

SECOND REGULAR SESSION

# HOUSE BILL NO. 787

## 92ND GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVES JOLLY (Sponsor), JOHNSON (90), MORRIS,  
WILDBERGER, HARRIS (23), MEINERS AND SAGER (Co-sponsors).

Pre-filed December 1, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2747L.011

---

### AN ACT

To repeal sections 1.160 and 558.019, RSMo, and to enact in lieu thereof two new sections relating to sentencing.

---

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

Section A. Sections 1.160 and 558.019, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 1.160 and 558.019, to read as follows:

2 1.160. No offense committed and no fine, penalty or forfeiture incurred, or prosecution  
2 commenced or pending previous to or at the time when any statutory provision is repealed or  
3 amended, shall be affected by the repeal or amendment, but the trial and punishment of all such  
4 offenses, and the recovery of the fines, penalties or forfeitures shall be had, in all respects, as if  
5 the provision had not been repealed or amended, except[:

6 (1)] that all such proceedings shall be conducted according to existing procedural laws[;  
7 and

8 (2) That if the penalty or punishment for any offense is reduced or lessened by any  
9 alteration of the law creating the offense prior to original sentencing, the penalty or punishment  
10 shall be assessed according to the amendatory law].

558.019. 1. This section shall not be construed to affect the powers of the governor  
2 under article IV, section 7, of the Missouri Constitution. This statute shall not affect those  
3 provisions of section 565.020, RSMo, section 558.018 or section 571.015, RSMo, which set  
4 minimum terms of sentences, or the provisions of section 559.115, RSMo, relating to probation.

5 2. The provisions of subsections 2 to 5 of this section shall be applicable to all classes  
6 of felonies except those set forth in chapter 195, RSMo, and those otherwise excluded in

**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.**

7 subsection 1 of this section. For the purposes of this section, "prison commitment" means and  
8 is the receipt by the department of corrections of an offender after sentencing. For purposes of  
9 this section, prior prison commitments to the department of corrections shall not include  
10 commitment to a regimented discipline program established pursuant to section 217.378, RSMo.  
11 Other provisions of the law to the contrary notwithstanding, any offender who has pleaded guilty  
12 to or has been found guilty of a felony other than a dangerous felony as defined in section  
13 556.061, RSMo, and is committed to the department of corrections shall be required to serve the  
14 following minimum prison terms:

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

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

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

28 3. Other provisions of the law to the contrary notwithstanding, any offender who has  
29 pleaded guilty to or has been found guilty of a dangerous felony as defined in section 556.061,  
30 RSMo, and is committed to the department of corrections shall be required to serve a minimum  
31 prison term of eighty-five percent of the sentence imposed by the court or until the offender  
32 attains seventy years of age, and has served at least forty percent of the sentence imposed,  
33 whichever occurs first.

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

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

37 (2) Any sentence either alone or in the aggregate with other consecutive sentences for  
38 crimes committed at or near the same time which is over seventy-five years shall be calculated  
39 to be seventy-five years.

40 5. For purposes of this section, the term "minimum prison term" shall mean time  
41 required to be served by the offender before he or she is eligible for parole, conditional release  
42 or other early release by the department of corrections. [Except that the board of probation and

43 parole, in the case of consecutive sentences imposed at the same time pursuant to a course of  
44 conduct constituting a common scheme or plan, shall be authorized to convert consecutive  
45 sentences to concurrent sentences, when the board finds, after hearing with notice to the  
46 prosecuting or circuit attorney, that the sum of the terms results in an unreasonably excessive  
47 total term, taking into consideration all factors related to the crime or crimes committed and the  
48 sentences received by others similarly situated.]

49         6. (1) A sentencing advisory commission is hereby created to consist of eleven  
50 members. One member shall be appointed by the speaker of the house. One member shall be  
51 appointed by the president pro tem of the senate. One member shall be the director of the  
52 department of corrections. Six members shall be appointed by and serve at the pleasure of the  
53 governor from among the following: the public defender commission; private citizens; a private  
54 member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members  
55 shall be appointed by the supreme court, one from a metropolitan area and one from a rural area.  
56 All members shall be appointed to a four-year term. All members of the sentencing commission  
57 appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory  
58 commission at the pleasure of the governor.

59         (2) The commission shall study sentencing practices in the circuit courts throughout the  
60 state for the purpose of determining whether and to what extent disparities exist among the  
61 various circuit courts with respect to the length of sentences imposed and the use of probation  
62 for offenders convicted of the same or similar crimes and with similar criminal histories. The  
63 commission shall also study and examine whether and to what extent sentencing disparity among  
64 economic and social classes exists in relation to the sentence of death and if so, the reasons  
65 therefor sentences are comparable to other states, if the length of the sentence is appropriate, and  
66 the rate of rehabilitation based on sentence. It shall compile statistics, examine cases, draw  
67 conclusions, and perform other duties relevant to the research and investigation of disparities in  
68 death penalty sentencing among economic and social classes.

69         (3) The commission shall establish a system of recommended sentences, within the  
70 statutory minimum and maximum sentences provided by law for each felony committed under  
71 the laws of this state. This system of recommended sentences shall be distributed to all  
72 sentencing courts within the state of Missouri. The recommended sentence for each crime shall  
73 take into account, but not be limited to, the following factors:

74             (a) The nature and severity of each offense;

75             (b) The record of prior offenses by the offender;

76             (c) The data gathered by the commission showing the duration and nature of sentences  
77 imposed for each crime; and

78             (d) The resources of the department of corrections and other authorities to carry out the

79 punishments that are imposed.

80 (4) The commission shall study alternative sentences, prison work programs, work  
81 release, home-based incarceration, probation and parole options, and any other programs and  
82 report the feasibility of these options in Missouri.

83 (5) The commission shall publish and distribute its recommendations on or before July  
84 1, 2004. The commission shall study the implementation and use of the recommendations until  
85 July 1, 2005, and return a report to the governor, the speaker of the house of representatives, and  
86 the president pro tem of the senate. Following the July 1, 2005, report, the commission shall  
87 revise the recommended sentences every two years.

88 (6) The governor shall select a chairperson who shall call meetings of the commission  
89 as required or permitted pursuant to the purpose of the sentencing commission.

90 (7) The members of the commission shall not receive compensation for their duties on  
91 the commission, but shall be reimbursed for actual and necessary expenses incurred in the  
92 performance of these duties and for which they are not reimbursed by reason of their other paid  
93 positions.

94 (8) The circuit and associate circuit courts of this state, the office of the state courts  
95 administrator, the department of public safety, and the department of corrections shall cooperate  
96 with the commission by providing information or access to information needed by the  
97 commission. The office of the state courts administrator will provide needed staffing resources.

98 7. Courts shall retain discretion to lower or exceed the sentence recommended by the  
99 commission as otherwise allowable by law, and to order restorative justice methods, when  
100 applicable.

101 8. If the imposition or execution of a sentence is suspended, the court may order any or  
102 all of the following restorative justice methods, or any other method that the court finds just or  
103 appropriate:

104 (1) Restitution to any victim for costs incurred as a result of the offender's actions;

105 (2) Offender treatment programs;

106 (3) Mandatory community service;

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

108 (5) Community-based residential and nonresidential programs.

109 9. The provisions of this section shall apply only to offenses occurring on or after August  
110 28, 2003.