

SECOND REGULAR SESSION

SENATE BILL NO. 699

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS GOODMAN, JUSTUS AND PARSON.

Read 1st time January 24, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5321S.041

AN ACT

To repeal sections 221.105, 559.016, 559.036, and 559.100, RSMo, and to enact in lieu thereof seven new sections relating to criminal offenders under the supervision of the department of corrections, with penalty provisions.

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

Section A. Sections 221.105, 559.016, 559.036, and 559.100, RSMo, are
2 repealed and seven new sections enacted in lieu thereof, to be known as sections
3 217.147, 217.703, 217.718, 221.105, 559.016, 559.036, and 559.100, to read as
4 follows:

217.147. 1. There is hereby created the "Sentencing and
2 Corrections Oversight Commission". The commission shall be composed
3 of thirteen members as follows:

4 (1) A circuit court judge to be appointed by the chief justice of
5 the Missouri supreme court;

6 (2) Three members to be appointed by the governor with the
7 advice and consent of the senate, one of whom shall be a victim's
8 advocate, one of whom shall be a representative from the Missouri
9 Sheriffs' Association, and one of whom shall be a representative of the
10 Missouri Association of Counties;

11 (3) The following shall be ex officio, voting members:

12 (a) The chair of the senate judiciary committee, or any successor
13 committee that reviews legislation involving crime and criminal
14 procedure, who shall serve as co-chair of the commission and the
15 ranking minority member of such senate committee;

16 (b) The chair of the appropriations-public safety and corrections

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 committee of the house of representatives, or any successor committee
18 that reviews similar legislation, who shall serve as co-chair and the
19 ranking minority member of such house committee;

20 (c) The director of the Missouri state public defender system, or
21 his or her designee who is a practicing public defender;

22 (d) The executive director of the Missouri office of prosecution
23 services, or his or her designee who is a practicing prosecutor;

24 (e) The director of the department of corrections;

25 (f) The chairman of the board of probation and parole;

26 (g) The chief justice of the Missouri supreme court, or his or her
27 designee.

28 2. Beginning with the appointments made after August 28, 2012,
29 the circuit court judge member shall be appointed for four years, two
30 of the members appointed by the governor shall be appointed for three
31 years, and one member appointed by the governor shall be appointed
32 for two years. Thereafter, the members shall be appointed to serve
33 four-year terms and shall serve until a successor is appointed. A
34 vacancy in the office of a member shall be filled by appointment for the
35 remainder of the unexpired term.

36 3. The co-chairs are responsible for establishing and enforcing
37 attendance and voting rules, bylaws, and the frequency, location, and
38 time of meetings, and distributing meeting notices, except that the
39 commission's first meeting shall occur by February 28, 2013, and the
40 commission shall meet at least twice each calendar year.

41 4. The duties of the commission shall include:

42 (1) Monitoring and assisting the implementation of sections
43 217.703, 217.718, and subsection 4 of section 559.036, and evaluating
44 recidivism reductions, cost savings, and other effects resulting from the
45 implementation;

46 (2) Determining ways to reinvest any cost savings to pay for the
47 continued implementation of the sections listed in subdivision (1) of
48 this subsection and other evidence-based practices for reducing
49 recidivism; and

50 (3) Examining the issue of restitution for crime victims,
51 including the amount ordered and collected annually, methods and
52 costs of collection, and restitution's order of priority in official
53 procedures and documents.

