



Missouri Legislative Academy

New Approaches to Incarceration in Missouri

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Introduction

Pressure for revisions in Missouri's sentencing laws has been increasing, fueled by analyses of the severity of those laws,² by the examination of alternatives to sentencing,³ and by the escalating cost of incarceration.⁴ The trends are very clear. Missouri had about 5,700 inmates in prison in 1980 but by 2001, the state held nearly 29,000 prisoners.⁵ In recent years, the rate of growth has been about three new inmates per day, requiring a new 1800 man prison facility every 18 months. The cost of incarcerating one offender is \$12,968 annually.

Senate Bill 5, enacted by the General Assembly and signed by the Governor in 2003 was designed to address these issues.⁶ Senate Bill 5, sponsored by Senator Harold Caskey and handled in the House by Representative Robert Mayer, relaxes the sentencing for first time, non-violent offenders, emphasizing instead rehabilitation, probation, parole and community options. These changes are expected to reduce the rate of growth of Missouri's prison population to near zero. As a result of SB 5, the Department of Corrections estimates a possible savings of over \$9 million per year because it will receive 1,392 fewer prisoners per year.

1. Sarah Morrow was a Staff Attorney for the Missouri State Senate, specializing in criminal law and agriculture, and is Staff Counsel for the Vitae Caring Foundation. She graduated from Iowa State University with a degree in Agricultural Business and from Drake University Law School.

2. For example, see Dr. Leanne Alarid, University of Missouri, Kansas City, "Should we continue to incarcerate non-violent offenders?" Issue Brief 02-01, Missouri Legislative Academy.

3. Dr. Richard Rosenfeld, University of Missouri, St. Louis, "The cost of incarceration in Missouri and the benefits of sentencing alternatives", Issue Brief 02-03, Missouri Legislative Academy.

4. A bill revising sentencing was enacted in 2001 but it was vetoed by Governor Carnahan because of provisions in the bill that were unrelated to sentencing.

5. "The cost of & alternatives to imprisonment in Missouri" presented by Dr. Richard Rosenfeld at the Millennium Student Center, UMSL, March 14, 2003.

6. Senate Bill 5 contains a number of provisions not examined here. The entire bill and a complete summary may be found at www.senate.state.mo.us.

Senate Bill 5 provides additional options for the sentencing of non-violent offenders requiring drug and alcohol treatment, provides new sentencing alternatives to judges, and modifies several sentencing provisions.

Drug/Alcohol Treatment Programs (Long Term)

In the past, chronic, non-violent drug and alcohol offenders could only receive treatment after sentencing to a state institution. Senate Bill 5 allows a judge to sentence such an offender to long-term treatment without long-term incarceration, if space is available and the Department of Corrections approves such sentencing. When such sentencing is under consideration, the Department will assess the nature, intensity and duration of the required treatment based upon the needs of each individual. If the offender is sentenced to a treatment program, the remainder of his or her sentence may be suspended, pending successful completion of the treatment program. The Board of Probation and Parole informs the court 30 days prior to release and the offender will be released unless the court determines that release is not appropriate, based upon the Board's report and other factors, in which case, the court will execute the offender's sentence.

An individual's first incarceration in a long-term treatment program shall not be considered a previous prison commitment because the treatment program is not held against the offender for the purposes of determining a minimum prison commitment for subsequent sentencing.

From FY 99 to FY 02, approximately 3,872 offenders completed long-term alcohol and drug treatment programs. The Department of Corrections estimates that this legislation will lower prison population by enabling the Department to more efficiently manage the alcohol and drug abuse programs, through the tailoring of the length and intensity of the program to the needs of individual offenders. In addition, by excluding the first trip through treatment from the definition of prior prison commitment, the number of people sentenced to prison for nonviolent drug offences should decline.

Probation/Parole

One of the major foundations of SB 5 is the reliance on probation and parole and other alternative sentences, rather than traditional incarceration. The average cost per day to house one inmate is \$35.52. The average cost per day to monitor an individual on probation and parole is \$3.10 per offender per day – nine percent of the cost of incarceration. This act requires the Board of Probation and Parole to present the sentencing judge with a report on available alternatives prior to incarceration if probation is part of the recommended sentence. These sentencing alternatives could include prison work release programs, home-based incarceration, half-way houses and other offender treatment programs.

Senate Bill 5 provides new tools to the courts and the Board of Probation and Parole which are designed to keep less serious offenders out of prison and to reinforce the power of probation and parole without the necessity of a return to prison for some of those who violate the terms of their probation or parole.

