

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NOS. 49 & 50
93RD GENERAL ASSEMBLY

Reported from the Committee on Judiciary February 23, 2005, with recommendation that the House Committee Substitute for House Bill Nos. 49 & 50 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

0368L.02C

AN ACT

To repeal sections 558.016 and 595.209, RSMo, and to enact in lieu thereof two new sections relating to early release of offenders.

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

Section A. Sections 558.016 and 595.209, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 558.016 and 595.209, to read as follows:

558.016. 1. The court may sentence a person who has pleaded guilty to or has been
2 found guilty of an offense to a term of imprisonment as authorized by section 558.011 or to a
3 term of imprisonment authorized by a statute governing the offense if it finds the defendant is
4 a prior offender or a persistent misdemeanor offender, or to an extended term of imprisonment
5 if it finds the defendant is a persistent offender or a dangerous offender.

6 2. A "prior offender" is one who has pleaded guilty to or has been found guilty of one
7 felony.

8 3. A "persistent offender" is one who has pleaded guilty to or has been found guilty of
9 two or more felonies committed at different times.

10 4. A "dangerous offender" is one who:

11 (1) Is being sentenced for a felony during the commission of which he knowingly
12 murdered or endangered or threatened the life of another person or knowingly inflicted or
13 attempted or threatened to inflict serious physical injury on another person; and

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.

14 (2) Has pleaded guilty to or has been found guilty of a class A or B felony or a dangerous
15 felony.

16 5. A "persistent misdemeanor offender" is one who has pleaded guilty to or has been
17 found guilty of two or more class A or B misdemeanors, committed at different times, which are
18 defined as offenses under chapters 195, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575,
19 and 576, RSMo.

20 6. The pleas or findings of guilty shall be prior to the date of commission of the present
21 offense.

22 7. The total authorized maximum terms of imprisonment for a persistent offender or a
23 dangerous offender are:

24 (1) For a class A felony, any sentence authorized for a class A felony;

25 (2) For a class B felony, any sentence authorized for a class A felony;

26 (3) For a class C felony, any sentence authorized for a class B felony;

27 (4) For a class D felony, any sentence authorized for a class C felony.

28 [8. An offender convicted of a nonviolent class C or class D felony with no prior prison
29 commitments, after serving one hundred twenty days of his or her sentence, may, in writing,
30 petition the court to serve the remainder of his or her sentence on probation, parole, or other
31 court-approved alternative sentence. No hearing shall be conducted unless the court deems it
32 necessary. Upon the offender petitioning the court, the department of corrections shall submit
33 a report to the sentencing court which evaluates the conduct of the offender while in custody,
34 alternative custodial methods available to the offender, and shall recommend whether the
35 offender be released or remain in custody. If the report issued by the department is favorable and
36 recommends probation, parole, or other alternative sentence, the court shall follow the
37 recommendations of the department if the court deems it appropriate. Any placement of an
38 offender pursuant to section 559.115, RSMo, shall be excluded from the provisions of this
39 subsection.]

595.209. 1. The following rights shall automatically be afforded to victims of dangerous
2 felonies, as defined in section 556.061, RSMo, victims of murder in the first degree, as defined
3 in section 565.020, RSMo, victims of voluntary manslaughter, as defined in section 565.023,
4 RSMo, and victims of an attempt to commit one of the preceding crimes, as defined in section
5 564.011, RSMo; and, upon written request, the following rights shall be afforded to victims of
6 all other crimes and witnesses of crimes:

7 (1) For victims, the right to be present at all criminal justice proceedings at which the
8 defendant has such right, including juvenile proceedings where the offense would have been a
9 felony if committed by an adult, even if the victim is called to testify or may be called to testify
10 as a witness in the case;

11 (2) For victims, the right to information about the crime, as provided for in subdivision
12 (5) of this subsection;

13 (3) For victims and witnesses, to be informed, in a timely manner, by the prosecutor's
14 office of the filing of charges, preliminary hearing dates, trial dates, continuances and the final
15 disposition of the case. Final disposition information shall be provided within five days;

16 (4) For victims, the right to confer with and to be informed by the prosecutor regarding
17 bail hearings, guilty pleas, pleas under chapter 552, RSMo, or its successors, hearings, sentencing
18 and probation revocation hearings and the right to be heard at such hearings, including juvenile
19 proceedings, unless in the determination of the court the interests of justice require otherwise;

20 (5) The right to be informed by local law enforcement agencies, the appropriate juvenile
21 authorities or the custodial authority of the following:

22 (a) The status of any case concerning a crime against the victim, including juvenile
23 offenses;

24 (b) The right to be informed by local law enforcement agencies or the appropriate
25 juvenile authorities, of the availability of victim compensation assistance, assistance in obtaining
26 documentation of the victim's losses, including, but not limited to and subject to existing law
27 concerning protected information or closed records, access to copies of complete, unaltered,
28 unedited investigation reports of motor vehicle, pedestrian, and other similar accidents upon
29 request to the appropriate law enforcement agency by the victim or the victim's representative,
30 and emergency crisis intervention services available in the community;

31 (c) Any release of such person on bond or for any other reason;

32 (d) Within twenty-four hours, any escape by such person from a municipal detention
33 facility, county jail, a correctional facility operated by the department of corrections, mental
34 health facility, or the division of youth services or any agency thereof, and any subsequent
35 recapture of such person;

