

SECOND REGULAR SESSION

SENATE BILL NO. 960

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Read 1st time January 30, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4589S.02I

AN ACT

To repeal sections 217.703, 217.730, and 559.036, RSMo, and to enact in lieu thereof two new sections relating to earned compliance credits for offenders, with existing penalty provisions.

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Section A. Sections 217.703, 217.730, and 559.036, RSMo, are repealed
2 and two new sections enacted in lieu thereof, to be known as sections 217.730 and
3 559.036, to read as follows:

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

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

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

559.036. 1. A term of probation commences on the day it is imposed.
2 Multiple terms of Missouri probation, whether imposed at the same time or at

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

3 different times, shall run concurrently. Terms of probation shall also run
4 concurrently with any federal or other state jail, prison, probation or parole term
5 for another offense to which the defendant is or becomes subject during the
6 period, unless otherwise specified by the Missouri court.

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

18 **(1) The division of probation and parole may file a notification**
19 **of earned discharge from probation with the court if the defendant has**
20 **completed at least twelve months of the probation term, and is**
21 **compliant with the terms of supervision as ordered by the court and**
22 **division. The division shall notify the prosecuting or circuit attorney**
23 **of the county having jurisdiction of the defendant's probation when a**
24 **notification of earned discharge has been filed.**

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

30 **(3) The court shall order the defendant discharged from**
31 **probation within thirty days after the division files the notification of**
32 **earned discharge, unless the court determines that discharge is not**
33 **appropriate after holding a hearing on the matter within sixty days**
34 **after the division files the notification of earned discharge as requested**
35 **by the prosecuting or circuit attorney pursuant to subdivision (4) of**
36 **this subsection.**

37 **(4) The prosecuting or circuit attorney may request a hearing**
38 **within thirty days after the notification of earned discharge has been**

39 **filed with the court. If the prosecuting or circuit attorney opposes the**
40 **division's determination, then the prosecuting or circuit attorney shall**
41 **prove by a preponderance of the evidence that the earned discharge is**
42 **not appropriate and the defendant should continue to serve the**
43 **remainder of the probation term. If the court finds that earned**
44 **discharge is not appropriate the court shall order the continuance of**
45 **the probation term within sixty days after the notification of earned**
46 **discharge is filed. The court may modify the conditions of probation as**
47 **appropriate and may order the defendant's continued supervision by**
48 **either the division of probation and parole or the court.**

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

53 4. (1) Unless the defendant consents to the revocation of probation, if a
54 continuation, modification, enlargement or extension is not appropriate under this
55 section, the court shall order placement of the offender in one of the department
56 of corrections' one hundred twenty-day programs so long as:

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

72 (b) The probation violation is not the result of the defendant being an
73 absconder or being found guilty of, pleading guilty to, or being arrested on
74 suspicion of any felony, misdemeanor, or infraction. For purposes of this

75 subsection, "absconder" shall mean an offender under supervision who has left
76 such offender's place of residency without the permission of the offender's
77 supervising officer for the purpose of avoiding supervision;

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

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

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

86 (3) Notwithstanding any of the provisions of subsection 3 of section
87 559.115 to the contrary, once the defendant has successfully completed the
88 program under this subsection, the court shall release the defendant to continue
89 to serve the term of probation, which shall not be modified, enlarged, or extended
90 based on the same incident of violation. Time served in the program shall be
91 credited as time served on any sentence imposed for the underlying offense.

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

104 6. Probation shall not be revoked without giving the probationer notice
105 and an opportunity to be heard on the issues of whether such probationer violated
106 a condition of probation and, if a condition was violated, whether revocation is
107 warranted under all the circumstances. Not less than five business days prior to
108 the date set for a hearing on the violation, except for a good cause shown, the
109 judge shall inform the probationer that he or she may have the right to request
110 the appointment of counsel if the probationer is unable to retain counsel. If the

111 probationer requests counsel, the judge shall determine whether counsel is
112 necessary to protect the probationer's due process rights. If the judge determines
113 that counsel is not necessary, the judge shall state the grounds for the decision
114 in the record.

