

SECOND REGULAR SESSION

HOUSE BILL NO. 2313

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DEGROOT

5166H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 217.703, 217.730, and 559.036, RSMo, and to enact in lieu thereof two new sections relating to supervision by the division of probation and parole.

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

Section A. Sections 217.703, 217.730, and 559.036, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 217.730 and 559.036, to read as follows:

217.730. 1. The period served on parole, except for judicial parole granted or revoked pursuant to section 559.100, shall be deemed service of the term of imprisonment and, subject to the provisions of section 217.720 relating to an offender who is or has been a fugitive from justice, the total time served may not exceed the maximum term or sentence.

2. When an offender on parole or conditional release, before the expiration of the term for which the offender was sentenced, has performed the obligation of his parole for such time as satisfies the board that his final release is not incompatible with the best interest of society and the welfare of the individual, the board may make a final order of discharge and issue a certificate of discharge to the offender. ~~[No such order of discharge shall be made in any case less than three years after the date on which the offender was paroled or conditionally released except where the sentence expires earlier.]~~

3. Upon final discharge, persons shall be informed in writing on the process and procedure to register to vote.

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,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

4 prison, probation or parole term for another offense to which the defendant is or becomes subject
5 during the period, unless otherwise specified by the Missouri court.

6 2. **(1)** The court may terminate a period of probation and discharge the defendant at any
7 time before completion of the specific term fixed under section 559.016 if warranted by the
8 conduct of the defendant and the ends of justice. The court may extend the term of the probation,
9 but no more than one extension of any probation may be ordered except that the court may
10 extend the term of probation by one additional year by order of the court if the defendant admits
11 he or she has violated the conditions of probation or is found by the court to have violated the
12 conditions of his or her probation. Total time on any probation term, including any extension
13 shall not exceed the maximum term established in section 559.016. Procedures for termination,
14 discharge and extension may be established by rule of court.

15 **(2) The division of probation and parole may file a notification of earned discharge**
16 **from probation with the court if the defendant has completed at least twelve months of the**
17 **probation term and is compliant with the terms of supervision as ordered by the court and**
18 **the division of probation and parole. The division of probation and parole shall notify the**
19 **prosecuting or circuit attorney when a notification of earned discharge has been filed.**

20 **(3) The division of probation and parole shall not file a notification of earned**
21 **discharge for any defendant who has not paid the ordered restitution in full, is on a term**
22 **of probation for any class A or class B felony, or is subject to lifetime supervision under**
23 **sections 217.735 and 559.106.**

24 **(4) The court shall order the defendant discharged from probation within thirty**
25 **days after the division of probation and parole files the notification of earned discharge,**
26 **unless the court determines that discharge is not appropriate after holding a hearing on**
27 **the matter within sixty days after the division of probation and parole files the notification**
28 **of earned discharge as requested by the prosecuting or circuit attorney under subdivision**
29 **(5) of this subsection.**

30 **(5) The prosecuting or circuit attorney may request a hearing within thirty days**
31 **after the notification of earned discharge has been filed with the court. If the state opposes**
32 **the division of probation and parole's determination, the prosecuting or circuit attorney**
33 **shall prove by a preponderance of the evidence that the earned discharge is not**
34 **appropriate and the offender should continue to serve the remainder of the probation**
35 **term. If the court finds that earned discharge is not appropriate the court shall order the**
36 **continuance of the probation term within sixty days after the notification of earned**
37 **discharge is filed. The court may modify the conditions of probation as appropriate and**
38 **may order the defendant's continued supervision by either the division of probation and**
39 **parole or the court.**

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

43 4. (1) Unless the defendant consents to the revocation of probation, if a continuation,
44 modification, enlargement or extension is not appropriate under this section, the court shall order
45 placement of the offender in one of the department of corrections' one hundred twenty-day
46 programs so long as:

