

SECOND REGULAR SESSION

HOUSE BILL NO. 2770

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HOVIS.

5033H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 558.019, 566.030, 566.060, 566.125, and 566.210, RSMo, and to enact in lieu thereof five new sections relating to minimum prison terms.

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

Section A. Sections 558.019, 566.030, 566.060, 566.125, and 566.210, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections 558.019,
3 566.030, 566.060, 566.125, and 566.210, to read as follows:

558.019. 1. This section shall not be construed to affect the powers of the governor
2 under Article IV, Section 7, of the Missouri Constitution. This statute shall not affect those
3 provisions of section 565.020, section 566.125, or section 571.015, which set minimum terms
4 of sentences, or the provisions of section 559.115, relating to probation.

5 2. **The minimum prison term for an offender with one or two previous felony**
6 **convictions unrelated to the present offense, for offenses not qualifying as dangerous**
7 **felonies under section 556.061, shall be fifty percent of the sentence imposed by the**
8 **court; except that, for any such offenders who are seventy years of age or older, the**
9 **minimum prison term that the offender shall serve shall be forty percent of the sentence**
10 **imposed by the court.**

11 3. The provisions of subsections [2] 3 to 5 of this section shall only be applicable to
12 the offenses contained in sections 565.021, 565.023, 565.024, 565.027, 565.050, 565.052,
13 565.054, 565.072, 565.073, 565.074, 565.090, 565.110, 565.115, 565.120, 565.153, 565.156,
14 565.225, 565.300, 566.030, 566.031, 566.032, 566.034, 566.060, 566.061, 566.062, 566.064,
15 566.067, 566.068, 566.069, 566.071, 566.083, 566.086, 566.100, 566.101, 566.103, 566.111,
16 566.115, 566.145, 566.151, 566.153, 566.203, 566.206, 566.209, 566.210, 566.211, 566.215,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 568.030, 568.045, 568.060, 568.065, 568.175, 569.040, 569.160, 570.023, 570.025, 570.030
18 when punished as a class A, B, or C felony, 570.145 when punished as a class A or B felony,
19 570.223 when punished as a class B or C felony, 571.020, 571.030, 571.070, 573.023,
20 573.025, 573.035, 573.037, 573.200, 573.205, 574.070, 574.080, 574.115, 575.030, 575.150,
21 575.153, 575.155, 575.157, 575.200 when punished as a class A felony, 575.210, 575.230
22 when punished as a class B felony, 575.240 when punished as a class B felony, 576.070,
23 576.080, 577.010, 577.013, 577.078, 577.703, 577.706, 579.065, and 579.068 when punished
24 as a class A or B felony. For the purposes of this section, "prison commitment" means and is
25 the receipt by the department of corrections of an offender after sentencing. ~~[For purposes of~~
26 ~~this section, prior prison commitments to the department of corrections shall not include an~~
27 ~~offender's first incarceration prior to release on probation under section 217.362 or 559.115.]~~
28 Other provisions of the law to the contrary notwithstanding, ~~[any]~~ **if an** offender ~~[who]~~ has
29 been found guilty of a felony other than a dangerous felony as defined in section 556.061
30 ~~[and]~~, is committed to the department of corrections ~~[shall be required to serve the following~~
31 ~~minimum prison terms:~~

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

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

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

46 ~~[3-]~~ **4.** Other provisions of the law to the contrary notwithstanding, any offender who
47 has been found guilty of a dangerous felony as defined in section 556.061 and is committed to
48 the department of corrections shall be required to serve a minimum prison term of eighty-five
49 percent of the sentence imposed by the court or until the offender attains seventy years of age,
50 and has served at least forty percent of the sentence imposed, whichever occurs first.

51 ~~[4-]~~ **5.** For the purpose of determining the minimum prison term to be served, the
52 following calculations shall apply:

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

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

57 ~~[5-]~~ 6. For purposes of this section, the term "minimum prison term" shall mean time
58 required to be served by the offender before he or she is eligible for parole, conditional
59 release or other early release by the department of corrections.

