

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 407

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SMITH (118), HAMPTON, BLACK, BEARDEN,
WARD (Co-sponsors) AND KELLY (144).

Read 1st time February 6, 2003, and copies ordered printed.

Read 2nd time February 10, 2003, and referred to the Committee on Corrections and State Institutions February 13, 2003.

Reported from the Committee on Corrections and State Institutions March 13, 2003, with recommendation that the bill Do Pass by
Consent.

Perfectured by Consent March 19, 2003.

STEPHEN S. DAVIS, Chief Clerk

1504L.01P

AN ACT

To repeal sections 217.362 and 559.115, RSMo, and to enact in lieu thereof two new sections
relating to offender treatment programs, with penalty provisions.

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

Section A. Sections 217.362 and 559.115, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 217.362 and 559.115, to read as follows:

217.362. 1. The department of corrections shall design and implement an intensive
2 long-term program for the treatment of chronic nonviolent offenders with serious substance
3 abuse addictions who have not pleaded guilty to or been convicted of a dangerous felony as
4 defined in section 556.061, RSMo.

5 2. Prior to sentencing, any judge considering an offender for this program shall notify
6 the department. The potential candidate for the program shall be screened by the department to
7 determine eligibility. The department shall, by regulation, establish eligibility criteria and inform
8 the court of such criteria. The department shall notify the court as to the offender's eligibility and
9 the availability of space in the program. Notwithstanding any other provision of law to the
10 contrary, except as provided for in section 558.019, RSMo, if an offender is eligible and there
11 is adequate space, the court may sentence a person to the program which shall consist of

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

12 institutional drug **or alcohol** treatment for a period of **at least twelve and no more than**
13 twenty-four months, as well as a term of incarceration. **The department shall determine the**
14 **nature, intensity, duration, and completion criteria of the education, treatment and**
15 **aftercare portions of any program services provided.** Execution of the offender's term of
16 incarceration shall be suspended pending completion of said program. Allocation of space in the
17 program may be distributed by the department in proportion to drug arrest patterns in the state.
18 If the court is advised that an offender is not eligible or that there is no space available, the court
19 shall consider other authorized dispositions.

20 3. [Notwithstanding any other provision of the law to the contrary, upon successful
21 completion of the program, the board of probation and parole may advise the sentencing court
22 of the eligibility of the individual for probation. The original sentencing court shall hold a
23 hearing to make a determination as to the fitness of the offender to be placed on probation. The
24 court shall follow the recommendation of the board unless the court makes a determination that
25 such a placement would be an abuse of discretion. If an offender successfully completes the
26 program before the end of the twenty-four-month period, the department may petition the court
27 and request that probation be granted immediately.] **Upon successful completion of the**
28 **program, the board of probation and parole shall advise the sentencing court of an**
29 **offender's probationary release date thirty days prior to release. If the court determines**
30 **that probation is not appropriate the court may order the execution of the offender's**
31 **sentence.**

32 4. If it is determined by the department that the offender has not successfully completed
33 the program, or that the offender is not cooperatively participating in the program, the offender
34 shall be removed from the program and the court shall be advised. Failure of an offender to
35 complete the program shall cause the offender to serve the sentence prescribed by the court and
36 void the right to be considered for probation on this sentence.

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

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

12 3. The court may recommend placement of an offender in a department of
13 corrections one hundred twenty-day program. Upon the recommendation of the court, the
14 department of corrections shall determine the offender's eligibility for the program, the
15 nature, intensity, and duration of any offender's participation in a program and the
16 availability of space for an offender in any program. When the court recommends and
17 receives placement of an offender in a department of corrections one hundred twenty-day
18 program, the offender shall be released on probation if the department of corrections
19 determines that the offender has successfully completed the program. If the department
20 determines that an offender is not successful in a program, then after one hundred days
21 of incarceration the circuit court shall receive from the department of corrections a report
22 on the offender's participation in the program and department recommendations for terms
23 and conditions of an offender's probation. The court shall then release the offender on
24 probation or order the offender to remain in the department to serve the sentence imposed.

25 4. Except when the defendant has been found to be a predatory sexual offender pursuant
26 to section 558.018, RSMo, [the court shall] or unless otherwise prohibited by this section a
27 circuit court only upon its own motion and not that of the state or defendant shall have the
28 power to grant probation to a defendant anytime up to one hundred twenty days after such
29 defendant has been delivered to the department of corrections but not thereafter. A circuit
30 court may request that the defendant be [placed in] evaluated by the sexual offender assessment
31 unit of the department of corrections if the [defendant] offender has [pleaded] pled guilty to or
32 has been found guilty of [sexual abuse when classified as a class B felony] a sexual assault
33 offense as defined in subsection 2 of section 589.015, RSMo. The court may request
34 information and a recommendation from the department concerning the defendant's risk
35 to reoffend sexually and such defendant's behavior during the period of incarceration.
36 Except as provided in this section, the court may place the defendant on probation created
37 pursuant to section 217.777, RSMo, or may place the defendant on probation with any
38 other conditions authorized by law.

39 [4.] 5. Unless the defendant is being granted probation pursuant to successful
40 completion of a one hundred twenty-day program the circuit court shall notify the state in
41 writing when the court intends to grant probation to the defendant pursuant to the provisions of
42 this section. The state may, in writing, request a hearing within ten days of receipt of the court's
43 notification that the court intends to grant probation. Upon the state's request for a hearing, the
44 court shall grant a hearing as soon as reasonably possible. If the state does not respond to the
45 court's notice in writing within ten days, the court may proceed upon its own motion to grant
46 probation.

47 [5.] 6. An offender's incarceration for one hundred twenty days for participation

48 **in a department of corrections program prior to release on probation shall not be**
49 **considered a previous prison commitment for the purpose of determining a minimum**
50 **prison term under the provisions of section 558.019, RSMo.**

51 7. Notwithstanding any other provision of law, probation may not be granted pursuant
52 to this section to defendants who have been convicted of murder in the second degree pursuant
53 to section 565.021, RSMo; forcible rape pursuant to section 566.030, RSMo; forcible sodomy
54 pursuant to section 566.060, RSMo; statutory rape in the first degree pursuant to section 566.032,
55 RSMo; statutory sodomy in the first degree pursuant to section 566.062, RSMo; child
56 molestation in the first degree pursuant to section 566.067, RSMo, when classified as a class B
57 felony; abuse of a child pursuant to section 568.060, RSMo, when classified as a class A felony;
58 a defendant who has been found to be a predatory sexual offender pursuant to section 558.018,
59 RSMo; or any offense in which there exists a statutory prohibition against either probation or
60 parole.