47 (a) The underlying offense for the probation is a class D or E felony or an offense listed
48 in chapter 579 or an offense previously listed in chapter 195; except that, the court may, upon
49 its own motion or a motion of the prosecuting or circuit attorney, make a finding that an offender
50 is not eligible if the underlying offense is involuntary manslaughter in the second degree, stalking
51 in the first degree, assault in the second degree, sexual assault, rape in the second degree,
52 domestic assault in the second degree, assault in the third degree when the victim is a special
53 victim, statutory rape in the second degree, statutory sodomy in the second degree, deviate sexual
54 assault, sodomy in the second degree, sexual misconduct involving a child, incest, endangering
55 the welfare of a child in the first degree under subdivision (1) or (2) of subsection 1 of section
56 568.045, abuse of a child, invasion of privacy, any case in which the defendant is found guilty
57 of a felony offense under chapter 571, or an offense of aggravated stalking or assault of a law
58 enforcement officer in the second degree as such offenses existed prior to January 1, 2017;

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

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

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

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

72 (3) Notwithstanding any of the provisions of subsection 3 of section 559.115 to the
73 contrary, once the defendant has successfully completed the program under this subsection, the
74 court shall release the defendant to continue to serve the term of probation, which shall not be

75 modified, enlarged, or extended based on the same incident of violation. Time served in the
76 program shall be credited as time served on any sentence imposed for the underlying offense.

77 5. If the defendant consents to the revocation of probation or if the defendant is not
78 eligible under subsection 4 of this section for placement in a program and a continuation,
79 modification, enlargement, or extension of the term under this section is not appropriate, the
80 court may revoke probation and order that any sentence previously imposed be executed. If
81 imposition of sentence was suspended, the court may revoke probation and impose any sentence
82 available under section 557.011. The court may mitigate any sentence of imprisonment by
83 reducing the prison or jail term by all or part of the time the defendant was on probation. The
84 court may, upon revocation of probation, place an offender on a second term of probation. Such
85 probation shall be for a term of probation as provided by section 559.016, notwithstanding any
86 amount of time served by the offender on the first term of probation.

87 6. Probation shall not be revoked without giving the probationer notice and an
88 opportunity to be heard on the issues of whether such probationer violated a condition of
89 probation and, if a condition was violated, whether revocation is warranted under all the
90 circumstances. Not less than five business days prior to the date set for a hearing on the
91 violation, except for a good cause shown, the judge shall inform the probationer that he or she
92 may have the right to request the appointment of counsel if the probationer is unable to retain
93 counsel. If the probationer requests counsel, the judge shall determine whether counsel is
94 necessary to protect the probationer's due process rights. If the judge determines that counsel is
95 not necessary, the judge shall state the grounds for the decision in the record.

96 7. The prosecuting or circuit attorney may file a motion to revoke probation or at any
97 time during the term of probation, the court may issue a notice to the probationer to appear to
98 answer a charge of a violation, and the court may issue a warrant of arrest for the violation. Such
99 notice shall be personally served upon the probationer. The warrant shall authorize the return
100 of the probationer to the custody of the court or to any suitable detention facility designated by
101 the court. Upon the filing of the prosecutor's or circuit attorney's motion or on the court's own
102 motion, the court may immediately enter an order suspending the period of probation and may
103 order a warrant for the defendant's arrest. The probation shall remain suspended until the court
104 rules on the prosecutor's or circuit attorney's motion, or until the court otherwise orders the
105 probation reinstated.

106 8. The power of the court to revoke probation shall extend for the duration of the term
107 of probation designated by the court and for any further period which is reasonably necessary for
108 the adjudication of matters arising before its expiration, provided that some affirmative
109 manifestation of an intent to conduct a revocation hearing occurs prior to the expiration of the

110 period and that every reasonable effort is made to notify the probationer and to conduct the
 111 hearing prior to the expiration of the period.

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

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

~~2 (1) Not subject to lifetime supervision under sections 217.735 and
 3 559.106 or otherwise found to be ineligible to earn credits by a court pursuant to
 4 subsection 2 of this section;~~

~~5 (2) On probation, parole, or conditional release for an offense listed in
 6 chapter 579, or an offense previously listed in chapter 195, or for a class D or E
 7 felony, excluding sections 565.225, 565.252, 566.031, 566.061, 566.083,
 8 566.093, 568.020, 568.060, offenses defined as sexual assault under section
 9 589.015, deviate sexual assault, assault in the second degree under subdivision
 10 (2) of subsection 1 of section 565.052, endangering the welfare of a child in the
 11 first degree under subdivision (2) of subsection 1 of section 568.045, and any
 12 offense of aggravated stalking or assault in the second degree under subdivision
 13 (2) of subsection 1 of section 565.060 as such offenses existed prior to January
 14 1, 2017;~~

