

FIRST REGULAR SESSION

HOUSE BILL NO. 550

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ROBERTS.

1056H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 217.147, 217.703, 559.016, and 559.036, RSMo, and to enact in lieu thereof three new sections relating to the duration of probation, with penalty provisions.

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

Section A. Sections 217.147, 217.703, 559.016, and 559.036, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 217.147, 559.016, and
3 559.036, to read as follows:

217.147. 1. There is hereby created the "Sentencing and Corrections Oversight
2 Commission". The commission shall be composed of thirteen members as follows:

3 (1) A circuit court judge to be appointed by the chief justice of the Missouri supreme
4 court;

5 (2) Three members to be appointed by the governor with the advice and consent of
6 the senate, one of whom shall be a victim's advocate, one of whom shall be a representative
7 from the Missouri Sheriffs' Association, and one of whom shall be a representative of the
8 Missouri Association of Counties;

9 (3) The following shall be ex officio, voting members:

10 (a) The chair of the senate judiciary committee, or any successor committee that
11 reviews legislation involving crime and criminal procedure, who shall serve as co-chair of the
12 commission and the ranking minority member of such senate committee;

13 (b) The chair of the appropriations-public safety and corrections committee of the
14 house of representatives, or any successor committee that reviews similar legislation, who
15 shall serve as co-chair and the ranking minority member of such house committee;

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.

16 (c) The director of the Missouri state public defender system, or his or her designee
17 who is a practicing public defender;

18 (d) The executive director of the Missouri office of prosecution services, or his or her
19 designee who is a practicing prosecutor;

20 (e) The director of the department of corrections, or his or her designee;

21 (f) The chairman of the board of probation and parole, or his or her designee;

22 (g) The chief justice of the Missouri supreme court, or his or her designee.

23 2. Beginning with the appointments made after August 28, 2012, the circuit court
24 judge member shall be appointed for four years, two of the members appointed by the
25 governor shall be appointed for three years, and one member appointed by the governor shall
26 be appointed for two years. Thereafter, the members shall be appointed to serve four-year
27 terms and shall serve until a successor is appointed. A vacancy in the office of a member
28 shall be filled by appointment for the remainder of the unexpired term.

29 3. The co-chairs are responsible for establishing and enforcing attendance and voting
30 rules, bylaws, and the frequency, location, and time of meetings, and distributing meeting
31 notices, except that the commission's first meeting shall occur by February 28, 2013, and the
32 commission shall meet at least twice each calendar year.

33 4. The duties of the commission shall include:

34 (1) Monitoring and assisting the implementation of [~~sections 217.703,~~] **section**
35 217.718[~~]~~] and subsection 4 of section 559.036, and evaluating recidivism reductions, cost
36 savings, and other effects resulting from the implementation;

37 (2) Determining ways to reinvest any cost savings to pay for the continued
38 implementation of the sections listed in subdivision (1) of this subsection and other evidence-
39 based practices for reducing recidivism; and

40 (3) Examining the issue of restitution for crime victims, including the amount ordered
41 and collected annually, methods and costs of collection, and restitution's order of priority in
42 official procedures and documents.

43 5. The department, board, and office of state courts administrator shall collect and
44 report any data requested by the commission in a timely fashion.

45 6. The commission shall issue a report to the speaker of the house of representatives,
46 senate president pro tempore, chief justice of the Missouri supreme court, and governor on
47 December 31, 2013, and annually thereafter, detailing the effects of the sections listed in
48 subdivision (1) of subsection 4 **of this section** and providing the data and analysis
49 demonstrating those effects. The report may also recommend ways to reinvest any cost
50 savings into evidence-based practices to reduce recidivism and possible changes to sentencing
51 and corrections policies and statutes.

52 7. The department of corrections shall provide administrative support to the
53 commission to carry out the duties of this section.

54 8. No member shall receive any compensation for the performance of official duties,
55 but the members who are not otherwise reimbursed by their agency shall be reimbursed for
56 travel and other expenses actually and necessarily incurred in the performance of their duties.

57 9. The provisions of this section shall automatically expire on August 28, 2018.

 559.016. 1. Unless terminated as provided in section 559.036 ~~[or modified under~~
2 ~~section 217.703]~~, the terms during which each probation shall remain conditional and be
3 subject to revocation are:

4 (1) A term of years not less than one year and not to exceed five years for a felony;

5 (2) A term not less than six months and not to exceed two years for a misdemeanor;

6 (3) A term not less than six months and not to exceed one year for an infraction.

