

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 335
90TH GENERAL ASSEMBLY
1999

S0643.25T

AN ACT

To repeal sections 1.160, 149.011, 149.071, 217.760, 513.653, 558.011, 558.016, 569.025, 569.035, 570.020, 573.503 and 577.023, RSMo 1994, and sections 21.455, 392.540, 407.020, 558.019, 559.021, 559.026, 559.115, 559.630, 559.633, 559.635, 570.030, 570.040, 571.030, 589.400, 589.410, 589.414 and 589.425, RSMo Supp. 1998, relating to crimes and punishment, and to enact in lieu thereof thirty-seven new sections relating to the same subject, with penalty provisions for certain sections.

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

Section A. Sections 1.160, 149.011, 149.071, 217.760, 513.653, 558.011, 558.016, 569.025, 569.035, 570.020, 573.503 and 577.023, RSMo 1994, and sections 21.455, 392.540, 407.020, 558.019, 559.021, 559.026, 559.115, 559.630, 559.633, 559.635, 570.030, 570.040, 571.030, 589.400, 589.410, 589.414 and 589.425, RSMo Supp. 1998, are repealed and thirty-seven new sections enacted in lieu thereof, to be known as sections 1.160, 21.455, 149.011, 149.071, 217.760, 392.540, 407.020, 513.653, 558.011, 558.016, 558.019, 559.021, 559.026, 559.115, 559.630, 559.633, 559.635, 570.020, 570.030, 570.040, 571.030, 573.503, 577.023, 577.068, 589.400, 589.410, 589.414, 589.425, 1, 2, 3, 4, 5, 6, 7, 8 and 9 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or forfeiture incurred, or prosecution commenced or pending previous to or at the time when any statutory provision is repealed or amended, shall be affected by the repeal or amendment, but the trial and punishment of all such

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

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and the recovery of the fines, penalties or forfeitures shall be had, in all respects, as if the provision had not been repealed or amended, except[: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 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.

149.011. As used in this chapter, unless the context requires otherwise, the following terms mean:

(1) "Cigar", any roll for smoking, except cigarettes, made chiefly of tobacco or any substitute therefor;

(2) "Cigarette", an item manufactured of tobacco or any substitute therefor, wrapped in paper or any substitute therefor, weighing not to exceed three pounds per one thousand cigarettes and which is commonly classified, labeled or advertised as a cigarette, **or any product that contains nicotine, as intended to be burned or heated under ordinary conditions of use, and consists of or contains:**

(a) **Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or**

(b) **Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or**

(c) **Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subdivision.**

Cigarette includes "roll-your-own", which is any tobacco which, because of its appearance, type, packaging or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of cigarette, nine one-hundredths of an ounce of "roll-your-own" tobacco shall constitute one individual cigarette;

(3) "Common carrier", any person, association, company, or corporation engaged in the business of operating, for public use, an agency for the transportation of persons or property within the state;

(4) "Director", the director of Missouri department of revenue;

(5) "First sale within the state", the first sale of a tobacco product by a manufacturer, wholesaler or other person to a person who intends to sell such tobacco products at retail or to a person at retail within the state of Missouri;

(6) "Manufacturer", any person engaged in the manufacture or production of cigarettes;

(7) "Manufacturer's invoice price", the original net invoice price for which a manufacturer sells a tobacco product to a distributor, wholesaler or first seller in the state as shown by the manufacturer's original invoice;

(8) "Meter machine", a type of device manufactured for the use of printing or imprinting an inked impression indicating that the cigarette tax has been paid on an individual package of cigarettes;

(9) "Package of cigarettes", a container of any type composition in which is normally contained twenty individual cigarettes, except as in special instances when the number may be more or less than twenty, **or a pack, carton, or container of any kind in which cigarettes are offered for sale, sold, or otherwise distributed, or intended for distribution, to consumers;**

(10) "Person", any individual, corporation, firm, partnership, incorporated or unincorporated association, or any other legal or commercial entity;

(11) "Retailer", any person who sells to a consumer or to any person for any purpose other than resale;

(12) "Sale" in this instance is defined to be and declared to include sales, barter, exchanges and every other manner, method and form of transferring the ownership of personal property from one person to another. "Sale" also means the possession of cigarettes or tobacco products by any person other than a manufacturer, wholesaler or retailer and shall be prima facie evidence of possession for consumption;

(13) "Smokeless tobacco", chewing tobacco, including, but not limited to, twist, moist plug, loose leaf and firm plug, and all types of snuff, including, but not limited to, moist and dry;

(14) "Stamped cigarettes", an individual package, containing twenty individual cigarettes, more or less, on which appears or is affixed or imprinted thereon a Missouri state cigarette tax stamp or Missouri state meter machine impression;

(15) "Tax stamp", an item manufactured of a paper product or substitute thereof on which is printed, imprinted, or engraved lettering, numerals or symbols indicating that the cigarette tax has been paid on each individual package of cigarettes;

