

## SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILLS NOS. 384 &amp; 276

## AN ACT

To repeal sections 217.035, 217.650, 217.670, 217.710, 217.720, 217.785, 217.810, and 548.241, RSMo, and to enact in lieu thereof eight new sections relating to the department of corrections.

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

Section A. Sections 217.035, 217.650, 217.670, 217.710, 217.720, 217.785, 217.810, and 548.241, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 217.035, 217.650, 217.670, 217.710, 217.720, 548.241, 589.564, and 589.565, to read as follows:

217.035. The director shall have the authority to:

(1) Establish, with approval of the governor, the internal organization of the department and file the plan thereof with the secretary of state in the manner in which administrative rules are filed, the commissioner of administration and the revisor of statutes;

(2) Exclusively prepare the budgets of the department and each division within the department in the form and manner set out by statute or by the commissioner of administration;

(3) Designate by written order filed with the governor, the president pro tem of the senate, and the chairman of the joint committee on corrections, a deputy director of the department to act for and exercise the powers of the director during the director's absence for official business, vacation, illness or incapacity. The deputy director shall serve as acting director no longer than six months; however, after the deputy director has acted as director for longer than thirty days the deputy

director shall receive compensation equal to that of the director;

(4) Procure, either through the division of purchasing or by other means authorized by law, supplies, material, equipment or contractual services for the department and each of its divisions;

(5) Establish policy for the department and each of its divisions;

(6) Designate any responsibilities, duties and powers given by sections 217.010, [217.810,] 558.011 and 558.026 to the department or the department director to any division or division director.

217.650. As used in sections 217.650 to [217.810] 217.805, unless the context clearly indicates otherwise, the following terms mean:

(1) "Chairperson", chairperson of the parole board who shall be appointed by the governor;

(2) "Diversionary program", a program designed to utilize alternatives to incarceration undertaken under the supervision of the division of probation and parole after commitment of an offense and prior to arraignment;

(3) "Parole", the release of an offender to the community by the court or the state parole board prior to the expiration of his term, subject to conditions imposed by the court or the parole board and to its supervision by the division of probation and parole;

(4) "Parole board", the state board of parole;

(5) "Prerelease program", a program relating to an offender's preparation for, or orientation to, supervision by the division of probation and parole immediately prior to or immediately after assignment of the offender to the division of probation and parole for supervision;

(6) "Pretrial program", a program relating to the investigation or supervision of persons referred or assigned to the division of probation and parole prior to their conviction;

(7) "Probation", a procedure under which a defendant found guilty of a crime upon verdict or plea is released by the court without imprisonment, subject to conditions imposed by the court and subject to the supervision of the division of probation and parole;

(8) "Recognizance program", a program relating to the release of an individual from detention who is under arrest for an offense for which he or she may be released as provided in section 544.455.

217.670. 1. The board shall adopt an official seal of which the courts shall take official notice.

2. Decisions of the board regarding granting of paroles, extensions of a conditional release date or revocations of a parole or conditional release shall be by a majority vote of the hearing panel members. The hearing panel shall consist of one member of the board and two hearing officers appointed by the board. A member of the board may remove the case from the jurisdiction of the hearing panel and refer it to the full board for a decision. Within thirty days of entry of the decision of the hearing panel to deny parole or to revoke a parole or conditional release, the offender may appeal the decision of the hearing panel to the board. The board shall consider the appeal within thirty days of receipt of the appeal. The decision of the board shall be by majority vote of the board members and shall be final.

3. The orders of the board shall not be reviewable except as to compliance with the terms of sections 217.650

to [217.810] 217.805 or any rules promulgated pursuant to such section.

4. The board shall keep a record of its acts and shall notify each correctional center of its decisions relating to persons who are or have been confined in such correctional center.

5. Notwithstanding any other provision of law, any meeting, record, or vote, of proceedings involving probation, parole, or pardon, may be a closed meeting, closed record, or closed vote.

6. Notwithstanding any other provision of law, when the appearance or presence of an offender before the board or a hearing panel is required for the purpose of deciding whether to grant conditional release or parole, extend the date of conditional release, revoke parole or conditional release, or for any other purpose, such appearance or presence may occur by means of a videoconference at the discretion of the board. Victims having a right to attend parole hearings may testify either at the site where the board is conducting the videoconference or at the institution where the offender is located. The use of videoconferencing in this section shall be at the discretion of the board, and shall not be utilized if either the victim or the victim's family objects to it.

217.710. 1. Probation and parole officers, supervisors and members of the parole board, who are certified pursuant to the requirements of subsection 2 of this section shall have the authority to carry their firearms at all times. The department of corrections shall promulgate policies and operating regulations which govern the use of firearms by probation and parole officers, supervisors and members of the parole board when carrying out the provisions of sections 217.650 to [217.810]

217.805. Mere possession of a firearm shall not constitute an employment activity for the purpose of calculating compensatory time or overtime.

