

# SENATE BILL NO. 1130

## 101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASHINGTON.

5281S.01H

ADRIANE D. CROUSE, Secretary

### AN ACT

To repeal sections 217.703 and 559.036, RSMo, and to enact in lieu thereof one new section relating to earned discharge from probation, with existing penalty provisions.

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

Section A. Sections 217.703 and 559.036, RSMo, are  
2 repealed and one new section enacted in lieu thereof, to be  
3 known as section 559.036, to read as follows:

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

9 2. The court may terminate a period of probation and  
10 discharge the defendant at any time before completion of the  
11 specific term fixed under section 559.016 if warranted by  
12 the conduct of the defendant and the ends of justice. The  
13 court may extend the term of the probation, but no more than  
14 one extension of any probation may be ordered except that  
15 the court may extend the term of probation by one additional  
16 year by order of the court if the defendant admits he or she  
17 has violated the conditions of probation or is found by the  
18 court to have violated the conditions of his or her

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

19 probation. Total time on any probation term, including any  
20 extension shall not exceed the maximum term established in  
21 section 559.016. Procedures for termination, discharge and  
22 extension may be established by rule of court.

23 (1) The division of probation and parole shall file a  
24 notification of earned discharge from probation with the  
25 court for any defendant who has completed at least twenty-  
26 four months of the probation term and is compliant with the  
27 terms of supervision as ordered by the court and division.  
28 The division shall not file a notification of earned  
29 discharge for any defendant who has not paid ordered  
30 restitution in full, is on a term of probation for any class  
31 A or class B felony, or is subject to lifetime supervision  
32 under sections 217.735 and 559.106. The division shall  
33 notify the prosecuting or circuit attorney when a  
34 notification of earned discharge is filed.

35 (2) The prosecuting or circuit attorney may request a  
36 hearing within thirty days of the filing of the notification  
37 of earned discharge from probation. If the state opposes  
38 the discharge of the defendant, the prosecuting or circuit  
39 attorney shall argue the earned discharge is not appropriate  
40 and the defendant should continue to serve the probation  
41 term.

42 (3) If a hearing is requested, the court shall hold  
43 the hearing and issue its order no later than sixty days  
44 after the filing of the notification of earned discharge  
45 from probation. If, after a hearing, the court finds by a  
46 preponderance of the evidence that the earned discharge is  
47 not appropriate, the court shall order the probation term to  
48 continue, may modify the conditions of probation as  
49 appropriate, and may order the continued supervision of the  
50 defendant by either the division of probation and parole or

51 the court. If, after a hearing, the court finds that the  
52 earned discharge is appropriate, the court shall order the  
53 defendant discharged from probation.

54 (4) If the prosecuting or circuit attorney does not  
55 request a hearing, the court shall order the defendant  
56 discharged from probation within sixty days of the filing of  
57 the notification of earned discharge from probation but no  
58 earlier than thirty days from the filing of notification of  
59 earned discharge from probation.

60 3. If the defendant violates a condition of probation  
61 at any time prior to the expiration or termination of the  
62 probation term, the court may continue him or her on the  
63 existing conditions, with or without modifying or enlarging  
64 the conditions or extending the term.

65 4. (1) Unless the defendant consents to the  
66 revocation of probation, if a continuation, modification,  
67 enlargement or extension is not appropriate under this  
68 section, the court shall order placement of the offender in  
69 one of the department of corrections' one hundred twenty-day  
70 programs so long as:

71 (a) The underlying offense for the probation is a  
72 class D or E felony or an offense listed in chapter 579 or  
73 an offense previously listed in chapter 195; except that,  
74 the court may, upon its own motion or a motion of the  
75 prosecuting or circuit attorney, make a finding that an  
76 offender is not eligible if the underlying offense is  
77 involuntary manslaughter in the second degree, stalking in  
78 the first degree, assault in the second degree, sexual  
79 assault, rape in the second degree, domestic assault in the  
80 second degree, assault in the third degree when the victim  
81 is a special victim, statutory rape in the second degree,  
82 statutory sodomy in the second degree, deviate sexual