(16) "Tobacco product", cigarettes, cigarette papers, clove cigarettes, cigars, smokeless tobacco, smoking tobacco, or other form of tobacco products or products made with tobacco substitute containing nicotine;

(17) "Unstamped cigarettes", an individual package containing cigarettes on which does not appear a Missouri state cigarette tax stamp or Missouri state meter machine impression;

(18) "Wholesaler", any person, firm or corporation organized and existing, or doing business, primarily to sell cigarettes or tobacco products to, and render service to, retailers in the territory the person, firm or corporation chooses to serve; that purchases cigarettes or tobacco products directly from the manufacturer; that carries at all times at his or its principal place of business a representative stock of cigarettes or tobacco products for sale; and that comes into the possession of cigarettes or tobacco products for the purpose of selling them to retailers or to persons outside or within the state who might resell or retail the cigarettes or tobacco products to consumers. This shall include any manufacturer, jobber, broker, agent or other person, whether or not enumerated in this chapter, who so sells or so distributes cigarettes or tobacco products.

149.071. 1. Any person who shall, without the authorization of the director of revenue, make or manufacture, or who shall falsely or fraudulently forge, counterfeit, reproduce, restore, or process any stamp, impression, copy, facsimile, or other evidence for the purpose of indicating the payment of the tax levied by this chapter, or who shall knowingly or by a deceptive act use or

pass, or tender as true, or affix, impress, or imprint, by use of any device, rubber stamp or by any other means, or any package containing cigarettes, any unauthorized, false, altered, forged, counterfeit or previously used stamp, impressions, copies, facsimilies or other evidence of cigarette tax payment, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment by the state department of corrections and human resources for a term of not less than two years nor more than five years.

2. No tax stamp may be affixed to, or made upon, any package of cigarettes if:

(1) The package does not comply with all the requirements of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 1331 and following), for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States; or

(2) The package has been imported into the United States after January 1, 2000, in violation of 26 U.S.C. Sec. 5754;

(3) The package is labeled "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording indicating that the manufacturer did not intend that the product be sold in the United States; or

(4) The package, or a package containing individually stamped packages, has been altered by masking or deleting the wording described in subdivision (3) of this subsection.

3. Any person who sells or holds for sale cigarette packages to which is affixed a tax stamp in violation of this section shall be guilty of a class D felony upon conviction.

4. The department of revenue may revoke a wholesale license of any person who sells or holds for sale cigarette packages to which is affixed a tax stamp in violation of this section.

5. The department of revenue may seize and destroy or sell only for export to licensed exporters cigarette packages to which is affixed a tax stamp in violation of this section.

6. A violation of this section is a deceptive act or practice pursuant to this section.

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 such 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 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.

392.540. **1.** Notwithstanding any other provision of law to the contrary, the public service commission shall promulgate rules which shall be effective by January 1, 1999, for the submission or execution of changes by a telecommunications company to a subscriber's selected provider of basic interexchange or basic local telecommunications services, and requiring verification by customers to telecommunication companies for any changes in such customer's telecommunication service. Any rule promulgated shall be consistent with rules prescribed by the Federal Communications Commission pursuant to 47 U.S.C. Section 258(a).

2. Notwithstanding any other provision of law to the contrary, the public service commission shall promulgate rules which shall be effective by January 1, 2000, for the advertisement and sale of merchandise through telemarketing, as defined in section 3 of this act, by or on behalf of a telecommunications company. Any rule promulgated shall not be inconsistent with the rules promulgated by the Federal Communications Commission pursuant to 47 U.S.C. Section 258(a).

407.020. **1.** The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice. The use by any person, in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri of the fact that the attorney general has approved any filing required by this chapter as the approval, sanction or endorsement of any activity, project or action of such person, is declared to be an unlawful practice. Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

2. Nothing contained in this section shall apply to:

(1) The owner or publisher of any newspaper, magazine, publication or printed matter wherein such advertisement appears, or the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser; or

(2) Any institution or company that is under the direction and supervision of the director

of the department of insurance, **director of the division of credit unions**, or director of the division of finance, unless the directors of such divisions specifically authorize the attorney general to implement the powers of this chapter or such powers are provided to either the attorney general or a private citizen by statute.

3. Any person who willfully and knowingly engages in any act, use, employment or practice declared to be unlawful by this section with the intent to defraud shall be guilty of a class D felony.

4. It shall be the duty of each prosecuting attorney and circuit attorney in their respective jurisdictions to commence any criminal actions under this section, and the attorney general shall have concurrent original jurisdiction to commence such criminal actions throughout the state where such violations have occurred.