54 **5. The department, board, and office of state court administrator**
55 **shall collect and report any data requested by the commission in a**
56 **timely fashion.**

57 **6. The commission shall issue a report to the speaker of the**
58 **house of representatives, senate president pro tempore, chief justice of**
59 **the Missouri supreme court, and governor on December 31, 2013, and**
60 **annually thereafter, detailing the effects of the sections listed in**
61 **subdivision (1) of subsection 4 and providing the data and analysis**
62 **demonstrating those effects. The report may also recommend ways to**
63 **reinvest any cost savings into evidence-based practices to reduce**
64 **recidivism and possible changes to sentencing and corrections policies**
65 **and statutes.**

66 **7. The department of corrections shall provide administrative**
67 **support to the commission to carry out the duties of this section.**

68 **8. No member shall receive any compensation for the**
69 **performance of official duties, but the members shall be reimbursed for**
70 **travel and other expenses actually and necessarily incurred in the**
71 **performance of their duties.**

217.703. 1. Except for offenders subject to lifetime supervision
2 **under sections 217.735 and 559.106, the division of probation and parole**
3 **shall award earned compliance credits to any offender who is:**

4 **(1) Placed on probation or parole after August 28, 2012, for a**
5 **class C or D felony or an offense listed in chapter 195, and who is a**
6 **nonviolent offender as the term "nonviolent offender" is defined under**
7 **section 217.010;**

8 **(2) Supervised by the board; and**

9 **(3) In compliance with the conditions of release imposed by the**
10 **sentencing court or board.**

11 **2. Earned compliance credits shall reduce the term of probation**
12 **or parole by one day for each day of compliance with the terms of**
13 **release. Credits shall begin to accrue the first day of the term of**
14 **probation or parole.**

15 **3. For the purposes of this section, the term "compliance" shall**
16 **mean the absence of a violation report submitted by a probation or**
17 **parole officer, or a motion to revoke filed by a prosecuting or circuit**
18 **attorney, against the offender.**

19 **4. Credits shall not accrue during any calendar month in which**

20 a violation report has been submitted or a motion to revoke has been
21 filed, and shall be suspended pending the outcome of a revocation
22 hearing, if a hearing is held. If no hearing is held or the court or board
23 finds that the violation did not occur, then the offender shall be
24 deemed to be in compliance and shall begin earning credits on the first
25 day of the next calendar month following the month in which the report
26 was submitted or the motion was filed. All earned credits shall be
27 rescinded if the court or board revokes the probation or parole or the
28 court places the offender in a department program pursuant to
29 subsection 4 of section 559.036.

30 5. Offenders who are deemed by the division to be absconders
31 shall not earn credits. For purposes of this subsection, "absconder"
32 shall mean an offender under supervision who, lacking good cause, has
33 left such offender's place of residency without the permission of the
34 offender's supervising officer for the purpose of avoiding supervision.
35 An offender shall no longer be deemed an absconder when such
36 offender is available for active supervision.

37 6. Notwithstanding subsection 2 of section 217.730 to the
38 contrary, once the combination of time served in custody, if applicable,
39 time served on probation or parole, and earned compliance credits
40 satisfy the total term of probation or parole, the board or sentencing
41 court shall order final discharge of the offender, so long as the offender
42 has completed at least two years of his or her sentence in custody or on
43 probation or parole.

44 7. The award or rescission of any credits earned under this
45 section shall not be subject to appeal.

46 8. Each calendar month, the division shall calculate the number
47 of months the offender has remaining on his or her probation or parole
48 term, taking into consideration any earned compliance credits, and
49 notify the offender of the length of the remaining term.

217.718. 1. As an alternative to the revocation proceedings
2 provided under sections 217.720, 217.722, and 559.036 and if the court
3 has not otherwise required detention to be a condition of probation
4 under section 559.026, a probation or parole officer may order an
5 offender to submit to a period of detention in the county jail, or other
6 appropriate institution, upon a determination by a probation or parole
7 officer that the offender has violated a condition of continued

8 **probation or parole.**

9 **2. The period of detention may not exceed forty-eight hours the**
10 **first time it is imposed against an offender during a term of probation**
11 **or parole. Subsequent periods may exceed forty-eight hours, but the**
12 **total number of hours an offender spends in detention under this**
13 **section shall not exceed three hundred and sixty in any calendar year.**