36 (6) For victims, the right to be informed by appropriate juvenile authorities of probation
37 revocation hearings initiated by the juvenile authority and the right to be heard at such hearings
38 or to offer a written statement, video or audio tape in lieu of a personal appearance, the right to
39 be informed by the board of probation and parole of probation revocation hearings initiated by
40 the board and of parole hearings, the right to be present at each and every phase of parole
41 hearings and the right to be heard at probation revocation and parole hearings or to offer a written
42 statement, video or audio tape in lieu of a personal appearance, and the right to be informed by
43 the custodial mental health facility or agency thereof of any hearings for the release of a person
44 committed pursuant to the provisions of chapter 552, RSMo, the right to be present at such
45 hearings, the right to be heard at such hearings or to offer a written statement, video or audio tape
46 in lieu of personal appearance;

47 (7) For victims and witnesses, upon their written request, the right to be informed by the
48 appropriate custodial authority, including any municipal detention facility, juvenile detention
49 facility, county jail, correctional facility operated by the department of corrections, mental health
50 facility, division of youth services or agency thereof if the offense would have been a felony if
51 committed by an adult, postconviction or commitment pursuant to the provisions of chapter 552,
52 RSMo, of the following:

53 (a) The projected date of such person's release from confinement;

54 (b) Any release of such person on bond;

55 (c) Any release of such person on furlough, work release, trial release, electronic
56 monitoring program, or to a community correctional facility or program or release for any other
57 reason, in advance of such release;

58 (d) Any scheduled parole or release hearings, **including hearings under section**
59 **217.362, RSMo**, regarding such person and any changes in the scheduling of such hearings. No
60 such hearing shall be conducted without thirty days' advance notice;

61 (e) Within twenty-four hours, any escape by such person from a municipal detention
62 facility, county jail, a correctional facility operated by the department of corrections, mental
63 health facility, or the division of youth services or any agency thereof, and any subsequent
64 recapture of such person;

65 (f) Any decision by a parole board, **by a juvenile releasing authority or by a circuit court**
66 **presiding over releases pursuant to the provisions of chapter 552, RSMo, or by a circuit court**
67 **presiding over releases under section 217.362, RSMo**, to release such person or any decision
68 by the governor to commute the sentence of such person or pardon such person;

69 (g) Notification within thirty days of the death of such person;

70 (8) For witnesses who have been summoned by the prosecuting attorney and for victims,
71 to be notified by the prosecuting attorney in a timely manner when a court proceeding will not
72 go on as scheduled;

73 (9) For victims and witnesses, the right to reasonable protection from the defendant or
74 any person acting on behalf of the defendant from harm and threats of harm arising out of their
75 cooperation with law enforcement and prosecution efforts;

76 (10) For victims and witnesses, on charged cases or submitted cases where no charge
77 decision has yet been made, to be informed by the prosecuting attorney of the status of the case
78 and of the availability of victim compensation assistance and of financial assistance and
79 emergency and crisis intervention services available within the community and information
80 relative to applying for such assistance or services, and of any final decision by the prosecuting
81 attorney not to file charges;

82 (11) For victims, to be informed by the prosecuting attorney of the right to restitution
83 which shall be enforceable in the same manner as any other cause of action as otherwise
84 provided by law;

85 (12) For victims and witnesses, to be informed by the court and the prosecuting attorney
86 of procedures to be followed in order to apply for and receive any witness fee to which they are
87 entitled;

88 (13) When a victim's property is no longer needed for evidentiary reasons or needs to be
89 retained pending an appeal, the prosecuting attorney or any law enforcement agency having
90 possession of the property shall, upon request of the victim, return such property to the victim
91 within five working days unless the property is contraband or subject to forfeiture proceedings,
92 or provide written explanation of the reason why such property shall not be returned;

93 (14) An employer may not discharge or discipline any witness, victim or member of a
94 victim's immediate family for honoring a subpoena to testify in a criminal proceeding or for
95 participating in the preparation of a criminal proceeding;

96 (15) For victims, to be provided with creditor intercession services by the prosecuting
97 attorney if the victim is unable, as a result of the crime, temporarily to meet financial obligations;

98 (16) For victims and witnesses, the right to speedy disposition of their cases, and for
99 victims, the right to speedy appellate review of their cases, provided that nothing in this
100 subdivision shall prevent the defendant from having sufficient time to prepare such defendant's
101 defense. The attorney general shall provide victims, upon their written request, case status
102 information throughout the appellate process of their cases. The provisions of this subdivision
103 shall apply only to proceedings involving the particular case to which the person is a victim or
104 witness;

105 (17) For victims and witnesses, to be provided by the court, a secure waiting area during
106 court proceedings and to receive notification of the date, time and location of any hearing
107 conducted by the court for reconsideration of any sentence imposed, modification of such
108 sentence or recall and release of any defendant from incarceration.

109 2. The provisions of subsection 1 of this section shall not be construed to imply any
110 victim who is incarcerated by the department of corrections or any local law enforcement agency
111 has a right to be released to attend any hearing or that the department of corrections or the local
112 law enforcement agency has any duty to transport such incarcerated victim to any hearing.

113 3. Those persons entitled to notice of events pursuant to the provisions of subsection 1
114 of this section shall provide the appropriate person or agency with their current addresses and
115 telephone numbers or the addresses or telephone numbers at which they wish notification to be
116 given.

117 4. Notification by the appropriate person or agency by certified mail to the most current
118 address provided by the victim shall constitute compliance with the victim notification
119 requirement of this section.

120 5. Victims' rights as established in section 32 of article I of the Missouri Constitution or
121 the laws of this state pertaining to the rights of victims of crime shall be granted and enforced
122 regardless of the desires of a defendant and no privileges of confidentiality shall exist in favor
123 of the defendant to exclude victims or prevent their full participation in each and every phase of
124 parole hearings or probation revocation hearings. The rights of the victims granted in this section
125 are absolute and the policy of this state is that the victim's rights are paramount to the defendant's
126 rights. The victim has an absolute right to be present at any hearing in which the defendant is
127 present before a probation and parole hearing officer.