

SENATE BILL NO. 948

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

4401S.01I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 217.785, 559.036, and 559.115, RSMo, and to enact in lieu thereof two new sections relating to terms of probation.

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

Section A. Sections 217.785, 559.036, and 559.115, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 559.036 and 559.115, to read as follows:

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

2. The court may terminate a period of probation and discharge the defendant at any time before completion of the specific term fixed under section 559.016 if warranted by the conduct of the defendant and the ends of justice. [The court may extend the term of the probation, but no more than one extension of any probation may be ordered except that the court may extend the term of probation by one additional year by order of the court if the defendant admits he or she has violated the conditions of probation or is found by the 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. **Total time on any probation term shall not**
22 **include time when the probation term is suspended under this**
23 **section.** Procedures for termination, discharge and
24 extension may be established by rule of court.

25 3. If the defendant violates a condition of probation
26 at any time prior to the expiration or termination of the
27 probation term, the court may continue him or her on the
28 existing conditions, with or without modifying or enlarging
29 the conditions or extending the term.

30 4. (1) Unless the defendant consents to the
31 revocation of probation, if a continuation, modification,
32 enlargement or extension is not appropriate under this
33 section, the court shall order placement of the offender in
34 [one of the] a department of corrections' one hundred twenty-
35 day [programs] **program** so long as:

36 (a) The underlying offense for the probation is a
37 class D or E felony or an offense listed in chapter 579 or
38 an offense previously listed in chapter 195; except that,
39 the court may, upon its own motion or a motion of the
40 prosecuting or circuit attorney, make a finding that an
41 offender is not eligible if the underlying offense is
42 involuntary manslaughter in the second degree, stalking in
43 the first degree, assault in the second degree, sexual
44 assault, rape in the second degree, domestic assault in the
45 second degree, assault in the third degree when the victim
46 is a special victim, statutory rape in the second degree,
47 statutory sodomy in the second degree, deviate sexual
48 assault, sodomy in the second degree, sexual misconduct
49 involving a child, incest, endangering the welfare of a
50 child in the first degree under subdivision (1) or (2) of

51 subsection 1 of section 568.045, abuse of a child, invasion
52 of privacy, any case in which the defendant is found guilty
53 of a felony offense under chapter 571, or an offense of
54 aggravated stalking or assault of a law enforcement officer
55 in the second degree as such offenses existed prior to
56 January 1, 2017;

57 (b) The probation violation is not the result of the
58 defendant being an absconder or being found guilty of,
59 pleading guilty to, or being arrested on suspicion of any
60 felony, misdemeanor, or infraction. For purposes of this
61 subsection, "absconder" shall mean an offender under
62 supervision who has left such offender's place of residency
63 without the permission of the offender's supervising officer
64 for the purpose of avoiding supervision;

65 (c) The defendant has not violated any conditions of
66 probation involving the possession or use of weapons, or a
67 stay-away condition prohibiting the defendant from
68 contacting a certain individual; and

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

72 (2) Upon receiving the order, the department of
73 corrections shall conduct an assessment of the offender and
74 place such offender in the appropriate one hundred twenty-
75 day program [under subsection 3 of section 559.115], **either**
76 **the structured cognitive behavioral intervention program or**
77 **institutional treatment program. The placement of an**
78 **offender in the structured cognitive behavioral intervention**
79 **program or the institutional treatment program shall be at**
80 **the sole discretion of the department based on assessment.**
81 **The one hundred twenty-day program shall begin upon receipt**
82 **of the offender by the department of corrections. The time**

83 between the court's order and receipt of offender by the
84 department of corrections shall not apply towards the one
85 hundred twenty-day program.

86 (3) Upon successful completion of a program under this
87 subsection as determined by the department, the division of
88 probation and parole shall advise the sentencing court of an
89 offender's probationary release date thirty days prior to
90 release.

91 (4) If the department determines the offender has not
92 successfully completed a one hundred twenty-day program
93 under this section, the division of probation and parole
94 shall advise the sentencing court of the offender's
95 unsuccessful program exit. The offender shall be removed
96 from the program. The offender shall be released from the
97 department within three working days after notifying the
98 court of the unsuccessful program exit, unless the court has
99 issued a warrant in response to the unsuccessful program
100 exit to facilitate the return of the offender to the county
101 of jurisdiction for further court proceedings. If a
102 offender is discharged as unsuccessful from a one hundred
103 twenty-day program the sentencing court may modify, enlarge,
104 or revoke the offender's probation based on the same
105 incident of the violation.