5. It shall be an unlawful practice for any long-term care facility, as defined in section 660.600, RSMo, except a facility which is a residential care facility I or a residential care facility II, as defined in section 198.006, RSMo, which makes, either orally or in writing representation to residents, prospective residents, their families or representatives, regarding the quality of care provided, or systems or methods utilized for assurance or maintenance of standards of care, to refuse to provide copies of documents which reflect the facility's evaluation of the quality of care, except that the facility may remove information that would allow identification of any resident. If the facility is requested to provide any copies, a reasonable amount, as established by departmental rule, may be charged.

6. Any long-term care facility, as defined in section 660.600, RSMo, which commits an unlawful practice under this section shall be liable for damages in a civil action of up to one thousand dollars for each violation, and attorney's fees and costs incurred by a prevailing plaintiff, as allowed by the circuit court.

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, **subject to standards promulgated by the state auditor which shall take into account adequate measures to protect the confidentiality of any law enforcement activities involved in the federal seizures**, 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. Any law enforcement agency which has not complied with the provisions of this section shall acquire audits for the years in which they have not filed as required by 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.

558.016. 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] **felony convictions, in addition to one unrelated previous prison commitment, for offenses** 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] **one or more previous prison commitments for** 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 **or previous prison commitments** shall [be] **commence** 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.

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 subsections 2 through 5 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 **no later than January 31, 2000**. Following [the July 1, 1998,] **this** 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 may 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. No appeal shall lie from the court's decision to impose or not to impose the sentence recommended by the commission.

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 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 apply the rules of parole guidelines as if the sentence 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; and

(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. An annual audit of the fund shall be conducted by the

county auditor or the state auditor. The provisions of this subdivision shall expire December 31, 2002. Any money deposited into the county law enforcement fund pursuant to this section shall only be expended with the approval of the majority of the presiding commissioner, the sheriff and one other elected county official to be agreed upon by the presiding commissioner and the sheriff.

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. An annual audit of the fund shall be conducted by the county auditor or the state auditor. The provisions of this subdivision shall expire December 31, 2002. Any money deposited into the county law enforcement fund pursuant to this section shall only be expended with the approval of the majority of the presiding commissioner, the sheriff and one other elected county official to be agreed upon by the presiding commissioner and the sheriff.

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, in addition to conditions imposed under section 559.021, may require as a condition of probation that the

defendant submit to a period of detention in an appropriate institution at whatever time or intervals within the period of probation, consecutive or nonconsecutive, the court shall designate. **Unless ordered otherwise by the court, it shall be a statutory condition of every probation that, without further proceedings, the defendant shall submit to any period of detention in an appropriate institution at whatever time or intervals within the period of probation, consecutive or nonconsecutive, the board of probation and parole shall direct. Such detention shall not exceed a cumulative one hundred twenty days.** 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 shall 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 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.

[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.]

570.020. For the purposes of this chapter, the value of property shall be ascertained as follows:

(1) Except as otherwise specified in this section, "value" means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime;

(2) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows:

(a) The value of an instrument constituting evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;

(b) The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument;

(3) When the value of property cannot be satisfactorily ascertained pursuant to the

standards set forth in subdivisions (1) and (2) of this section, its value shall be deemed to be an amount less than [one hundred fifty] **five hundred** dollars.

570.030. 1. A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.

2. Evidence of the following is admissible in any criminal prosecution under this section on the issue of the requisite knowledge or belief of the alleged stealer:

(1) That he or she failed or refused to pay for property or services of a hotel, restaurant, inn or boardinghouse;

(2) That he or she gave in payment for property or services of a hotel, restaurant, inn or boardinghouse a check or negotiable paper on which payment was refused;

(3) That he or she left the hotel, restaurant, inn or boardinghouse with the intent to not pay for property or services;

(4) That he or she surreptitiously removed or attempted to remove his or her baggage from a hotel, inn or boardinghouse;

(5) That he or she, with intent to cheat or defraud a retailer, possesses, uses, utters, transfers, makes, alters, counterfeits or reproduces a retail sales receipt, price tag or universal price code label, or possesses with intent to cheat or defraud, the device that manufactures fraudulent receipts or universal price code labels.

3. Stealing is a class C felony if:

(1) The value of the property or services appropriated is [seven hundred fifty] **five hundred** dollars or more; or

(2) The actor physically takes the property appropriated from the person of the victim; or

(3) The property appropriated consists of:

(a) Any motor vehicle, watercraft or aircraft; or

(b) Any will or unrecorded deed affecting real property; or

(c) Any credit card or letter of credit; or

(d) Any firearms; or

(e) A United States national flag designed, intended and used for display on buildings or stationary flagstaffs in the open; or

(f) Any original copy of an act, bill or resolution, introduced or acted upon by the legislature of the state of Missouri; or

(g) Any pleading, notice, judgment or any other record or entry of any court of this state, any other state or of the United States; or

(h) Any book of registration or list of voters required by chapter 115, RSMo; or

(i) Any animal of the species of horse, mule, ass, cattle, swine, sheep, or goat; or

(j) Live fish raised for commercial sale with a value of seventy-five dollars; or

(k) Any controlled substance as defined by section 195.010, RSMo.