115 7. The prosecuting or circuit attorney may file a motion to revoke
116 probation or at any time during the term of probation, the court may issue a
117 notice to the probationer to appear to answer a charge of a violation, and the
118 court may issue a warrant of arrest for the violation. Such notice shall be
119 personally served upon the probationer. The warrant shall authorize the return
120 of the probationer to the custody of the court or to any suitable detention facility
121 designated by the court. Upon the filing of the prosecutor's or circuit attorney's
122 motion or on the court's own motion, the court may immediately enter an order
123 suspending the period of probation and may order a warrant for the defendant's
124 arrest. The probation shall remain suspended until the court rules on the
125 prosecutor's or circuit attorney's motion, or until the court otherwise orders the
126 probation reinstated.

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

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

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

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

6 (2) On probation, parole, or conditional release for an
7 offense listed in chapter 579, or an offense previously listed in
8 chapter 195, or for a class D or E felony, excluding sections

9 565.225, 565.252, 566.031, 566.061, 566.083, 566.093, 568.020,
10 568.060, offenses defined as sexual assault under section 589.015,
11 deviate sexual assault, assault in the second degree under
12 subdivision (2) of subsection 1 of section 565.052, endangering the
13 welfare of a child in the first degree under subdivision (2) of
14 subsection 1 of section 568.045, and any offense of aggravated
15 stalking or assault in the second degree under subdivision (2) of
16 subsection 1 of section 565.060 as such offenses existed prior to
17 January 1, 2017;

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

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

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

23 (1) Involuntary manslaughter in the second degree;

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

27 (3) Domestic assault in the second degree;

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

31 (5) Statutory rape in the second degree;

32 (6) Statutory sodomy in the second degree;

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

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

37 the sentencing court may, upon its own motion or a motion of the
38 prosecuting or circuit attorney, make a finding that the offender is
39 ineligible to earn compliance credits because the nature and
40 circumstances of the offense or the history and character of the
41 offender indicate that a longer term of probation, parole, or
42 conditional release is necessary for the protection of the public or
43 the guidance of the offender. The motion may be made any time
44 prior to the first month in which the person may earn compliance

45 credits under this section or at a hearing under subsection 5 of this
46 section. The offender's ability to earn credits shall be suspended
47 until the court or board makes its finding. If the court or board
48 finds that the offender is eligible for earned compliance credits, the
49 credits shall begin to accrue on the first day of the next calendar
50 month following the issuance of the decision.

51 3. Earned compliance credits shall reduce the term of
52 probation, parole, or conditional release by thirty days for each full
53 calendar month of compliance with the terms of
54 supervision. Credits shall begin to accrue for eligible offenders
55 after the first full calendar month of supervision or on October 1,
56 2012, if the offender began a term of probation, parole, or
57 conditional release before September 1, 2012.

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

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

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

78 (2) The offender is found by the court or board to be
79 ineligible to earn compliance credits because the nature and
80 circumstances of the violation indicate that a longer term of

81 probation, parole, or conditional release is necessary for the
82 protection of the public or the guidance of the offender.

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

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

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

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

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

113 10. No less than sixty days before the date of final
114 discharge, the division shall notify the sentencing court, the board,
115 and, for probation cases, the circuit or prosecuting attorney of the
116 impending discharge. If the sentencing court, the board, or the

117 circuit or prosecuting attorney upon receiving such notice does not
118 take any action under subsection 5 of this section, the offender
119 shall be discharged under subsection 7 of this section.

120 11. Any offender who was sentenced prior to January 1,
121 2017, to an offense that was eligible for earned compliance credits
122 under subsection 1 or 2 of this section at the time of sentencing
123 shall continue to remain eligible for earned compliance credits so
124 long as the offender meets all the other requirements provided
125 under this section.

126 12. The application of earned compliance credits shall be
127 suspended upon entry into a treatment court, as described in
128 sections 478.001 to 478.009, and shall remain suspended until the
129 offender is discharged from such treatment court. Upon successful
130 completion of treatment court, all earned compliance credits
131 accumulated during the suspension period shall be retroactively
132 applied, so long as the other terms and conditions of probation
133 have been successfully completed.]

Bill

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