

FIRST REGULAR SESSION

SENATE BILL NO. 125

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR WILLIAMS.

0965S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 217.720 and 559.036, RSMo, and to enact in lieu thereof two new sections relating to technical violations while on parole, with penalty provisions.

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

Section A. Sections 217.720 and 559.036, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 217.720 and 559.036, to read as follows:

217.720. 1. At any time during release on parole or conditional release the division of probation and parole may issue a warrant for the arrest of a released offender for violation of any of the conditions of parole or conditional release. The warrant shall authorize any law enforcement officer to return the offender to the actual custody of the correctional center from which the offender was released, or to any other suitable facility designated by the division.

If any parole or probation officer has probable cause to believe that such offender has violated a condition of parole or conditional release, the probation or parole officer may issue a warrant for the arrest of the offender. The probation or parole officer may effect the arrest or may deputize any officer with the power of arrest to do so by giving the officer a copy of the warrant which shall outline the circumstances of the alleged violation and contain the statement that the offender has, in the judgment of the probation or parole officer, violated conditions of parole

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

19 or conditional release. The warrant delivered with the
20 offender by the arresting officer to the official in charge
21 of any facility designated by the division to which the
22 offender is brought shall be sufficient legal authority for
23 detaining the offender. After the arrest the parole or
24 probation officer shall present to the detaining authorities
25 a similar statement of the circumstances of violation.
26 Pending hearing as hereinafter provided, upon any charge of
27 violation, the offender shall remain in custody or
28 incarcerated without consideration of bail.

29 2. If the offender is arrested under the authority
30 granted in subsection 1 of this section, the offender shall
31 have the right to a preliminary hearing on the violation
32 charged unless the offender waives such hearing. Upon such
33 arrest and detention, the parole or probation officer shall
34 immediately notify the board and shall submit in writing a
35 report showing in what manner the offender has violated the
36 conditions of his parole or conditional release. The board
37 shall order the offender discharged from such facility,
38 require as a condition of parole or conditional release the
39 placement of the offender in a treatment center operated by
40 the department of corrections, or shall cause the offender
41 to be brought before it for a hearing on the violation
42 charged, under such rules and regulations as the board may
43 adopt. If the violation is established and found, the board
44 may continue or revoke the parole or conditional release, or
45 enter such other order as it may see fit, **except that there**
46 **shall be a presumption against revoking the parole or**
47 **conditional release and ordering a term of incarceration for**
48 **a technical violation of parole or conditional release**
49 **unless the board finds that the underlying conduct in the**
50 **violation demonstrates an identifiable, credible, and**

51 **imminent threat to public safety and the person cannot be**
52 **diverted safely from incarceration through less restrictive**
53 **means. For the purposes of this section, a technical**
54 **violation of parole or conditional release is defined as a**
55 **violation of the specific terms and conditions of parole or**
56 **conditional release other than a conviction of a new**
57 **offense.** If no violation is established and found, then the
58 parole or conditional release shall continue. If at any
59 time during release on parole or conditional release the
60 offender is arrested for a crime which later leads to
61 conviction, and sentence is then served outside the Missouri
62 department of corrections, the board shall determine what
63 part, if any, of the time from the date of arrest until
64 completion of the sentence imposed is counted as time served
65 under the sentence from which the offender was paroled or
66 conditionally released.

67 3. An offender for whose return a warrant has been
68 issued by the division shall, if it is found that the
69 warrant cannot be served, be deemed to be a fugitive from
70 justice or to have fled from justice. If it shall appear
71 that the offender has violated the provisions and conditions
72 of his parole or conditional release, the board shall
73 determine whether the time from the issuing date of the
74 warrant to the date of his arrest on the warrant, or
75 continuance on parole or conditional release shall be
76 counted as time served under the sentence. In all other
77 cases, time served on parole or conditional release shall be
78 counted as time served under the sentence.