Shock Incarceration

When an offender is sentenced, the court may recommend placement in the 120-day program. This “shock treatment” incarcerates an offender for a short period of time in the belief that for many first time offenders, the reality of prison will prevent further commission of crimes. Prior to sentencing, the Department determines the offender’s eligibility for the program, the nature, intensity and duration of the program. Upon successful completion of the program, which may be less than 120 days after incarceration, the offender will be released if recommended by the Department and approved by the court. If the court deems probation is inappropriate, or if the offender is unsuccessful in the shock incarceration program, the court may order the execution of the sentence after conducting a hearing on the matter. An offender's first participation in a 120-day program prior to probationary release is not considered a previous prison commitment for the purposes of calculating the minimum prison term an offender must serve.⁷ The release process of offenders incarcerated in the 120-day shock program remains the same as prior to the passage of SB 5.

48-Hour Detention

Senate Bill 5 also provides a new tool that the Board of Probation and Parole may use when a probation officer believes that an offender has violated the term of probation or parole. As a condition of probation, and in lieu of automatic return to prison, the probation and parole officer has the authority to require the offender to submit to a period of detention up to 48 hours if the offender has violated a condition of probation or parole. The court is not involved in the detention of the offender. This gives significant authority to Probation and Parole officers by allowing officers more discretion when a probationer or parolee has committed a minor violation of the terms of probation or parole.

The act shortens the lengths of certain sentences and revives the Sentencing Commission to ensure that there is a continuing review of sentencing provisions.

Maximum Sentence Length

The maximum length of a sentence for a class D felony has decreased from five years to four years. This is an estimated savings of 119 beds per year. A second change occurs in how the total authorized term of imprisonment of a persistent or dangerous offender is calculated.⁸ The sentencing scheme was adjusted to reflect the normal range of the felony above it, rather than a set term of years. For example, prior to SB 5, a judge could have sentenced a persistent or dangerous offender convicted of a class C felony to a period of incarceration up to 20 years.⁹ The passage of SB 5 changes the enhanced sentencing for a persistent or dangerous class C felony to the range of a regular class B felony, which is five to 15 years. Similarly, the term of a persistent or dangerous offender convicted of a class D felony previously could be enhanced for up to 10 years but now has the range of a regular class C felony, which is two to seven years.

7. The requirements for a minimum prison term for those having committed prior dangerous felonies can be found in Section 558.019, Revised Statutes of Missouri.

8. Terms for persistent and dangerous felony offenders may be found in Section 558.106, Revised Statutes of Missouri while the terms of class A through class D felonies can be found in Section 558.011, Revised Statutes of Missouri (RSMo).

9. The normal sentence for a class C felony is seven years for a person who is not a persistent and dangerous offender. See Section 558.011, Revised Statutes of Missouri.

Sentencing Commission

The language in SB 5 "re-activates" the Sentencing Advisory Commission, which is charged with making recommendations about sentencing and related issues. The commission is charged with studying other state schemes, rehabilitation rates, alternative sentences, and devising a system of recommended sentences. The recommendations shall be published on or before July 1, 2004. The commission will also study the implementation and use of the recommendations until July 1, 2005 and will then submit a final report to the Governor and the Legislature. The Commission revises its findings every two years thereafter. Courts still retain discretion to lower or exceed the sentence recommended by the commission. There is also a provision that allows the court to order several restorative justice methods if the imposition or execution of a sentence is suspended, such as restitution to victims, offender treatment programs, and community service.

Conclusion

For more than fifteen years, Missouri has increased penalties for criminal behavior in response to public concern about crime without considering the effectiveness of alternatives and without regard to the long-term budget implications. With the enactment of SB 5, the General Assembly acknowledged that the state cannot continue to incarcerate a growing number of prisoners if only because the cost of construction of new facilities and the cost of maintaining prisoners in those facilities are imposing significant strains on the state budget. The provisions of SB 5 should ease the overcrowding in Missouri's prisons and allow the courts and the board of Probation and Parole to focus on the rehabilitation of offenders in the most cost-effective manner possible.

Suggested Citation

Morrow, S. (2004). *New approaches to incarceration in Missouri*. Retrieved [Month, Day, Year], from University of Missouri System, Missouri Legislative Academy Web site:
<http://www.truman.missouri.edu/ipp/mla/publications/publications.htm>