

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 5**  
92ND GENERAL ASSEMBLY

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Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, March 6, 2003, with recommendation that the Senate Committee Substitute do pass.

0356S.03C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal sections 217.362, 217.760, 513.653, 557.036, 558.011, 558.016, 558.019, 559.026, 559.115, and 570.040, RSMo, and to enact in lieu thereof eleven new sections relating to various sentencing provisions, with penalty provisions.

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

Section A. Sections 217.362, 217.760, 513.653, 557.036, 558.011, 558.016, 558.019, 559.026, 559.115, and 570.040, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 195.297, 217.362, 217.760, 513.653, 557.036, 558.011, 558.016, 558.019, 559.026, 559.115, and 570.040, to read as follows:

**195.297. The provisions of sections 195.285 to 195.296 shall not apply if the court, in its discretion and after consideration of all relevant factors, finds the resulting sentence unjust or inappropriate, and instead finds that the interests of justice and public safety are served by a lesser sentence. If the court so finds, it shall order:**

- (1) Seizure of any assets directly related to the commission of the offense; and**
- (2) An assessment of the offender by the department of corrections shall be conducted to determine the offender's need, if any, and amenability for treatment/intervention programs offered by the department or available in the community. If treatment/intervention is recommended, the assessment shall recommend the intensity, location, and availability of the proposed treatment/intervention.**

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

217.362. 1. The department of corrections shall design and implement an intensive long-term program for the treatment of chronic nonviolent offenders with serious substance abuse addictions who have not pleaded guilty to or been convicted of a dangerous felony as defined in section 556.061, RSMo.

2. Prior to sentencing, any judge considering an offender for this program shall notify the department. The potential candidate for the program shall be screened by the department to determine eligibility. The department shall, by regulation, establish eligibility criteria and inform the court of such criteria. The department shall notify the court as to the offender's eligibility and the availability of space in the program. Notwithstanding any other provision of law to the contrary, except as provided for in section 558.019, RSMo, if an offender is eligible and there is adequate space, the court may sentence a person to the program which shall consist of institutional drug **or alcohol** treatment for a period of **at least twelve and no more than** twenty-four months, as well as a term of incarceration. **The department shall determine the nature, intensity, duration, and completion criteria of the education, treatment, and aftercare portions of any program services provided.** Execution of the offender's term of incarceration shall be suspended pending completion of said program. Allocation of space in the program may be distributed by the department in proportion to drug arrest patterns in the state. If the court is advised that an offender is not eligible or that there is no space available, the court shall consider other authorized dispositions.

3. [Notwithstanding any other provision of the law to the contrary, upon successful completion of the program, the board of probation and parole may advise the sentencing court of the eligibility of the individual for probation. The original sentencing court shall hold a hearing to make a determination as to the fitness of the offender to be placed on probation. The court shall follow the recommendation of the board unless the court makes a determination that such a placement would be an abuse of discretion. If an offender successfully completes the program before the end of the twenty-four-month period, the department may petition the court and request that probation be granted immediately.] **Upon successful completion of the program, the board of probation and parole shall advise the sentencing court of an offender's probationary release date thirty days prior to release. If the court determines that probation is not appropriate based on the offender's performance in the program, the court may order the execution of the offender's sentence.**

4. If it is determined by the department that the offender has not successfully completed the program, or that the offender is not cooperatively participating in the program, the offender shall be removed from the program and the court shall be advised. Failure of an offender to complete the program shall cause the offender to serve the sentence prescribed by the court and void the right to be considered for probation on this sentence.

217.760. 1. In all felony cases and class A misdemeanor cases, the basis of which

misdemeanor cases are contained in chapters 565, 566, and 570, RSMo, and section 577.023, RSMo, at the request of a circuit judge of any circuit court, the board shall assign one or more state probation and parole officers to make an investigation of the person convicted of the crime or offense before sentence is imposed. **In all felony cases in which the recommended sentence established by the sentencing advisory commission pursuant to subsection 6 of section 558.019, RSMo, includes probation but the recommendation of the prosecuting attorney or circuit attorney does not include probation, the board of probation and parole shall, prior to sentencing, provide the judge with a report on available alternatives to incarceration.**

2. The report of the presentence investigation or preparole investigation shall contain any prior criminal record of the defendant and such information about his **or her** characteristics, his **or her** financial condition, his **or her** social history [and], the circumstances affecting his **or her** behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, **information concerning the impact of the crime upon the victim, the recommended sentence established by the sentencing advisory commission and available alternatives to incarceration including opportunities for restorative justice**, as well as a recommendation by the probation and parole officer. The officer shall secure such other information as may be required by the court and, whenever it is practicable and needed, such investigation shall include a physical and mental examination of the defendant.

