

FIRST REGULAR SESSION

SENATE BILL NO. 479

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

Read 1st time February 28, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2386S.011

AN ACT

To repeal sections 488.029, 513.605, 556.046, 556.061, 557.036, 558.021, 558.046, 559.115, 559.117, 566.010, 566.030, 566.032, 566.060, 566.062, 566.086, 566.125, 571.070, 575.150, 575.200, and 589.414, RSMo, and to enact in lieu thereof twenty new sections relating to criminal offenses, with penalty provisions.

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

Section A. Sections 488.029, 513.605, 556.046, 556.061, 557.036, 558.021, 558.046, 559.115, 559.117, 566.010, 566.030, 566.032, 566.060, 566.062, 566.086, 566.125, 571.070, 575.150, 575.200, and 589.414, RSMo, are repealed and twenty new sections enacted in lieu thereof, to be known as sections 488.029, 513.605, 556.046, 556.061, 557.036, 558.021, 558.046, 559.115, 559.117, 566.010, 566.030, 566.032, 566.060, 566.062, 566.086, 566.123, 566.124, 571.070, 575.150, and 589.414, to read as follows:

488.029. There shall be assessed and collected a surcharge of one hundred fifty dollars in all criminal cases for any violation of chapter [195] **579** in which a crime laboratory makes analysis of a controlled substance, but no such surcharge shall be assessed when the costs are waived or are to be paid by the state or when a criminal proceeding or the defendant has been dismissed by the court. The moneys collected by clerks of the courts pursuant to the provisions of this section shall be collected and disbursed as provided by sections 488.010 to 488.020. All such moneys shall be payable to the director of revenue, who shall deposit all amounts collected pursuant to this section to the credit of the state forensic laboratory account to be administered by the department of public safety pursuant to section 650.105.

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

513.605. As used in sections 513.600 to 513.645, unless the context clearly indicates otherwise, the following terms mean:

(1) (a) "Beneficial interest":

a. The interest of a person as a beneficiary under any other trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or

b. The interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person;

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general partnership or limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located;

(2) "Civil proceeding", any civil suit commenced by an investigative agency under any provision of sections 513.600 to 513.645;

(3) "Criminal activity" is the commission, attempted commission, conspiracy to commit, or the solicitation, coercion or intimidation of another person to commit any crime which is chargeable by indictment or information under the following Missouri laws:

(a) Chapter [195] 579, relating to drug regulations;

(b) Chapter 565, relating to offenses against the person;

(c) Chapter 566, relating to sexual offenses;

(d) Chapter 568, relating to offenses against the family;

(e) Chapter 569, relating to robbery, arson, burglary and related offenses;

(f) Chapter 570, relating to stealing and related offenses;

(g) Chapter 567, relating to prostitution;

(h) Chapter 573, relating to pornography and related offenses;

(i) Chapter 574, relating to offenses against public order;

(j) Chapter 575, relating to offenses against the administration of justice;

(k) Chapter 491, relating to witnesses;

(l) Chapter 572, relating to gambling;

(m) Chapter 311, but relating only to felony violations of this chapter committed by persons not duly licensed by the supervisor of liquor control;

(n) Chapter 571, relating to weapons offenses;

(o) Chapter 409, relating to regulation of securities;

(p) Chapter 301, relating to registration and licensing of motor vehicles;

37 (4) "Criminal proceeding", any criminal prosecution commenced by an
38 investigative agency under any criminal law of this state;

39 (5) "Investigative agency", the attorney general's office, or the office of any
40 prosecuting attorney or circuit attorney;

41 (6) "Pecuniary value":

42 (a) Anything of value in the form of money, a negotiable instrument, a
43 commercial interest, or anything else the primary significance of which is
44 economic advantage; or

45 (b) Any other property or service that has a value in excess of one
46 hundred dollars;

47 (7) "Real property", any estate or legal or equitable interest in land
48 situated in this state or any interest in such real property, including, but not
49 limited to, any lease or deed of trust upon such real property;

50 (8) "Seizing agency", the agency which is the primary employer of the
51 officer or agent seizing the property, including any agency in which one or more
52 of the employees acting on behalf of the seizing agency is employed by the state
53 of Missouri or any political subdivision of this state;

54 (9) "Seizure", the point at which any law enforcement officer or agent
55 discovers and exercises any control over property that an officer or agent has
56 reason to believe was used or intended for use in the course of, derived from, or
57 realized through criminal activity. Seizure includes but is not limited to
58 preventing anyone found in possession of the property from leaving the scene of
59 the investigation while in possession of the property;

60 (10) (a) "Trustee":

61 a. Any person who holds legal or record title to real property for which
62 any other person has a beneficial interest; or

63 b. Any successor trustee or trustees to any of the foregoing persons;

64 (b) "Trustee" does not include the following:

65 a. Any person appointed or acting as a personal representative under
66 chapter 475 or under chapter 473;

67 b. Any person appointed or acting as a trustee of any testamentary trust
68 or as trustee of any indenture of trust under which any bonds are or are to be
69 issued.

556.046. 1. A person may be convicted of an offense included in an offense
2 charged in the indictment or information. An offense is so included when:

3 (1) It is established by proof of the same or less than all the [facts]

4 **elements** required to establish the commission of the offense charged; or

5 (2) It is specifically denominated by statute as a lesser degree of the
6 offense charged; or

7 (3) It consists of an attempt to commit the offense charged or to commit
8 an offense otherwise included therein.

9 2. The court shall [not] be obligated to charge the jury with respect to an
10 included offense [unless] **only if:**

11 (1) **The offense is established by proof of the same or less than**
12 **all the elements required to establish the commission of the charged**
13 **offense;**

14 (2) There is a **rational basis in the evidence** for a verdict acquitting
15 the person of the offense charged and convicting him **or her** of the included
16 offense; **and**

17 (3) **Either party requests the court to charge the jury with**
18 **respect to a specific included offense.**

19 3. **Failure of the defendant or defense counsel to request the**
20 **court to charge the jury with respect to a specific included offense shall**
21 **not be a basis for plain-error review on direct appeal or for**
22 **postconviction relief.**

23 4. **It shall be the trial court's duty to determine if a rational basis**
24 **in the evidence for a verdict exists.**

25 5. An offense is charged for purposes of this section if:

26 (1) It is in an indictment or information; or

27 (2) It is an offense submitted to the jury because there is a **rational** basis
28 **in the evidence** for a verdict acquitting the person of the offense charged and
29 convicting the person of the included offense.

30 [3. The court shall be obligated to instruct the jury with respect to a
31 particular included offense only if there is a basis in the evidence for acquitting
32 the person of the immediately higher included offense and there is a basis in the
33 evidence for convicting the person of that particular included offense.]

556.061. In this code, unless the context requires a different definition,
2 the following terms shall mean:

3 (1) "Access", to instruct, communicate with, store data in, retrieve or
4 extract data from, or otherwise make any use of any resources of, a computer,
5 computer system, or computer network;

6 (2) "Affirmative defense":

7 (a) The defense referred to is not submitted to the trier of fact unless
8 supported by evidence; and

9 (b) If the defense is submitted to the trier of fact the defendant has the
10 burden of persuasion that the defense is more probably true than not;

11 (3) "Burden of injecting the issue":

12 (a) The issue referred to is not submitted to the trier of fact unless
13 supported by evidence; and

14 (b) If the issue is submitted to the trier of fact any reasonable doubt on
15 the issue requires a finding for the defendant on that issue;

16 (4) "Commercial film and photographic print processor", any person who
17 develops exposed photographic film into negatives, slides or prints, or who makes
18 prints from negatives or slides, for compensation. The term commercial film and
19 photographic print processor shall include all employees of such persons but shall
20 not include a person who develops film or makes prints for a public agency;

21 (5) "Computer", the box that houses the central processing unit (CPU),
22 along with any internal storage devices, such as internal hard drives, and
23 internal communication devices, such as internal modems capable of sending or
24 receiving electronic mail or fax cards, along with any other hardware stored or
25 housed internally. Thus, computer refers to hardware, software and data
26 contained in the main unit. Printers, external modems attached by cable to the
27 main unit, monitors, and other external attachments will be referred to
28 collectively as peripherals and discussed individually when appropriate. When
29 the computer and all peripherals are referred to as a package, the term "computer
30 system" is used. Information refers to all the information on a computer system
31 including both software applications and data;

