

FIRST REGULAR SESSION

# HOUSE BILL NO. 438

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HOVIS.

1355H.011

DANA RADEMAN MILLER, Chief Clerk

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## 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.

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*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2 repealed and five new sections enacted in lieu thereof, to be known as sections 558.019,  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 provisions of this subsection and subsection 5 of this section shall be**  
6 **applicable to all offenses resulting in a prison commitment as defined under subsection 3**  
7 **of this section. Notwithstanding any other provision of law, if an offender has any**  
8 **previous commitments to the department of corrections for offenses unrelated to the**  
9 **present offense, the minimum prison term that the offender shall serve shall be fifty**  
10 **percent of his or her sentence.**

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 for felonies unrelated to the present offense, the minimum prison  
43 term ~~which~~ **that** the offender ~~must~~ **shall** serve shall be eighty percent of his or her  
44 sentence ~~or until the offender attains seventy years of age, and has served at least forty~~  
45 ~~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~~  
50 ~~age, 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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