

# SENATE BILL NO. 850

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BEAN.

4329S.01I

ADRIANE D. CROUSE, Secretary

## AN ACT

To repeal sections 558.016, 558.019, 571.015, and 571.070, RSMo, and to enact in lieu thereof four new sections relating to criminal laws, with penalty provisions.

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

Section A. Sections 558.016, 558.019, 571.015, and  
2 571.070, RSMo, are repealed and four new sections enacted in  
3 lieu thereof, to be known as sections 558.016, 558.019, 571.015,  
4 and 571.070, to read as follows:

558.016. 1. The court may sentence a person who has  
2 been found guilty of an offense to a term of imprisonment as  
3 authorized by section 558.011 or to a term of imprisonment  
4 authorized by a statute governing the offense if it finds  
5 the defendant is a prior offender or a persistent  
6 misdemeanor offender. The court may sentence a person to an  
7 extended term of imprisonment if:

8 (1) The defendant is a persistent offender or a  
9 dangerous offender, and the person is sentenced under  
10 subsection 7 of this section;

11 (2) The statute under which the person was found  
12 guilty contains a sentencing enhancement provision that is  
13 based on a prior finding of guilt or a finding of prior  
14 criminal conduct and the person is sentenced according to  
15 the statute; or

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

16 (3) A more specific sentencing enhancement provision  
17 applies that is based on a prior finding of guilt or a  
18 finding of prior criminal conduct.

19 2. A "prior offender" is one who has been found guilty  
20 of one felony.

21 3. A "persistent offender" is one who has been found  
22 guilty of two or more felonies committed at different times.

23 4. A "dangerous offender" is one who:

24 (1) Is being sentenced for a felony during the  
25 commission of which he knowingly murdered or endangered or  
26 threatened the life of another person or knowingly inflicted  
27 or attempted or threatened to inflict serious physical  
28 injury on another person; [and]

29 (2) Has been found guilty of a class A or B felony or  
30 a dangerous felony; **and**

31 **(3) Has been found guilty of a dangerous felony as**  
32 **defined by section 556.061.**

33 5. A "persistent misdemeanor offender" is one who has  
34 been found guilty of two or more offenses, committed at  
35 different times that are classified as A or B misdemeanors  
36 under the laws of this state.

37 6. The findings of guilt shall be prior to the date of  
38 commission of the present offense.

39 7. The court shall sentence a person, who has been  
40 found to be a persistent offender or a dangerous offender,  
41 and is found guilty of a class B, C, D, or E felony to the  
42 authorized term of imprisonment for the offense that is one  
43 class higher than the offense for which the person is found  
44 guilty.

558.019. 1. This section shall not be construed to  
2 affect the powers of the governor under Article IV, Section  
3 7, of the Missouri Constitution. This statute shall not

4 affect those provisions of section 565.020, **or** section  
5 566.125, [or section 571.015,] which set minimum terms of  
6 sentences, or the provisions of section 559.115, relating to  
7 probation.

8       2. The provisions of subsections 2 to 5 of this  
9 section shall only be applicable to the offenses contained  
10 in sections 565.021, 565.023, 565.024, 565.027, 565.050,  
11 565.052, 565.054, 565.072, 565.073, 565.074, 565.090,  
12 565.110, 565.115, 565.120, 565.153, 565.156, 565.225,  
13 565.300, 566.030, 566.031, 566.032, 566.034, 566.060,  
14 566.061, 566.062, 566.064, 566.067, 566.068, 566.069,  
15 566.071, 566.083, 566.086, 566.100, 566.101, 566.103,  
16 566.111, 566.115, 566.145, 566.151, 566.153, 566.203,  
17 566.206, 566.209, 566.210, 566.211, 566.215, 568.030,  
18 568.045, 568.060, 568.065, 568.175, 569.040, 569.160,  
19 570.023, 570.025, 570.030 when punished as a class A, B, or  
20 C felony, 570.145 when punished as a class A or B felony,  
21 570.223 when punished as a class B or C felony, 571.020,  
22 571.030, 571.070, 573.023, 573.025, 573.035, 573.037,  
23 573.200, 573.205, 574.070, 574.080, 574.115, 575.030,  
24 575.150, 575.153, 575.155, 575.157, 575.200 when punished as  
25 a class A felony, 575.210, 575.230 when punished as a class  
26 B felony, 575.240 when punished as a class B felony,  
27 576.070, 576.080, 577.010, 577.013, 577.078, 577.703,  
28 577.706, 579.065, and 579.068 when punished as a class A or  
29 B felony. For the purposes of this section, "prison  
30 commitment" means and is the receipt by the department of  
31 corrections of an offender after sentencing. For purposes  
32 of this section, prior prison commitments to the department  
33 of corrections shall not include an offender's first  
34 incarceration prior to release on probation under section  
35 217.362 or 559.115. Other provisions of the law to the

