

FIRST REGULAR SESSION

HOUSE BILL NO. 189

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JOLLY (Sponsor), JOHNSON (90),
DARROUGH AND DUSENBERG (Co-sponsors).

Read 1st time January 10, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0369L.01I

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Section A. Sections 1.160 and 558.019, RSMo, are repealed and two new sections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:

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2 commenced or pending previous to or at the time when any statutory provision is repealed or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5 the provision had not been repealed or amended, except[: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.

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to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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
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

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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

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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:

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- 104 (1) Restitution to any victim or a statutorily created fund for costs incurred as a result
105 of the offender's actions;
- 106 (2) Offender treatment programs;
- 107 (3) Mandatory community service;
- 108 (4) Work release programs in local facilities; and
- 109 (5) Community-based residential and nonresidential programs.
- 110 9. The provisions of this section shall apply only to offenses occurring on or after August
111 28, 2003.
- 112 10. Pursuant to subdivision (1) of subsection 8 of this section, the court may order the
113 assessment and payment of a designated amount of restitution to a county law enforcement
114 restitution fund established by the county commission pursuant to section 50.565, RSMo. Such
115 contribution shall not exceed three hundred dollars for any charged offense. Any restitution
116 moneys deposited into the county law enforcement restitution fund pursuant to this section shall
117 only be expended pursuant to the provisions of section 50.565, RSMo.
- 118 11. A judge may order payment to a restitution fund only if such fund had been created
119 by ordinance or resolution of a county of the state of Missouri prior to sentencing. A judge shall
120 not have any direct supervisory authority or administrative control over any fund to which the
121 judge is ordering a defendant to make payment.
- 122 12. A defendant who fails to make a payment to a county law enforcement restitution
123 fund may not have his or her probation revoked solely for failing to make such payment unless
124 the judge, after evidentiary hearing, makes a finding supported by a preponderance of the
125 evidence that the defendant either willfully refused to make the payment or that the defendant
126 willfully, intentionally, and purposefully failed to make sufficient bona fide efforts to acquire the
127 resources to pay.

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