

House _____ Amendment NO. _____

Offered By

AMEND House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill Nos. 775, 751 & 640, Page 1, Section A, Line 4, by inserting after all of said section and line the following:

"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

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1 (8) Any case in which the defendant is found guilty of a felony offense under chapter 571;
2 the sentencing court may, upon its own motion or a motion of the prosecuting or circuit attorney,
3 make a finding that the offender is ineligible to earn compliance credits because the nature and
4 circumstances of the offense or the history and character of the offender indicate that a longer term
5 of probation, parole, or conditional release is necessary for the protection of the public or the
6 guidance of the offender. The motion may be made any time prior to the first month in which the
7 person may earn compliance credits under this section or at a hearing under subsection 5 of this
8 section. The offender's ability to earn credits shall be suspended until the court or board makes its
9 finding. If the court or board finds that the offender is eligible for earned compliance credits, the
10 credits shall begin to accrue on the first day of the next calendar month following the issuance of the
11 decision.

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

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

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

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

31 (2) The offender is found by the court or board to be ineligible to earn compliance credits
32 because the nature and circumstances of the violation indicate that a longer term of probation,
33 parole, or conditional release is necessary for the protection of the public or the guidance of the
34 offender.

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

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

7 7. Notwithstanding subsection 2 of section 217.730 to the contrary, once the combination of
8 time served in custody, if applicable, time served on probation, parole, or conditional release, and
9 earned compliance credits satisfy the total term of probation, parole, or conditional release, the
10 board or sentencing court shall order final discharge of the offender, so long as the offender has
11 completed restitution and at least two years of his or her probation, parole, or conditional release,
12 which shall include any time served in custody under section 217.718 and sections 559.036 and
13 559.115.

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

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

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

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

28 12. The application of earned compliance credits shall be suspended upon entry into a
29 treatment court, as described in sections 478.001 to 478.009, and shall remain suspended until the
30 offender is discharged from such treatment court. Upon successful completion of treatment court,
31 all earned compliance credits accumulated during the suspension period shall be retroactively
32 applied, so long as the other terms and conditions of probation have been successfully completed.";
33 and

34
35 Further amend said bill, Page 2, Section 491.015, Line 31, by inserting after all of said section and
36 line the following:

37
38 "559.036. 1. A term of probation commences on the day it is imposed. Multiple terms of
39 Missouri probation, whether imposed at the same time or at different times, shall run concurrently.
40 Terms of probation shall also run concurrently with any federal or other state jail, prison, probation

1 or parole term for another offense to which the defendant is or becomes subject during the period[,
2 ~~unless otherwise specified by the Missouri court~~].

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

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

16 4. (1) Unless the defendant consents to the revocation of probation, if a continuation,
17 modification, enlargement or extension is not appropriate under this section, the court shall order
18 placement of the offender in ~~[one of the]~~ a department of corrections' one hundred twenty-day
19 ~~[programs]~~ program so long as:

20 (a) The underlying offense for the probation is a class D or E felony or an offense listed in
21 chapter 579 or an offense previously listed in chapter 195; except that, the court may, upon its own
22 motion or a motion of the prosecuting or circuit attorney, make a finding that an offender is not
23 eligible if the underlying offense is involuntary manslaughter in the second degree, stalking in the
24 first degree, assault in the second degree, sexual assault, rape in the second degree, domestic assault
25 in the second degree, assault in the third degree when the victim is a special victim, statutory rape in
26 the second degree, statutory sodomy in the second degree, deviate sexual assault, sodomy in the
27 second degree, sexual misconduct involving a child, incest, endangering the welfare of a child in the
28 first degree under subdivision (1) or (2) of subsection 1 of section 568.045, abuse of a child,
29 invasion of privacy, any case in which the defendant is found guilty of a felony offense under
30 chapter 571, or an offense of aggravated stalking or assault of a law enforcement officer in the
31 second degree as such offenses existed prior to January 1, 2017;

