

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 335
90TH GENERAL ASSEMBLY

Reported from the Committee on Criminal Law, April 28, 1999, with recommendation that the House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 335 Do Pass.

ANNE C. WALKER, Chief Clerk

L0643.18C

AN ACT

To repeal sections 1.160, 217.760, 513.653, 558.011, 569.025 and 569.035, RSMo 1994, and sections 21.455, 558.019, 559.021, 559.026, 559.115, 559.630, 559.633, 559.635, 570.040 and 577.023, RSMo Supp. 1998, relating to various sentencing provisions, and to enact in lieu thereof sixteen new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 1.160, 217.760, 513.653, 558.011, 569.025 and 569.035, RSMo 1994, and sections 21.455, 558.019, 559.021, 559.026, 559.115, 559.630, 559.633, 559.635, 570.040 and 577.023, RSMo Supp. 1998, are repealed and sixteen new sections enacted in lieu thereof, to be known as sections 1.160, 21.455, 217.760, 513.653, 558.011, 558.019, 559.021, 559.026, 559.115, 559.630, 559.633, 559.635, 570.040, 577.023, 1 and 2, to read as follows:

1.160. No offense committed and no fine, penalty or forfeiture incurred, or prosecution commenced or pending previous to or at the time when any statutory provision is repealed or amended, shall be affected by the repeal or amendment, but the trial and punishment of all such offenses, and the recovery of the fines, penalties or forfeitures shall be had, in all respects, as if the provision had not been repealed or amended, except[:

(1)] That all such proceedings shall be conducted according to existing procedural laws[; and

(2) That if the penalty or punishment for any offense is reduced or lessened by any alteration of the law creating the offense prior to original sentencing, the penalty or punishment shall be assessed according to the amendatory law].

21.455. It shall be the duty of the committee:

(1) To make a continuing study and analysis of penal and correctional problems as they relate to this state;

(2) To devise and arrange for a long-range program for the department and its correctional centers based on a plan of biennial development and making the recommendation of any required correctional centers in the state [in accordance with] **to the governor for selection**

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

and to the general [assembly's powers of] assembly for appropriation;

(3) To inspect at least once each year and as necessary all correctional facilities and properties under the jurisdiction of the department of corrections and of the division of youth services;

(4) To make a continuing study and review of the department of corrections and the correctional facilities under its jurisdiction, including the internal organization, management, powers, duties and functions of the department and its correctional centers, particularly, by way of extension but not of limitation, in relation to the

- (a) Personnel of the department;
- (b) Discipline of the correctional facilities;
- (c) Correctional enterprises;
- (d) Classification of offenders;
- (e) Care and treatment of offenders;
- (f) Educational and vocational training facilities of the correctional centers;
- (g) Location and establishment of new correctional centers or of new buildings and facilities;

(h) All other matters relating to the administration of the state's correctional centers which the committee deems pertinent; and

(i) Probations and paroles;

(5) To make a continuing study and review of the institutions and programs under the jurisdiction of the division of youth services;

(6) To study and determine the need for changes in the state's criminal laws as they apply to correctional centers and to sentencing, commitment, probation and parole of persons convicted of law violations;

(7) To determine from such study and analyses the need for changes in statutory law or administrative procedures;

(8) To make recommendations to the **governor, for the governor's final selection, for the location of any new correctional centers, to the** general assembly for legislative action and to the department of corrections and to the division of youth services for administrative or procedural changes.

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 does not include probation, probation and parole shall, prior to sentencing, provide the judge with a report on the 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 characteristics, his financial condition, his social history [and], the circumstances affecting his 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.**

tion 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. 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.**

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] **eight** 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 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 to the county jail or other authorized penal institution for the term of his 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 behalf and cross-examine witnesses appearing against him. 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.

558.019. 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 through 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 **and section 558.016**, "prison commitment" means and is the receipt by the department of corrections of a defendant 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, **or a commitment following a revocation of probation subsequent to a commitment for up to one hundred twenty days pursuant to section 559.115, RSMo.** Other provisions of the law to the contrary notwithstanding, any defendant 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 has one previous prison commitment to the department of corrections for a felony offense, the minimum prison term which the defendant must serve shall be forty percent of his sentence or until the defendant attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first;

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

(3) If the defendant 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 must serve shall be eighty percent of his sentence or until the defendant 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 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 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 before he 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 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 grant parole as though the judge's order was in compliance with the sentence recommended by the commission.