83 assault, sodomy in the second degree, sexual misconduct  
84 involving a child, incest, endangering the welfare of a  
85 child in the first degree under subdivision (1) or (2) of  
86 subsection 1 of section 568.045, abuse of a child, invasion  
87 of privacy, any case in which the defendant is found guilty  
88 of a felony offense under chapter 571, or an offense of  
89 aggravated stalking or assault of a law enforcement officer  
90 in the second degree as such offenses existed prior to  
91 January 1, 2017;

92 (b) The probation violation is not the result of the  
93 defendant being an absconder or being found guilty of,  
94 pleading guilty to, or being arrested on suspicion of any  
95 felony, misdemeanor, or infraction. For purposes of this  
96 subsection, "absconder" shall mean an offender under  
97 supervision who has left such offender's place of residency  
98 without the permission of the offender's supervising officer  
99 for the purpose of avoiding supervision;

100 (c) The defendant has not violated any conditions of  
101 probation involving the possession or use of weapons, or a  
102 stay-away condition prohibiting the defendant from  
103 contacting a certain individual; and

104 (d) The defendant has not already been placed in one  
105 of the programs by the court for the same underlying offense  
106 or during the same probation term.

107 (2) Upon receiving the order, the department of  
108 corrections shall conduct an assessment of the offender and  
109 place such offender in the appropriate one hundred twenty-  
110 day program under subsection 3 of section 559.115.

111 (3) Notwithstanding any of the provisions of  
112 subsection 3 of section 559.115 to the contrary, once the  
113 defendant has successfully completed the program under this  
114 subsection, the court shall release the defendant to

115 continue to serve the term of probation, which shall not be  
116 modified, enlarged, or extended based on the same incident  
117 of violation. Time served in the program shall be credited  
118 as time served on any sentence imposed for the underlying  
119 offense.

120         5. If the defendant consents to the revocation of  
121 probation or if the defendant is not eligible under  
122 subsection 4 of this section for placement in a program and  
123 a continuation, modification, enlargement, or extension of  
124 the term under this section is not appropriate, the court  
125 may revoke probation and order that any sentence previously  
126 imposed be executed. If imposition of sentence was  
127 suspended, the court may revoke probation and impose any  
128 sentence available under section 557.011. The court may  
129 mitigate any sentence of imprisonment by reducing the prison  
130 or jail term by all or part of the time the defendant was on  
131 probation. The court may, upon revocation of probation,  
132 place an offender on a second term of probation. Such  
133 probation shall be for a term of probation as provided by  
134 section 559.016, notwithstanding any amount of time served  
135 by the offender on the first term of probation.

136         6. Probation shall not be revoked without giving the  
137 probationer notice and an opportunity to be heard on the  
138 issues of whether such probationer violated a condition of  
139 probation and, if a condition was violated, whether  
140 revocation is warranted under all the circumstances. Not  
141 less than five business days prior to the date set for a  
142 hearing on the violation, except for a good cause shown, the  
143 judge shall inform the probationer that he or she may have  
144 the right to request the appointment of counsel if the  
145 probationer is unable to retain counsel. If the probationer  
146 requests counsel, the judge shall determine whether counsel

147 is necessary to protect the probationer's due process  
148 rights. If the judge determines that counsel is not  
149 necessary, the judge shall state the grounds for the  
150 decision in the record.

151 7. The prosecuting or circuit attorney may file a  
152 motion to revoke probation or at any time during the term of  
153 probation, the court may issue a notice to the probationer  
154 to appear to answer a charge of a violation, and the court  
155 may issue a warrant of arrest for the violation. Such  
156 notice shall be personally served upon the probationer. The  
157 warrant shall authorize the return of the probationer to the  
158 custody of the court or to any suitable detention facility  
159 designated by the court. Upon the filing of the  
160 prosecutor's or circuit attorney's motion or on the court's  
161 own motion, the court may immediately enter an order  
162 suspending the period of probation and may order a warrant  
163 for the defendant's arrest. The probation shall remain  
164 suspended until the court rules on the prosecutor's or  
165 circuit attorney's motion, or until the court otherwise  
166 orders the probation reinstated.

