**  
35 **sentence of such an offender, and it may release the individual on**  
36 **probation or parole prior to the completion of the sentence imposed.**

37 (2) **Those offenders sentenced under this section prior to August**  
38 **28, 2006, shall have his or her sentence reviewed by the board of**  
39 **probation and parole. The board of probation and parole shall have**  
40 **discretion to release such an offender prior to completion of the**  
41 **sentence imposed in accordance with the former mandatory minimum**  
42 **sentencing requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

100 (5) The commission shall publish and distribute its recommendations on  
101 or before July 1, 2004. The commission shall study the implementation and use  
102 of the recommendations until July 1, 2005, and return a report to the governor,  
103 the speaker of the house of representatives, and the president pro tem of the  
104 senate. Following the July 1, 2005, report, the commission shall revise the  
105 recommended sentences every two years.

106 (6) The governor shall select a chairperson who shall call meetings of the  
107 commission as required or permitted pursuant to the purpose of the sentencing  
108 commission.

109 (7) The members of the commission shall not receive compensation for  
110 their duties on the commission, but shall be reimbursed for actual and necessary  
111 expenses incurred in the performance of these duties and for which they are not  
112 reimbursed by reason of their other paid positions.

113 (8) The circuit and associate circuit courts of this state, the office of the  
114 state courts administrator, the department of public safety, and the department  
115 of corrections shall cooperate with the commission by providing information or  
116 access to information needed by the commission. The office of the state courts  
117 administrator will provide needed staffing resources.

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

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

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

126 (2) Offender treatment programs;

127 (3) Mandatory community service;

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

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

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

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

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

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

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