60 ~~[6. An offender who was convicted of, or pled guilty to, a felony offense other than
61 those offenses listed in subsection 2 of this section prior to August 28, 2019, shall no longer
62 be subject to the minimum prison term provisions under subsection 2 of this section, and shall
63 be eligible for parole, conditional release, or other early release by the department of
64 corrections according to the rules and regulations of the department.]~~

65 7. (1) A sentencing advisory commission is hereby created to consist of eleven
66 members. One member shall be appointed by the speaker of the house. One member shall be
67 appointed by the president pro tem of the senate. One member shall be the director of the
68 department of corrections. Six members shall be appointed by and serve at the pleasure of the
69 governor from among the following: the public defender commission; private citizens; a
70 private member of the Missouri Bar; the board of probation and parole; and a prosecutor.
71 Two members shall be appointed by the supreme court, one from a metropolitan area and one
72 from a rural area. All members shall be appointed to a four-year term. All members of the
73 sentencing commission appointed prior to August 28, 1994, shall continue to serve on the
74 sentencing advisory commission at the pleasure of the governor.

75 (2) The commission shall study sentencing practices in the circuit courts throughout
76 the state for the purpose of determining whether and to what extent disparities exist among
77 the various circuit courts with respect to the length of sentences imposed and the use of
78 probation for offenders convicted of the same or similar offenses and with similar criminal
79 histories. The commission shall also study and examine whether and to what extent
80 sentencing disparity among economic and social classes exists in relation to the sentence of
81 death and if so, the reasons therefor, if sentences are comparable to other states, if the length
82 of the sentence is appropriate, and the rate of rehabilitation based on sentence. It shall
83 compile statistics, examine cases, draw conclusions, and perform other duties relevant to the
84 research and investigation of disparities in death penalty sentencing among economic and
85 social classes.

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

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

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

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

100 8. Courts shall retain discretion to lower or exceed the sentence recommended by the
101 commission as otherwise allowable by law, and to order restorative justice methods, when
102 applicable.

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

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

108 (2) Offender treatment programs;

109 (3) Mandatory community service;

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

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

112 10. Pursuant to subdivision (1) of subsection 9 of this section, the court may order the
113 assessment and payment of a designated amount of restitution to a county law enforcement
114 restitution fund established by the county commission pursuant to section 50.565. Such
115 contribution shall not exceed three hundred dollars for any charged offense. Any restitution
116 moneys deposited into the county law enforcement restitution fund pursuant to this section
117 shall only be expended pursuant to the provisions of section 50.565.

118 11. A judge may order payment to a restitution fund only if such fund had been
119 created by ordinance or resolution of a county of the state of Missouri prior to sentencing. A
120 judge shall not have any direct supervisory authority or administrative control over any fund
121 to which the judge is ordering a person to make payment.

122 12. A person who fails to make a payment to a county law enforcement restitution
123 fund may not have his or her probation revoked solely for failing to make such payment
124 unless the judge, after evidentiary hearing, makes a finding supported by a preponderance of
125 the evidence that the person either willfully refused to make the payment or that the person
126 willfully, intentionally, and purposefully failed to make sufficient bona fide efforts to acquire
127 the resources to pay.

128 13. Nothing in this section shall be construed to allow the sentencing advisory
129 commission to issue recommended sentences in specific cases pending in the courts of this
130 state.

 566.030. 1. A person commits the offense of rape in the first degree if he or she has
2 sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the
3 capacity to consent, or by the use of forcible compulsion. Forcible compulsion includes the
4 use of a substance administered without a victim's knowledge or consent which renders the
5 victim physically or mentally impaired so as to be incapable of making an informed consent
6 to sexual intercourse.

 2. The offense of rape in the first degree or an attempt to commit rape in the first
8 degree is a felony for which the authorized term of imprisonment is life imprisonment or a
9 term of years not less than five years, unless:

10 (1) The offense is an aggravated sexual offense, in which case the authorized term of
11 imprisonment is life imprisonment or a term of years not less than fifteen years;

12 (2) The person is a persistent or predatory sexual offender as defined in section
13 566.125 and subjected to an extended term of imprisonment under said section;

14 (3) The victim is a child less than twelve years of age, in which case the required term
15 of imprisonment is life imprisonment without eligibility for probation or parole until the
16 offender has served not less than thirty years of such sentence or unless the offender has
17 reached the age of seventy-five years and has served at least fifteen years of such sentence,
18 unless such rape in the first degree is described under subdivision (4) of this subsection; or

19 (4) The victim is a child less than twelve years of age and such rape in the first degree
20 or attempt to commit rape in the first degree was outrageously or wantonly vile, horrible or
21 inhumane, in that it involved torture or depravity of mind, in which case the required term of
22 imprisonment is life imprisonment without eligibility for probation, parole or conditional
23 release.