32 (6) "Computer equipment", computers, terminals, data storage devices,
33 and all other computer hardware associated with a computer system or network;

34 (7) "Computer hardware", all equipment which can collect, analyze, create,
35 display, convert, store, conceal or transmit electronic, magnetic, optical or similar
36 computer impulses or data. Hardware includes, but is not limited to, any data
37 processing devices, such as central processing units, memory typewriters and
38 self-contained laptop or notebook computers; internal and peripheral storage
39 devices, transistor-like binary devices and other memory storage devices, such as
40 floppy disks, removable disks, compact disks, digital video disks, magnetic tape,
41 hard drive, optical disks and digital memory; local area networks, such as two or
42 more computers connected together to a central computer server via cable or

43 modem; peripheral input or output devices, such as keyboards, printers, scanners,
44 plotters, video display monitors and optical readers; and related communication
45 devices, such as modems, cables and connections, recording equipment, RAM or
46 ROM units, acoustic couplers, automatic dialers, speed dialers, programmable
47 telephone dialing or signaling devices and electronic tone-generating devices; as
48 well as any devices, mechanisms or parts that can be used to restrict access to
49 computer hardware, such as physical keys and locks;

50 (8) "Computer network", two or more interconnected computers or
51 computer systems;

52 (9) "Computer program", a set of instructions, statements, or related data
53 that directs or is intended to direct a computer to perform certain functions;

54 (10) "Computer software", digital information which can be interpreted by
55 a computer and any of its related components to direct the way they
56 work. Software is stored in electronic, magnetic, optical or other digital
57 form. The term commonly includes programs to run operating systems and
58 applications, such as word processing, graphic, or spreadsheet programs, utilities,
59 compilers, interpreters and communications programs;

60 (11) "Computer-related documentation", written, recorded, printed or
61 electronically stored material which explains or illustrates how to configure or
62 use computer hardware, software or other related items;

63 (12) "Computer system", a set of related, connected or unconnected,
64 computer equipment, data, or software;

65 (13) "Confinement":

66 (a) A person is in confinement when such person is held in a place of
67 confinement pursuant to arrest or order of a court, and remains in confinement
68 until:

69 a. A court orders the person's release; or

70 b. The person is released on bail, bond, or recognizance, personal or
71 otherwise; or

72 c. A public servant having the legal power and duty to confine the person
73 authorizes his release without guard and without condition that he return to
74 confinement;

75 (b) A person is not in confinement if:

76 a. The person is on probation or parole, temporary or otherwise; or

77 b. The person is under sentence to serve a term of confinement which is
78 not continuous, or is serving a sentence under a work-release program, and in

79 either such case is not being held in a place of confinement or is not being held
80 under guard by a person having the legal power and duty to transport the person
81 to or from a place of confinement;

82 (14) "Consent": consent or lack of consent may be expressed or
83 implied. Assent does not constitute consent if:

84 (a) It is given by a person who lacks the mental capacity to authorize the
85 conduct charged to constitute the offense and such mental incapacity is manifest
86 or known to the actor; or

87 (b) It is given by a person who by reason of youth, mental disease or
88 defect, intoxication, a drug-induced state, or any other reason is manifestly
89 unable or known by the actor to be unable to make a reasonable judgment as to
90 the nature or harmfulness of the conduct charged to constitute the offense; or

91 (c) It is induced by force, duress or deception;

92 (15) "Controlled substance", a drug, substance, or immediate precursor in
93 schedules I through V as defined in chapter 195;

94 (16) "Criminal negligence", failure to be aware of a substantial and
95 unjustifiable risk that circumstances exist or a result will follow, and such failure
96 constitutes a gross deviation from the standard of care which a reasonable person
97 would exercise in the situation;

98 (17) "Custody", a person is in custody when he or she has been arrested
99 but has not been delivered to a place of confinement;

100 (18) "Damage", when used in relation to a computer system or network,
101 means any alteration, deletion, or destruction of any part of the computer system
102 or network;

103 (19) "Dangerous felony", the felonies of arson in the first degree, assault
104 in the first degree, attempted rape in the first degree if physical injury results,
105 attempted forcible rape if physical injury results, attempted sodomy in the first
106 degree if physical injury results, attempted forcible sodomy if physical injury
107 results, rape in the first degree, forcible rape, sodomy in the first degree, forcible
108 sodomy, assault in the second degree if the victim of such assault is a special
109 victim as defined in subdivision (14) of section 565.002, kidnapping in the first
110 degree, kidnapping, murder in the second degree, assault of a law enforcement
111 officer in the first degree, domestic assault in the first degree, elder abuse in the
112 first degree, robbery in the first degree, statutory rape in the first degree when
113 the victim is a child less than twelve years of age at the time of the commission
114 of the act giving rise to the offense, statutory sodomy in the first degree when the

115 victim is a child less than twelve years of age at the time of the commission of the
116 act giving rise to the offense, child molestation in the first or second degree,
117 abuse of a child if the child dies as a result of injuries sustained from conduct
118 chargeable under section 568.060, child kidnapping, parental kidnapping
119 committed by detaining or concealing the whereabouts of the child for not less
120 than one hundred twenty days under section 565.153, and an "intoxication-related
121 traffic offense" or "intoxication-related boating offense" if the person is found [to
122 be a "habitual offender" or "habitual boating offender" as such terms are defined
123 in section 577.001] **guilty of or pleads guilty to a class A or B felony in
124 violation of section 577.010, 577.012, 577.013, or 577.014;**

125 (20) "Dangerous instrument", any instrument, article or substance, which,
126 under the circumstances in which it is used, is readily capable of causing death
127 or other serious physical injury;

128 (21) "Data", a representation of information, facts, knowledge, concepts,
129 or instructions prepared in a formalized or other manner and intended for use in
130 a computer or computer network. Data may be in any form including, but not
131 limited to, printouts, microfiche, magnetic storage media, punched cards and as
132 may be stored in the memory of a computer;

133 (22) "Deadly weapon", any firearm, loaded or unloaded, or any weapon
134 from which a shot, readily capable of producing death or serious physical injury,
135 may be discharged, or a switchblade knife, dagger, billy club, blackjack or metal
136 knuckles;

137 (23) "Digital camera", a camera that records images in a format which
138 enables the images to be downloaded into a computer;

139 (24) "Disability", a mental, physical, or developmental impairment that
140 substantially limits one or more major life activities or the ability to provide
141 adequately for one's care or protection, whether the impairment is congenital or
142 acquired by accident, injury or disease, where such impairment is verified by
143 medical findings;

144 (25) "Elderly person", a person sixty years of age or older;

145 (26) "Felony", an offense so designated or an offense for which persons
146 found guilty thereof may be sentenced to death or imprisonment for a term of
147 more than one year;

148 (27) "Forcible compulsion" either:

149 (a) Physical force that overcomes reasonable resistance; or

150 (b) A threat, express or implied, that places a person in reasonable fear

151 of death, serious physical injury or kidnapping of such person or another person;
152 (28) "Incapacitated", a temporary or permanent physical or mental
153 condition in which a person is unconscious, unable to appraise the nature of his
154 or her conduct, or unable to communicate unwillingness to an act;

155 (29) "Infraction", a violation defined by this code or by any other statute
156 of this state if it is so designated or if no sentence other than a fine, or fine and
157 forfeiture or other civil penalty, is authorized upon conviction;

158 (30) "Inhabitable structure", a vehicle, vessel or structure:
159 (a) Where any person lives or carries on business or other calling; or
160 (b) Where people assemble for purposes of business, government,
161 education, religion, entertainment, or public transportation; or
162 (c) Which is used for overnight accommodation of persons.