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

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

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

3 (2) Upon receiving the order, the department of corrections shall conduct an assessment of
4 the offender and place such offender in either the [appropriate] one hundred twenty-day structured
5 cognitive behavioral intervention program [under subsection 3 of section 559.115] or the one
6 hundred twenty-day institutional treatment program. The placement of the offender in the structured
7 cognitive behavioral intervention program or institutional treatment program shall be at the sole
8 discretion of the department based on the assessment of the offender. The program shall begin upon
9 receipt of the offender by the department. The time between the court's order and receipt of the
10 offender by the department shall not apply toward the program.

11 (3) ~~[Notwithstanding any of the provisions of subsection 3 of section 559.115 to the~~
12 ~~contrary, once the defendant has successfully completed the program under this subsection, the court~~
13 ~~shall release the defendant to continue to serve the term of probation, which shall not be modified,~~
14 ~~enlarged, or extended based on the same incident of violation.]~~ Upon successful completion of a
15 program under this subsection, as determined by the department, the division of probation and
16 parole shall advise the sentencing court of the defendant's probationary release date thirty days prior
17 to release. Once the defendant has successfully completed a program under this subsection, the
18 court shall release the defendant to continue to serve the term of probation, which shall not be
19 modified, enlarged, or extended based on the same incident of violation.

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

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

31 5. If the defendant consents to the revocation of probation or if the defendant is not eligible
32 under subsection 4 of this section for placement in a program and a continuation, modification,
33 enlargement, or extension of the term under this section is not appropriate, the court may revoke
34 probation and order that any sentence previously imposed be executed. If imposition of sentence
35 was suspended, the court may revoke probation and impose any sentence available under section
36 557.011. The court may mitigate any sentence of imprisonment by reducing the prison or jail term
37 by all or part of the time the defendant was on probation. The court may, upon revocation of
38 probation, place an offender on a second term of probation. Such probation shall be for a term of
39 probation as provided by section 559.016, notwithstanding any amount of time served by the

1 offender on the first term of probation.

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

11 7. The prosecuting or circuit attorney may file a motion to revoke probation or at any time
12 during the term of probation, the court may issue a notice to the probationer to appear to answer a
13 charge of a violation, and the court may issue a warrant of arrest for the violation. Such notice shall
14 be personally served upon the probationer. The warrant shall authorize the return of the probationer
15 to the custody of the court or to any suitable detention facility designated by the court. Upon the
16 filing of the prosecutor's or circuit attorney's motion or on the court's own motion, the court may
17 immediately enter an order suspending the period of probation and may order a warrant for the
18 defendant's arrest. The probation shall remain suspended until the court rules on the prosecutor's or
19 circuit attorney's motion, or until the court otherwise orders the probation reinstated.

20 Notwithstanding any other provision of the law, the probation term shall be tolled during the time
21 period when the probation is suspended under this section. The court may grant the probationer
22 credit on the probation term for any of the tolled period when reinstating the probation term.

23 8. The power of the court to revoke probation shall extend for the duration of the term of
24 probation designated by the court and for any further period which is reasonably necessary for the
25 adjudication of matters arising before its expiration, provided that some affirmative manifestation of
26 an intent to conduct a revocation hearing occurs prior to the expiration of the period and that every
27 reasonable effort is made to notify the probationer and to conduct the hearing prior to the expiration
28 of the period. If the delay of the hearing is attributable to the probationer's actions or the
29 probationer otherwise consents or acquiesces to the delay, the court shall have been found to have
30 made every reasonable effort to conduct the hearing within the probation term.

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

35 559.115. 1. Neither probation nor parole shall be granted by the circuit court between the
36 time the transcript on appeal from the offender's conviction has been filed in appellate court and the
37 disposition of the appeal by such court.