167 8. The power of the court to revoke probation shall  
168 extend for the duration of the term of probation designated  
169 by the court and for any further period which is reasonably  
170 necessary for the adjudication of matters arising before its  
171 expiration, provided that some affirmative manifestation of  
172 an intent to conduct a revocation hearing occurs prior to  
173 the expiration of the period and that every reasonable  
174 effort is made to notify the probationer and to conduct the  
175 hearing prior to the expiration of the period.

176 9. A defendant who was sentenced prior to January 1,  
177 2017 to an offense that was eligible at the time of  
178 sentencing under paragraph (a) of subdivision (1) of

179 subsection 4 of this section for the court ordered detention  
180 sanction shall continue to remain eligible for the sanction  
181 so long as the defendant meets all the other requirements  
182 provided under subsection 4 of this section.

2 [217.703. 1. The division of probation  
3 and parole shall award earned compliance credits  
4 to any offender who is:

5 (1) Not subject to lifetime supervision  
6 under sections 217.735 and 559.106 or otherwise  
7 found to be ineligible to earn credits by a  
8 court pursuant to subsection 2 of this section;

9 (2) On probation, parole, or conditional  
10 release for an offense listed in chapter 579, or  
11 an offense previously listed in chapter 195, or  
12 for a class D or E felony, excluding sections  
13 565.225, 565.252, 566.031, 566.061, 566.083,  
14 566.093, 568.020, 568.060, offenses defined as  
15 sexual assault under section 589.015, deviate  
16 sexual assault, assault in the second degree  
17 under subdivision (2) of subsection 1 of section  
18 565.052, endangering the welfare of a child in  
19 the first degree under subdivision (2) of  
20 subsection 1 of section 568.045, and any offense  
21 of aggravated stalking or assault in the second  
22 degree under subdivision (2) of subsection 1 of  
23 section 565.060 as such offenses existed prior  
24 to January 1, 2017;

25 (3) Supervised by the division of  
26 probation and parole; and

27 (4) In compliance with the conditions of  
28 supervision imposed by the sentencing court or  
29 board.

30 2. If an offender was placed on probation,  
31 parole, or conditional release for an offense of:

32 (1) Involuntary manslaughter in the second  
33 degree;

34 (2) Assault in the second degree except  
35 under subdivision (2) of subsection 1 of section  
36 565.052 or section 565.060 as it existed prior  
37 to January 1, 2017;

38 (3) Domestic assault in the second degree;

39 (4) Assault in the third degree when the  
40 victim is a special victim or assault of a law  
41 enforcement officer in the second degree as it  
42 existed prior to January 1, 2017;

43 (5) Statutory rape in the second degree;

44 (6) Statutory sodomy in the second degree;

45 (7) Endangering the welfare of a child in  
46 the first degree under subdivision (1) of  
47 subsection 1 of section 568.045; or

48 (8) Any case in which the defendant is  
49 found guilty of a felony offense under chapter  
50 571;

50 the sentencing court may, upon its own motion or  
51 a motion of the prosecuting or circuit attorney,  
52 make a finding that the offender is ineligible  
53 to earn compliance credits because the nature  
54 and circumstances of the offense or the history  
55 and character of the offender indicate that a  
56 longer term of probation, parole, or conditional  
57 release is necessary for the protection of the  
58 public or the guidance of the offender. The  
59 motion may be made any time prior to the first  
60 month in which the person may earn compliance  
61 credits under this section or at a hearing under  
62 subsection 5 of this section. The offender's  
63 ability to earn credits shall be suspended until  
64 the court or board makes its finding. If the  
65 court or board finds that the offender is  
66 eligible for earned compliance credits, the  
67 credits shall begin to accrue on the first day  
68 of the next calendar month following the  
69 issuance of the decision.

70 3. Earned compliance credits shall reduce  
71 the term of probation, parole, or conditional  
72 release by thirty days for each full calendar  
73 month of compliance with the terms of  
74 supervision. Credits shall begin to accrue for  
75 eligible offenders after the first full calendar  
76 month of supervision or on October 1, 2012, if  
77 the offender began a term of probation, parole,  
78 or conditional release before September 1, 2012.

79 4. For the purposes of this section, the  
80 term "compliance" shall mean the absence of an  
81 initial violation report or notice of citation  
82 submitted by a probation or parole officer  
83 during a calendar month, or a motion to revoke  
84 or motion to suspend filed by a prosecuting or  
85 circuit attorney, against the offender.

