

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill
2 No. 834, Pages 12-15, Section 559.036, Lines 1-125, by deleting said lines and inserting in lieu thereof the
3 following:
4

5 "559.036. 1. A term of probation commences on the day it is imposed. Multiple terms of Missouri
6 probation, whether imposed at the same time or at different times, shall run concurrently. Terms of probation
7 shall also run concurrently with any federal or other state jail, prison, probation or parole term for another
8 offense to which the defendant is or becomes subject during the period~~], unless otherwise specified by the~~
9 ~~Missouri court]~~.

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

19 (1) The division of probation and parole shall file a notification of earned discharge from probation
20 with the court for any defendant who has completed at least sixty percent of the probation term, rounded up
21 to the nearest whole month, and is compliant with the terms of supervision as ordered by the court and
22 division. If a defendant submits to the division of probation and parole verifiable documentation of
23 employment of at least one hundred thirty wage-earning hours per month for a period of at least six
24 consecutive months, then the division of probation and parole shall file a notification of earned discharge
25 from probation with the court once the defendant has completed at least forty percent of the probation term,
26 rounded up to the nearest whole month, and is compliant with the terms of supervision as ordered by the
27 court and division. The division shall not file a notification of earned discharge for any defendant who has
28 not paid ordered restitution in full, is on a term of probation for any class A or class B felony, or is subject to
29 lifetime supervision under sections 217.735 and 559.106. The division shall notify the prosecuting or circuit
30 attorney when a notification of earned discharge is filed.

31 (2) The prosecuting or circuit attorney may request a hearing within thirty days of the filing of the

Action Taken _____ Date _____

1 notification of earned discharge from probation. If the state opposes the discharge of the defendant, the
2 prosecuting or circuit attorney shall argue the earned discharge is not appropriate and the defendant should
3 continue to serve the probation term.

4 (3) If a hearing is requested, the court shall hold the hearing and issue its order no later than sixty
5 days after the filing of the notification of earned discharge from probation. If, after a hearing, the court finds
6 by a preponderance of the evidence that the earned discharge is not appropriate, the court shall order the
7 probation term to continue, may modify the conditions of probation as appropriate, and may order the
8 continued supervision of the defendant by either the division of probation and parole or the court. If, after a
9 hearing, the court finds that the earned discharge is appropriate, the court shall order the defendant discharged
10 from probation.

11 (4) If the prosecuting or circuit attorney does not request a hearing, the court shall order the
12 defendant discharged from probation within sixty days of the filing of the notification of earned discharge
13 from probation but no earlier than thirty days from the filing of notification of earned discharge from
14 probation.

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

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

21 (a) The underlying offense for the probation is a class D or E felony or an offense listed in chapter
22 579 or an offense previously listed in chapter 195; except that, the court may, upon its own motion or a
23 motion of the prosecuting or circuit attorney, make a finding that an offender is not eligible if the underlying
24 offense is involuntary manslaughter in the second degree, stalking in the first degree, assault in the second
25 degree, sexual assault, rape in the second degree, domestic assault in the second degree, assault in the third
26 degree when the victim is a special victim, statutory rape in the second degree, statutory sodomy in the
27 second degree, deviate sexual assault, sodomy in the second degree, sexual misconduct involving a child,
28 incest, endangering the welfare of a child in the first degree under subdivision (1) or (2) of subsection 1 of
29 section 568.045, abuse of a child, invasion of privacy, any case in which the defendant is found guilty of a
30 felony offense under chapter 571, or an offense of aggravated stalking or assault of a law enforcement officer
31 in the 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 found
33 guilty of, pleading guilty to, or being arrested on suspicion of any felony, misdemeanor, or infraction. For
34 purposes of this subsection, "absconder" shall mean an offender under supervision who has left such
35 offender's place of residency without the permission of the offender's supervising officer for the purpose of
36 avoiding supervision;

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

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

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

44 (3) Notwithstanding any of the provisions of subsection 3 of section 559.115 to the contrary, once
45 the defendant has successfully completed the program under this subsection, the court shall release the
46 defendant to continue to serve the term of probation, which shall not be modified, enlarged, or extended
47 based on the same incident of violation. Time served in the program shall be credited as time served on any
48 sentence imposed for the underlying offense.

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

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

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

27 8. The power of the court to revoke probation shall extend for the duration of the term of probation
28 designated by the court and for any further period which is reasonably necessary for the adjudication of
29 matters arising before its expiration, provided that some affirmative manifestation of an intent to conduct a
30 revocation hearing occurs prior to the expiration of the period and that every reasonable effort is made to
31 notify the probationer and to conduct the hearing prior to the expiration of the period.

32 9. A defendant who was sentenced prior to January 1, 2017 to an offense that was eligible at the time
33 of sentencing under paragraph (a) of subdivision (1) of subsection 4 of this section for the court ordered
34 detention sanction shall continue to remain eligible for the sanction so long as the defendant meets all the
35 other requirements provided under subsection 4 of this section."; and
36

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