

SENATE BILL NO. 1195

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASHINGTON.

3603S.01I

KRISTINA MARTIN, 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2 repealed and one new section enacted in lieu thereof, to be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,
3 whether imposed at the same time or at different times,
4 shall run 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.

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

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

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

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

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

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

51 defendant by either the division of probation and parole or
52 the court. If, after a hearing, the court finds that the
53 earned discharge is appropriate, the court shall order the
54 defendant discharged from probation.

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

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

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

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

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

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

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

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

108 (2) Upon receiving the order, the department of
109 corrections shall conduct an assessment of the offender and
110 place such offender in either the one hundred twenty-day
111 structured cognitive behavioral intervention program or the
112 one hundred twenty-day institutional treatment program. The
113 placement of the offender in the structured cognitive
114 behavioral intervention program or institutional treatment

115 program shall be at the sole discretion of the department
116 based on the assessment of the offender. The program shall
117 begin upon receipt of the offender by the department. The
118 time between the court's order and receipt of the offender
119 by the department shall not apply toward the program.

120 (3) Upon successful completion of a program under this
121 subsection, as determined by the department, the division of
122 probation and parole shall advise the sentencing court of
123 the defendant's probationary release date thirty days prior
124 to release. Once the defendant has successfully completed a
125 program under this subsection, the court shall release the
126 defendant to continue to serve the term of probation, which
127 shall not be modified, enlarged, or extended based on the
128 same incident of violation.

129 (4) If the department determines the defendant has not
130 successfully completed a one hundred twenty-day program
131 under this section, the division of probation and parole
132 shall advise the prosecuting attorney and the sentencing
133 court of the defendant's unsuccessful program exit and the
134 defendant shall be removed from the program. The defendant
135 shall be released from the department within fifteen working
136 days after the court is notified of the unsuccessful program
137 exit, unless the court has issued a warrant in response to
138 the unsuccessful program exit to facilitate the return of
139 the defendant to the county of jurisdiction for further
140 court proceedings. If a defendant is discharged as
141 unsuccessful from a one hundred twenty-day program, the
142 sentencing court may modify, enlarge, or revoke the
143 defendant's probation based on the same incident of the
144 violation.

145 (5) Time served in the program shall be credited as
146 time served on any sentence imposed for the underlying
147 offense.

148 5. If the defendant consents to the revocation of
149 probation or if the defendant is not eligible under
150 subsection 4 of this section for placement in a program and
151 a continuation, modification, enlargement, or extension of
152 the term under this section is not appropriate, the court
153 may revoke probation and order that any sentence previously
154 imposed be executed. If imposition of sentence was
155 suspended, the court may revoke probation and impose any
156 sentence available under section 557.011. The court may
157 mitigate any sentence of imprisonment by reducing the prison
158 or jail term by all or part of the time the defendant was on
159 probation. The court may, upon revocation of probation,
160 place an offender on a second term of probation. Such
161 probation shall be for a term of probation as provided by
162 section 559.016, notwithstanding any amount of time served
163 by the offender on the first term of probation.

164 6. Probation shall not be revoked without giving the
165 probationer notice and an opportunity to be heard on the
166 issues of whether such probationer violated a condition of
167 probation and, if a condition was violated, whether
168 revocation is warranted under all the circumstances. Not
169 less than five business days prior to the date set for a
170 hearing on the violation, except for a good cause shown, the
171 judge shall inform the probationer that he or she may have
172 the right to request the appointment of counsel if the
173 probationer is unable to retain counsel. If the probationer
174 requests counsel, the judge shall determine whether counsel
175 is necessary to protect the probationer's due process
176 rights. If the judge determines that counsel is not

177 necessary, the judge shall state the grounds for the
178 decision in the record.

