

FIRST REGULAR SESSION

SENATE BILL NO. 349

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDGEWAY.

Read 1st time February 24, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1754S.011

AN ACT

To repeal section 558.019, RSMo, and to enact in lieu thereof one new section relating to abolishing the sentencing advisory commission, with existing penalty provisions.

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Section A. Section 558.019, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 558.019, to read as follows: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 558.018 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 195, 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 commitment to a regimented discipline program established pursuant to section 217.378. Other provisions of the law to the contrary notwithstanding, any 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 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

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

19 must serve shall be forty percent of his or her sentence or until the offender
20 attains seventy years of age, and has served at least thirty percent of the
21 sentence imposed, whichever occurs first;

22 (2) If the offender has two previous prison commitments to the
23 department of corrections for felonies unrelated to the present offense, the
24 minimum prison term which the offender must serve shall be fifty percent of his
25 or her sentence or until the offender attains seventy years of age, and has served
26 at least forty percent of the sentence imposed, whichever occurs first;

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

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

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

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

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

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

48 6. [(1) A sentencing advisory commission is hereby created to consist of
49 eleven members. One member shall be appointed by the speaker of the
50 house. One member shall be appointed by the president pro tem of the
51 senate. One member shall be the director of the department of corrections. Six
52 members shall be appointed by and serve at the pleasure of the governor from
53 among the following: the public defender commission; private citizens; a private
54 member of the Missouri Bar; the board of probation and parole; and a

55 prosecutor. Two members shall be appointed by the supreme court, one from a
56 metropolitan area and one from a rural area. All members shall be appointed to
57 a four-year term. All members of the sentencing commission appointed prior to
58 August 28, 1994, shall continue to serve on the sentencing advisory commission
59 at the pleasure of the governor.

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

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

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

84 (4) The commission shall study alternative sentences, prison work
85 programs, work release, home-based incarceration, probation and parole options,
86 and any other programs and report the feasibility of these options in Missouri.

87 (5) The commission shall publish and distribute its recommendations on
88 or before July 1, 2004. The commission shall study the implementation and use
89 of the recommendations until July 1, 2005, and return a report to the governor,
90 the speaker of the house of representatives, and the president pro tem of the

91 senate. Following the July 1, 2005, report, the commission shall revise the
92 recommended sentences every two years.

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

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

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

105 7.] Courts shall retain discretion to lower or exceed the sentence
106 recommended by the commission as otherwise allowable by law, and to order
107 restorative justice methods, when applicable.

108 [8.] 7. If the imposition or execution of a sentence is suspended, the court
109 may order any or all of the following restorative justice methods, or any other
110 method that the court finds just or appropriate:

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

113 (2) Offender treatment programs;

114 (3) Mandatory community service;

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

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

117 [9.] 8. The provisions of this section shall apply only to offenses occurring
118 on or after August 28, 2003.

119 [10.] 9. Pursuant to subdivision (1) of subsection [8] 7 of this section, the
120 court may order the assessment and payment of a designated amount of
121 restitution to a county law enforcement restitution fund established by the county
122 commission pursuant to section 50.565. Such contribution shall not exceed three
123 hundred dollars for any charged offense. Any restitution moneys deposited into
124 the county law enforcement restitution fund pursuant to this section shall only
125 be expended pursuant to the provisions of section 50.565.

126 [11.] 10. A judge may order payment to a restitution fund only if such

127 fund had been created by ordinance or resolution of a county of the state of
128 Missouri prior to sentencing. A judge shall not have any direct supervisory
129 authority or administrative control over any fund to which the judge is ordering
130 a defendant to make payment.

131 [12.] 11. A defendant who fails to make a payment to a county law
132 enforcement restitution fund may not have his or her probation revoked solely for
133 failing to make such payment unless the judge, after evidentiary hearing, makes
134 a finding supported by a preponderance of the evidence that the defendant either
135 willfully refused to make the payment or that the defendant willfully,
136 intentionally, and purposefully failed to make sufficient bona fide efforts to
137 acquire the resources to pay.

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