38 2. Unless otherwise prohibited by subsection 8 of this section, a circuit court only upon its
39 own motion and not that of the state or the offender shall have the power to grant probation to an

offender anytime up to one hundred twenty days after such offender has been delivered to the department of corrections but not thereafter. The court may request information and a recommendation from the department concerning the offender and such offender's behavior during the period of incarceration. Except as provided in this section, the court may place the offender on probation in a program created pursuant to section 217.777, or may place the offender on probation with any other conditions authorized by law.

3. The court may recommend placement of an offender in a department of corrections one hundred twenty-day program under this subsection ~~[or order such placement under subsection 4 of section 559.036]. [Upon the recommendation or order of the court,]~~ The department of corrections shall assess each offender to determine the appropriate one hundred twenty-day program in which to place the offender, which may include placement in the ~~[shock incarceration]~~ structured cognitive behavioral intervention program or institutional treatment program. The placement of an 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 and available bed space. When the court recommends and receives placement of an offender in a department of corrections one hundred twenty-day program, the offender shall be released on probation if the department of corrections determines that the offender has successfully completed the program except as follows. Upon successful completion of a program under this subsection, the division of probation and parole shall advise the sentencing court of an offender's probationary release date thirty days prior to release. The court shall follow the recommendation of the department unless the court determines that probation is not appropriate. If the court determines that probation is not appropriate, the court may order the execution of the offender's sentence only after conducting a hearing on the matter within ninety to one hundred twenty days from the date the offender was delivered to the department of corrections. If the department determines the offender has not successfully completed a one hundred twenty-day program under this subsection, the ~~[offender shall be removed from the program and the court shall be advised of the removal.]~~ 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 department shall report on the offender's participation in the program and may provide recommendations for terms and conditions of an offender's probation. The court shall then have the power to grant probation or order the execution of the offender's sentence.

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

1 5. Except when the offender has been found to be a predatory sexual offender pursuant to
2 section 566.125, the court shall request the department of corrections to conduct a sexual offender
3 assessment if the defendant has been found guilty of sexual abuse when classified as a class B
4 felony. Upon completion of the assessment, the department shall provide to the court a report on the
5 offender and may provide recommendations for terms and conditions of an offender's probation.
6 The assessment shall not be considered a one hundred twenty-day program as provided under
7 subsection 3 of this section. The process for granting probation to an offender who has completed
8 the assessment shall be as provided under subsections 2 and 6 of this section.

9 6. Unless the offender is being granted probation pursuant to successful completion of a one
10 hundred twenty-day program the circuit court shall notify the state in writing when the court intends
11 to grant probation to the offender pursuant to the provisions of this section. The state may, in
12 writing, request a hearing within ten days of receipt of the court's notification that the court intends
13 to grant probation. Upon the state's request for a hearing, the court shall grant a hearing as soon as
14 reasonably possible. If the state does not respond to the court's notice in writing within ten days, the
15 court may proceed upon its own motion to grant probation.

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

19 8. Notwithstanding any other provision of law, probation may not be granted pursuant to
20 this section to offenders who have been convicted of murder in the second degree pursuant to
21 section 565.021; forcible rape pursuant to section 566.030 as it existed prior to August 28, 2013;
22 rape in the first degree under section 566.030; forcible sodomy pursuant to section 566.060 as it
23 existed prior to August 28, 2013; sodomy in the first degree under section 566.060; statutory rape in
24 the first degree pursuant to section 566.032; statutory sodomy in the first degree pursuant to section
25 566.062; child molestation in the first degree pursuant to section 566.067 when classified as a class
26 A felony; abuse of a child pursuant to section 568.060 when classified as a class A felony; or an
27 offender who has been found to be a predatory sexual offender pursuant to section 566.125; any
28 offense under section 557.045; or any offense in which there exists a statutory prohibition against
29 either probation or parole."; and

30
31 Further amend said bill by amending the title, enacting clause, and intersectional references
32 accordingly.