106 (5) Notwithstanding any of the provisions of
107 subsection 3 of section 559.115 to the contrary, once the
108 defendant has successfully completed the program under this
109 subsection, the court shall release the defendant to
110 continue to serve the term of probation, which shall not be
111 modified, enlarged, or extended based on the same incident
112 of violation. Time served in the program shall be credited
113 as time served on any sentence imposed for the underlying
114 offense.

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

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

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

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. **If the delay**
176 **of the hearing is attributable to the probationer's actions**
177 **or the probationer otherwise consents or acquiesces to the**

178 **delay, the court shall have been found to have made every**
179 **reasonable effort to conduct the hearing within the**
180 **probation term.**

181 9. A defendant who was sentenced prior to January 1,
182 2017 to an offense that was eligible at the time of
183 sentencing under paragraph (a) of subdivision (1) of
184 subsection 4 of this section for the court ordered detention
185 sanction shall continue to remain eligible for the sanction
186 so long as the defendant meets all the other requirements
187 provided under subsection 4 of this section.

559.115. 1. Neither probation nor parole shall be
2 granted by the circuit court between the time the transcript
3 on appeal from the offender's conviction has been filed in
4 appellate court and the disposition of the appeal by such
5 court.

6 2. Unless otherwise prohibited by subsection 8 of this
7 section, a circuit court only upon its own motion and not
8 that of the state or the offender shall have the power to
9 grant probation to an offender anytime up to one hundred
10 twenty days after such offender has been delivered to the
11 department of corrections but not thereafter. The court may
12 request information and a recommendation from the department
13 concerning the offender and such offender's behavior during
14 the period of incarceration. Except as provided in this
15 section, the court may place the offender on probation in a
16 program created pursuant to section 217.777, or may place
17 the offender on probation with any other conditions
18 authorized by law.

19 3. The court may recommend placement of an offender in
20 a department of corrections one hundred twenty-day program
21 under this subsection [or order such placement under
22 subsection 4 of section 559.036. Upon the recommendation or

23 order of the court,]. The department of corrections shall
24 assess each offender to determine the appropriate one
25 hundred twenty-day program in which to place the offender,
26 which may include placement in the [shock incarceration]
27 **structured cognitive behavioral intervention** program or
28 institutional treatment program. **The placement of an**
29 **offender in the structured cognitive behavioral intervention**
30 **program or the institutional treatment program shall be at**
31 **the sole discretion of the department of corrections based**
32 **on assessment and available bed space.** When the court
33 recommends and receives placement of an offender in a
34 department of corrections one hundred twenty-day program,
35 the offender shall be released on probation if the
36 department of corrections determines that the offender has
37 successfully completed the program except as follows. Upon
38 successful completion of a program under this subsection,
39 the division of probation and parole shall advise the
40 sentencing court of an offender's probationary release date
41 thirty days prior to release. The court shall follow the
42 recommendation of the department unless the court determines
43 that probation is not appropriate. If the court determines
44 that probation is not appropriate, the court may order the
45 execution of the offender's sentence only after conducting a
46 hearing on the matter within ninety to one hundred twenty
47 days from the date the offender was delivered to the
48 department of corrections. If the department determines the
49 offender has not successfully completed a one hundred twenty-
50 day program under this subsection, the offender shall be
51 removed from the program and the court shall be advised of
52 the removal. The department shall report on the offender's
53 participation in the program and may provide recommendations
54 for terms and conditions of an offender's probation. The

55 court shall then have the power to grant probation or order
56 the execution of the offender's sentence.

57 4. If the court is advised that an offender is not
58 eligible for placement in a one hundred twenty-day program
59 under subsection 3 of this section, the court shall consider
60 other authorized dispositions. If the department of
61 corrections one hundred twenty-day program under subsection
62 3 of this section is full, the court may place the offender
63 in a private program approved by the department of
64 corrections or the court, the expenses of such program to be
65 paid by the offender, or in an available program offered by
66 another organization. If the offender is convicted of a
67 class C, class D, or class E nonviolent felony, the court
68 may order probation while awaiting appointment to treatment.

69 5. Except when the offender has been found to be a
70 predatory sexual offender pursuant to section 566.125, the
71 court shall request the department of corrections to conduct
72 a sexual offender assessment if the defendant has been found
73 guilty of sexual abuse when classified as a class B felony.
74 Upon completion of the assessment, the department shall
75 provide to the court a report on the offender and may
76 provide recommendations for terms and conditions of an
77 offender's probation. The assessment shall not be
78 considered a one hundred twenty-day program as provided
79 under subsection 3 of this section. The process for
80 granting probation to an offender who has completed the
81 assessment shall be as provided under subsections 2 and 6 of
82 this section.