36 contrary notwithstanding, any offender who has been found  
37 guilty of a felony other than a dangerous felony as defined  
38 in section 556.061 and is committed to the department of  
39 corrections shall be required to serve the following minimum  
40 prison terms:

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

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

54 (3) If the offender has three or more previous prison  
55 commitments to the department of corrections for felonies  
56 unrelated to the present offense, the minimum prison term  
57 which the offender must serve shall be eighty percent of his  
58 or her sentence or until the offender attains seventy years  
59 of age, and has served at least forty percent of the  
60 sentence imposed, whichever occurs first.

61 3. Other provisions of the law to the contrary  
62 notwithstanding, any offender who has been found guilty of a  
63 dangerous felony as defined in section 556.061 and is  
64 committed to the department of corrections shall be required  
65 to serve a minimum prison term of eighty-five percent of the  
66 sentence imposed by the court or until the offender attains

67 seventy years of age, and has served at least forty percent  
68 of the sentence imposed, whichever occurs first.

69 4. For the purpose of determining the minimum prison  
70 term to be served, the following calculations shall apply:

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

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

77 5. For purposes of this section, the term "minimum  
78 prison term" shall mean time required to be served by the  
79 offender before he or she is eligible for parole,  
80 conditional release or other early release by the department  
81 of corrections.

82 6. An offender who was convicted of, or pled guilty  
83 to, a felony offense other than those offenses listed in  
84 subsection 2 of this section prior to August 28, 2019, shall  
85 no longer be subject to the minimum prison term provisions  
86 under subsection 2 of this section, and shall be eligible  
87 for parole, conditional release, or other early release by  
88 the department of corrections according to the rules and  
89 regulations of the department.

90 7. (1) A sentencing advisory commission is hereby  
91 created to consist of eleven members. One member shall be  
92 appointed by the speaker of the house. One member shall be  
93 appointed by the president pro tem of the senate. One  
94 member shall be the director of the department of  
95 corrections. Six members shall be appointed by and serve at  
96 the pleasure of the governor from among the following: the  
97 public defender commission; private citizens; a private  
98 member of the Missouri Bar; the board of probation and

99 parole; and a prosecutor. Two members shall be appointed by  
100 the supreme court, one from a metropolitan area and one from  
101 a rural area. All members shall be appointed to a four-year  
102 term. All members of the sentencing commission appointed  
103 prior to August 28, 1994, shall continue to serve on the  
104 sentencing advisory commission at the pleasure of the  
105 governor.

106 (2) The commission shall study sentencing practices in  
107 the circuit courts throughout the state for the purpose of  
108 determining whether and to what extent disparities exist  
109 among the various circuit courts with respect to the length  
110 of sentences imposed and the use of probation for offenders  
111 convicted of the same or similar offenses and with similar  
112 criminal histories. The commission shall also study and  
113 examine whether and to what extent sentencing disparity  
114 among economic and social classes exists in relation to the  
115 sentence of death and if so, the reasons therefor, if  
116 sentences are comparable to other states, if the length of  
117 the sentence is appropriate, and the rate of rehabilitation  
118 based on sentence. It shall compile statistics, examine  
119 cases, draw conclusions, and perform other duties relevant  
120 to the research and investigation of disparities in death  
121 penalty sentencing among economic and social classes.

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

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

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

135           (6) The circuit and associate circuit courts of this  
136 state, the office of the state courts administrator, the  
137 department of public safety, and the department of  
138 corrections shall cooperate with the commission by providing  
139 information or access to information needed by the  
140 commission. The office of the state courts administrator  
141 will provide needed staffing resources.