179 7. The prosecuting or circuit attorney may file a
180 motion to revoke probation or at any time during the term of
181 probation, the court may issue a notice to the probationer
182 to appear to answer a charge of a violation, and the court
183 may issue a warrant of arrest for the violation. Such
184 notice shall be personally served upon the probationer. The
185 warrant shall authorize the return of the probationer to the
186 custody of the court or to any suitable detention facility
187 designated by the court. Upon the filing of the
188 prosecutor's or circuit attorney's motion or on the court's
189 own motion, the court may immediately enter an order
190 suspending the period of probation and may order a warrant
191 for the defendant's arrest. The probation shall remain
192 suspended until the court rules on the prosecutor's or
193 circuit attorney's motion, or until the court otherwise
194 orders the probation reinstated. Notwithstanding any other
195 provision of the law to the contrary, the probation term
196 shall be tolled during the time period when the probation is
197 suspended under this section. The court may grant the
198 probationer credit on the probation term for any of the
199 tolled period when reinstating the probation term.

200 8. The power of the court to revoke probation shall
201 extend for the duration of the term of probation designated
202 by the court and for any further period which is reasonably
203 necessary for the adjudication of matters arising before its
204 expiration, provided that some affirmative manifestation of
205 an intent to conduct a revocation hearing occurs prior to
206 the expiration of the period and that every reasonable
207 effort is made to notify the probationer and to conduct the
208 hearing prior to the expiration of the period. If the delay

209 of the hearing is attributable to the probationer's actions
210 or the probationer otherwise consents or acquiesces to the
211 delay, the court shall have been found to have made every
212 reasonable effort to conduct the hearing within the
213 probation term.

214 9. A defendant who was sentenced prior to January 1,
215 2017 to an offense that was eligible at the time of
216 sentencing under paragraph (a) of subdivision (1) of
217 subsection 4 of this section for the court ordered detention
218 sanction shall continue to remain eligible for the sanction
219 so long as the defendant meets all the other requirements
220 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
under subdivision (2) of subsection 1 of section

35 565.052 or section 565.060 as it existed prior
36 to January 1, 2017;

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

42 (5) Statutory rape in the second degree;
43 (6) Statutory sodomy in the second degree;
44 (7) Endangering the welfare of a child in
45 the first degree under subdivision (1) of
46 subsection 1 of section 568.045; or

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

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

107 (2) The offender is found by the court or
108 board to be ineligible to earn compliance
109 credits because the nature and circumstances of
110 the violation indicate that a longer term of
111 probation, parole, or conditional release is
112 necessary for the protection of the public or
113 the guidance of the offender.

114 Earned credits, if not rescinded, shall continue
115 to be suspended for a period of time during
116 which the court or board has suspended the term
117 of probation, parole, or release, and shall
118 begin to accrue on the first day of the next
119 calendar month following the lifting of the
120 suspension.

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

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

146 8. The award or rescission of any credits
147 earned under this section shall not be subject

148 to appeal or any motion for postconviction
149 relief.

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

157 10. No less than sixty days before the
158 date of final discharge, the division shall
159 notify the sentencing court, the board, and, for
160 probation cases, the circuit or prosecuting
161 attorney of the impending discharge. If the
162 sentencing court, the board, or the circuit or
163 prosecuting attorney upon receiving such notice
164 does not take any action under subsection 5 of
165 this section, the offender shall be discharged
166 under subsection 7 of this section.

167 11. Any offender who was sentenced prior
168 to January 1, 2017, to an offense that was
169 eligible for earned compliance credits under
170 subsection 1 or 2 of this section at the time of
171 sentencing shall continue to remain eligible for
172 earned compliance credits so long as the
173 offender meets all the other requirements
174 provided under this section.

175 12. The application of earned compliance
176 credits shall be suspended upon entry into a
177 treatment court, as described in sections
178 478.001 to 478.009, and shall remain suspended
179 until the offender is discharged from such
180 treatment court. Upon successful completion of
181 treatment court, all earned compliance credits
182 accumulated during the suspension period shall
183 be retroactively applied, so long as the other
184 terms and conditions of probation have been
185 successfully completed.]

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