9. If the imposition or execution of a sentence is suspended, the court may consider ordering restorative justice methods pursuant to section 217.777, RSMo, including any or all of the following, 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 services;**
- (4) Work release programs in local facilities;**
- (5) Community based residential and nonresidential programs; and**
- (6) The donation of a designated amount of money to a county law enforcement fund**

as determined by the judge.

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

559.021. 1. The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the defendant will not again violate the law. When a defendant is placed on probation [he] **the defendant** shall be given a certificate explicitly stating the conditions on which he **or she** is being released.

2. In addition to such other authority as exists to order conditions of probation, the court may order such conditions as the court believes will serve to compensate the victim, any dependent of the victim, or society. Such conditions may include, but shall not be limited to:

(1) Restitution to the victim or any dependent of the victim, in an amount to be determined by the judge; [and]

(2) The performance of a designated amount of free work for a public or charitable purpose, or purposes, as determined by the judge; **and**

(3) **The donation of a designated amount of money to a county law enforcement fund as determined by the judge.**

3. The defendant may refuse probation conditioned on the performance of free work. If [he] **the defendant** does so, the court shall decide the extent or duration of sentence or other disposition to be imposed and render judgment accordingly. Any county, city, person, organization, or agency, or employee of a county, city, organization or agency charged with the supervision of such free work or who benefits from its performance shall be immune from any suit by the defendant or any person deriving a cause of action from [him] **the defendant** if such cause of action arises from such supervision of performance, except for an intentional tort or gross negligence. The services performed by the defendant shall not be deemed employment within the meaning of the provisions of chapter 288, RSMo. A defendant performing services pursuant to this section shall not be deemed an employee within the meaning of the provisions of chapter 287, RSMo.

4. The court may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the probation term.

559.026. Except in infraction cases[, when probation is granted, the court,] **and** in addition to conditions imposed under section 559.021, [may] **the court shall** require as a condition of **any** probation that the defendant submit to a period of detention **as ordered by the court or directed by the board of probation and parole. The period of detention shall be** 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, 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 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 anytime up to one hundred twenty days after such defendant 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. Except when the defendant has been found to be a predatory sexual offender pursuant to section 558.018, RSMo, the court shall request that the defendant be placed in the sexual offender assessment unit of the department of corrections if the defendant has pleaded guilty to or has been found guilty of sexual abuse when classified as a class B felony.

4. The circuit court shall notify the state in writing when the court intends to grant probation to the defendant 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.

5. Notwithstanding any other provision of law, probation may not be granted pursuant to this section to defendants 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; a defendant 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. **Defendants 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 sex offender assessment unit of the department of corrections.**

559.630. As used in sections 559.630 to 559.635, the following words and phrases mean:

(1) "Required educational assessment and community treatment program", a program certified by the department of mental health to provide education or rehabilitation services pursuant to a professional assessment screening to identify the individual needs of the person who has been referred to the program as the result of [a drug offense] **an alcohol- or drug-related offense or as the result of an offense for which alcohol or other drug abuse was a contributing factor;**

(2) "Substance abuse specialist", a person who is qualified under the regulations of the department of mental health as a qualified instructor or professional to provide services in an alcohol and drug offender education program.

559.633. 1. Upon a plea of guilty or a finding of guilty for a commission of a felony offense pursuant to chapter 195, RSMo, **or for a commission of a felony offense for which alcohol or other drug abuse was a contributing factor**, except for those offenses in which there exists a statutory prohibition against either probation or parole, when placing the person on probation, the court shall order the person to begin a required educational assessment and community treatment program within the first sixty days of probation as a condition of probation. **Persons who are ordered by the court for a presentence investigation or are placed under the supervision of the board of probation and parole may be ordered to begin the required educational assessment and community treatment program and if placed on probation the court may order the person to continue the required educational assessment and community treatment program.** Persons who are placed on probation after a period of incarceration pursuant to section 559.115 **or who have been ordered to complete the Missouri substance abuse traffic offenders program, pursuant to section 302.540, RSMo, and section 577.049, RSMo,** may not be required to participate in a required educational assessment and community treatment program.

