

FIRST REGULAR SESSION

# HOUSE BILL NO. 358

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES LIPKE (Sponsor) AND WILSON (119) (Co-sponsor).

Read 1<sup>st</sup> time January 26, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0160L.011

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### AN ACT

To repeal section 557.036, RSMo, and to enact in lieu thereof one new section relating to the role of the court and jury in sentencing.

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

Section A. Section 557.036, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 557.036, to read as follows:

557.036. 1. **Subject to the limitation provided in subsection 3 of this section**, upon a finding of guilt upon verdict or plea, the court shall decide the extent or duration of sentence or other disposition to be imposed under all the circumstances, having regard to the nature and circumstances of the offense and the history and character of the defendant and render judgment accordingly.

2. [Where an offense is submitted to the jury, the trial shall proceed in two stages. At the first stage, the jury shall decide only whether the defendant is guilty or not guilty of any submitted offense. The issue of punishment shall not be submitted to the jury at the first stage.

3. If the jury at the first stage of a trial finds the defendant guilty of the submitted offense, the second stage of the trial shall proceed. The issue at the second stage of the trial shall be the punishment to be assessed and declared. Evidence supporting or mitigating punishment may be presented. Such evidence may include, within the discretion of the court, evidence concerning the impact of the crime upon the victim, the victim's family and others, the nature and circumstances of the offense, and the history and character of the defendant. Rebuttal and surrebuttal evidence may be presented. The state shall be the first to proceed. The court shall instruct the jury as to the range of punishment authorized by statute for each submitted offense.

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

17 The attorneys may argue the issue of punishment to the jury, and the state shall have the right to  
18 open and close the argument. The jury shall assess and declare the punishment as authorized by  
19 statute.

20 4. A second stage of the trial shall not proceed and the court, and not the jury, shall  
21 assess punishment if:] **The court shall instruct the jury as to the range of punishment**  
22 **authorized by statute and upon a finding of guilt to assess and declare the punishment as**  
23 **a part of their verdict, unless:**

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

26 (2) The state pleads and proves the defendant is a prior offender, persistent offender,  
27 dangerous offender, or persistent misdemeanor offender as defined in section 558.016, RSMo,  
28 a persistent sexual offender as defined in section 558.018, RSMo, or a predatory sexual offender  
29 as defined in section 558.018, RSMo.

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31 If the jury **finds the defendant guilty but** cannot agree on the punishment to be assessed, the  
32 court shall proceed as provided in subsection 1 of this section. **If there is a trial by jury and**  
33 **the jury is to assess punishment and if**, after due deliberation by the jury, the court finds the  
34 jury cannot agree on punishment, then the court may instruct the jury that if it cannot agree on  
35 punishment that **it may return its verdict without assessing punishment and** the court will  
36 assess punishment.

37 [5.] **3.** If the jury returns a verdict of guilty [in the first stage] and declares a term of  
38 imprisonment [in the second stage] **as provided in subsection 2 of this section**, the court shall  
39 proceed as provided in subsection 1 of this section except that any term of imprisonment  
40 imposed cannot exceed the term declared by the jury unless the term declared by the jury is less  
41 than the authorized lowest term for the offense, in which event the court cannot impose a term  
42 of imprisonment greater than the lowest term provided for the offense.

43 [6.] **4.** If the defendant is found to be a prior offender, persistent offender, dangerous  
44 offender or persistent misdemeanor offender as defined in section 558.016, RSMo:

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

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

49 [7.] **5.** The court shall not seek an advisory verdict from the jury in cases of prior  
50 offenders, persistent offenders, dangerous offenders, persistent sexual offenders or predatory  
51 sexual offenders; if an advisory verdict is rendered, the court shall not deem it advisory, but shall  
52 consider it as mere surplusage.