

SECOND REGULAR SESSION

# HOUSE BILL NO. 1869

99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE KELLEY (127).

5563H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal section 558.019, RSMo, and to enact in lieu thereof one new section relating to minimum sentencing for first-time offenders who have been convicted of dangerous felonies, with a penalty provision.

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*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Section A. Section 558.019, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 558.019, to read as follows: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 section 556.061 and is committed to the department of corrections shall be required to serve the following minimum prison terms:

(1) If the offender has one previous prison commitment to the department of corrections for a felony offense, the minimum prison term which the offender must serve shall be forty

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.

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.

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