24 3. Subsection ~~[4]~~ 5 of section 558.019 shall not apply to the sentence of a person who
25 has been found guilty of rape in the first degree or attempt to commit rape in the first degree
26 when the victim is less than twelve years of age, and "life imprisonment" shall mean
27 imprisonment for the duration of a person's natural life for the purposes of this section.

28 4. No person found guilty of rape in the first degree or an attempt to commit rape in
29 the first degree shall be granted a suspended imposition of sentence or suspended execution of
30 sentence.

 566.060. 1. A person commits the offense of sodomy in the first degree if he or she
2 has deviate sexual intercourse with another person who is incapacitated, incapable of consent,
3 or lacks the capacity to consent, or by the use of forcible compulsion. Forcible compulsion
4 includes the use of a substance administered without a victim's knowledge or consent which

5 renders the victim physically or mentally impaired so as to be incapable of making an
6 informed consent to sexual intercourse.

7 2. The offense of sodomy in the first degree or an attempt to commit sodomy in the
8 first degree is a felony for which the authorized term of imprisonment is life imprisonment or
9 a term of years not less than five years, unless:

10 (1) The offense is an aggravated sexual offense, in which case the authorized term of
11 imprisonment is life imprisonment or a term of years not less than ten years;

12 (2) The person is a persistent or predatory sexual offender as defined in section
13 566.125 and subjected to an extended term of imprisonment under said section;

14 (3) The victim is a child less than twelve years of age, in which case the required term
15 of imprisonment is life imprisonment without eligibility for probation or parole until the
16 offender has served not less than thirty years of such sentence or unless the offender has
17 reached the age of seventy-five years and has served at least fifteen years of such sentence,
18 unless such sodomy in the first degree is described under subdivision (4) of this subsection; or

19 (4) The victim is a child less than twelve years of age and such sodomy in the first
20 degree or attempt to commit sodomy in the first degree was outrageously or wantonly vile,
21 horrible or inhumane, in that it involved torture or depravity of mind, in which case the
22 required term of imprisonment is life imprisonment without eligibility for probation, parole or
23 conditional release.

24 3. Subsection ~~[4]~~ 5 of section 558.019 shall not apply to the sentence of a person who
25 has been found guilty of sodomy in the first degree or an attempt to commit sodomy in the
26 first degree when the victim is less than twelve years of age, and "life imprisonment" shall
27 mean imprisonment for the duration of a person's natural life for the purposes of this section.

28 4. No person found guilty of sodomy in the first degree or an attempt to commit
29 sodomy in the first degree shall be granted a suspended imposition of sentence or suspended
30 execution of sentence.

566.125. 1. The court shall sentence a person to an extended term of imprisonment if
2 it finds the defendant is a persistent sexual offender and has been found guilty of attempting
3 to commit or committing the following offenses:

4 (1) Statutory rape in the first degree or statutory sodomy in the first degree;

5 (2) Rape in the first degree or sodomy in the first degree;

6 (3) Forcible rape;

7 (4) Forcible sodomy;

8 (5) Rape;

9 (6) Sodomy.

10 2. A "persistent sexual offender" is one who has previously been found guilty of
11 attempting to commit or committing any of the offenses listed in subsection 1 of this section

12 or one who has previously been found guilty of an offense in any other jurisdiction which
13 would constitute any of the offenses listed in subsection 1 of this section.

14 3. The term of imprisonment for one found to be a persistent sexual offender shall be
15 imprisonment for life without eligibility for probation or parole. Subsection [4] 5 of section
16 558.019 shall not apply to any person imprisoned under this subsection, and "imprisonment
17 for life" shall mean imprisonment for the duration of the person's natural life.

18 4. The court shall sentence a person to an extended term of imprisonment as provided
19 for in this section if it finds the defendant is a predatory sexual offender and has been found
20 guilty of committing or attempting to commit any of the offenses listed in subsection 1 of this
21 section or committing child molestation in the first or second degree or sexual abuse when
22 classified as a class B felony.

