

FIRST REGULAR SESSION

SENATE BILL NO. 278

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOSTER.

Read 1st time January 16, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1512S.011

AN ACT

To repeal section 558.019, RSMo, and to enact in lieu thereof one new section relating to the mandatory term of imprisonment for certain sex offenders, with penalty provisions.

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Section A. Section 558.019, RSMo, is repealed and one new section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. The provisions of subsections 2 to 5 of this section shall be applicable
7 to all classes of felonies except those set forth in chapter 195, RSMo, and those
8 otherwise excluded in subsection 1 of this section. For the purposes of this
9 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

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

19 of corrections for a felony offense, the minimum prison term which the offender
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.

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

40 4. **Notwithstanding any other provision of law to the contrary,**
41 **any person who pleads guilty to or is found guilty of a felony shall be**
42 **punished by imprisonment without eligibility for probation or parole**
43 **for a term of not less than three years, if at the time the felony was**
44 **committed, such person was required to register as a sex offender**
45 **under sections 589.400 and 589.425, RSMo, and violated section 589.425,**
46 **RSMo, by failing to comply with all the requirements of such sections.**

47 5. For the purpose of determining the minimum prison term to be served,
48 the following calculations shall apply:

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

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

53 [5.] 6. For purposes of this section, the term "minimum prison term"
54 shall mean time required to be served by the offender before he or she is eligible

55 for parole, conditional release or other early release by the department of
56 corrections.

57 [6.] 7. (1) A sentencing advisory commission is hereby created to consist
58 of eleven members. One member shall be appointed by the speaker of the
59 house. One member shall be appointed by the president pro tem of the
60 senate. One member shall be the director of the department of corrections. Six
61 members shall be appointed by and serve at the pleasure of the governor from
62 among the following: the public defender commission; private citizens; a private
63 member of the Missouri Bar; the board of probation and parole; and a
64 prosecutor. Two members shall be appointed by the supreme court, one from a
65 metropolitan area and one from a rural area. All members shall be appointed to
66 a four-year term. All members of the sentencing commission appointed prior to
67 August 28, 1994, shall continue to serve on the sentencing advisory commission
68 at the pleasure of the governor.

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

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

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

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

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

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

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

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

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

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

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

114 [7.] 8. Courts shall retain discretion to lower or exceed the sentence
115 recommended by the commission as otherwise allowable by law, and to order
116 restorative justice methods, when applicable.

117 [8.] 9. If the imposition or execution of a sentence is suspended, the court
118 may order any or all of the following restorative justice methods, or any other
119 method that the court finds just or appropriate:

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

122 (2) Offender treatment programs;

123 (3) Mandatory community service;

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

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

126 [9.] 10. The provisions of this section shall apply only to offenses

127 occurring on or after August 28, 2003.

128 [10.] 11. Pursuant to subdivision (1) of subsection 8 of this section, the
129 court may order the assessment and payment of a designated amount of
130 restitution to a county law enforcement restitution fund established by the county
131 commission pursuant to section 50.565, RSMo. Such contribution shall not exceed
132 three hundred dollars for any charged offense. Any restitution moneys deposited
133 into the county law enforcement restitution fund pursuant to this section shall
134 only be expended pursuant to the provisions of section 50.565, RSMo.

135 [11.] 12. A judge may order payment to a restitution fund only if such
136 fund had been created by ordinance or resolution of a county of the state of
137 Missouri prior to sentencing. A judge shall not have any direct supervisory
138 authority or administrative control over any fund to which the judge is ordering
139 a defendant to make payment.

140 [12.] 13. A defendant who fails to make a payment to a county law
141 enforcement restitution fund may not have his or her probation revoked solely for
142 failing to make such payment unless the judge, after evidentiary hearing, makes
143 a finding supported by a preponderance of the evidence that the defendant either
144 willfully refused to make the payment or that the defendant willfully,
145 intentionally, and purposefully failed to make sufficient bona fide efforts to
146 acquire the resources to pay.

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