163 Any such vehicle, vessel, or structure is inhabitable regardless of whether a
164 person is actually present. If a building or structure is divided into separately
165 occupied units, any unit not occupied by the actor is an inhabitable structure of
166 another;

167 (31) "Knowingly", when used with respect to:
168 (a) Conduct or attendant circumstances, means a person is aware of the
169 nature of his or her conduct or that those circumstances exist; or
170 (b) A result of conduct, means a person is aware that his or her conduct
171 is practically certain to cause that result;

172 (32) "Law enforcement officer", any public servant having both the power
173 and duty to make arrests for violations of the laws of this state, and federal law
174 enforcement officers authorized to carry firearms and to make arrests for
175 violations of the laws of the United States;

176 (33) "Misdemeanor", an offense so designated or an offense for which
177 persons found guilty thereof may be sentenced to imprisonment for a term of
178 which the maximum is one year or less;

179 (34) "Of another", property that any entity, including but not limited to
180 any natural person, corporation, limited liability company, partnership,
181 association, governmental subdivision or instrumentality, other than the actor,
182 has a possessory or proprietary interest therein, except that property shall not
183 be deemed property of another who has only a security interest therein, even if
184 legal title is in the creditor pursuant to a conditional sales contract or other
185 security arrangement;

186 (35) "Offense", any felony or misdemeanor;

187 (36) "Physical injury", slight impairment of any function of the body or
188 temporary loss of use of any part of the body;

189 (37) "Place of confinement", any building or facility and the grounds
190 thereof wherein a court is legally authorized to order that a person charged with
191 or convicted of a crime be held;

192 (38) "Possess" or "possessed", having actual or constructive possession of
193 an object with knowledge of its presence. A person has actual possession if such
194 person has the object on his or her person or within easy reach and convenient
195 control. A person has constructive possession if such person has the power and
196 the intention at a given time to exercise dominion or control over the object either
197 directly or through another person or persons. Possession may also be sole or
198 joint. If one person alone has possession of an object, possession is sole. If two
199 or more persons share possession of an object, possession is joint;

200 (39) "Property", anything of value, whether real or personal, tangible or
201 intangible, in possession or in action;

202 (40) "Public servant", any person employed in any way by a government
203 of this state who is compensated by the government by reason of such person's
204 employment, any person appointed to a position with any government of this
205 state, or any person elected to a position with any government of this state. It
206 includes, but is not limited to, legislators, jurors, members of the judiciary and
207 law enforcement officers. It does not include witnesses;

208 (41) "Purposely", when used with respect to a person's conduct or to a
209 result thereof, means when it is his or her conscious object to engage in that
210 conduct or to cause that result;

211 (42) "Recklessly", consciously disregarding a substantial and unjustifiable
212 risk that circumstances exist or that a result will follow, and such disregard
213 constitutes a gross deviation from the standard of care which a reasonable person
214 would exercise in the situation;

215 (43) "Serious emotional injury", an injury that creates a substantial risk
216 of temporary or permanent medical or psychological damage, manifested by
217 impairment of a behavioral, cognitive or physical condition. Serious emotional
218 injury shall be established by testimony of qualified experts upon the reasonable
219 expectation of probable harm to a reasonable degree of medical or psychological
220 certainty;

221 (44) "Serious physical injury", physical injury that creates a substantial
222 risk of death or that causes serious disfigurement or protracted loss or

223 impairment of the function of any part of the body;

224 (45) "Services", when used in relation to a computer system or network,
225 means use of a computer, computer system, or computer network and includes,
226 but is not limited to, computer time, data processing, and storage or retrieval
227 functions;

228 (46) "Sexual orientation", male or female heterosexuality, homosexuality
229 or bisexuality by inclination, practice, identity or expression, or having a
230 self-image or identity not traditionally associated with one's gender;

231 (47) "Vehicle", a self-propelled mechanical device designed to carry a
232 person or persons, excluding vessels or aircraft;

233 (48) "Vessel", any boat or craft propelled by a motor or by machinery,
234 whether or not such motor or machinery is a principal source of propulsion used
235 or capable of being used as a means of transportation on water, or any boat or
236 craft more than twelve feet in length which is powered by sail alone or by a
237 combination of sail and machinery, and used or capable of being used as a means
238 of transportation on water, but not any boat or craft having, as the only means
239 of propulsion, a paddle or oars;

240 (49) "Voluntary act":

241 (a) A bodily movement performed while conscious as a result of effort or
242 determination. Possession is a voluntary act if the possessor knowingly procures
243 or receives the thing possessed, or having acquired control of it was aware of his
244 or her control for a sufficient time to have enabled him or her to dispose of it or
245 terminate his or her control; or

246 (b) An omission to perform an act of which the actor is physically capable.
247 A person is not guilty of an offense based solely upon an omission to perform an
248 act unless the law defining the offense expressly so provides, or a duty to perform
249 the omitted act is otherwise imposed by law;

250 (50) "Vulnerable person", any person in the custody, care, or control of the
251 department of mental health who is receiving services from an operated, funded,
252 licensed, or certified program.

557.036. 1. Upon a finding of guilt, the court shall decide the extent or
2 duration of sentence or other disposition to be imposed under all the
3 circumstances, having regard to the nature and circumstances of the offense and
4 the history and character of the defendant and render judgment accordingly.

5 2. Where an offense is submitted to the jury, the trial shall proceed in two
6 stages. At the first stage, the jury shall decide only whether the defendant is

7 guilty or not guilty of any submitted offense. The issue of punishment shall not
8 be submitted to the jury at the first stage.

9 3. If the jury at the first stage of a trial finds the defendant guilty of the
10 submitted offense, the second stage of the trial shall proceed. The issue at the
11 second stage of the trial shall be the punishment to be assessed and declared.
12 Evidence supporting or mitigating punishment may be presented. Such evidence
13 may include, within the discretion of the court, evidence concerning the impact
14 of the offense upon the victim, the victim's family and others, the nature and
15 circumstances of the offense, and the history and character of the
16 defendant. Rebuttal and surrebuttal evidence may be presented. The state shall
17 be the first to proceed. The court shall instruct the jury as to the range of
18 punishment authorized by statute for each submitted offense. The attorneys may
19 argue the issue of punishment to the jury, and the state shall have the right to
20 open and close the argument. The jury shall assess and declare the punishment
21 as authorized by statute.

22 4. A second stage of the trial shall not proceed and the court, and not the
23 jury, shall assess punishment if:

24 (1) The defendant requests in writing, prior to voir dire, that the court
25 assess the punishment in case of a finding of guilt; or

26 (2) The state pleads and proves the defendant is a prior offender,
27 persistent offender, dangerous offender, or persistent misdemeanor offender as
28 defined in section 558.016[, or a persistent sexual offender or predatory sexual
29 offender as defined in section 566.125]. If the jury cannot agree on the
30 punishment to be assessed, the court shall proceed as provided in subsection 1 of
31 this section. If, after due deliberation by the jury, the court finds the jury cannot
32 agree on punishment, then the court may instruct the jury that if it cannot agree
33 on punishment that the court will assess punishment.

34 5. If the jury returns a verdict of guilty in the first stage and declares a
35 term of imprisonment in the second stage, the court shall proceed as provided in
36 subsection 1 of this section except that any term of imprisonment imposed cannot
37 exceed the term declared by the jury unless the term declared by the jury is less
38 than the authorized lowest term for the offense, in which event the court cannot
39 impose a term of imprisonment greater than the lowest term provided for the
40 offense.

41 6. If the defendant is found to be a prior offender, persistent offender,
42 dangerous offender or persistent misdemeanor offender as defined in section

43 558.016:

44 (1) If he has been found guilty of an offense, the court shall proceed as
45 provided in section 558.016; or

46 (2) If he has been found guilty of a class A felony, the court may impose
47 any sentence authorized for the class A felony.

48 7. The court shall not seek an advisory verdict from the jury in cases of
49 prior offenders, persistent offenders, dangerous offenders[, persistent sexual
50 offenders or predatory sexual offenders]; if an advisory verdict is rendered, the
51 court shall not deem it advisory, but shall consider it as mere surplusage.

558.021. 1. The court shall find the defendant to be a prior offender,
2 persistent offender, **or** dangerous offender[, persistent sexual offender or
3 predatory sexual offender] if:

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

8 (2) Evidence is introduced that establishes sufficient facts pleaded to
9 warrant a finding beyond a reasonable doubt that the defendant is a prior
10 offender, persistent offender, **or** dangerous offender[, persistent sexual offender
11 or predatory sexual offender]; and

12 (3) The court makes findings of fact that warrant a finding beyond a
13 reasonable doubt by the court that the defendant is a prior offender, persistent
14 offender, **or** dangerous offender[, persistent sexual offender or predatory sexual
15 offender].

16 2. In a jury trial, the facts shall be pleaded, established and found prior
17 to submission to the jury outside of its hearing, except the facts required by
18 subdivision (1) of subsection 4 of section 558.016 may be established and found
19 at a later time, but prior to sentencing, and may be established by judicial notice
20 of prior testimony before the jury.