23 5. For purposes of this section, a "predatory sexual offender" is a person who:

24 (1) Has previously been found guilty of committing or attempting to commit any of
25 the offenses listed in subsection 1 of this section, or committing child molestation in the first
26 or second degree, or sexual abuse when classified as a class B felony; or

27 (2) Has previously committed an act which would constitute an offense listed in
28 subsection 4 of this section, whether or not the act resulted in a conviction; or

29 (3) Has committed an act or acts against more than one victim which would constitute
30 an offense or offenses listed in subsection 4 of this section, whether or not the defendant was
31 charged with an additional offense or offenses as a result of such act or acts.

32 6. A person found to be a predatory sexual offender shall be imprisoned for life with
33 eligibility for parole, however subsection [4] 5 of section 558.019 shall not apply to persons
34 found to be predatory sexual offenders for the purposes of determining the minimum prison
35 term or the length of sentence as defined or used in such subsection. Notwithstanding any
36 other provision of law, in no event shall a person found to be a predatory sexual offender
37 receive a final discharge from parole.

38 7. Notwithstanding any other provision of law, the court shall set the minimum time
39 required to be served before a predatory sexual offender is eligible for parole, conditional
40 release or other early release by the department of corrections. The minimum time to be
41 served by a person found to be a predatory sexual offender who:

42 (1) Has previously been found guilty of committing or attempting to commit any of
43 the offenses listed in subsection 1 of this section and is found guilty of committing or
44 attempting to commit any of the offenses listed in subsection 1 of this section shall be any
45 number of years but not less than thirty years;

46 (2) Has previously been found guilty of child molestation in the first or second
47 degree, or sexual abuse when classified as a class B felony and is found guilty of attempting

48 to commit or committing any of the offenses listed in subsection 1 of this section shall be any
49 number of years but not less than fifteen years;

50 (3) Has previously been found guilty of committing or attempting to commit any of
51 the offenses listed in subsection 1 of this section, or committing child molestation in the first
52 or second degree, or sexual abuse when classified as a class B felony shall be any number of
53 years but not less than fifteen years;

54 (4) Has previously been found guilty of child molestation in the first degree or second
55 degree, or sexual abuse when classified as a class B felony, and is found guilty of child
56 molestation in the first or second degree, or sexual abuse when classified as a class B felony
57 shall be any number of years but not less than fifteen years;

58 (5) Is found to be a predatory sexual offender pursuant to subdivision (2) or (3) of
59 subsection 5 of this section shall be any number of years within the range to which the person
60 could have been sentenced pursuant to the applicable law if the person was not found to be a
61 predatory sexual offender.

62 8. Notwithstanding any provision of law to the contrary, the department of
63 corrections, or any division thereof, may not furlough an individual found to be and sentenced
64 as a persistent sexual offender or a predatory sexual offender.

566.210. 1. A person commits the offense of sexual trafficking of a child in the first
2 degree if he or she knowingly:

3 (1) Recruits, entices, harbors, transports, provides, or obtains by any means, including
4 but not limited to through the use of force, abduction, coercion, fraud, deception, blackmail,
5 or causing or threatening to cause financial harm, a person under the age of twelve to
6 participate in a commercial sex act, a sexual performance, or the production of explicit sexual
7 material as defined in section 573.010, or benefits, financially or by receiving anything of
8 value, from participation in such activities;

9 (2) Causes a person under the age of twelve to engage in a commercial sex act, a
10 sexual performance, or the production of explicit sexual material as defined in section
11 573.010; or

12 (3) Advertises the availability of a person under the age of twelve to participate in a
13 commercial sex act, a sexual performance, or the production of explicit sexual material as
14 defined in section 573.010.

15 2. It shall not be a defense that the defendant believed that the person was twelve
16 years of age or older.

17 3. The offense of sexual trafficking of a child in the first degree is a felony for which
18 the authorized term of imprisonment is life imprisonment without eligibility for probation or
19 parole until the offender has served not less than twenty-five years of such sentence.
20 Subsection [4] 5 of section 558.019 shall not apply to the sentence of a person who has been

21 found guilty of sexual trafficking of a child less than twelve years of age, and "life
22 imprisonment" shall mean imprisonment for the duration of a person's natural life for the
23 purposes of this section.

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