14 **3. The officer shall present the offender with a written report**
15 **detailing in what manner the offender has violated the conditions of**
16 **parole or probation and advise the offender of the right to a hearing**
17 **before the court or board prior to the period of detention. The division**
18 **shall file a copy of the violation report with the sentencing court or**
19 **board within twenty-four hours of the imposition of the period of**
20 **detention.**

21 **4. The probation or parole officer shall, to the extent feasible,**
22 **impose the period of detention during days and times when the**
23 **offender is not otherwise scheduled to work.**

24 **5. Any offender detained under this section in a county of the**
25 **first class or second class or in any city with a population of five**
26 **hundred thousand or more and detained as herein provided shall be**
27 **subject to all the provisions of section 221.170, even though the**
28 **offender was not convicted and sentenced to a jail or workhouse.**

29 **6. If probation or parole is revoked and a term of imprisonment**
30 **is served by reason thereof, the time spent in a jail, half-way house,**
31 **honor center, workhouse, or other institution as a detention condition**
32 **of probation shall be credited against the prison or jail term served for**
33 **the offense in connection with which the detention was imposed.**

34 **7. The division shall reimburse the county jail or other**
35 **institution for the costs of detention under this section at a rate of no**
36 **less than thirty dollars per day per offender, subject to appropriation**
37 **of funds by the General Assembly. A jail or other institution may refuse**
38 **to detain an offender under this section if funds are not available to**
39 **provide reimbursement or if there is inadequate space in the facility**
40 **for the offender.**

41 **8. Upon successful completion of the period of detention under**
42 **this section, the court or board may not revoke the term of probation**
43 **or parole or impose additional periods of detention for the same**
44 **incident. If the offender fails to complete the period of detention, the**

45 offender may be arrested pursuant to sections 217.720 and 217.722.

221.105. 1. The governing body of any county and of any city not within
2 a county shall fix the amount to be expended for the cost of incarceration of
3 prisoners confined in jails or medium security institutions. The per diem cost of
4 incarceration of these prisoners chargeable by the law to the state shall be
5 determined, subject to the review and approval of the department of corrections.

6 2. When the final determination of any criminal prosecution shall be such
7 as to render the state liable for costs under existing laws, it shall be the duty of
8 the sheriff to certify to the clerk of the circuit court or court of common pleas in
9 which the case was determined the total number of days any prisoner who was
10 a party in such case remained in the county jail. It shall be the duty of the
11 county commission to supply the cost per diem for county prisons to the clerk of
12 the circuit court on the first day of each year, and thereafter whenever the
13 amount may be changed. It shall then be the duty of the clerk of the court in
14 which the case was determined to include in the bill of cost against the state all
15 fees which are properly chargeable to the state. In any city not within a county
16 it shall be the duty of the superintendent of any facility boarding prisoners to
17 certify to the chief executive officer of such city not within a county the total
18 number of days any prisoner who was a party in such case remained in such
19 facility. It shall be the duty of the superintendents of such facilities to supply the
20 cost per diem to the chief executive officer on the first day of each year, and
21 thereafter whenever the amount may be changed. It shall be the duty of the chief
22 executive officer to bill the state all fees for boarding such prisoners which are
23 properly chargeable to the state. The chief executive may by notification to the
24 department of corrections delegate such responsibility to another duly sworn
25 official of such city not within a county. The clerk of the court of any city not
26 within a county shall not include such fees in the bill of costs chargeable to the
27 state. The department of corrections shall revise its criminal cost manual in
28 accordance with this provision.