21 3. In a trial without a jury or upon a plea of guilty, the court may defer
22 the proof and findings of such facts to a later time, but prior to sentencing. The
23 facts required by subdivision (1) of subsection 4 of section 558.016 may be
24 established by judicial notice of prior testimony or the plea of guilty.

25 4. The defendant shall be accorded full rights of confrontation and
26 cross-examination, with the opportunity to present evidence, at such hearings.

27 5. The defendant may waive proof of the facts alleged.

28 6. Nothing in this section shall prevent the use of presentence
29 investigations or commitments under sections 557.026 and 557.031.

30 7. At the sentencing hearing both the state and the defendant shall be
31 permitted to present additional information bearing on the issue of sentence.

 558.046. The sentencing court may, upon petition, reduce any term of
2 sentence or probation pronounced by the court or a term of conditional release or
3 parole pronounced by the state board of probation and parole if the court
4 determines that:

5 (1) The convicted person was:

6 (a) Convicted of an offense that did not involve violence or the threat of
7 violence; and

8 (b) Convicted of an offense that involved alcohol or illegal drugs; and

9 (2) Since the commission of such offense, the convicted person has
10 successfully completed a detoxification and rehabilitation program; and

11 (3) The convicted person is not:

12 (a) A prior offender, a persistent offender, a dangerous offender or a
13 persistent misdemeanor offender as defined by section 558.016; or

14 (b) A **predatory sexual offender as defined in section 566.123 or**
15 **a prior sexual offender or a persistent sexual offender as defined in section**
16 **[566.125] 566.124; or**

17 (c) A prior offender, a persistent offender, or a class X offender as
18 **[defined] described** in section 558.019.

 559.115. 1. Neither probation nor parole shall be granted by the circuit
2 court between the time the transcript on appeal from the offender's **[conviction]**
3 **finding of guilt** has been filed in appellate court and the disposition of the
4 appeal by such court.

5 2. Unless otherwise prohibited by subsection 8 of this section, a circuit
6 court only upon its own motion and not that of the state or the offender shall
7 have the power to grant probation to an offender anytime up to one hundred
8 twenty days after such offender has been delivered to the department of
9 corrections but not thereafter. The court may request information and a
10 recommendation from the department concerning the offender and such offender's
11 behavior during the period of incarceration. Except as provided in this section,
12 the court may place the offender on probation in a program created pursuant to
13 section 217.777, or may place the offender on probation with any other conditions
14 authorized by law.

15 3. The court may recommend placement of an offender in a department
16 of corrections one hundred twenty-day program under this subsection or order
17 such placement under subsection 4 of section 559.036. Upon the recommendation
18 or order of the court, the department of corrections shall assess each offender to
19 determine the appropriate one hundred twenty-day program in which to place the
20 offender, which may include placement in the shock incarceration program or
21 institutional treatment program. When the court recommends and receives
22 placement of an offender in a department of corrections one hundred twenty-day
23 program, the offender shall be released on probation if the department of
24 corrections determines that the offender has successfully completed the program
25 except as follows. Upon successful completion of a program under this subsection,
26 the board of probation and parole shall advise the sentencing court of an
27 offender's probationary release date thirty days prior to release. The court shall
28 follow the recommendation of the department unless the court determines that
29 probation is not appropriate. If the court determines that probation is not
30 appropriate, the court may order the execution of the offender's sentence only
31 after conducting a hearing on the matter within ninety to one hundred twenty
32 days from the date the offender was delivered to the department of corrections.
33 If the department determines the offender has not successfully completed a one
34 hundred twenty-day program under this subsection, the offender shall be removed
35 from the program and the court shall be advised of the removal. The department
36 shall report on the offender's participation in the program and may provide
37 recommendations for terms and conditions of an offender's probation. The court
38 shall then have the power to grant probation or order the execution of the
39 offender's sentence.

40 4. If the court is advised that an offender is not eligible for placement in
41 a one hundred twenty-day program under subsection 3 of this section, the court
42 shall consider other authorized dispositions. If the department of corrections one
43 hundred twenty-day program under subsection 3 of this section is full, the court
44 may place the offender in a private program approved by the department of
45 corrections or the court, the expenses of such program to be paid by the offender,
46 or in an available program offered by another organization. If the offender is
47 convicted of a class C, class D, or class E nonviolent felony, the court may order
48 probation while awaiting appointment to treatment.

49 5. Except when the offender has been found to be a predatory sexual
50 offender pursuant to section [566.125] **566.123**, the court shall request the

51 department of corrections to conduct a sexual offender assessment if the
52 defendant has been found guilty of sexual abuse when classified as a class B
53 felony. Upon completion of the assessment, the department shall provide to the
54 court a report on the offender and may provide recommendations for terms and
55 conditions of an offender's probation. The assessment shall not be considered a
56 one hundred twenty-day program as provided under subsection 3 of this
57 section. The process for granting probation to an offender who has completed the
58 assessment shall be as provided under subsections 2 and 6 of this section.

59 6. Unless the offender is being granted probation pursuant to successful
60 completion of a one hundred twenty-day program the circuit court shall notify the
61 state in writing when the court intends to grant probation to the offender
62 pursuant to the provisions of this section. The state may, in writing, request a
63 hearing within ten days of receipt of the court's notification that the court intends
64 to grant probation. Upon the state's request for a hearing, the court shall grant
65 a hearing as soon as reasonably possible. If the state does not respond to the
66 court's notice in writing within ten days, the court may proceed upon its own
67 motion to grant probation.

68 7. An offender's first incarceration under this section prior to release on
69 probation shall not be considered a previous prison commitment for the purpose
70 of determining a minimum prison term under the provisions of section 558.019.

71 8. Notwithstanding any other provision of law, probation may not be
72 granted pursuant to this section to offenders who have been convicted of murder
73 in the second degree pursuant to section 565.021; forcible rape pursuant to
74 section 566.030 as it existed prior to August 28, 2013; rape in the first degree
75 under section 566.030; forcible sodomy pursuant to section 566.060 as it existed
76 prior to August 28, 2013; sodomy in the first degree under section 566.060;
77 statutory rape in the first degree pursuant to section 566.032; statutory sodomy
78 in the first degree pursuant to section 566.062; child molestation in the first
79 degree pursuant to section 566.067 when classified as a class A felony; abuse **or**
80 **neglect** of a child pursuant to section 568.060 when classified as a class A felony;
81 or an offender who has been found to be a predatory sexual offender pursuant to
82 section [566.125] **566.123**; or any offense in which there exists a statutory
83 prohibition against either probation or parole.

559.117. 1. The director of the department of corrections is authorized to
2 establish, as a three-year pilot program, a mental health assessment process.

3 2. Only upon a motion filed by the prosecutor in a criminal case, the judge

4 who is hearing the criminal case in a participating county may request that an
5 offender be placed in the department of corrections for one hundred twenty days
6 for a mental health assessment and for treatment if it appears that the offender
7 has a mental disorder or mental illness such that the offender may qualify for
8 probation including community psychiatric rehabilitation (CPR) programs and
9 such probation is appropriate and not inconsistent with public safety. Before the
10 judge rules upon the motion, the victim shall be given notice of such motion and
11 the opportunity to be heard. Upon recommendation of the court, the department
12 shall determine the offender's eligibility for the mental health assessment
13 process.

14 3. Following this assessment and treatment period, an assessment report
15 shall be sent to the sentencing court and the sentencing court may, if appropriate,
16 release the offender on probation. The offender shall be supervised on probation
17 by a state probation and parole officer, who shall work cooperatively with the
18 department of mental health to enroll eligible offenders in community psychiatric
19 rehabilitation (CPR) programs.

20 4. Notwithstanding any other provision of law, probation shall not be
21 granted under this section to offenders who:

22 (1) Have been found guilty of, or plead guilty to, murder in the second
23 degree under section 565.021;

24 (2) Have been found guilty of, or plead guilty to, rape in the first degree
25 under section 566.030 or forcible rape under section 566.030 as it existed prior
26 to August 28, 2013;

27 (3) Have been found guilty of, or plead guilty to, statutory rape in the first
28 degree under section 566.032;

29 (4) Have been found guilty of, or plead guilty to, sodomy in the first
30 degree under section 566.060 or forcible sodomy under section 566.060 as it
31 existed prior to August 28, 2013;

32 (5) Have been found guilty of, or plead guilty to, statutory sodomy in the
33 first degree under section 566.062;

34 (6) Have been found guilty of, or plead guilty to, child molestation in the
35 first degree under section 566.067 when classified as a class A felony;

36 (7) Have been found to be a predatory sexual offender under section
37 ~~566.125~~ **566.123**; or

38 (8) Have been found guilty of, or plead guilty to, any offense for which
39 there exists a statutory prohibition against either probation or parole.