4. If an actor appropriates any material with a value less than [one hundred fifty] **five hundred** dollars in violation of this section with the intent to use such material to manufacture,

compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogues, then such violation is a class D felony. The theft of any amount of anhydrous ammonia, **or any attempt to steal any amount of anhydrous ammonia**, is a class D felony.

5. The theft of any item of property or services [under] **pursuant to** subsection 3 of this section which exceeds [seven hundred fifty] **five hundred** dollars may be considered a separate felony and may be charged in separate counts.

6. Any person with a prior conviction of paragraph (i) of subdivision (3) of subsection 3 of this section and who violates the provisions of paragraph (i) of subdivision (3) of subsection 3 of this section when the value of the animal or animals stolen exceeds three thousand dollars is guilty of a class B felony.

7. Any violation of this section for which no other penalty is specified in this section is a class A misdemeanor.

570.040. 1. Every person who has previously pled guilty or been found guilty on two separate occasions of stealing **or receiving stolen property**, and who subsequently pleads guilty or is found guilty of stealing **or receiving stolen property for property or services not qualifying as a felony pursuant to section 570.030 or 570.080** 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.

571.030. 1. A person commits the crime of unlawful use of weapons if he **or she** knowingly:

(1) Carries concealed upon or about his **or her** person a knife, a firearm, a blackjack or any other weapon readily capable of lethal use; or

(2) Sets a spring gun; or

(3) Discharges or shoots a firearm into a dwelling house, a railroad train, boat, aircraft, or motor vehicle as defined in section 302.010, RSMo, or any building or structure used for the assembling of people; or

(4) Exhibits, in the presence of one or more persons, any weapon readily capable of lethal use in an angry or threatening manner; or

(5) Possesses or discharges a firearm or projectile weapon while intoxicated; or

(6) Discharges a firearm within one hundred yards of any occupied school house, courthouse, or church building; or

(7) Discharges or shoots a firearm at a mark, at any object, or at random, on, along or across a public highway or discharges or shoots a firearm into any outbuilding; or

(8) Carries a firearm or any other weapon readily capable of lethal use into any church or place where people have assembled for worship, [or into any school,] or into any election precinct on any election day, or into any building owned or occupied by any agency of the federal government, state government, or political subdivision thereof, or into any public assemblage of persons met for any lawful purpose; [or]

(9) Discharges or shoots a firearm at or from a motor vehicle, as defined in section 301.010, RSMo, while within any city, town, or village, and discharges or shoots a firearm at any person, or at any other motor vehicle, or at any building or habitable structure, unless the person was lawfully acting in self-defense; **or**

(10) Carries a firearm or any other weapon readily capable of lethal use into any school or onto any school bus, unless the person is participating in a school-sanctioned, firearm-related event.

2. Subdivisions (1), (3), (4), (6), (7), (8) [and], (9) **and (10)** of subsection 1 of this section shall not apply to or affect any of the following:

(1) All state, county and municipal law enforcement officers possessing the duty and power of arrest for violation of the general criminal laws of the state or for violation of ordinances of counties or municipalities of the state, **whether such officers are within or outside of their jurisdictions or on or off duty**, or any person summoned by such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;

(3) Members of the armed forces or national guard while performing their official duty;

(4) Those persons vested by article V, section 1 of the Constitution of Missouri with the judicial power of the state and those persons vested by article III of the Constitution of the United States with the judicial power of the United States, the members of the federal judiciary;

(5) Any person whose bona fide duty is to execute process, civil or criminal;

(6) Any federal probation officer;

(7) Any state probation or parole officer, including supervisors and members of the board of probation and parole; [and]

(8) Any corporate security advisor meeting the definition and fulfilling the requirements of the regulations established by the board of police commissioners under section 84.340, RSMo;

(9) Any former peace or reserve officer who was certified by the department of public safety and whose certification has not subsequently been revoked by the department;

(10) Any former Missouri state court judge who meets the requirements of subsection 3 of this section; and

(11) Any active or former Missouri prosecuting or circuit attorney who meets the requirements of subsection 3 of this section.

3. An active or former prosecuting attorney or former state court judge who does not have a valid permit shall complete eight hours of firearms safety training with a federal, state or local law enforcement agency before such attorney, former attorney or former judge may be exempted from the provisions of subsection 1 of this section.

[3.] **4.** Subdivisions (1), (5) and (8) of subsection 1 of this section do not apply when the actor is transporting such weapons in a nonfunctioning state or in an unloaded state when ammunition is not readily accessible or when such weapons are not readily accessible. Subdivision (1) of subsection 1 of this section does not apply when the actor is also in possession of an exposed firearm or projectile weapon for the lawful pursuit of game, or is in his dwelling unit or upon business premises over which the actor has possession, authority or control, or is traveling in a continuous journey peaceably through this state.