83 6. Unless the offender is being granted probation
84 pursuant to successful completion of a one hundred twenty-
85 day program the circuit court shall notify the state in
86 writing when the court intends to grant probation to the

87 offender pursuant to the provisions of this section. The
88 state may, in writing, request a hearing within ten days of
89 receipt of the court's notification that the court intends
90 to grant probation. Upon the state's request for a hearing,
91 the court shall grant a hearing as soon as reasonably
92 possible. If the state does not respond to the court's
93 notice in writing within ten days, the court may proceed
94 upon its own motion to grant probation.

95 7. An offender's first incarceration under this
96 section prior to release on probation shall not be
97 considered a previous prison commitment for the purpose of
98 determining a minimum prison term under the provisions of
99 section 558.019.

100 8. Notwithstanding any other provision of law,
101 probation may not be granted pursuant to this section to
102 offenders who have been convicted of murder in the second
103 degree pursuant to section 565.021; forcible rape pursuant
104 to section 566.030 as it existed prior to August 28, 2013;
105 rape in the first degree under section 566.030; forcible
106 sodomy pursuant to section 566.060 as it existed prior to
107 August 28, 2013; sodomy in the first degree under section
108 566.060; statutory rape in the first degree pursuant to
109 section 566.032; statutory sodomy in the first degree
110 pursuant to section 566.062; child molestation in the first
111 degree pursuant to section 566.067 when classified as a
112 class A felony; abuse of a child pursuant to section 568.060
113 when classified as a class A felony; or an offender who has
114 been found to be a predatory sexual offender pursuant to
115 section 566.125; **any offense pursuant to section 557.045**; or
116 any offense in which there exists a statutory prohibition
117 against either probation or parole.

2 [217.785. 1. As used in this section, the
3 term "Missouri postconviction drug treatment
4 program" means a program of noninstitutional and
5 institutional correctional programs for the
6 monitoring, control and treatment of certain
7 drug abuse offenders.

8 2. The department of corrections shall
9 establish by regulation the "Missouri
10 Postconviction Drug Treatment Program". The
11 program shall include noninstitutional and
12 institutional placement. The institutional
13 phase of the program may include any offender
14 under the supervision and control of the
15 department of corrections. The department shall
16 establish rules determining how, when and where
17 an offender shall be admitted into or removed
18 from the program.

19 3. Any first-time offender who has been
20 found guilty of violating the provisions of
21 chapter 195 or 579, or whose controlled
22 substance abuse was a precipitating or
23 contributing factor in the commission of his
24 offense, and who is placed on probation may be
25 required to participate in the noninstitutional
26 phase of the program, which may include
27 education, treatment and rehabilitation
28 programs. Persons required to attend a program
29 pursuant to this section may be charged a
30 reasonable fee to cover the costs of the
31 program. Failure of an offender to complete
32 successfully the noninstitutional phase of the
33 program shall be sufficient cause for the
34 offender to be remanded to the sentencing court
35 for assignment to the institutional phase of the
36 program or any other authorized disposition.

37 4. A probationer shall be eligible for
38 assignment to the institutional phase of the
39 postconviction drug treatment program if he has
40 failed to complete successfully the
41 noninstitutional phase of the program. If space
42 is available, the sentencing court may assign
43 the offender to the institutional phase of the
44 program as a special condition of probation,
45 without the necessity of formal revocation of
46 probation.

47 5. The availability of space in the
48 institutional program shall be determined by the
49 department of corrections. If the sentencing
50 court is advised that there is no space
51 available, then the court shall consider other
52 authorized dispositions.

53 6. Any time after ninety days and prior to
54 one hundred twenty days after assignment of the
55 offender to the institutional phase of the
56 program, the department shall submit to the
57 court a report outlining the performance of the
58 offender in the program. If the department

58 determines that the offender will not
59 participate or has failed to complete the
60 program, the department shall advise the
61 sentencing court, who shall cause the offender
62 to be brought before the court for consideration
63 of revocation of the probation or other
64 authorized disposition. If the offender
65 successfully completes the program, the
66 department shall release the individual to the
67 appropriate probation and parole district office
68 and so advise the court.
69 7. Time spent in the institutional phase
70 of the program shall count as time served on the
71 sentence.]

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