40 5. At the end of the three-year pilot, the director of the department of
41 corrections and the director of the department of mental health shall jointly
42 submit recommendations to the governor and to the general assembly by
43 December 31, 2015, on whether to expand the process statewide.

 566.010. As used in this chapter and chapter 568, the following terms
2 mean:

3 (1) "Aggravated sexual offense", any sexual offense, in the course of which,
4 the actor:

5 (a) Inflicts serious physical injury on the victim;

6 (b) Displays a deadly weapon or dangerous instrument in a threatening
7 manner;

8 (c) Subjects the victim to sexual intercourse or deviate sexual intercourse
9 with more than one person;

10 (d) Had previously been found guilty of an offense under this chapter or
11 under section 573.200, child used in sexual performance; section 573.205,
12 promoting sexual performance by a child; section 573.023, sexual exploitation of
13 a minor; section 573.025, promoting child pornography in the first degree; section
14 573.035, promoting child pornography in the second degree; section 573.037,
15 possession of child pornography; or section 573.040, furnishing pornographic
16 materials to minors; or has previously been found guilty of an offense in another
17 jurisdiction which would constitute an offense under this chapter or said sections;

18 (e) Commits the offense as part of an act or series of acts performed by
19 two or more persons as part of an established or prescribed pattern of activity; or

20 (f) Engages in the act that constitutes the offense with a person the actor
21 knows to be, without regard to legitimacy, the actor's:

22 a. Ancestor or descendant by blood or adoption;

23 b. Stepchild while the marriage creating that relationship exists;

24 c. Brother or sister of the whole or half blood; or

25 d. Uncle, aunt, nephew, or niece of the whole blood;

26 (2) "Commercial sex act", any sex act on account of which anything of
27 value is given to or received by any person;

28 (3) "Deviate sexual intercourse", any act involving the genitals of one
29 person and the hand, mouth, tongue, or anus of another person or a sexual act
30 involving the penetration, however slight, of the penis, female genitalia, or the
31 anus by a finger, instrument or object done for the purpose of arousing or
32 gratifying the sexual desire of any person or for the purpose of terrorizing the

33 victim;

34 (4) "Forced labor", a condition of servitude induced by means of:

35 (a) Any scheme, plan, or pattern of behavior intended to cause a person
36 to believe that, if the person does not enter into or continue the servitude, such
37 person or another person will suffer substantial bodily harm or physical restraint;
38 or

39 (b) The abuse or threatened abuse of the legal process;

40 (5) "Sexual conduct", sexual intercourse, deviate sexual intercourse or
41 sexual contact;

42 (6) "Sexual contact", any touching of another person with the genitals or
43 any touching of the genitals or anus of another person, or the breast of a female
44 person, or such touching through the clothing, **or causing semen, seminal**
45 **fluid, or other ejaculate to come into contact with another person**, for
46 the purpose of arousing or gratifying the sexual desire of any person or for the
47 purpose of terrorizing the victim;

48 (7) "Sexual intercourse", any penetration, however slight, of the female
49 genitalia by the penis.

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

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

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

14 (2) The person is **a prior sexual offender** or a persistent **sexual**
15 **offender as defined in section 566.124** or a predatory sexual offender as
16 defined in section [566.125] **566.123** and subjected to an extended term of
17 imprisonment under said section;

18 (3) The victim is a child less than twelve years of age, in which case the
19 required term of imprisonment is life imprisonment without eligibility for

20 probation or parole until the offender has served not less than thirty years of
21 such sentence or unless the offender has reached the age of seventy-five years and
22 has served at least fifteen years of such sentence, unless such rape in the first
23 degree is described under subdivision (4) of this subsection; or

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

29 3. Subsection 4 of section 558.019 shall not apply to the sentence of a
30 person who has been found guilty of rape in the first degree or attempt to commit
31 rape in the first degree when the victim is less than twelve years of age, and "life
32 imprisonment" shall mean imprisonment for the duration of a person's natural
33 life for the purposes of this section.

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

566.032. 1. A person commits the offense of statutory rape in the first
2 degree if he or she has sexual intercourse with another person who is less than
3 fourteen years of age.

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

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

11 (2) The person is **a prior sexual offender** or a persistent **sexual**
12 **offender as defined in section 566.124** or a predatory sexual offender as
13 defined in section [566.125 and subjected to an extended term of imprisonment
14 under said section] **566.123**.

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

6 physically or mentally impaired so as to be incapable of making an informed
7 consent to sexual intercourse.

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

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

15 (2) The person is a **prior sexual offender** or a persistent **sexual**
16 **offender as defined in section 566.124** or a predatory sexual offender as
17 defined in section [566.125 and subjected to an extended term of imprisonment
18 under said section] **566.123**;

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

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

30 3. Subsection 4 of section 558.019 shall not apply to the sentence of a
31 person who has been found guilty of sodomy in the first degree or an attempt to
32 commit sodomy in the first degree when the victim is less than twelve years of
33 age, and "life imprisonment" shall mean imprisonment for the duration of a
34 person's natural life for the purposes of this section.

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

566.062. 1. A person commits the offense of statutory sodomy in the first
2 degree if he or she has deviate sexual intercourse with another person who is less
3 than fourteen years of age.

4 2. The offense of statutory sodomy in the first degree or an attempt to

5 commit statutory sodomy in the first degree is a felony for which the authorized
6 term of imprisonment is life imprisonment or a term of years not less than five
7 years, unless:

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

11 (2) The person is a **prior sexual offender** or a persistent **sexual**
12 **offender as defined in section 566.124** or a predatory sexual offender as
13 defined in section [566.125 and subjected to an extended term of imprisonment
14 under said section] **566.123**.

566.086. 1. A person commits the offense of sexual contact with a student
2 if he or she has sexual contact with a student of the school and is:

3 (1) A teacher, as that term is defined in subdivisions (4), (5), and (7) of
4 section 168.104;

5 (2) A student teacher; [or]

6 (3) An employee of the school; [or]

7 (4) A volunteer of the school or of an organization working with the school
8 on a project or program who is not a student at the school; [or]

9 (5) An elected or appointed official of the school district; [or]

10 (6) A person employed by an entity that contracts with the school or
11 school district to provide services; **or**

12 **(7) A coach, assistant coach, director, or other adult with a**
13 **school-aged team, club, or ensemble, regardless of whether such team,**
14 **club, or ensemble is connected to a school or scholastic**
15 **association. For purposes of this subdivision, "school-aged team, club,**
16 **or ensemble" means any group organized for individual or group**
17 **competition for the performance of sports activities or any group**
18 **organized for individual or group presentation for fine or performing**
19 **arts by any child under eighteen years of age.**

20 2. For the purposes of this section, "school" shall mean any public or
21 private school in this state serving kindergarten through grade twelve or any
22 school bus used by the school district.

23 3. The offense of sexual contact with a student is a class E felony.

24 4. It is not a defense to prosecution for a violation of this section that the
25 student consented to the sexual contact.

566.123. 1. As used in this section, the following terms shall

2 mean:

3 (1) "Predatory sexual offender", any person who has been found
4 guilty of committing or attempting to commit a predatory sexual
5 offense and who has, prior to that finding:

6 (a) Committed another act that would constitute a predatory
7 sexual offense, regardless of whether the other act was charged or
8 resulted in a finding of guilt; or

9 (b) Committed an act or acts against more than one victim that
10 would constitute a predatory sexual offense, whether the defendant was
11 charged with an additional offense or offenses as a result of such act
12 or acts;

13 (2) "Predatory sexual offense", statutory rape in the first degree,
14 statutory sodomy in the first degree, rape in the first degree, sodomy
15 in the first degree, forcible rape, forcible sodomy, rape, sodomy, child
16 molestation in the first degree when classified as a class A or B felony,
17 child molestation in the second degree when classified as a class A or
18 B felony, sexual abuse when classified as a class B felony, sexual abuse
19 in the first degree when classified as a class B felony, or an attempt to
20 commit any of these offenses, or the commission of an offense in
21 another jurisdiction that if committed in this state would constitute the
22 commission of any of the listed offenses.

