

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILLS NOS. 36 & 112
95TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, February 5, 2009, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bills Nos. 36 and 112, adopted February 11, 2009.

Taken up for Perfection February 11, 2009. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

0517S.03P

AN ACT

To repeal sections 559.115, 566.030, and 566.060, RSMo, and to enact in lieu thereof three new sections relating to the penalties for certain forcible sexual offenses committed against children, with penalty provisions.

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

Section A. Sections 559.115, 566.030, and 566.060, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 559.115,
3 566.030, and 566.060, to read as follows:

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

4 2. Unless otherwise prohibited by subsection 5 of this section, a circuit
5 court only upon its own motion and not that of the state or the offender shall
6 have the power to grant probation to an offender anytime up to one hundred
7 twenty days after such offender has been delivered to the department of
8 corrections but not thereafter. The court may request information and a
9 recommendation from the department concerning the offender and such offender's
10 behavior during the period of incarceration. Except as provided in this section,
11 the court may place the offender on probation in a program created pursuant to
12 section 217.777, RSMo, or may place the offender on probation with any other
13 conditions authorized by law.

14 3. The court may recommend placement of an offender in a department

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

15 of corrections one hundred twenty-day program. Upon the recommendation of the
16 court, the department of corrections shall determine the offender's eligibility for
17 the program, the nature, intensity, and duration of any offender's participation
18 in a program and the availability of space for an offender in any program. When
19 the court recommends and receives placement of an offender in a department of
20 corrections one hundred twenty-day program, the offender shall be released on
21 probation if the department of corrections determines that the offender has
22 successfully completed the program except as follows. Upon successful completion
23 of a treatment program, the board of probation and parole shall advise the
24 sentencing court of an offender's probationary release date thirty days prior to
25 release. The court shall release the offender unless such release constitutes an
26 abuse of discretion. If the court determined that there is an abuse of discretion,
27 the court may order the execution of the offender's sentence only after conducting
28 a hearing on the matter within ninety to one hundred twenty days of the
29 offender's sentence. If the court does not respond when an offender successfully
30 completes the program, the offender shall be released on probation. Upon
31 successful completion of a shock incarceration program, the board of probation
32 and parole shall advise the sentencing court of an offender's probationary release
33 date thirty days prior to release. The court shall follow the recommendation of
34 the department unless the court determines that probation is not appropriate. If
35 the court determines that probation is not appropriate, the court may order the
36 execution of the offender's sentence only after conducting a hearing on the matter
37 within ninety to one hundred twenty days of the offender's sentence. If the
38 department determines that an offender is not successful in a program, then after
39 one hundred days of incarceration the circuit court shall receive from the
40 department of corrections a report on the offender's participation in the program
41 and department recommendations for terms and conditions of an offender's
42 probation. The court shall then release the offender on probation or order the
43 offender to remain in the department to serve the sentence imposed.

44 4. If the department of corrections one hundred twenty-day program is
45 full, the court may place the offender in a private program approved by the
46 department of corrections or the court, the expenses of such program to be paid
47 by the offender, or in an available program offered by another organization. If
48 the offender is convicted of a class C or class D nonviolent felony, the court may
49 order probation while awaiting appointment to treatment.

50 5. Except when the offender has been found to be a predatory sexual

51 offender pursuant to section 558.018, RSMo, the court shall request that the
52 offender be placed in the sexual offender assessment unit of the department of
53 corrections if the defendant has pleaded guilty to or has been found guilty of
54 sexual abuse when classified as a class B felony.

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

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

69 8. Notwithstanding any other provision of law, probation may not be
70 granted pursuant to this section to offenders who have **pleaded guilty to, been**
71 **found guilty of, or** been convicted of **any felony offense under chapter 566,**
72 **RSMo, committed against a victim less than seventeen years of age;**
73 murder in the second degree pursuant to section 565.021, RSMo; forcible rape
74 pursuant to section 566.030, RSMo; forcible sodomy pursuant to section 566.060,
75 RSMo; [statutory rape in the first degree pursuant to section 566.032, RSMo;
76 statutory sodomy in the first degree pursuant to section 566.062, RSMo; child
77 molestation in the first degree pursuant to section 566.067, RSMo, when classified
78 as a class A felony;] abuse of a child pursuant to section 568.060, RSMo, when
79 classified as a class A felony; an offender who has been found to be a predatory
80 sexual offender pursuant to section 558.018, RSMo; or any offense in which there
81 exists a statutory prohibition against either probation or parole.