2. **Persons who are found guilty or who plead guilty to a driving while intoxicated offense pursuant to section 577.023, RSMo, may be required as a condition of probation to complete a substance abuse traffic offender program in lieu of a required educational assessment and community treatment program.**

3. **When placing persons on probation who are found guilty or who plead guilty to a second or subsequent offense of operating a vessel while intoxicated pursuant to section 306.111 or 306.112, RSMo, the court may order the person to begin a required educational assessment and community treatment program within the first sixty days of probation as a condition of probation.**

[2.] 4. The fees for the required educational assessment and community treatment program, or a portion of such fees, to be determined by the department of corrections, shall be paid by the person receiving the assessment **whether ordered for the presentence investigation or when placed under the supervision of the board of probation and parole, or as a condition of probation.** Any person who is assessed shall pay, in addition to any fee charged for the assessment, a supplemental fee of sixty dollars. The administrator of the program shall remit to the department of corrections the supplemental fees for all persons assessed, less two percent for administrative costs. The supplemental fees received by the department of corrections pursuant to this section shall be deposited in the correctional substance abuse earnings fund created pursuant to section 559.635.

559.635. 1. There is hereby created in the state treasury a fund to be known as the "Correctional Substance Abuse Earnings Fund". The state treasurer shall credit to the fund any interest earned from investing the moneys in the fund. Notwithstanding the provisions of section 33.080, RSMo, money in the correctional substance abuse earnings fund shall not be transferred and placed to the credit of general revenue at the end of the biennium.

2. Fees received pursuant to the required educational assessment and community treatment program, **other authorized fees paid by the offender for alcohol and drug treatment programs, and drug testing fees authorized by the department of corrections,** shall be deposited in the correctional substance abuse earnings fund. The moneys received from such fees shall be appropriated solely for assistance in securing alcohol and drug rehabilitation services.

3. The department of corrections and the department of mental health shall promulgate

rules and regulations to implement and administer the provisions of this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

[569.025. 1. A person commits the crime of pharmacy robbery in the first degree when he forcibly steals any controlled substance from a pharmacy and in the course thereof he, or another participant in the crime:

- (1) Causes serious physical injury to any person;
- (2) Is armed with a deadly weapon;
- (3) Uses or threatens the immediate use of a dangerous instrument against any person; or
- (4) Displays or threatens the use of what appears to be a deadly weapon or dangerous instrument.

2. For purposes of this section the following terms mean:

- (1) "Controlled substance", a drug, substance or immediate precursor in schedules I through V as defined in sections 195.005 to 195.425, RSMo;
- (2) "Pharmacy", any building, warehouse, physician's office, hospital, pharmaceutical house or other structure used in whole or in part for the sale, storage or dispensing of any controlled substance as defined by sections 195.005 to 195.425, RSMo.

3. Pharmacy robbery in the first degree is a class A felony, but, notwithstanding any other provision of law, a person convicted pursuant to this section shall not be eligible for suspended execution of sentence, parole or conditional release until having served a minimum of ten years of imprisonment.]

[569.035. 1. A person commits the crime of pharmacy robbery in the second degree when he forcibly steals any controlled substance from a pharmacy.

2. For purposes of this section the following terms mean:

- (1) "Controlled substance", a drug, substance or immediate precursor in schedules I through V as defined in sections 195.005 to 195.425, RSMo;
- (2) "Pharmacy", any building, warehouse, physician's office, hospital, pharmaceutical house or other structure used in whole or in part for the sale, storage or dispensing of any controlled substance as defined by sections 195.005 to 195.425, RSMo.

3. Pharmacy robbery in the second degree is a class B felony, but, notwithstanding any other provision of law, a person convicted pursuant to this section shall not be eligible for suspended execution of sentence, parole or conditional release until having served a minimum of five years of imprisonment.]

570.040. 1. Every person who has previously pled guilty or been found guilty on two separate occasions of stealing, and who subsequently pleads guilty or is found guilty of stealing is guilty of a class [C] **D** felony and shall be punished accordingly.

2. For the purpose of this section, guilty pleas or findings of guilt in any state or federal court or in a municipal court of this state shall be considered by the court to be previous pleas or findings of guilt for the enhancement purposes of this section as long as:

- (1) The defendant was either represented by counsel or knowingly waived counsel in

writing; and

(2) 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.