2. The department shall determine the content of the required firearms safety training and provide firearms certification and recertification training for probation and parole officers, supervisors and members of the parole board. A minimum of sixteen hours of firearms safety training shall be required. In no event shall firearms certification or recertification training for probation and parole officers and supervisors exceed the training required for officers of the state highway patrol.

3. The department shall determine the type of firearm to be carried by the officers, supervisors and members of the parole board.

4. Any officer, supervisor or member of the parole board that chooses to carry a firearm in the performance of such officer's, supervisor's or member's duties shall purchase the firearm and holster.

5. The department shall furnish such ammunition as is necessary for the performance of the officer's, supervisor's and member's duties.

6. Any rule or portion of a rule, as that term is defined in section 536.010, that is promulgated under the authority of this chapter, shall become effective only if the agency has fully complied with all of the requirements of chapter 536 including but not limited to, section 536.028, if applicable, after August 28, 1998. All rulemaking authority delegated prior to August 28, 1998, is of no force and effect and repealed as of August 28, 1998, however nothing in section 571.030 or this section shall be interpreted to repeal or affect the validity of any rule adopted and promulgated prior to August 28, 1998. If the

provisions of section 536.028 apply, the provisions of this section are nonseverable and if any of the powers vested with the general assembly pursuant to section 536.028 to review, to delay the effective date, or to disapprove and annul a rule or portion of a rule are held unconstitutional or invalid, the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be invalid and void, except that nothing in section 571.030 or this section shall affect the validity of any rule adopted and promulgated prior to August 28, 1998.

217.720. 1. At any time during release on parole or conditional release the division of probation and parole may issue a warrant for the arrest of a released offender for violation of any of the conditions of parole or conditional release. The warrant shall authorize any law enforcement officer to return the offender to the actual custody of the correctional center from which the offender was released, or to any other suitable facility designated by the division. If any parole or probation officer has probable cause to believe that such offender has violated a condition of parole or conditional release, the probation or parole officer may issue a warrant for the arrest of the offender. The probation or parole officer may effect the arrest or may deputize any officer with the power of arrest to do so by giving the officer a copy of the warrant which shall outline the circumstances of the alleged violation and contain the statement that the offender has, in the judgment of the probation or parole officer, violated conditions of parole or conditional release. The warrant delivered with the offender by the arresting officer to the official in charge of any facility designated by the division to which the offender is brought shall be sufficient legal authority for detaining the offender. After the arrest the parole or

probation officer shall present to the detaining authorities a similar statement of the circumstances of violation. Pending hearing as hereinafter provided, upon any charge of violation, the offender shall remain in custody or incarcerated without consideration of bail.

2. If the offender is arrested under the authority granted in subsection 1 of this section, the offender shall have the right to a preliminary hearing on the violation charged unless the offender waives such hearing. Upon such arrest and detention, the parole or probation officer shall immediately notify the board and shall submit in writing a report showing in what manner the offender has violated the conditions of his parole or conditional release. The board shall order the offender discharged from such facility, require as a condition of parole or conditional release the placement of the offender in a treatment center operated by the department of corrections, or shall cause the offender to be brought before it for a hearing on the violation charged, under such rules and regulations as the board may adopt. If the violation is established and found, the board may continue or revoke the parole or conditional release, or enter such other order as it may see fit. If no violation is established and found, then the parole or conditional release shall continue. If at any time during release on parole or conditional release the offender is arrested for a crime which later leads to conviction, and sentence is then served outside the Missouri department of corrections, the board shall determine what part, if any, of the time from the date of arrest until completion of the sentence imposed is counted as time served under the sentence from which the offender was paroled or conditionally released.

3. An offender for whose return a warrant has been issued by the division shall, if it is found that the

warrant cannot be served, be deemed to be a fugitive from justice or to have fled from justice. If it shall appear that the offender has violated the provisions and conditions of his parole or conditional release, the board shall determine whether the time from the issuing date of the warrant to the date of his arrest on the warrant, or continuance on parole or conditional release shall be counted as time served under the sentence. In all other cases, time served on parole or conditional release shall be counted as time served under the sentence.

4. At any time during parole or probation, the division may issue a warrant for the arrest of any person from another jurisdiction[, the visitation and supervision of whom the division has undertaken pursuant to the provisions of the interstate compact for the supervision of parolees and probationers authorized in section 217.810,] for violation of any of the conditions of release[, ] or a notice to appear to answer a charge of violation. The notice shall be served personally upon the person. The warrant shall authorize any law enforcement officer to return the offender to any suitable detention facility designated by the division. Any parole or probation officer may arrest such person without a warrant, or may deputize any other officer with power of arrest to do so by issuing a written statement setting forth that the defendant has, in the judgment of the parole or probation officer, violated the conditions of his release. The written statement delivered with the person by the arresting officer to the official in charge of the detention facility to which the person is brought shall be sufficient legal authority for detaining him. After making an arrest the parole or probation officer shall present to the detaining authorities a similar statement of the circumstances of violation.