566.030. 1. A person commits the crime of forcible rape if such person has
2 sexual intercourse with another person by the use of forcible
3 compulsion. Forcible compulsion includes the use of a substance administered
4 without a victim's knowledge or consent which renders the victim physically or
5 mentally impaired so as to be incapable of making an informed consent to sexual

6 intercourse.

7 2. Forcible rape or an attempt to commit forcible rape is a felony for which
8 the authorized term of imprisonment is life imprisonment or a term of years not
9 less than five years, unless:

10 (1) In the course thereof the actor inflicts serious physical injury or
11 displays a deadly weapon or dangerous instrument in a threatening manner or
12 subjects the victim to sexual intercourse or deviate sexual intercourse with more
13 than one person, in which case the authorized term of imprisonment is life
14 imprisonment or a term of years not less than fifteen years; [or]

15 (2) The victim is a child less than twelve years of age, in which case the
16 required term of imprisonment is life imprisonment without eligibility for
17 probation or parole until the defendant has served not less than thirty years of
18 such sentence or unless the defendant has reached the age of seventy-five years
19 and has served at least fifteen years of such sentence, **unless such forcible**
20 **rape is described under subdivision (3) of this subsection; or**

21 **(3) The victim is a child less than twelve years of age and such**
22 **forcible rape was outrageously or wantonly vile, horrible or inhuman,**
23 **in that it involved torture or depravity of mind, in which case, the**
24 **required term of imprisonment is life imprisonment without eligibility**
25 **for probation, parole or conditional release.**

26 3. Subsection 4 of section 558.019, RSMo, shall not apply to the sentence
27 of a person who has pleaded guilty to or has been found guilty of forcible rape
28 when the victim is under the age of twelve, and "life imprisonment" shall mean
29 imprisonment for the duration of a person's natural life for the purposes of this
30 section.

31 [3.] 4. No person found guilty of or pleading guilty to forcible rape or an
32 attempt to commit forcible rape shall be granted a suspended imposition of
33 sentence or suspended execution of sentence.

566.060. 1. A person commits the crime of forcible sodomy if such person
2 has deviate sexual intercourse with another person by the use of forcible
3 compulsion. Forcible compulsion includes the use of a substance administered
4 without a victim's knowledge or consent which renders the victim physically or
5 mentally impaired so as to be incapable of making an informed consent to sexual
6 intercourse.

7 2. Forcible sodomy or an attempt to commit forcible sodomy is a felony for
8 which the authorized term of imprisonment is life imprisonment or a term of

9 years not less than five years, unless:

10 (1) In the course thereof the actor inflicts serious physical injury or
11 displays a deadly weapon or dangerous instrument in a threatening manner or
12 subjects the victim to sexual intercourse or deviate sexual intercourse with more
13 than one person, in which case the authorized term of imprisonment is life
14 imprisonment or a term of years not less than ten years; or

15 (2) The victim is a child less than twelve years of age, in which case the
16 required term of imprisonment is life imprisonment without eligibility for
17 probation or parole until the defendant has served not less than thirty years of
18 such sentence or unless the defendant has reached the age of seventy-five years
19 and has served at least fifteen years of such sentence, **unless such forcible**
20 **sodomy is described under subdivision (3) of this subsection; or**

21 (3) **The victim is a child less than twelve years of age and such**
22 **forcible sodomy was outrageously or wantonly vile, horrible or**
23 **inhuman, in that it involved torture or depravity of mind, in which**
24 **case, the required term of imprisonment is life imprisonment without**
25 **eligibility for probation, parole or conditional release.**

26 3. Subsection 4 of section 558.019, RSMo, shall not apply to the sentence
27 of a person who has pleaded guilty to or has been found guilty of forcible sodomy
28 when the victim is under the age of twelve, and "life imprisonment" shall mean
29 imprisonment for the duration of a person's natural life for the purposes of this
30 section.

31 [3.] 4. No person found guilty of or pleading guilty to forcible sodomy or
32 an attempt to commit forcible sodomy shall be granted a suspended imposition
33 of sentence or suspended execution of sentence.

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