23 2. The court shall sentence a person to life without eligibility for
24 probation or parole if it finds the defendant is a predatory sexual
25 offender. Subsection 4 of section 558.019 shall not apply to any person
26 imprisoned under this subsection for the purposes of determining the
27 minimum prison term or the length of sentence as defined or used in
28 such subsection. Notwithstanding any other provision of law, in no
29 event shall a person found to be a predatory sexual offender receive a
30 final discharge from parole.

31 3. Notwithstanding any provision of law, the department of
32 corrections, or any division thereof, shall not furlough an individual
33 found to be and sentenced as a prior sexual offender or a persistent
34 sexual offender as defined in section 566.124 or a predatory sexual
35 offender as defined in section 566.123.

36 4. The punishment imposed under this section shall be in
37 addition to any punishment provided by law for the offense, of which
38 the defendant has been previously found guilty, or the act which would

39 constitute an offense, whether the act was charged or resulted in a
40 finding of guilt.

41 5. In determining whether a defendant is a predatory sexual
42 offender:

43 (1) Prior findings of guilt shall be pleaded and proven in the
44 same manner required by the provisions of section 558.021;

45 (2) Acts that would constitute an offense that were not charged
46 or did not result in a finding of guilt shall be pleaded and proven as
47 follows:

48 (a) In a trial without a jury or upon a plea of guilty, the acts
49 shall be pleaded and proven in the same manner required under section
50 558.021. The court may defer the proof and findings establishing the
51 defendant is a predatory sexual offender to a later time, but prior to
52 sentencing. The facts required to prove the defendant is a predatory
53 sexual offender may be established by judicial notice of prior testimony
54 or the plea of guilty;

55 (b) Notwithstanding any other provision of law, if an offense is
56 submitted to the jury, the trial shall proceed in multiple stages. If the
57 jury at the first stage of a trial finds the defendant guilty of the
58 submitted offense, the second stage of the trial shall proceed. The issue
59 at the second stage of the trial shall be whether the defendant is a
60 predatory sexual offender. The state shall be the first to proceed. The
61 court shall instruct the jury. The attorneys may argue the issue of
62 whether the defendant is a predatory sexual offender to the jury, and
63 the state shall have the right to open and close the argument. The jury
64 shall determine whether the defendant is a predatory sexual offender
65 beyond a reasonable doubt. If the jury determines that the defendant
66 is a predatory sexual offender, the court shall not seek an advisory
67 verdict from the jury. If the jury determines that the defendant is not
68 a predatory sexual offender, a third stage of the trial shall proceed,
69 unless jury sentencing is removed under section 557.036. The issue at
70 the third stage of the trial shall be the punishment to be assessed and
71 declared. The third stage of the trial shall proceed in the same manner
72 required under section 557.036. The parties may present additional
73 evidence in this stage and may argue evidence presented at the first
74 stage or the second stage.

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

2 (1) "Persistent sexual offender", a person who has been found
3 guilty of two or more sexual offenses;

4 (2) "Prior sexual offender", a person who has been found guilty
5 of one sexual offense;

6 (3) "Sexual offense", any offense under chapter 566, or an attempt
7 to commit any of these offenses, or the commission of an offense in
8 another jurisdiction that if committed in this state would constitute the
9 commission of any of the listed offenses, or any offense that requires
10 registration under section 589.400.

11 2. No court shall suspend the imposition of sentence as to a prior
12 or persistent sexual offender under this section nor sentence such
13 person to pay a fine in lieu of a term of imprisonment, section 557.011
14 to the contrary notwithstanding, nor shall such person be eligible for
15 parole or probation until such person has served a minimum of three
16 years' imprisonment.

17 3. The court shall find the defendant to be a prior sexual
18 offender or persistent sexual offender, if:

19 (1) The indictment or information, original or amended, or the
20 information in lieu of an indictment pleads all essential facts
21 warranting a finding that the defendant is a prior sexual offender or
22 persistent sexual offender;

23 (2) Evidence is introduced that establishes sufficient facts
24 pleaded to warrant a finding beyond a reasonable doubt the defendant
25 is a prior sexual offender or persistent sexual offender; and

26 (3) The court makes findings of fact that warrant a finding
27 beyond a reasonable doubt by the court that the defendant is a prior
28 sexual offender or persistent sexual offender.

29 4. In a jury trial, such facts shall be pleaded, established, and
30 found prior to submission to the jury outside of its hearing.

31 5. In a trial without a jury or upon a plea of guilty, the court may
32 defer the proof in findings of such facts to a later time, but prior to
33 sentencing.

34 6. The defendant shall be accorded full rights of confrontation
35 and cross-examination, with the opportunity to present evidence, at
36 such hearings.

37 7. The defendant may waive proof of the facts alleged.

38 8. Nothing in this section shall prevent the use of presentence

39 investigations or commitments.

40 **9. At the sentencing hearing, both the state and the defendant**
41 **shall be permitted to present additional information bearing on the**
42 **issue of sentence.**

43 **10. The findings of guilt shall be prior to the date of commission**
44 **of the present offense.**

45 **11. The court shall not instruct the jury as to the range of**
46 **punishment or allow the jury, upon a finding of guilt, to assess and**
47 **declare the punishment as part of its verdict in cases of prior sexual**
48 **offenders or persistent sexual offenders.**

49 **12. Evidence of prior findings of guilt shall be heard and**
50 **determined by the trial court out of the hearing of the jury prior to the**
51 **submission of the case to the jury and shall include, but not be limited**
52 **to, evidence of findings of guilt received by a search of the records of**
53 **the Missouri uniform law enforcement system maintained by the**
54 **Missouri state highway patrol. After hearing the evidence, the court**
55 **shall enter its findings thereon.**

56 **13. The court shall sentence a person who has been found to be**
57 **a prior sexual offender to the authorized term of imprisonment for the**
58 **class one class step higher than the offense for which the person was**
59 **found guilty.**

60 **14. The court shall sentence a person who has been found to be**
61 **a persistent sexual offender to the authorized term of imprisonment for**
62 **the class two steps higher than the offense for which the person was**
63 **found guilty. A person found to be a persistent sexual offender who is**
64 **found guilty of a class B felony shall be sentenced to the authorized**
65 **term of imprisonment for a class A felony. A person found to be a prior**
66 **or persistent sexual offender who is found guilty of a class A felony or**
67 **a felony for which the maximum punishment is thirty years or more**
68 **shall be sentenced to life imprisonment without the eligibility for**
69 **probation or parole.**

571.070. 1. A person commits the offense of unlawful possession of a
2 firearm if such person knowingly has any firearm in his or her possession and:

3 (1) Such person has been convicted of a felony under the laws of this
4 state, or of a crime under the laws of any state or of the United States which, if
5 committed within this state, would be a felony; or

6 (2) Such person is:

7 **(a) A fugitive from justice[, is] in another jurisdiction or for whom**
8 **a warrant for arrest has been issued in this state or any other state,**
9 **territory, foreign country, or by a federal court who has absconded**
10 **from any probation or parole supervision;**

11 **(b) Habitually in an intoxicated or drugged condition[, or is]; or**

12 **(c) Currently adjudged mentally incompetent.**

13 2. Unlawful possession of a firearm is a class D felony.

14 3. The provisions of subdivision (1) of subsection 1 of this section shall not
15 apply to the possession of an antique firearm.

575.150. 1. A person commits the offense of resisting [or interfering with
2 arrest, detention, or stop], **interfering with, or escaping or attempting to**
3 **escape from detention or custody** if he or she knows or reasonably should
4 know that a law enforcement officer is making an arrest or attempting to lawfully
5 detain or stop an individual or vehicle, and for the purpose of preventing the
6 officer from effecting the arrest, stop, or detention, **or maintaining custody**
7 **after such arrest, stop, or detention,** he or she:

8 (1) Resists the arrest, stop or detention of such person by using or
9 threatening the use of violence or physical force or by fleeing from such officer;
10 [or]

11 (2) Interferes with the arrest, stop or detention of another person by using
12 or threatening the use of violence, physical force or physical interference; **or**

13 **(3) While being held in custody after a stop or detention or an**
14 **arrest has been made, escapes or attempts to escape from custody.**

15 2. This section applies to:

16 (1) Arrests, stops, or detentions, with or without warrants;

17 (2) Arrests, stops, [or] detentions, **or being held in custody** for any
18 offense, infraction, or ordinance violation; and

19 (3) Arrests for warrants issued by a court or a probation and parole
20 officer.