[4.] **5.** Unlawful use of weapons is a class D felony unless committed [under] **pursuant to** subdivision (5), (6), (7) or (8) of subsection 1 of this section, in which cases it is a class B misdemeanor, **or subdivision (10) of subsection 1 of this section, in which case it is a class C felony**, or subdivision (9) of subsection 1 of this section, in which case it is a class B felony, except that if the violation of subdivision (9) of subsection 1 of this section results in injury or death to another person, it is a class A felony.

[5.] **6.** Violations of subdivision (9) of subsection 1 of this section shall be punished as follows:

(1) For the first violation a person shall be sentenced to the maximum authorized term of imprisonment for a class B felony;

(2) For any violation by a prior offender as defined in section 558.016, RSMo, a person shall be sentenced to the maximum authorized term of imprisonment for a class B felony without the possibility of parole, probation or conditional release for a term of ten years;

(3) For any violation by a persistent offender as defined in section 558.016, RSMo, a person shall be sentenced to the maximum authorized term of imprisonment for a class B felony without the possibility of parole, probation, or conditional release;

(4) For any violation which results in injury or death to another person, a person shall be sentenced to an authorized disposition for a class A felony.

[6.] **7.** Any person knowingly aiding or abetting any other person in the violation of subdivision (9) of subsection 1 of this section shall be subject to the same penalty as that prescribed by this section for violations by other persons.

573.503. Notwithstanding any provision of law to the contrary, any city not within a county and any county may, by order or ordinance, require a background check be conducted on all employees of any adult cabaret to ascertain whether any such employees have been convicted of or have pled guilty to any misdemeanor or felony involving prostitution or aiding or abetting prostitution, drug possession or trafficking, money laundering, tax evasion, or illegal gambling activity. **Any person who violates an ordinance adopted pursuant to this section is guilty of a class A misdemeanor.**

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 been convicted of three or more driving while intoxicated offenses, one of which was a felony conviction, 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.

577.068. 1. A person commits the crime of leaving the scene of a shooting when, being in possession of a firearm or projectile weapon as defined in section 571.010, RSMo, such person discharges such firearm or projectile weapon and causes injury or death to another person and such person, knowing that he has caused such injury or death, leaves the place of the shooting without giving his name, address, and driver's license number, if applicable, to a law enforcement officer. If no such officer is in the vicinity where the shooting occurs, the person must provide such information to the

nearest police station or law enforcement officer. A person is not in violation of this section if he leaves the scene of a shooting in order to obtain medical assistance or contact law enforcement authorities to notify them of the shooting, so long as such person returns to the scene of the shooting or otherwise provides the information required by this section to a law enforcement officer within a reasonable time after the shooting.

2. All peace officers and reserve peace officers certified under the provisions of chapter 590, RSMo, shall have authority to investigate shootings and arrest a person who violates subsection 1 of this section, except that conservation agents may enforce such provisions as to hunting related shootings. For the purpose of this section, a hunting related shooting shall be defined as any shooting in which a person is injured as a result of hunting activity that involves the discharge of a hunting weapon.

3. Leaving the scene of a shooting is a class A misdemeanor, except that it is a class D felony if the person has previously pled guilty to or been found guilty of a violation of this section.

589.400. 1. Sections 589.400 to 589.425 shall apply to:

(1) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to committing, or attempting to commit, [a felony] **an** offense of chapter 566, RSMo; or

(2) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to committing, or attempting to commit one or more of the following offenses: kidnapping; promoting prostitution in the first degree; promoting prostitution in the second degree; promoting prostitution in the third degree; incest; abuse of a child; used a child in a sexual performance; or promoting sexual performance by a child; and committed or attempted to commit the offense against a victim who is a minor, defined for the purposes of sections 589.400 to 589.425 as a person under [seventeen] **eighteen** years of age; or

(3) Any person who, since July 1, 1979, has been committed to the department of mental health as a criminal sexual psychopath; or

(4) Any person who, since July 1, 1979, has been found not guilty as a result of mental disease or defect of any offense listed in subdivision (1) or (2) of this subsection; or

(5) Any person who is a resident of this state [who has, since July 1, 1979, or is hereafter convicted of, been found guilty of, or pled guilty or nolo contendere in any other state or under federal jurisdiction to committing, or attempting to commit, an offense which, if committed in this state, would be a felony violation of chapter 566, RSMo, or a felony violation of any offense listed in subdivision (2) of this subsection] **and has been or is required to register in another state or has been or is required to register under federal or military law; or**

(6) any person who has been or is required to register in another state or has been or is required to register under federal or military law and who works or attends school or training on a full-time or on a part-time basis in Missouri. Part-time in this subdivision means for more than fourteen days in any twelve-month period.