548.241. 1. All necessary and proper expenses accruing under section 548.221, upon being ascertained to the satisfaction of the governor, shall be allowed on his certificate and paid out of the state treasury as other demands against the state.

2. All necessary and proper expenses accruing as a result of a person being returned to this state pursuant to the provisions of section 548.243 [or 217.810] shall be allowed and paid out of the state treasury as if the person were being returned to this state pursuant to section 548.221.

3. Any necessary and proper expenses accruing as a result of a person being returned to this state under the provisions of sections 589.500 to 589.569 may be paid either out of the Missouri interstate compact fund established in section 589.565 or out of the state treasury.

589.564. 1. Upon a petition from the state, a circuit court is authorized to add any condition to a term of probation for an offender supervised in this state for a term of probation ordered by another state, including shock incarceration; however, the court shall not reduce, extend, or revoke such a term of probation. The circuit court for the jurisdiction in which a probationer is under supervision shall serve as the authorizing court for the purposes of this section. The prosecuting attorney or circuit attorney for the jurisdiction in which a probationer is under supervision shall serve as the authorized person to petition the court to add a condition of probation. Notwithstanding any provision of section 549.500 or 559.125, the division of probation and parole may submit violation reports to the prosecuting attorney or circuit attorney with authority to petition the court to add a condition to a term of probation under this section.

2. Where supervision of a parolee in Missouri is administered pursuant to this compact, the division of probation and parole shall have the authority to impose a sanction or additional conditions in response to written violations of supervision; however, the division of probation and parole shall not reduce, extend, or revoke such a term of parole.

589.565. A Missouri probationer or parolee seeking transfer of their supervision through this compact shall pay a fee for each transfer application submitted in the amount of one hundred seventy-five dollars. The transfer application fee shall be paid to the compact commissioner upon submission of the transfer application. The commissioner or commissioner's designee may waive the application fee if either the commissioner or the commissioner's designee finds that payment of the fee will constitute an undue economic burden on the offender. All fees collected pursuant to this section shall be paid and deposited to the credit of the "Missouri Interstate Compact Fund", which is hereby established in the state treasury. The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180, the state treasurer may approve disbursements. The fund shall be a dedicated fund and, upon appropriation, moneys in the fund shall be used for the sole benefit of the department of corrections in support of administration of this section; expenses related to retaking, assessment, staff development, and training; and implementation of evidence-based practices in support of offenders under supervision. Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner

as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

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

2. The department of corrections shall establish by regulation the "Missouri Postconviction Drug Treatment Program". The program shall include noninstitutional and institutional placement. The institutional phase of the program may include any offender under the supervision and control of the department of corrections. The department shall establish rules determining how, when and where an offender shall be admitted into or removed from the program.

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

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

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

6. Any time after ninety days and prior to one hundred twenty days after assignment of the offender to the institutional phase of the program, the department shall submit to the court a report outlining the performance of the

offender in the program. If the department determines that the offender will not participate or has failed to complete the program, the department shall advise the sentencing court, who shall cause the offender to be brought before the court for consideration of revocation of the probation or other authorized disposition. If the offender successfully completes the program, the department shall release the individual to the appropriate probation and parole district office and so advise the court.

7. Time spent in the institutional phase of the program shall count as time served on the sentence.]

[217.810. 1. The governor is hereby authorized and directed to enter into the interstate compact for the supervision of parolees and probationers on behalf of the state of Missouri with the commonwealth of Puerto Rico, the Virgin Islands, the District of Columbia and any and all other states of the United States legally joining therein and pursuant to the provisions of an act of the Congress of the United States of America granting the consent of Congress to the commonwealth of Puerto Rico, the Virgin Islands, the District of Columbia and any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes, which compact shall have as its objective the permitting of persons placed on probation or released on parole to reside in any other state signatory to the compact assuming the duties of visitation and supervision over such probationers and parolees; permitting the extradition and transportation without interference of prisoners, being retaken, through any and all states signatory to the compact under such terms, conditions, rules and regulations, and for such duration as in the opinion of the governor of this state shall be necessary and proper and in a form substantially as contained in subsection 2 of this section. The chairman of the board shall administer the compact for the state.

2. INTERSTATE COMPACT FOR THE SUPERVISION OF PAROLEES AND PROBATIONERS

This compact shall be entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an act entitled "An act granting the consent of Congress to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes."

The contracting states solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state"), while on probation or parole, if

(a) Such a person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) The receiving state shall assume the duties of visitation and supervision over probationers or parolees of any sending state transferred under the compact and will apply the same standards of supervision that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state. Provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport

prisoners being retaken through any and all states parties to this compact, without interference.

(5) Each state may designate an officer who, acting jointly with like officers of other contracting states shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(7) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

3. If any section, sentence, subdivision or clause within subsection 2 of this section is for any reason held invalid or to be unconstitutional, such decision shall not affect the validity of the remaining provisions of that subsection or this section.

4. All necessary and proper expenses accruing as a result of a person being returned to this state by order of a court or the parole board shall be paid by the state as provided in section 548.241 or 548.243.]