21 3. A person is presumed to be fleeing a vehicle stop if he or she continues
22 to operate a motor vehicle after he or she has seen or should have seen clearly
23 visible emergency lights or has heard or should have heard an audible signal
24 emanating from the law enforcement vehicle pursuing him or her.

25 4. It is no defense to a prosecution pursuant to subsection 1 of this section
26 that the law enforcement officer was acting unlawfully in making the
27 arrest. However, nothing in this section shall be construed to bar civil suits for

28 unlawful arrest.

29 5. The offense of resisting [or interfering with an arrest] , **interfering**
30 **with, or escaping or attempting to escape from a stop or detention or**
31 **an arrest, or from custody after such stop, detention, or arrest** is a class
32 E felony for an arrest for a:

33 (1) Felony;

34 (2) Warrant issued for failure to appear on a felony case; or

35 (3) Warrant issued for a probation violation on a felony case,
36 **unless a person is escaping or attempting to escape while in custody or**
37 **under arrest for a felony by means of a deadly weapon or dangerous**
38 **instrument, or by holding any person hostage, in which case it is a class**
39 **A felony.**

40 6. The offense of resisting an arrest, detention or stop **for a**
41 **misdemeanor or an infraction** in violation of subdivision (1) or (2) of
42 subsection 1 of this section is a class A misdemeanor, unless the person fleeing
43 creates a substantial risk of serious physical injury or death to any person, in
44 which case it is a class E felony.

 589.414. 1. Any person required by sections 589.400 to 589.425 to register
2 shall, within three business days, appear in person to the chief law enforcement
3 officer of the county or city not within a county if there is a change to any of the
4 following information:

5 (1) Name;

6 (2) Residence;

7 (3) Employment, including status as a volunteer or intern;

8 (4) Student status; or

9 (5) A termination to any of the items listed in this subsection.

10 2. Any person required to register under sections 589.400 to 589.425 shall,
11 within three business days, notify the chief law enforcement official of the county
12 or city not within a county of any changes to the following information:

13 (1) Vehicle information;

14 (2) Temporary lodging information;

15 (3) Temporary residence information;

16 (4) Email addresses, instant messaging addresses, and any other
17 designations used in internet communications, postings, or telephone
18 communications; or

19 (5) Telephone or other cellular number, including any new forms of

20 electronic communication.

21 3. The chief law enforcement official in the county or city not within a
22 county shall immediately forward the registration changes described under
23 subsections 1 and 2 of this section to the Missouri state highway patrol within
24 three business days.

25 4. If any person required by sections 589.400 to 589.425 to register
26 changes such person's residence or address to a different county or city not within
27 a county, the person shall appear in person and shall inform both the chief law
28 enforcement official with whom the person last registered and the chief law
29 enforcement official of the county or city not within a county having jurisdiction
30 over the new residence or address in writing within three business days of such
31 new address and phone number, if the phone number is also changed. If any
32 person required by sections 589.400 to 589.425 to register changes his or her
33 state, territory, the District of Columbia, or foreign country, or federal, tribal, or
34 military jurisdiction of residence, the person shall appear in person and shall
35 inform both the chief law enforcement official with whom the person was last
36 registered and the chief law enforcement official of the area in the new state,
37 territory, the District of Columbia, or foreign country, or federal, tribal, or
38 military jurisdiction having jurisdiction over the new residence or address within
39 three business days of such new address. Whenever a registrant changes
40 residence, the chief law enforcement official of the county or city not within a
41 county where the person was previously registered shall inform the Missouri state
42 highway patrol of the change within three business days. When the registrant
43 is changing the residence to a new state, territory, the District of Columbia, or
44 foreign country, or federal, tribal, or military jurisdiction, the Missouri state
45 highway patrol shall inform the responsible official in the new state, territory, the
46 District of Columbia, or foreign country, or federal, tribal, or military jurisdiction
47 of residence within three business days.

48 5. Tier I sexual offenders, in addition to the requirements of subsections
49 1 to 4 of this section, shall report in person to the chief law enforcement official
50 annually in the month of their birth to verify the information contained in their
51 statement made pursuant to section 589.407. Tier I sexual offenders include:

52 (1) Any offender who has been adjudicated for the offense of:

53 (a) Sexual abuse in the first degree under section 566.100 if the victim is
54 eighteen years of age or older;

55 (b) Sexual misconduct involving a child under section 566.083 if it is a

56 first offense and the punishment is less than one year;

57 (c) Sexual abuse in the second degree under section 566.101 if the
58 punishment is less than a year;

59 (d) Kidnapping in the second degree under section 565.120 with sexual
60 motivation;

61 (e) Kidnapping in the third degree under section 565.130;

62 (f) Sexual conduct with a nursing facility resident or vulnerable person
63 in the first degree under section 566.115 if the punishment is less than one year;

64 (g) Sexual conduct under section 566.116 with a nursing facility resident
65 or vulnerable person;

66 (h) Sexual [contact] **conduct** with a prisoner or offender under section
67 566.145 if the victim is eighteen years of age or older;

68 (i) Sex with an animal under section 566.111;

69 (j) Trafficking for the purpose of sexual exploitation under section 566.209
70 if the victim is eighteen years of age or older;

71 (k) Possession of child pornography under section 573.037;

72 (l) Sexual misconduct in the first degree under section 566.093;

73 (m) Sexual misconduct in the second degree under section 566.095;

74 (n) Child molestation in the second degree under section 566.068 as it
75 existed prior to January 1, 2017, if the punishment is less than one year; or

76 (o) Invasion of privacy under section 565.252 if the victim is less than
77 eighteen years of age;

78 (2) Any offender who is or has been adjudicated in any other state,
79 territory, the District of Columbia, or foreign country, or under federal, tribal, or
80 military jurisdiction of an offense of a sexual nature or with a sexual element that
81 is comparable to the tier I sexual offenses listed in this subsection or, if not
82 comparable to those in this subsection, comparable to those described as tier I
83 offenses under the Sex Offender Registration and Notification Act, Title I of the
84 Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248.

85 6. Tier II sexual offenders, in addition to the requirements of subsections
86 1 to 4 of this section, shall report semiannually in person in the month of their
87 birth and six months thereafter to the chief law enforcement official to verify the
88 information contained in their statement made pursuant to section 589.407. Tier
89 II sexual offenders include:

90 (1) Any offender who has been adjudicated for the offense of:

91 (a) Statutory sodomy in the second degree under section 566.064 if the

92 victim is sixteen to seventeen years of age;

93 (b) Child molestation in the third degree under section 566.069 if the
94 victim is between thirteen and fourteen years of age;

95 (c) Sexual contact with a student under section 566.086 if the victim is
96 thirteen to seventeen years of age;

97 (d) Enticement of a child under section 566.151;

98 (e) Abuse of a child under section 568.060 if the offense is of a sexual
99 nature and the victim is thirteen to seventeen years of age;

100 (f) Sexual exploitation of a minor under section 573.023;

101 (g) Promoting child pornography in the first degree under section 573.025;

102 (h) Promoting child pornography in the second degree under section
103 573.035;

104 (i) Patronizing prostitution under section 567.030;

105 (j) Sexual contact with a prisoner or offender under section 566.145 if the
106 victim is thirteen to seventeen years of age;

107 (k) Child molestation in the fourth degree under section 566.071 if the
108 victim is thirteen to seventeen years of age;

109 (l) Sexual misconduct involving a child under section 566.083 if it is a first
110 offense and the penalty is a term of imprisonment of more than a year; or

111 (m) Age misrepresentation with intent to solicit a minor under section
112 566.153;

113 (2) Any person who is adjudicated of an offense comparable to a tier I
114 offense listed in this section or failure to register offense under section 589.425
115 or comparable out-of-state failure to register offense and who is already required
116 to register as a tier I offender due to having been adjudicated of a tier I offense
117 on a previous occasion; or

118 (3) Any person who is or has been adjudicated in any other state,
119 territory, the District of Columbia, or foreign country, or under federal, tribal, or
120 military jurisdiction for an offense of a sexual nature or with a sexual element
121 that is comparable to the tier II sexual offenses listed in this subsection or, if not
122 comparable to those in this subsection, comparable to those described as tier II
123 offenses under the Sex Offender Registration and Notification Act, Title I of the
124 Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248.

