

SECOND REGULAR SESSION

# SENATE BILL NO. 1357

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASHINGTON.

4757S.011

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2 repealed and one new section enacted in lieu thereof, to be  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

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

18 probation. Total time on any probation term, including any  
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

behavioral intervention program or institutional treatment program shall be at the sole discretion of the department based on the assessment of the offender. The program shall begin upon receipt of the offender by the department. The time between the court's order and receipt of the offender by the department shall not apply toward the program.

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

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

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

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

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

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

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

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



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

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

(1) Involuntary manslaughter in the second degree;

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

(3) Domestic assault in the second degree;

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

(5) Statutory rape in the second degree;

(6) Statutory sodomy in the second degree;

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

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

the sentencing court may, upon its own motion or a motion of the prosecuting or circuit attorney, make a finding that the offender is ineligible to earn compliance credits because the nature and circumstances of the offense or the history and character of the offender indicate that a longer term of probation, parole, or conditional release is necessary for the protection of the public or the guidance of the offender. The motion may be made any time prior to the first month in which the person may earn compliance credits under this section or at a hearing under subsection 5 of this section. The offender's ability to earn credits shall be suspended until the court or board makes its finding. If the court or board finds that the offender is eligible for earned compliance credits, the credits shall begin to accrue on the first day of the next calendar month following the 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.

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

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

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

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

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