513.653. 1. Law enforcement agencies involved in using the federal forfeiture system under federal law shall be required at the end of their respective fiscal year to acquire an independent audit of the federal seizures and the proceeds received therefrom and provide this audit to their respective governing body **and to the department of public safety**. A copy of such audit shall be provided to the state auditor's office. This audit shall be paid for out of the proceeds of such federal forfeitures. **The department of public safety shall not issue funds to any law enforcement agency that fails to comply with the provisions of this section.**

2. Intentional or knowing failure to comply with the audit requirement contained in this section shall be a class A misdemeanor, punishable by a fine of up to one thousand dollars.

557.036. [1. Subject to the limitation provided in subsection 3 of this section,] Upon a finding of guilt upon verdict or plea, the court shall decide the extent or duration of sentence or other disposition to be imposed under all the circumstances, having regard to the nature and circumstances of the offense and the history and character of the defendant and render judgment accordingly.

[2. The court shall instruct the jury as to the range of punishment authorized by statute and upon a finding of guilt to assess and declare the punishment as a part of their verdict,

unless:

(1) The defendant requests in writing, prior to voir dire, that the court assess the punishment in case of a finding of guilt; or

(2) The state pleads and proves the defendant is a prior offender, persistent offender, dangerous offender, or persistent misdemeanor offender as defined in section 558.016, RSMo, a persistent sexual offender as defined in section 558.018, RSMo, or a predatory sexual offender as defined in section 558.018, RSMo.

If the jury finds the defendant guilty but cannot agree on the punishment to be assessed, the court shall proceed as provided in subsection 1 of this section. If there be a trial by jury and the jury is to assess punishment and if after due deliberation by the jury the court finds the jury cannot agree on punishment, then the court may instruct the jury that if it cannot agree on punishment that it may return its verdict without assessing punishment and the court will assess punishment.

3. If the jury returns a verdict of guilty and declares a term of imprisonment as provided in subsection 2 of this section, the court shall proceed as provided in subsection 1 of this section except that any term of imprisonment imposed cannot exceed the term declared by the jury unless the term declared by the jury is less than the authorized lowest term for the offense, in which event the court cannot impose a term of imprisonment greater than the lowest term provided for the offense.

4. If the defendant is found to be a prior offender, persistent offender, dangerous offender or persistent misdemeanor offender as defined in section 558.016, RSMo:

(1) If he has been found guilty of an offense, the court shall proceed as provided in section 558.016, RSMo; or

(2) If he has been found guilty of a class A felony, the court may impose any sentence authorized for the class A felony.

5. The court shall not seek an advisory verdict from the jury in cases of prior offenders, persistent offenders, dangerous offenders, persistent sexual offenders or predatory sexual offenders; if an advisory verdict is rendered, the court shall not deem it advisory, but shall consider it as mere surplusage.]

558.011. 1. The authorized terms of imprisonment, including both prison and conditional release terms, are:

(1) For a class A felony, a term of years not less than ten years and not to exceed thirty years, or life imprisonment;

(2) For a class B felony, a term of years not less than five years and not to exceed fifteen years;

(3) For a class C felony, a term of years not to exceed seven years;

(4) For a class D felony, a term of years not to exceed ~~five~~ **four** years;

- (5) For a class A misdemeanor, a term not to exceed one year;
- (6) For a class B misdemeanor, a term not to exceed six months;
- (7) For a class C misdemeanor, a term not to exceed fifteen days.

2. In cases of class C and D felonies, the court shall have discretion to imprison for a special term not to exceed one year in the county jail or other authorized penal institution, and the place of confinement shall be fixed by the court. If the court imposes a sentence of imprisonment for a term longer than one year upon a person convicted of a class C or D felony, it shall commit the person to the custody of the department of corrections for a term of years not less than two years and not exceeding the maximum authorized terms provided in subdivisions (3) and (4) of subsection 1 of this section.

3. (1) When a regular sentence of imprisonment for a felony is imposed, the court shall commit the [defendant] **person** to the custody of the department of corrections for the term imposed under section 557.036, RSMo, or until released under procedures established elsewhere by law.

(2) A sentence of imprisonment for a misdemeanor shall be for a definite term and the court shall commit the [defendant] **person** to the county jail or other authorized penal institution for the term of his **or her** sentence or until released under procedure established elsewhere by law.