29 3. **Except as provided under subsection 7 of section 217.718**, the
30 actual costs chargeable to the state, including those incurred for a prisoner who
31 is incarcerated in the county jail because the prisoner's parole or probation has
32 been revoked or because the prisoner has, or allegedly has, violated any condition
33 of the prisoner's parole or probation, and such parole or probation is a
34 consequence of a violation of a state statute, or the prisoner is a fugitive from the
35 Missouri department of corrections or otherwise held at the request of the

36 Missouri department of corrections regardless of whether or not a warrant has
37 been issued shall be the actual cost of incarceration not to exceed:

- 38 (1) Until July 1, 1996, seventeen dollars per day per prisoner;
39 (2) On and after July 1, 1996, twenty dollars per day per prisoner;
40 (3) On and after July 1, 1997, up to thirty-seven dollars and fifty cents per
41 day per prisoner, subject to appropriations, but not less than the amount
42 appropriated in the previous fiscal year.

559.016. 1. Unless terminated as provided in section 559.036 or
2 **modified under section 217.703**, the terms during which each probation shall
3 remain conditional and be subject to revocation are:

- 4 (1) A term of years not less than one year and not to exceed five years for
5 a felony;
6 (2) A term not less than six months and not to exceed two years for a
7 misdemeanor;
8 (3) A term not less than six months and not to exceed one year for an
9 infraction.

10 2. The court shall designate a specific term of probation at the time of
11 sentencing or at the time of suspension of imposition of sentence. **Such term**
12 **may be modified by the division of probation and parole pursuant to**
13 **section 217.703.**

14 3. The court may extend a period of probation, however, no more than one
15 extension of any probation may be ordered except that the court may extend the
16 total time on probation by one additional year by order of the court if the
17 defendant admits he or she has violated the conditions of his or her probation or
18 is found by the court to have violated the conditions of his or her probation. Total
19 time on any probation term, including any extension, shall not exceed the
20 maximum term as established in subsection 1 of this section plus one additional
21 year if the defendant admits or the court finds that the defendant has violated
22 the conditions of his or her probation.

559.036. 1. A term of probation commences on the day it is imposed.
2 Multiple terms of Missouri probation, whether imposed at the same time or at
3 different times, shall run concurrently. Terms of probation shall also run
4 concurrently with any federal or other state jail, prison, probation or parole term
5 for another offense to which the defendant is or becomes subject during the
6 period, unless otherwise specified by the Missouri court.

7 2. The court may terminate a period of probation and discharge the

8 defendant at any time before completion of the specific term fixed under section
9 559.016 if warranted by the conduct of the defendant and the ends of justice. The
10 court may extend the term of the probation, but no more than one extension of
11 any probation may be ordered except that the court may extend the term of
12 probation by one additional year by order of the court if the defendant admits he
13 or she has violated the conditions of probation or is found by the court to have
14 violated the conditions of his or her probation. Total time on any probation term,
15 including any extension shall not exceed the maximum term established in
16 section 559.016. Procedures for termination, discharge and extension may be
17 established by rule of court.

18 3. If the defendant violates a condition of probation at any time prior to
19 the expiration or termination of the probation term, the court may continue him
20 on the existing conditions, with or without modifying or enlarging the conditions
21 or extending the term[, or, if such].

22 4. **(1) If a continuation, modification, enlargement or extension is not**
23 **appropriate[,] under subsection 3 of this section, the court shall place the**
24 **defendant in one of the following programs:**

25 (a) **A one hundred twenty-day program, as described by section**
26 **559.115; or**

27 (b) **The postconviction drug treatment program established**
28 **under section 217.785.**

29 (2) **The court shall place the defendant in one of the programs**
30 **listed under subdivision (1) of this subsection if:**

31 (a) **The underlying offense for the probation is a class C or D**
32 **felony or an offense listed in chapter 195 and the defendant is a**
33 **nonviolent offender as the term "nonviolent offender" is defined under**
34 **section 217.010;**

35 (b) **The probation violation is not the result of the defendant**
36 **being an absconder or being found guilty of, pleading guilty to, or being**
37 **arrested on suspicion of any felony, misdemeanor, or infraction. For**
38 **purposes of this subsection, "absconder" shall mean an offender under**
39 **supervision who, lacking good cause, has left such offender's place of**
40 **residency without the permission of the offender's supervising officer**
41 **for the purpose of avoiding supervision;**