125 7. Tier III sexual offenders, in addition to the requirements of subsections
126 1 to 4 of this section, shall report in person to the chief law enforcement official
127 every ninety days to verify the information contained in their statement made

128 under section 589.407. Tier III sexual offenders include:

129 (1) Any offender registered as a predatory sexual offender as defined in
130 section 566.123 or **a prior sexual offender** or a persistent sexual offender as
131 defined in section 566.124;

132 (2) Any offender who has been adjudicated for the crime of:

133 (a) Rape in the first degree under section 566.030;

134 (b) Statutory rape in the first degree under section 566.032;

135 (c) Rape in the second degree under section 566.031;

136 (d) Endangering the welfare of a child in the first degree under section
137 568.045 if the offense is sexual in nature;

138 (e) Sodomy in the first degree under section 566.060;

139 (f) Statutory sodomy under section 566.062;

140 (g) Statutory sodomy under section 566.064 if the victim is under sixteen
141 years of age;

142 (h) Sodomy in the second degree under section 566.061;

143 (i) Sexual misconduct involving a child under section 566.083 if the
144 offense is a second or subsequent offense;

145 (j) Sexual abuse in the first degree under section 566.100 if the victim is
146 under thirteen years of age;

147 (k) Kidnapping in the first degree under section 565.110 if the victim is
148 under eighteen years of age, excluding kidnapping by a parent or guardian;

149 (l) Child kidnapping under section 565.115;

150 (m) Sexual conduct with a nursing facility resident or vulnerable person
151 in the first degree under section 566.115 if the punishment is greater than a year;

152 (n) Incest under section 568.020;

153 (o) Endangering the welfare of a child in the first degree under section
154 568.045 with sexual intercourse or deviate sexual intercourse with a victim under
155 eighteen years of age;

156 (p) Child molestation in the first degree under section 566.067;

157 (q) Child molestation in the second degree under section 566.068;

158 (r) Child molestation in the third degree under section 566.069 if the
159 victim is under thirteen years of age;

160 (s) Promoting prostitution in the first degree under section 567.050 if the
161 victim is under eighteen years of age;

162 (t) Promoting prostitution in the second degree under section 567.060 if
163 the victim is under eighteen years of age;

- 164 (u) Promoting prostitution in the third degree under section 567.070 if the
165 victim is under eighteen years of age;
- 166 (v) Promoting travel for prostitution under section 567.085 if the victim
167 is under eighteen years of age;
- 168 (w) Trafficking for the purpose of sexual exploitation under section
169 566.209 if the victim is under eighteen years of age;
- 170 (x) Sexual trafficking of a child in the first degree under section 566.210;
- 171 (y) Sexual trafficking of a child in the second degree under section
172 566.211;
- 173 (z) Genital mutilation of a female child under section 568.065;
- 174 (aa) Statutory rape in the second degree under section 566.034;
- 175 (bb) Child molestation in the fourth degree under section 566.071 if the
176 victim is under thirteen years of age;
- 177 (cc) Sexual abuse in the second degree under section 566.101 if the
178 penalty is a term of imprisonment of more than a year;
- 179 (dd) Patronizing prostitution under section 567.030 if the offender is a
180 persistent offender;
- 181 (ee) Abuse of a child under section 568.060 if the offense is of a sexual
182 nature and the victim is under thirteen years of age;
- 183 (ff) Sexual [contact] **conduct** with a prisoner or offender under section
184 566.145 if the victim is under thirteen years of age;
- 185 (gg) Sexual [intercourse] **conduct** with a prisoner or offender under
186 section 566.145;
- 187 (hh) Sexual contact with a student under section 566.086 if the victim is
188 under thirteen years of age;
- 189 (ii) Use of a child in a sexual performance under section 573.200; or
- 190 (jj) Promoting a sexual performance by a child under section 573.205;
- 191 (3) Any offender who is adjudicated for a crime comparable to a tier I or
192 tier II offense listed in this section or failure to register offense under section
193 589.425, or other comparable out-of-state failure to register offense, who has been
194 or is already required to register as a tier II offender because of having been
195 adjudicated for a tier II offense, two tier I offenses, or combination of a tier I
196 offense and failure to register offense, on a previous occasion;
- 197 (4) Any offender who is adjudicated in any other state, territory, the
198 District of Columbia, or foreign country, or under federal, tribal, or military
199 jurisdiction for an offense of a sexual nature or with a sexual element that is

200 comparable to a tier III offense listed in this section or a tier III offense under the
 201 Sex Offender Registration and Notification Act, Title I of the Adam Walsh Child
 202 Protection and Safety Act of 2006, Pub. L. 109-248; or

203 (5) Any offender who is adjudicated in Missouri for any offense of a sexual
 204 nature requiring registration under sections 589.400 to 589.425 that is not
 205 classified as a tier I or tier II offense in this section.

206 8. In addition to the requirements of subsections 1 to 7 of this section, all
 207 Missouri registrants who work, including as a volunteer or unpaid intern, or
 208 attend any school whether public or private, including any secondary school,
 209 trade school, professional school, or institution of higher education, on a full-time
 210 or part-time basis or have a temporary residence in this state shall be required
 211 to report in person to the chief law enforcement officer in the area of the state
 212 where they work, including as a volunteer or unpaid intern, or attend any school
 213 or training and register in that state. "Part-time" in this subsection means for
 214 more than seven days in any twelve-month period.

215 9. If a person who is required to register as a sexual offender under
 216 sections 589.400 to 589.425 changes or obtains a new online identifier as defined
 217 in section 43.651, the person shall report such information in the same manner
 218 as a change of residence before using such online identifier.

2 [575.200. 1. A person commits the offense of escape from
 3 custody or attempted escape from custody if, while being held in
 4 custody after arrest for any crime, he or she escapes or attempts to
 5 escape from custody.

6 2. The offense of escape or attempted escape from custody
 7 is a class A misdemeanor unless:

8 (1) The person escaping or attempting to escape is under
 9 arrest for a felony, in which case it is a class E felony; or

10 (2) The offense is committed by means of a deadly weapon
 11 or dangerous instrument or by holding any person as hostage, in
 which case it is a class A felony.]

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

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

- 7 (2) Rape in the first degree or sodomy in the first degree;
8 (3) Forcible rape;
9 (4) Forcible sodomy;
10 (5) Rape;
11 (6) Sodomy.

12 2. A "persistent sexual offender" is one who has previously
13 been found guilty of attempting to commit or committing any of the
14 offenses listed in subsection 1 of this section or one who has
15 previously been found guilty of an offense in any other jurisdiction
16 which would constitute any of the offenses listed in subsection 1 of
17 this section.

18 3. The term of imprisonment for one found to be a
19 persistent sexual offender shall be imprisonment for life without
20 eligibility for probation or parole. Subsection 4 of section 558.019
21 shall not apply to any person imprisoned under this subsection,
22 and "imprisonment for life" shall mean imprisonment for the
23 duration of the person's natural life.

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

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

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

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

40 (3) Has committed an act or acts against more than one
41 victim which would constitute an offense or offenses listed in
42 subsection 4 of this section, whether or not the defendant was

43 charged with an additional offense or offenses as a result of such
44 act or acts.

45 6. A person found to be a predatory sexual offender shall be
46 imprisoned for life with eligibility for parole, however subsection 4
47 of section 558.019 shall not apply to persons found to be predatory
48 sexual offenders for the purposes of determining the minimum
49 prison term or the length of sentence as defined or used in such
50 subsection. Notwithstanding any other provision of law, in no
51 event shall a person found to be a predatory sexual offender receive
52 a final discharge from parole.

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

59 (1) Has previously been found guilty of committing or
60 attempting to commit any of the offenses listed in subsection 1 of
61 this section and is found guilty of committing or attempting to
62 commit any of the offenses listed in subsection 1 of this section
63 shall be any number of years but not less than thirty years;

64 (2) Has previously been found guilty of child molestation in
65 the first or second degree, or sexual abuse when classified as a
66 class B felony and is found guilty of attempting to commit or
67 committing any of the offenses listed in subsection 1 of this section
68 shall be any number of years but not less than fifteen years;

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

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

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

84 8. Notwithstanding any provision of law to the contrary, the
85 department of corrections, or any division thereof, may not furlough
86 an individual found to be and sentenced as a persistent sexual
87 offender or a predatory sexual offender.]

Unofficial ✓

Bill

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