4. (1) A sentence of imprisonment for a term of years for felonies other than dangerous felonies as defined in section 556.061, RSMo, and other than sentences of imprisonment which involve the individual's fourth or subsequent remand to the department of corrections shall consist of a prison term and a conditional release term. The conditional release term of any term imposed under section 557.036, RSMo, shall be:

- (a) One-third for terms of nine years or less;
- (b) Three years for terms between nine and fifteen years;
- (c) Five years for terms more than fifteen years; and the prison term shall be the remainder of such term. The prison term may be extended by the board of probation and parole pursuant to subsection 5 of this section.

(2) "Conditional release" means the conditional discharge of an offender by the board of probation and parole, subject to conditions of release that the board deems reasonable to assist the offender to lead a law-abiding life, and subject to the supervision under the state board of probation and parole. The conditions of release shall include avoidance by the offender of any other crime, federal or state, and other conditions that the board in its discretion deems reasonably necessary to assist the releasee in avoiding further violation of the law.

5. The date of conditional release from the prison term may be extended up to a maximum of the entire sentence of imprisonment by the board of probation and parole. The director of any division of the department of corrections except the board of probation and parole

may file with the board of probation and parole a petition to extend the conditional release date when an offender fails to follow the rules and regulations of the division or commits an act in violation of such rules. Within ten working days of receipt of the petition to extend the conditional release date, the board of probation and parole shall convene a hearing on the petition. The offender shall be present and may call witnesses in his **or her** behalf and cross-examine witnesses appearing against **[him] the offender**. The hearing shall be conducted as provided in section 217.670, RSMo. If the violation occurs in close proximity to the conditional release date, the conditional release may be held for a maximum of fifteen working days to permit necessary time for the division director to file a petition for an extension with the board and for the board to conduct a hearing, provided some affirmative manifestation of an intent to extend the conditional release has occurred prior to the conditional release date. If at the end of a fifteen-working-day period a board decision has not been reached, the offender shall be released conditionally. The decision of the board shall be final.

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

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

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

4. A "dangerous offender" is one who:

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

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

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

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

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

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

- (2) For a class B felony, a term of years not to exceed thirty years;
- (3) For a class C felony, a term of years not to exceed twenty years;
- (4) For a class D felony, a term of years not to exceed ten years.

**8. An offender convicted of a nonviolent class C or class D felony, after serving one hundred twenty days of his or her sentence, may petition the court to serve the remainder of his or her sentence on probation, parole, or other court-approved alternative sentence. Upon the offender petitioning the court, the department of corrections shall submit a report to the sentencing court which evaluates the conduct of the offender while in custody, alternative custodial methods available to the offender, and shall recommend whether the offender be released or remain in custody. If the report issued by the department is favorable and recommends probation, parole, or other alternative sentence, the court shall follow the recommendations of the department unless the court makes the determination that such placement may be an abuse of discretion.**

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, RSMo, section 558.018 or section 571.015, RSMo, which set minimum terms of sentences, or the provisions of section 559.115, RSMo, 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 195, RSMo, 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 a [defendant] **offender** after sentencing. For purposes of this section, prior prison commitments to the department of corrections shall not include commitment to a regimented discipline program established pursuant to section 217.378, RSMo. Other provisions of the law to the contrary notwithstanding, any [defendant] **offender** who has pleaded guilty to or has been found guilty of a felony other than a dangerous felony as defined in section 556.061, RSMo, and is committed to the department of corrections shall be required to serve the following minimum prison terms:

(1) If the [defendant] **offender** has one previous prison commitment to the department of corrections for a felony offense, the minimum prison term which the [defendant] **offender** must serve shall be forty percent of his **or her** sentence or until the [defendant] **offender** attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first;

(2) If the [defendant] **offender** has two previous prison commitments to the department of corrections for felonies unrelated to the present offense, the minimum prison term which the [defendant] **offender** must serve shall be fifty percent of his **or her** sentence or until the [defendant] **offender** attains seventy years of age, and has served at least forty percent of the

sentence imposed, whichever occurs first;

(3) If the [defendant] **offender** has three or more previous prison commitments to the department of corrections for felonies unrelated to the present offense, the minimum prison term which the [defendant] **offender** must serve shall be eighty percent of his **or her** sentence or until the [defendant] **offender** attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first.

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

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

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

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

5. For purposes of this section, the term "minimum prison term" shall mean time required to be served by the [defendant] **offender** before he **or she** is eligible for parole, conditional release or other early release by the department of corrections. Except that the board of probation and parole, in the case of consecutive sentences imposed at the same time pursuant to a course of conduct constituting a common scheme or plan, shall be authorized to convert consecutive sentences to concurrent sentences, when the board finds, after hearing with notice to the prosecuting or circuit attorney, that the sum of the terms results in an unreasonably excessive total term, taking into consideration all factors related to the crime or crimes committed and the sentences received by others similarly situated.