7 2. The court shall designate a specific term of probation at the time of sentencing or at
8 the time of suspension of imposition of sentence. ~~[Such term may be modified by the division~~
9 ~~of probation and parole under section 217.703.]~~

10 3. The court may extend a period of probation, however, no more than one extension
11 of any probation may be ordered except that the court may extend the total time on probation
12 by one additional year by order of the court if the defendant admits he or she has violated the
13 conditions of his or her probation or is found by the court to have violated the conditions of
14 his or her probation. Total time on any probation term, including any extension, shall not
15 exceed the maximum term as established in subsection 1 of this section plus one additional
16 year if the defendant admits or the court finds that the defendant has violated the conditions of
17 his or her probation.

 559.036. 1. A term of probation commences on the day it is imposed. Multiple terms
2 of Missouri probation, whether imposed at the same time or at different times, shall run
3 concurrently. Terms of probation shall also run concurrently with any federal or other state
4 jail, prison, probation or parole term for another offense to which the defendant is or becomes
5 subject during the period.

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

15 under this section. Procedures for termination, discharge and extension may be established
16 by rule of court.

17 **(2) The division of probation and parole shall file a notification of earned**
18 **discharge from probation with the court for any defendant who has completed at least**
19 **twenty-four months of the probation term and is compliant as determined by the**
20 **policies of the division of probation and parole with the terms of supervision as ordered**
21 **by the court and division. The division shall not file a notification of earned discharge**
22 **for any defendant who has not paid ordered restitution in full, is on a term of probation**
23 **for any class A or class B felony, or is subject to lifetime supervision under sections**
24 **217.735 and 559.106. The division shall notify the prosecuting or circuit attorney when**
25 **a notification of earned discharge is filed.**

26 **(3) The prosecuting or circuit attorney may request a hearing within thirty days**
27 **of the filing of the notification of earned discharge from probation. If the state opposes**
28 **the discharge of the defendant, the prosecuting or circuit attorney shall argue the**
29 **earned discharge is not appropriate and the offender should continue to serve the**
30 **probation term.**

31 **(4) If a hearing is requested, the court shall hold the hearing and issue its order**
32 **no later than sixty days after the filing of the notification of earned discharge from**
33 **probation. If, after a hearing, the court finds by a preponderance of the evidence that**
34 **the earned discharge is not appropriate, the court shall order the probation term**
35 **continue, may modify the conditions of probation as appropriate, and may order the**
36 **continued supervision of the defendant by either the division of probation and parole or**
37 **the court. If, after a hearing, the court finds that the earned discharge is appropriate,**
38 **the court shall order the defendant discharged from probation.**

39 **(5) If the prosecuting or circuit attorney does not request a hearing, and the**
40 **court does not otherwise order a hearing, the court shall order the defendant discharged**
41 **from probation within sixty days of the filing of the notification of earned discharge**
42 **from probation but no earlier than thirty days from the filing of notification of earned**
43 **discharge from probation.**

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

47 4. (1) Unless the defendant consents to the revocation of probation, if a continuation,
48 modification, enlargement or extension is not appropriate under this section, the court shall
49 order placement of the offender in a department of corrections' one hundred twenty-day
50 program so long as:

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

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

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

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

74 (2) Upon receiving the order, the department of corrections shall conduct an
75 assessment of the offender and place such offender in either the one hundred twenty-day
76 structured cognitive behavioral intervention program or the one hundred twenty-day
77 institutional treatment program. The placement of the offender in the structured cognitive
78 behavioral intervention program or institutional treatment program shall be at the sole
79 discretion of the department based on the assessment of the offender. The program shall
80 begin upon receipt of the offender by the department. The time between the court's order and
81 receipt of the offender by the department shall not apply toward the program.

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

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

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

100 5. If the defendant consents to the revocation of probation or if the defendant is not
101 eligible under subsection 4 of this section for placement in a program and a continuation,
102 modification, enlargement, or extension of the term under this section is not appropriate, the
103 court may revoke probation and order that any sentence previously imposed be executed. If
104 imposition of sentence was suspended, the court may revoke probation and impose any
105 sentence available under section 557.011. The court may mitigate any sentence of
106 imprisonment by reducing the prison or jail term by all or part of the time the defendant was
107 on probation. The court may, upon revocation of probation, place an offender on a second
108 term of probation. Such probation shall be for a term of probation as provided by section
109 559.016, notwithstanding any amount of time served by the offender on the first term of
110 probation.