42 (c) **The defendant has not violated any conditions of probation**
43 **involving the possession or use of weapons, or a stay-away condition**

44 **prohibiting the defendant from contacting a certain individual; and**

45 **(d) The defendant has not already been placed in one of the**
46 **programs by the court for the same underlying offense or during the**
47 **same probation term.**

48 **(3) Once the defendant has completed the program pursuant to**
49 **this subsection, the court shall release the defendant to continue to**
50 **serve the term of probation, which shall not be modified, enlarged, or**
51 **extended based on the same incident of violation. Time served in the**
52 **program shall be credited as time served on any sentence imposed for**
53 **the underlying offense.**

54 **5. If the defendant is not eligible under subsection 4 of this**
55 **section for placement in a program and a continuation, modification,**
56 **enlargement, or extension of the term under subsection 2 of this section**
57 **is not appropriate, the court** may revoke probation and order that any
58 sentence previously imposed be executed. If imposition of sentence was
59 suspended, the court may revoke probation and impose any sentence available
60 under section 557.011. The court may mitigate any sentence of imprisonment by
61 reducing the prison or jail term by all or part of the time the defendant was on
62 probation. The court may, upon revocation of probation, place an offender on a
63 second term of probation. Such probation shall be for a term of probation as
64 provided by section 559.016, notwithstanding any amount of time served by the
65 offender on the first term of probation.

66 **[4.] 6.** Probation shall not be revoked without giving the probationer
67 notice and an opportunity to be heard on the issues of whether he violated a
68 condition of probation and, if he did, whether revocation is warranted under all
69 the circumstances.

70 **[5.] 7.** The prosecuting or circuit attorney may file a motion to revoke
71 probation or at any time during the term of probation, the court may issue a
72 notice to the probationer to appear to answer a charge of a violation, and the
73 court may issue a warrant of arrest for the violation. Such notice shall be
74 personally served upon the probationer. The warrant shall authorize the return
75 of the probationer to the custody of the court or to any suitable detention facility
76 designated by the court. Upon the filing of the prosecutor's or circuit attorney's
77 motion or on the court's own motion, the court may immediately enter an order
78 suspending the period of probation and may order a warrant for the defendant's
79 arrest. The probation shall remain suspended until the court rules on the

80 prosecutor's or circuit attorney's motion, or until the court otherwise orders the
81 probation reinstated.

82 [6.] 8. The power of the court to revoke probation shall extend for the
83 duration of the term of probation designated by the court and for any further
84 period which is reasonably necessary for the adjudication of matters arising
85 before its expiration, provided that some affirmative manifestation of an intent
86 to conduct a revocation hearing occurs prior to the expiration of the period and
87 that every reasonable effort is made to notify the probationer and to conduct the
88 hearing prior to the expiration of the period.

559.100. 1. The circuit courts of this state shall have power, herein
2 provided, to place on probation or to parole persons convicted of any offense over
3 which they have jurisdiction, except as otherwise provided in sections 195.275 to
4 195.296, section 558.018, section 559.115, section 565.020, sections 566.030,
5 566.060, 566.067, 566.151, and 566.213, section 571.015, and subsection 3 of
6 section 589.425.

7 2. The circuit court shall have the power to revoke the probation or parole
8 previously granted **pursuant to section 559.036** and commit the person to the
9 department of corrections. The circuit court shall determine any conditions of
10 probation or parole for the defendant that it deems necessary to ensure the
11 successful completion of the probation or parole term, including the extension of
12 any term of supervision for any person while on probation or parole. The circuit
13 court may require that the defendant pay restitution for his crime. The probation
14 or parole may be revoked **pursuant to section 559.036** for failure to pay
15 restitution or for failure to conform his behavior to the conditions imposed by the
16 circuit court. The circuit court may, in its discretion, credit any period of
17 probation or parole as time served on a sentence.

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