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

(2) The commission shall study sentencing practices in the circuit courts throughout the



state for the purpose of determining whether and to what extent disparities exist among the various circuit courts with respect to the length of sentences imposed and the use of probation for [defendants] **offenders** convicted of the same or similar crimes and with similar criminal histories. The commission shall also study and examine whether and to what extent sentencing disparity among economic and social classes exists in relation to the sentence of death and if so, the reasons therefor. It shall compile statistics, examine cases, draw conclusions, and perform other duties relevant to the research and investigation of disparities in death penalty sentencing among economic and social classes.

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

- (a) The nature and severity of each offense;
- (b) The record of prior offenses by the offender;
- (c) The data gathered by the commission showing the duration and nature of sentences imposed for each crime; and
- (d) The resources of the department of corrections and other authorities to carry out the punishments that are imposed.

(4) The commission shall publish and distribute its system of recommended sentences on or before July 1, 1995. The commission shall study the implementation and use of the system of recommended sentences until July 1, 1998, and return a final report to the governor, the speaker of the house of representatives, and the president pro tem of the senate. Following the July 1, 1998, report, the commission may revise the recommended sentences every three years.

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

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

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

**7. The recommended sentence established by the commission shall be considered by a court of this state in determining any sentence. Courts shall retain discretion to lower or exceed the sentence recommended by the commission as**

otherwise allowable by law, and to order restorative justice methods, when applicable.

8. In all cases involving violations of chapter 195, RSMo, a judge shall make written findings stating the reasons for any deviation from the recommended sentence. The written findings shall be for statistical purposes only, and shall not be used as the basis for any appeal of the offender's conviction of sentence. The written findings shall be transmitted by the court to the sentencing advisory commission and to the board of probation and parole, and shall be made part of the offender's records with the board. Failure of the judge to make the written findings shall authorize, but not require, the board of probation and parole to adjust the offender's sentence in order to bring it into compliance with the sentence recommended by the commission.

9. If the imposition or execution of a sentence is suspended, the court may consider ordering any or all of the following restorative justice methods, or any other method that the court finds just or appropriate:

- (1) Restitution to any victim for costs incurred as a result of the offender's actions;
- (2) Offender treatment programs;
- (3) Mandatory community service;
- (4) Work release programs in local facilities; and
- (5) Community based residential and nonresidential programs.

10. The provisions of this section shall apply only to offenses occurring on or after August 28, 1994.

559.026. Except in infraction cases, when probation is granted, the court, in addition to conditions imposed [under] **pursuant to** section 559.021, [may] **shall** require as a condition of probation that the [defendant] **offender** submit to a period of detention **up to forty-eight hours after the determination by a probation or parole officer that the offender violates a condition of continued probation or parole** in an appropriate institution at whatever time or intervals within the period of probation, consecutive or nonconsecutive, the court shall designate, **or the board of probation and parole shall direct**. Any person placed on probation in a county of the first class or second class or in any city with a population of five hundred thousand or more and detained as herein provided shall be subject to all provisions of section 221.170, RSMo, even though he was not convicted and sentenced to a jail or workhouse.

(1) In misdemeanor cases, the period of detention under this section shall not exceed the shorter of fifteen days or the maximum term of imprisonment authorized for the misdemeanor by chapter 558, RSMo.

(2) In felony cases, the period of detention under this section shall not exceed one hundred twenty days.

(3) If probation is revoked and a term of imprisonment is served by reason thereof, the

time spent in a jail, **half-way houses, honor centers**, workhouse or other institution as a detention condition of probation shall be credited against the prison or jail term served for the offense in connection with which the detention condition was imposed.

559.115. 1. Neither probation nor parole shall be granted by the circuit court between the time the transcript on appeal from the [defendant's] **offender's** conviction has been filed in appellate court and the disposition of the appeal by such court.

2. A circuit court [only upon its own motion and not that of the state or the defendant] shall have the power to grant probation to a [defendant] **offender** anytime up to one hundred twenty days after such [defendant] **offender** has been delivered to the custody of the department of corrections but not thereafter. [The court may request information and a recommendation from the department concerning the defendant and such defendant's behavior during the period of incarceration. Except as provided in this section, the court may place the defendant on probation in a program created pursuant to section 217.777, RSMo, or may place the defendant on probation with any other conditions authorized by law.]

