

FIRST REGULAR SESSION

HOUSE BILL NO. 1299

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GARDNER.

0204L.02I

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 two new sections relating to mandatory minimum sentences.

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and section 558.019 as enacted by senate bill no. 628, ninety-sixth general assembly, second regular session, are repealed and two new sections enacted in lieu thereof, to be known as section 558.019, to read as follows: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, if a person has been found guilty of a dangerous felony of robbery in the first degree**
34 **with no prior dangerous felony convictions, the court in its discretion may waive the**
35 **mandatory minimum under this subsection.**

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

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

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

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

45 6. (1) A sentencing advisory commission is hereby created to consist of eleven
46 members. One member shall be appointed by the speaker of the house. One member shall be
47 appointed by the president pro tem of the senate. One member shall be the director of the
48 department of corrections. Six members shall be appointed by and serve at the pleasure of the

49 governor from among the following: the public defender commission; private citizens; a private
50 member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members
51 shall be appointed by the supreme court, one from a metropolitan area and one from a rural area.
52 All members shall be appointed to a four-year term. All members of the sentencing commission
53 appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory
54 commission at the pleasure of the governor.

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

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

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

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

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

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

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

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

86 (2) Offender treatment programs;

87 (3) Mandatory community service;

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

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

90 9. The provisions of this section shall apply only to offenses occurring on or after August
91 28, 2003.

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

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

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

108 13. Nothing in this section shall be construed to allow the sentencing advisory
109 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
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49 member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members
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53 commission at the pleasure of the governor.

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59 economic and social classes exists in relation to the sentence of death and if so, the reasons
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100 judge is ordering a defendant to make payment.

101 12. A defendant who fails to make a payment to a county law enforcement restitution
102 fund may not have his or her probation revoked solely for failing to make such payment unless
103 the judge, after evidentiary hearing, makes a finding supported by a preponderance of the
104 evidence that the defendant either willfully refused to make the payment or that the defendant
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106 resources to pay.

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