86 5. Credits shall not accrue during any  
87 calendar month in which a violation report,  
88 which may include a report of absconder status,  
89 has been submitted, the offender is in custody,  
90 or a motion to revoke or motion to suspend has  
91 been filed, and shall be suspended pending the  
92 outcome of a hearing, if a hearing is held. If  
93 no hearing is held, or if a hearing is held and  
94 the offender is continued under supervision, or  
95 the court or board finds that the violation did  
96 not occur, then the offender shall be deemed to  
97 be in compliance and shall begin earning credits  
98 on the first day of the next calendar month  
99 following the month in which the report was  
100 submitted or the motion was filed. If a hearing  
101 is held, all earned credits shall be rescinded  
102 if:

103 (1) The court or board revokes the  
104 probation or parole or the court places the  
105 offender in a department program under



106 subsection 4 of section 559.036 or under section  
107 217.785; or

108 (2) The offender is found by the court or  
109 board to be ineligible to earn compliance  
110 credits because the nature and circumstances of  
111 the violation indicate that a longer term of  
112 probation, parole, or conditional release is  
113 necessary for the protection of the public or  
114 the guidance of the offender.  
115 Earned credits, if not rescinded, shall continue  
116 to be suspended for a period of time during  
117 which the court or board has suspended the term  
118 of probation, parole, or release, and shall  
119 begin to accrue on the first day of the next  
120 calendar month following the lifting of the  
121 suspension.

122 6. Offenders who are deemed by the  
123 division to be absconders shall not earn  
124 credits. For purposes of this subsection,  
125 "absconder" shall mean an offender under  
126 supervision whose whereabouts are unknown and  
127 who has left such offender's place of residency  
128 without the permission of the offender's  
129 supervising officer and without notifying of  
130 their whereabouts for the purpose of avoiding  
131 supervision. An offender shall no longer be  
132 deemed an absconder when such offender is  
133 available for active supervision.

134 7. Notwithstanding subsection 2 of section  
135 217.730 to the contrary, once the combination of  
136 time served in custody, if applicable, time  
137 served on probation, parole, or conditional  
138 release, and earned compliance credits satisfy  
139 the total term of probation, parole, or  
140 conditional release, the board or sentencing  
141 court shall order final discharge of the  
142 offender, so long as the offender has completed  
143 restitution and at least two years of his or her  
144 probation, parole, or conditional release, which  
145 shall include any time served in custody under  
146 section 217.718 and sections 559.036 and 559.115.

147 8. The award or rescission of any credits  
148 earned under this section shall not be subject  
149 to appeal or any motion for postconviction  
150 relief.

151 9. At least twice a year, the division  
152 shall calculate the number of months the  
153 offender has remaining on his or her term of  
154 probation, parole, or conditional release,  
155 taking into consideration any earned compliance  
156 credits, and notify the offender of the length  
157 of the remaining term.

158 10. No less than sixty days before the  
159 date of final discharge, the division shall  
160 notify the sentencing court, the board, and, for  
161 probation cases, the circuit or prosecuting  
162 attorney of the impending discharge. If the

163 sentencing court, the board, or the circuit or  
164 prosecuting attorney upon receiving such notice  
165 does not take any action under subsection 5 of  
166 this section, the offender shall be discharged  
167 under subsection 7 of this section.  
168 11. Any offender who was sentenced prior  
169 to January 1, 2017, to an offense that was  
170 eligible for earned compliance credits under  
171 subsection 1 or 2 of this section at the time of  
172 sentencing shall continue to remain eligible for  
173 earned compliance credits so long as the  
174 offender meets all the other requirements  
175 provided under this section.  
176 12. The application of earned compliance  
177 credits shall be suspended upon entry into a  
178 treatment court, as described in sections  
179 478.001 to 478.009, and shall remain suspended  
180 until the offender is discharged from such  
181 treatment court. Upon successful completion of  
182 treatment court, all earned compliance credits  
183 accumulated during the suspension period shall  
184 be retroactively applied, so long as the other  
185 terms and conditions of probation have been  
186 successfully completed.]

✓