2. Any person to whom sections 589.400 to 589.425 applies shall, within ten days of coming into any county, register with the chief law enforcement official of the county in which such person resides. The chief law enforcement official shall forward a copy of the registration form required by section 589.407 to a city, town or village law enforcement agency located within the county of the chief law enforcement official, if so requested. Such request may ask the chief law enforcement official to forward copies of all registration forms filed with such official. The chief law enforcement official may forward a copy of such registration form to any city, town or village law enforcement agency, if so requested.

3. The registration requirements of sections 589.400 through 589.425 are lifetime registration requirements unless all offenses requiring registration are reversed, vacated or set aside or unless the registrant is pardoned of the offenses requiring registration.

589.410. 1. The chief law enforcement official shall forward the completed offender registration form to the [central repository] **Missouri state highway patrol** within [ten] **three** days. The patrol shall enter the information into the Missouri uniform law enforcement system (MULES) where it is available to members of the criminal justice system upon inquiry.

2. The department of public safety shall develop and maintain a system for making the registry of persons who have pled guilty to or been convicted of a third or subsequent sexual offense requiring registration, and has demonstrated predatory behavior, available on its Internet Web site. Notwithstanding the provisions of section 589.417 to the contrary, the information to be available on the Internet shall include the person's name; date of birth; address of residence; crime which requires registration; whether such person was sentenced as a predatory or persistent sexual offender pursuant to section 558.018, RSMo, date, place and brief description of such crime; of such conviction or plea regarding such crime; age and gender of the victim at the time of the offense; photograph, and such other information as the department of public safety may determine is necessary to preserve public safety. The system shall be secure and not capable of being altered except by or through the department of public safety.

3. The information shall be removed from the Internet after twenty years unless the offender has pled guilty to or been found guilty of a sexual offense pursuant to chapter 566, RSMo, during such time period.

589.414. 1. If any person required by sections 589.400 to 589.425 to register changes residence or address within the same county as such person's previous address, the person shall inform the chief law enforcement official in writing within ten days of such new address and phone number, if the phone number is also changed.

2. If any person required by sections 589.400 to 589.425 to register changes such person's residence or address to a different county, the person **shall appear in person and** shall inform both the chief law enforcement official with whom the person last registered and the chief law enforcement official of the county having jurisdiction over the new residence or address in writing within ten days, of such new address and phone number, if the phone number is also changed. **If**

any person required by sections 589.400 to 589.425 to register changes their state of residence, the person shall appear in person and shall inform both the chief law enforcement official with whom the person was last registered and the chief law enforcement official of the area in the new state having jurisdiction over the new residence or address within ten days of such new address. Whenever a registrant changes residence, the chief law enforcement official of the county where the person was previously registered shall promptly inform the Missouri state highway patrol of the change. When the registrant is changing the residence to a new state, the Missouri state highway patrol shall promptly inform the responsible official in the new state of residence.

3. Any person required by sections 589.400 to 589.425 to register who officially changes such person's name shall inform the chief law enforcement officer of such name change within seven days after such change is made.

4. In addition to the requirements of subsections 1 and 2 of this section, the following offenders shall [contact] **report in person to** the county law enforcement agency every ninety days to verify the information contained in their statement made pursuant to section 589.407:

(1) Any offender registered as a predatory or persistent sexual offender **under the definitions found in section 558.018, RSMo;**

(2) Any offender who is registered for a crime where the victim was less than eighteen years of age at the time of the offense; and

(3) Any offender who has pled guilty or been found guilty pursuant to section 589.425 of failing to register or submitting false information when registering.

5. In addition to the requirements of subsections 1 and 2 of this section, all registrants shall report annually in person in the month of their birth to the county law enforcement agency to verify the information contained in their statement made pursuant to section 589.407.

6. In addition to the requirements of subsections 1 and 2 of this section, all Missouri registrants who work or attend school or training on a full-time or part-time basis in any other state shall be required to report in person to the chief law enforcement officer in the area of the state where they work or attend school or training and register in that state. Part-time in this subsection means for more than fourteen days in any twelve-month period.

589.425. 1. Any person who is required to register pursuant to sections 589.400 to 589.425 and[:

(1) Includes any false information in such person's registration statement; or

(2) Fails to register; or

(3) Fails to timely verify registration information pursuant to section 589.414;] **does not meet all requirements of sections 589.400 to 589.425** is guilty of a class A misdemeanor.

2. Any person who commits a second or subsequent violation of subsection 1 of this section is guilty of a class D felony.

Section 1. 1. As used in this section, the following terms shall mean:

(1) "Correctional center", any institution of the department of corrections where incarceration, evaluation, care, treatment or rehabilitation is provided to persons who are under the department's authority;

(2) "Tobacco products", cigarettes, cigarette papers, clove cigarettes, cigars, smokeless tobacco, smoking tobacco or other form of tobacco products as determined by the department.

2. Use of tobacco products shall be prohibited in the buildings of all correctional centers of the department of corrections by July 1, 2000.

Section 2. 1. No person less than twenty-one years of age shall dance in an adult cabaret as defined in section 573.500, RSMo, nor shall any proprietor of such establishment permit any person less than twenty-one years of age to dance in an adult cabaret.