577.023. 1. For purposes of this section, unless the context clearly indicates otherwise:

(1) An "intoxication-related traffic offense" is driving while intoxicated, driving with excessive blood alcohol content, involuntary manslaughter pursuant to subdivision (2) of subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section 565.082, RSMo, or driving under the influence of alcohol or drugs in violation of state law or a county or municipal ordinance, where the judge in such case was an attorney and the defendant was represented by or waived the right to an attorney in writing;

(2) An **"aggravated offender"** is a person who has pleaded guilty or been found guilty of three or more driving while intoxicated offenses where such three or more convictions occurred within fifteen years of the occurrence of the driving while intoxicated offense for which the person is charged;

(3) A "persistent offender" is one of the following:

(a) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related traffic offenses, where such two or more offenses occurred within ten years of the occurrence of the intoxication-related traffic offense for which the person is charged;

(b) A person who has pleaded guilty to or has been found guilty of involuntary manslaughter pursuant to subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to subdivision (3) of subsection 1 of section 565.082, RSMo; and

[(3)] (4) A "prior offender" is a person who has pleaded guilty to or has been found guilty of one intoxication-related traffic offense, where such prior offense occurred within five years of the occurrence of the intoxication-related traffic offense for which the person is charged.

2. **Any person who is convicted of a violation of section 577.010 who is alleged and proved to be an aggravated offender shall be guilty of a class C felony.**

3. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or 577.012 who is alleged and proved to be a prior offender shall be guilty of a class A misdemeanor.

[3.] 4. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or 577.012 who is alleged and proved to be a persistent offender shall be guilty of a class D felony.

[4.] 5. No court shall suspend the imposition of sentence as to a prior [or], persistent **or aggravated** offender under this section nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011, RSMo, to the contrary notwithstanding, nor shall such person be eligible for parole or probation until he has served a minimum of forty-eight consecutive hours' imprisonment, unless as a condition of such parole or probation such person performs at least ten days of community service under the supervision of the court in those jurisdictions which have

a recognized program for community service.

[5.] **6.** The court shall find the defendant to be a prior offender [or], persistent **or aggravated** offender, if:

(1) The indictment or information, original or amended, or the information in lieu of an indictment pleads all essential facts warranting a finding that the defendant is a prior offender [or], persistent **or aggravated** offender; and

(2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding beyond a reasonable doubt the defendant is a prior offender [or], persistent **or aggravated** offender; and

(3) The court makes findings of fact that warrant a finding beyond a reasonable doubt by the court that the defendant is a prior offender [or], persistent **or aggravated** offender.

[6.] **7.** In a jury trial, the facts shall be pleaded, established and found prior to submission to the jury outside of its hearing.

[7.] **8.** In a trial without a jury or upon a plea of guilty, the court may defer the proof in findings of such facts to a later time, but prior to sentencing.

[8.] **9.** The defendant shall be accorded full rights of confrontation and cross-examination, with the opportunity to present evidence, at such hearings.

[9.] **10.** The defendant may waive proof of the facts alleged.

[10.] **11.** Nothing in this section shall prevent the use of presentence investigations or commitments.

[11.] **12.** At the sentencing hearing both the state and the defendant shall be permitted to present additional information bearing on the issue of sentence.

[12.] **13.** The pleas or findings of guilty shall be prior to the date of commission of the present offense.

[13.] **14.** The court shall not instruct the jury as to the range of punishment or allow the jury, upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases of prior offenders [or], persistent **or aggravated** offenders.

[14.] **15.** Evidence of prior convictions shall be heard and determined by the trial court out of the hearing of the jury prior to the submission of the case to the jury, and shall include but not be limited to evidence of convictions received by a search of the records of the Missouri uniform law enforcement system maintained by the Missouri state highway patrol. After hearing the evidence, the court shall enter its findings thereon. A conviction of a violation of a municipal or county ordinance in a county or municipal court for driving while intoxicated or a conviction or a plea of guilty or a finding of guilty followed by a suspended imposition of sentence, suspended execution of sentence, probation or parole or any combination thereof in a state court shall be treated as a prior conviction.

Section 1. 1. Upon a finding or plea of guilty to any felony with a required culpable mental state as set forth in subsection 2 or 3 of section 562.016, RSMo, the court shall, upon motion of the state or the defendant, conduct a hearing, without a jury, before final sentencing, to determine the amount due to the victim as restitution by a preponderance of the evidence.

2. This section does not alter, impair or otherwise affect claims, rights or remedies available pursuant to law.

Section 2. 1. The board of probation and parole may, in its discretion, require restitution established pursuant to section 1 of this act, if any, to be paid by the offender

as a condition of parole.

2. All restitution required as a condition of parole shall be paid by the offender to the clerk of the sentencing court.

3. Any restitution established pursuant to this section shall not be a judgment enforceable at law.

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