~~15 (3) Supervised by the division of probation and parole; and~~

~~16 (4) In compliance with the conditions of supervision imposed by the
 17 sentencing court or board;~~

~~18 2. If an offender was placed on probation, parole, or conditional release
 19 for an offense of:~~

~~20 (1) Involuntary manslaughter in the second degree;~~

~~21 (2) Assault in the second degree except under subdivision (2) of
 22 subsection 1 of section 565.052 or section 565.060 as it existed prior to January
 23 1, 2017;~~

~~24 (3) Domestic assault in the second degree;~~

~~25 (4) Assault in the third degree when the victim is a special victim or
 26 assault of a law enforcement officer in the second degree as it existed prior to
 27 January 1, 2017;~~

~~28 (5) Statutory rape in the second degree;~~

~~29 (6) Statutory sodomy in the second degree;~~

~~30 (7) Endangering the welfare of a child in the first degree under
 31 subdivision (1) of subsection 1 of section 568.045; or~~

~~32 (8) Any case in which the defendant is found guilty of a felony offense
 33 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.~~

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

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

~~5. Credits shall not accrue during any calendar month in which a violation report, which may include a report of absconder status, has been submitted, the offender is in custody, or a motion to revoke or motion to suspend has been filed, and shall be suspended pending the outcome of a hearing, if a hearing is held. If no hearing is held, or if a hearing is held and the offender is continued under supervision, or the court or board finds that the violation did not occur, then the offender shall be deemed to be in compliance and shall begin earning credits on the first day of the next calendar month following the month in which the report was submitted or the motion was filed. If a hearing is held, all earned credits shall be rescinded if:~~

~~(1) The court or board revokes the probation or parole or the court places the offender in a department program under subsection 4 of section 559.036 or under section 217.785; or~~

~~(2) The offender is found by the court or board to be ineligible to earn compliance credits because the nature and circumstances of the violation 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.~~

~~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,~~

78 or release, and shall begin to accrue on the first day of the next calendar month
79 following the lifting of the suspension.

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

87 ~~7. Notwithstanding subsection 2 of section 217.730 to the contrary, once~~
88 ~~the combination of time served in custody, if applicable, time served on~~
89 ~~probation, parole, or conditional release, and earned compliance credits satisfy~~
90 ~~the total term of probation, parole, or conditional release, the board or sentencing~~
91 ~~court shall order final discharge of the offender, so long as the offender has~~
92 ~~completed restitution and at least two years of his or her probation, parole, or~~
93 ~~conditional release, which shall include any time served in custody under section~~
94 ~~217.718 and sections 559.036 and 559.115.~~

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

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

101 ~~10. No less than sixty days before the date of final discharge, the division~~
102 ~~shall notify the sentencing court, the board, and, for probation cases, the circuit~~
103 ~~or prosecuting attorney of the impending discharge. If the sentencing court, the~~
104 ~~board, or the circuit or prosecuting attorney upon receiving such notice does not~~
105 ~~take any action under subsection 5 of this section, the offender shall be~~
106 ~~discharged under subsection 7 of this section.~~

107 ~~11. Any offender who was sentenced prior to January 1, 2017, to an~~
108 ~~offense that was eligible for earned compliance credits under subsection 1 or 2~~
109 ~~of this section at the time of sentencing shall continue to remain eligible for~~
110 ~~earned compliance credits so long as the offender meets all the other~~
111 ~~requirements provided under this section.~~

112 ~~12. The application of earned compliance credits shall be suspended upon~~
113 ~~entry into a treatment court, as described in sections 478.001 to 478.009, and~~
114 ~~shall remain suspended until the offender is discharged from such treatment~~
115 ~~court. Upon successful completion of treatment court, all earned compliance~~
116 ~~credits accumulated during the suspension period shall be retroactively applied,~~
117 ~~so long as the other terms and conditions of probation have been successfully~~
118 ~~completed.]~~

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