2. Any person who violates the provisions of subsection 1 of this section is guilty of a class A misdemeanor.

Section 3. As used in sections 3 to 8 of this act, the following terms shall mean:

(1) "Advertisement", as defined in section 407.010, RSMo;

(2) "Consumer", a natural person who purchases, may purchase or is solicited for purchase of merchandise or an investment opportunity by a telemarketer through telemarketing;

(3) "Established business relationship", a prior or existing relationship formed by a voluntary two-way communication between a seller or telemarketer and a consumer with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the consumer regarding products or services offered by such seller or telemarketer, which relationship has not been previously terminated by either party;

(4) "Fictitious name", any name, other than the legal name, used by a seller or telemarketer;

(5) "Investment opportunity", anything tangible or intangible that is offered for sale, sold or traded based wholly or in part on representations, either express or implied, about past, present or future income, profit or appreciation;

(6) "Material aspect or element", any factor likely to significantly influence the consumer's choice of, or conduct regarding, merchandise;

(7) "Prize", anything offered or purportedly offered or given or purportedly given to a consumer by chance. For purposes of this definition, chance exists if a consumer is guaranteed to receive anything of value and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the consumer will receive;

(8) "Promptly", immediately at the beginning of any call initiated by a telemarketer to a consumer;

(9) "Seller", any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide merchandise to the consumer in exchange for consideration;

(10) "Telemarketing", a plan, program or campaign which is conducted to induce the purchase or lease of merchandise by use of one or more telephones and which involves more than one telephone call;

(11) "Telemarketer", any person who, in connection with telemarketing, initiates or receives telephone calls to or from a consumer. A telemarketer includes, but is not limited to, any such person that is an owner, operator, officer, director or partner to the management activities of a business.

Section 4. 1. A telemarketer shall disclose, promptly and in a clear and conspicuous manner, to the consumer receiving the telephone call the following:

- (1) That the purpose of the telephone call is to make a sale;**
- (2) The telemarketer's identifiable name and the seller on whose behalf the solicitation is being made;**
- (3) The nature of the merchandise or investment opportunity being sold; and**
- (4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the consumer called.**

2. Before a consumer pays for merchandise offered for sale through telemarketing, the telemarketer shall disclose, in a clear and conspicuous manner, the following:

- (1) The seller or telemarketer's identifiable name and the address or telephone number where the seller or telemarketer can be reached;**
- (2) The total cost and quantity of the merchandise that are the subject of the telemarketing sales call;**
- (3) Any material restriction, limitation or condition to purchase, receive or use the merchandise that is the subject of a telemarketing sales call;**
- (4) Any material aspect of the nature or terms of the refund, cancellation, exchange or repurchase policies, including the absence of such policies;**
- (5) Any material aspect of an investment opportunity being offered, including benefits, the price of the land or other investment, and the location of the investment;**
- (6) Material elements of a prize promotion, including:**
 - (a) The odds of being able to receive the prize and, if the odds are not calculable in advance, the factors and methods used in calculating the odds;**
 - (b) That no purchase or payment of any kind is required to win a prize or to participate in a prize promotion;**
 - (c) The no-purchase or no-payment method of participating in the prize promotion, with either instructions on how to participate or an address or local or toll-free telephone number to which consumers may write or call for information on how**

to participate;

(d) All material conditions to receive or redeem the prize.

3. A telemarketer may not misrepresent, directly or by implication, any of the following:

(1) A description of the prize;

(2) Its market value;

(3) The actual number of each prize to be awarded;

(4) The date by which the prize will be awarded.

4. A telemarketer may not misrepresent any material aspect of the performance, quality, efficacy, nature or basic characteristics of merchandise that is the subject of a telemarketing sales call.

Section 5. It is an unlawful telemarketing act or practice for any seller or telemarketer to engage in the following conduct:

(1) Omit or misrepresent any material fact required pursuant to section 4 of this act;

(2) Threaten, intimidate or use profane or obscene language;

(3) Cause the telephone to ring or engage any consumer in telephone conversation, repeatedly or continuously in a manner a reasonable consumer would deem to be annoying, abusive or harassing;

(4) Knowingly and willfully initiate a telemarketing call to a consumer, or transfer or make available to others for telemarketing purposes a consumer's telephone number when that consumer has stated previously that he or she does not wish to receive solicitation calls by or on behalf of the seller unless such request has been rescinded;

(5) Engage in telemarketing to a consumer's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time, at the called consumer's location;

(6) Request or receive payment in advance to remove derogatory information from or improve a consumer's credit history, credit record or credit rating;

(7) Request or receive payment in advance from a consumer, to recover or otherwise aid in the return of money or any other item lost by the consumer in a prior telemarketing transaction, except that this provision shall not apply to services provided by a licensed attorney;