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

120 7. The prosecuting or circuit attorney may file a motion to revoke probation or at any
121 time during the term of probation, the court may issue a notice to the probationer to appear to
122 answer a charge of a violation, and the court may issue a warrant of arrest for the violation.
123 Such notice shall be personally served upon the probationer. The warrant shall authorize the
124 return of the probationer to the custody of the court or to any suitable detention facility

125 designated by the court. Upon the filing of the prosecutor's or circuit attorney's motion or on
 126 the court's own motion, the court may immediately enter an order suspending the period of
 127 probation and may order a warrant for the defendant's arrest. The probation shall remain
 128 suspended until the court rules on the prosecutor's or circuit attorney's motion, or until the
 129 court otherwise orders the probation reinstated. Notwithstanding any other provision of the
 130 law to the contrary, the probation term shall be tolled during the time period when the
 131 probation is suspended under this section. The court may grant the probationer credit on the
 132 probation term for any of the tolled period when reinstating the probation term.

133 8. The power of the court to revoke probation shall extend for the duration of the term
 134 of probation designated by the court and for any further period which is reasonably necessary
 135 for the adjudication of matters arising before its expiration, provided that some affirmative
 136 manifestation of an intent to conduct a revocation hearing occurs prior to the expiration of the
 137 period and that every reasonable effort is made to notify the probationer and to conduct the
 138 hearing prior to the expiration of the period. If the delay of the hearing is attributable to the
 139 probationer's actions or the probationer otherwise consents or acquiesces to the delay, the
 140 court shall have been found to have made every reasonable effort to conduct the hearing
 141 within the probation term.

142 9. A defendant who was sentenced prior to January 1, 2017 to an offense that was
 143 eligible at the time of sentencing under paragraph (a) of subdivision (1) of subsection 4 of this
 144 section for the court ordered detention sanction shall continue to remain eligible for the
 145 sanction so long as the defendant meets all the other requirements provided under subsection
 146 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.~~

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

- 21 ~~(1) Involuntary manslaughter in the second degree;~~
22 ~~(2) Assault in the second degree except under subdivision (2) of~~
23 ~~subsection 1 of section 565.052 or section 565.060 as it existed prior to~~
24 ~~January 1, 2017;~~
25 ~~(3) Domestic assault in the second degree;~~
26 ~~(4) Assault in the third degree when the victim is a special victim or~~
27 ~~assault of a law enforcement officer in the second degree as it existed prior to~~
28 ~~January 1, 2017;~~
29 ~~(5) Statutory rape in the second degree;~~
30 ~~(6) Statutory sodomy in the second degree;~~
31 ~~(7) Endangering the welfare of a child in the first degree under~~
32 ~~subdivision (1) of subsection 1 of section 568.045; or~~
33 ~~(8) Any case in which the defendant is found guilty of a felony offense~~
34 ~~under chapter 571;~~

35
36 ~~the sentencing court may, upon its own motion or a motion of the prosecuting~~
37 ~~or circuit attorney, make a finding that the offender is ineligible to earn~~
38 ~~compliance credits because the nature and circumstances of the offense or the~~
39 ~~history and character of the offender indicate that a longer term of probation,~~
40 ~~parole, or conditional release is necessary for the protection of the public or the~~
41 ~~guidance of the offender. The motion may be made any time prior to the first~~
42 ~~month in which the person may earn compliance credits under this section or~~
43 ~~at a hearing under subsection 5 of this section. The offender's ability to earn~~
44 ~~credits shall be suspended until the court or board makes its finding. If the~~
45 ~~court or board finds that the offender is eligible for earned compliance credits,~~
46 ~~the credits shall begin to accrue on the first day of the next calendar month~~
47 ~~following the issuance of the decision.~~

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

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

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

67 following the month in which the report was submitted or the motion was
68 filed. If a hearing is held, all earned credits shall be rescinded if:

69 (1) The court or board revokes the probation or parole or the court
70 places the offender in a department program under subsection 4 of section
71 559.036; or

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

76
77 Earned credits, if not rescinded, shall continue to be suspended for a period of
78 time during which the court or board has suspended the term of probation,
79 parole, or release, and shall begin to accrue on the first day of the next calendar
80 month following the lifting of the suspension.

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

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

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

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

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

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

113 12. The application of earned compliance credits shall be suspended
114 upon entry into a treatment court, as described in sections 478.001 to 478.009,

115 ~~and shall remain suspended until the offender is discharged from such~~
116 ~~treatment court. Upon successful completion of treatment court, all earned~~
117 ~~compliance credits accumulated during the suspension period shall be~~
118 ~~retroactively applied, so long as the other terms and conditions of probation~~
119 ~~have been successfully completed.]~~

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