3. **The court may recommend placement of an offender in a department of corrections one-hundred-twenty-day-program. Upon the recommendation of the court, the department of corrections shall determine the offender's eligibility for the program and the availability of space for an offender in any program. If the department of correction's one-hundred-twenty-day-program is full, the court may place the offender in a private program approved by the department of corrections or the court. If the offender is convicted of a class C or class D nonviolent felony, the court may order probation while awaiting appointment to treatment.**

4. **If the offender has been placed in a one-hundred-twenty-day- program, the department of corrections, upon completion of the program, shall submit to the court the nature, intensity, and duration of any offender's participation in a program and evaluation of the offender's progress in the program. Upon successful completion of the program, the department of corrections shall make a determination as to the fitness of the offender to be placed on probation. The court shall follow the recommendations of the department unless the court makes the determination that such placement would be an abuse of discretion. If the department determines that an offender is not successful in the program then, after one hundred days of incarceration the circuit court shall receive from the department of corrections a report of the offender's participation in the program and department recommendations for term and conditions of an offender probation. The court shall then release the offender on probation or order the offender to remain in the department to serve the sentence imposed.**

[3.] 5. Except when the [defendant] **offender** has been found to be a predatory sexual

offender pursuant to section 558.018, RSMo, **[the] or unless otherwise prohibited by section 559.115, RSMo, a circuit court shall have the power to grant probation to a offender anytime up to one hundred twenty days after such offender has been delivered to the department of corrections but not thereafter. A circuit court may request that the [defendant be place in] offender be evaluated by the sexual offender assessment unit of the department of corrections if the [defendant] offender has [pleaded] pled guilty to or has been found guilty of [sexual abuse when classified as a class B felony.] a sexual assault offense as defined in section 589.015, RSMo. The court may request information and a recommendation from the department concerning the offender's risk to reoffend sexually and such offender's behavior during the period of incarceration. Except as provided in this section, the court may place the offender on probation created pursuant to section 217.777, RSMo, or may place the offender on probation with any other conditions authorized by law.**

**[4.] 6. Unless the offender is being granted probation pursuant to successful completion of a one-hundred-twenty-day-program** the circuit court shall notify the state in writing when the court intends to grant probation to the **[defendant] offender** pursuant to the provisions of this section. The state may, in writing, request a hearing within ten days of receipt of the court's notification that the court intends to grant probation. Upon the state's request for a hearing, the court shall grant a hearing as soon as reasonably possible. If the state does not respond to the court's notice in writing within ten days, the court may proceed upon its own motion to grant probation.

**7. An offender's incarceration for one hundred twenty days for participation in a department of corrections program prior to release on probation shall not be considered a previous prison commitment for the purpose of determining a minimum prison term under the provisions of section 558.019.**

**[5.] 8. Notwithstanding any other provision of law, probation may not be granted pursuant to this section to [defendants] offenders who have been convicted of murder in the second degree pursuant to section 565.021, RSMo; forcible rape pursuant to section 566.030, RSMo; forcible sodomy pursuant to section 566.060, RSMo; statutory rape in the first degree pursuant to section 566.032, RSMo; statutory sodomy in the first degree pursuant to section 566.062, RSMo; child molestation in the first degree pursuant to section 566.067, RSMo, when classified as a class B felony; abuse of a child pursuant to section 568.060, RSMo, when classified as a class A felony; a [defendant] offender who has been found to be a predatory sexual offender pursuant to section 558.018, RSMo; or any offense in which there exists a statutory prohibition against either probation or parole. Offenders convicted for statutory rape in the first degree or statutory sodomy in the first degree who have no prior convictions for either crime shall be eligible to be assessed at the sexual offender assessment unit of**

**the department of corrections.**

570.040. 1. Every person who has previously pled guilty or been found guilty on two separate occasions of a stealing-related offense where such offenses occurred within ten years of the date of occurrence of the present offense and where the person received and served a sentence of ten days or more on such previous offense and who subsequently pleads guilty or is found guilty of a stealing-related offense is guilty of a class [C] D felony and shall be punished accordingly.

2. As used in this section, the term "stealing-related offense" shall include federal and state violations of criminal statutes against stealing or buying or receiving stolen property and shall also include municipal ordinances against same if the defendant was either represented by counsel or knowingly waived counsel in writing and the judge accepting the plea or making the findings was a licensed attorney at the time of the court proceedings.

3. Evidence of prior guilty pleas or findings of guilt shall be heard by the court, out of the hearing of the jury, prior to the submission of the case to the jury, and the court shall determine the existence of the prior guilty pleas or findings of guilt.

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