(8) Obtain or submit for payment a check, draft or other form of negotiable paper drawn on a consumer's checking, savings, share or similar account without the consumer's express written or oral authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

(a) Express written authorization by the consumer, which may include the consumer's signature on the negotiable instrument;

(b) Express oral authorization which is tape recorded and made available upon request to the consumer's bank and which evidences clearly both the consumer's authorization of payment for the merchandise that is the subject of the sales offer and

the consumer's receipt of all of the following information:

- a. The date of the draft or drafts;**
- b. The amount of the draft or drafts;**
- c. The payor's name;**
- d. The number of draft payments;**
- e. A telephone number for consumer inquiry that is answered during normal business hours; and**

f. The date of the consumer's oral authorization; or

(c) Written confirmation of the transaction, sent to the consumer prior to submission for payment of the consumer's check, draft or other form of negotiable paper, which shall include:

- a. All of the information contained in paragraph (b) of this subdivision; and**
- b. The procedures by which the consumer can obtain a refund from the seller or telemarketer in the event that the confirmation is inaccurate;**

(9) Procure the services of any professional delivery, courier or other pick-up service to obtain immediate receipt or possession of a consumer's payment, unless the merchandise or investment opportunity is delivered with the opportunity to inspect before any payment is collected; or

(10) Knowingly assist or support any telemarketer when the seller knew or should have known that the telemarketer was engaged in any act in violation of sections 3 to 8 of this act.

Section 6. 1. A seller or telemarketer shall keep for a period of twenty-four months from the date the record is produced, all verifiable authorizations and records as required in this act, in the form, manner, format or place as they keep such records in the ordinary course of business, including but not limited to:

(1) All substantially different advertising, brochures, telemarketing scripts and promotional materials;

(2) For any prize with a value of twenty-five dollars or greater, the name and last known address of each prize recipient and the prize awarded;

(3) The name and last known address of each consumer, the merchandise purchased, the date such merchandise was shipped or provided and the amount paid by the consumer for the merchandise;

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title for all current and former employees directly involved in telephone sales, provided, that if the seller permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All written authorizations required to be provided or received pursuant to sections 3 to 8 of this act.

2. In the event of any dissolution or termination of the telemarketer's business, the telemarketer shall maintain all records as required pursuant to this section. In the

event of any sale, assignment or other change in ownership of the seller's business, the successor shall maintain all records required pursuant to this section.

Section 7. 1. It is unlawful to violate any provision of sections 3 to 8 of this act or to misrepresent or omit the required disclosures of section 4 or 5 of this act, and pursuant to sections 407.010 to 407.130, RSMo, the violator shall be subject to all penalties, remedies and procedures provided in sections 407.010 to 407.130, RSMo. The remedies available in this section are cumulative and in addition to any other remedies available by law.

2. Any person who willfully and knowingly engages in any act or practice declared to be unlawful by any provision of section 5 of this act shall be guilty of a class D felony.

3. In addition to the remedies already provided in sections 3 to 8 of this act, any consumer that suffers a loss or harm as a result of any unlawful telemarketing act or practice pursuant to section 5 of this act shall recover actual and punitive damages, reasonable attorney's fees, court costs and any other remedies provided by law.

Section 8. The provisions of sections 3 to 7 of this act shall not apply to:

(1) Telephone calls in which the sale of merchandise is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the telemarketer or seller;

(2) Telephone calls initiated by a consumer that:

(a) Are not the result of any advertisement by a seller or telemarketer;

(b) Are in response to an advertisement through any media, other than direct mail or telemarketing, which disclose the name of the seller and the identity of the merchandise; provided, however, that this exemption shall not apply to calls initiated by the consumer in response to an advertisement that offers a prize or investment opportunity, or is used to engage in telemarketing activities prohibited by subdivision (7), (8) or (9) of section 5 of this act;

(c) Are in response to direct mail solicitations that clearly and conspicuously disclose and do not misrepresent the material information required by subsection 2 of section 4 of this act; provided, however, that this exemption does not apply to calls initiated by the consumer in response to an advertisement that offers a prize or investment opportunity, or is to engage in telemarketing activities prohibited by subdivision (7), (8) or (9) of section 5 of this act; or

(d) Are in response to the mailing of a catalog which contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller, includes multiple pages of written materials or illustrations; and has been issued not less frequently than once a year, when the seller or telemarketer does not contact consumers by telephone but only receives calls initiated by consumers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of this paragraph, the term "further solicitation" does not include providing the consumer with information about, or

attempting to sell, any other item included in the same catalog which prompted the consumer's call or in a substantially similar catalog; and

(3) Telephone calls or messages:

(a) To any consumer with such consumer's prior express invitation or permission;

(b) To any consumer with whom the seller has an established business relationship; or

(c) By a tax-exempt nonprofit organization.

Section 9. Nothing in this act shall apply to an entity or industry regulated by the public service commission pursuant to section 392.540, RSMo.

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