142           8. Courts shall retain discretion to lower or exceed  
143 the sentence recommended by the commission as otherwise  
144 allowable by law, and to order restorative justice methods,  
145 when applicable.

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

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

153           (2) Offender treatment programs;

154           (3) Mandatory community service;

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

156           (5) Community-based residential and nonresidential  
157 programs.

158           10. Pursuant to subdivision (1) of subsection 9 of  
159 this section, the court may order the assessment and payment  
160 of a designated amount of restitution to a county law  
161 enforcement restitution fund established by the county

162 commission pursuant to section 50.565. Such contribution  
163 shall not exceed three hundred dollars for any charged  
164 offense. Any restitution moneys deposited into the county  
165 law enforcement restitution fund pursuant to this section  
166 shall only be expended pursuant to the provisions of section  
167 50.565.

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

174 12. A person who fails to make a payment to a county  
175 law enforcement restitution fund may not have his or her  
176 probation revoked solely for failing to make such payment  
177 unless the judge, after evidentiary hearing, makes a finding  
178 supported by a preponderance of the evidence that the person  
179 either willfully refused to make the payment or that the  
180 person willfully, intentionally, and purposefully failed to  
181 make sufficient bona fide efforts to acquire the resources  
182 to pay.

183 13. Nothing in this section shall be construed to  
184 allow the sentencing advisory commission to issue  
185 recommended sentences in specific cases pending in the  
186 courts of this state.

571.015. 1. Any person who commits any felony under  
2 the laws of this state by, with, or through the use,  
3 assistance, or aid of a dangerous instrument or deadly  
4 weapon is also guilty of the offense of armed criminal  
5 action, **the offense of armed criminal action shall be an**  
6 **unclassified felony**, and, upon conviction, shall be punished  
7 by imprisonment by the department of corrections for a term

8 of not less than three years [and not to exceed fifteen  
9 years], unless the person is unlawfully possessing a  
10 firearm, in which case the term of imprisonment shall be for  
11 a term of not less than five years. The punishment imposed  
12 pursuant to this subsection shall be in addition to and  
13 consecutive to any punishment provided by law for the crime  
14 committed by, with, or through the use, assistance, or aid  
15 of a dangerous instrument or deadly weapon. No person  
16 convicted under this subsection shall be eligible for  
17 [parole,] probation, conditional release, or suspended  
18 imposition or execution of sentence [for a period of three  
19 calendar years].

20 2. Any person convicted of a second offense of armed  
21 criminal action under subsection 1 of this section shall be  
22 punished by imprisonment by the department of corrections  
23 for a term of not less than five years [and not to exceed  
24 thirty years], unless the person is unlawfully possessing a  
25 firearm, in which case the term of imprisonment shall be for  
26 a term not less than fifteen years. The punishment imposed  
27 pursuant to this subsection shall be in addition to and  
28 consecutive to any punishment provided by law for the crime  
29 committed by, with, or through the use, assistance, or aid  
30 of a dangerous instrument or deadly weapon. No person  
31 convicted under this subsection shall be eligible for  
32 [parole,] probation, conditional release, or suspended  
33 imposition or execution of sentence [for a period of five  
34 calendar years].

35 3. Any person convicted of a third or subsequent  
36 offense of armed criminal action under subsection 1 of this  
37 section shall be punished by imprisonment by the department  
38 of corrections for a term of not less than ten years, unless  
39 the person is unlawfully possessing a firearm, in which case

40 the term of imprisonment shall be no less than fifteen  
41 years. The punishment imposed pursuant to this subsection  
42 shall be in addition to and consecutive to any punishment  
43 provided by law for the crime committed by, with, or through  
44 the use, assistance, or aid of a dangerous instrument or  
45 deadly weapon. No person convicted under this subsection  
46 shall be eligible for [parole,] probation, conditional  
47 release, or suspended imposition or execution of sentence  
48 [for a period of ten calendar years].

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

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

8 (2) Such person is a fugitive from justice, is  
9 habitually in an intoxicated or drugged condition, or is  
10 currently adjudged mentally incompetent.

11 2. Unlawful possession of a firearm is a class [D] C  
12 felony, unless a person has been convicted of a dangerous  
13 felony as defined in section 556.061 **or the person has a**  
14 **prior conviction for unlawful possession of a firearm**, in  
15 which case it is a class [C] B felony.

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

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