79 4. At any time during parole or probation, the
80 division may issue a warrant for the arrest of any person
81 from another jurisdiction, the visitation and supervision of
82 whom the division has undertaken pursuant to the provisions

83 of the interstate compact for the supervision of parolees
84 and probationers authorized in section 217.810, for
85 violation of any of the conditions of release, or a notice
86 to appear to answer a charge of violation. The notice shall
87 be served personally upon the person. The warrant shall
88 authorize any law enforcement officer to return the offender
89 to any suitable detention facility designated by the
90 division. Any parole or probation officer may arrest such
91 person without a warrant, or may deputize any other officer
92 with power of arrest to do so by issuing a written statement
93 setting forth that the defendant has, in the judgment of the
94 parole or probation officer, violated the conditions of his
95 release. The written statement delivered with the person by
96 the arresting officer to the official in charge of the
97 detention facility to which the person is brought shall be
98 sufficient legal authority for detaining him. After making
99 an arrest the parole or probation officer shall present to
100 the detaining authorities a similar statement of the
101 circumstances of violation.

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

8 2. The court may terminate a period of probation and
9 discharge the defendant at any time before completion of the
10 specific term fixed under section 559.016 if warranted by
11 the conduct of the defendant and the ends of justice. The
12 court may extend the term of the probation, but no more than
13 one extension of any probation may be ordered except that

14 the court may extend the term of probation by one additional
15 year by order of the court if the defendant admits he or she
16 has violated the conditions of probation or is found by the
17 court to have violated the conditions of his or her
18 probation. Total time on any probation term, including any
19 extension shall not exceed the maximum term established in
20 section 559.016. Total time on any probation term shall not
21 include time when the probation term is suspended under this
22 section. Procedures for termination, discharge and
23 extension may be established by rule of court.

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

29 4. (1) Unless the defendant consents to the
30 revocation of probation, if a continuation, modification,
31 enlargement or extension is not appropriate under this
32 section, the court shall order placement of the offender in
33 a department of corrections' one hundred twenty-day program
34 so long as:

35 (a) The underlying offense for the probation is a
36 class D or E felony or an offense listed in chapter 579 or
37 an offense previously listed in chapter 195; except that,
38 the court may, upon its own motion or a motion of the
39 prosecuting or circuit attorney, make a finding that an
40 offender is not eligible if the underlying offense is
41 involuntary manslaughter in the second degree, stalking in
42 the first degree, assault in the second degree, sexual
43 assault, rape in the second degree, domestic assault in the
44 second degree, assault in the third degree when the victim
45 is a special victim, statutory rape in the second degree,

46 statutory sodomy in the second degree, deviate sexual
47 assault, sodomy in the second degree, sexual misconduct
48 involving a child, incest, endangering the welfare of a
49 child in the first degree under subdivision (1) or (2) of
50 subsection 1 of section 568.045, abuse of a child, invasion
51 of privacy, any case in which the defendant is found guilty
52 of a felony offense under chapter 571, or an offense of
53 aggravated stalking or assault of a law enforcement officer
54 in the second degree as such offenses existed prior to
55 January 1, 2017;

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

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

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

71 (2) Upon receiving the order, the department of
72 corrections shall conduct an assessment of the offender and
73 place such offender in either the one hundred twenty-day
74 structured cognitive behavioral intervention program or the
75 one hundred twenty-day institutional treatment program. The
76 placement of the offender in the structured cognitive
77 behavioral intervention program or institutional treatment

78 program shall be at the sole discretion of the department
79 based on the assessment of the offender. The program shall
80 begin upon receipt of the offender by the department. The
81 time between the court's order and receipt of the offender
82 by the department shall not apply toward the program.

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

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

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

111 5. If the defendant consents to the revocation of
112 probation or if the defendant is not eligible under
113 subsection 4 of this section for placement in a program and
114 a continuation, modification, enlargement, or extension of
115 the term under this section is not appropriate, the court
116 may revoke probation and order that any sentence previously
117 imposed be executed. If imposition of sentence was
118 suspended, the court may revoke probation and impose any
119 sentence available under section 557.011. The court
120 **[may]shall** mitigate any sentence of imprisonment by reducing
121 the prison or jail term by all or part of the time the
122 defendant was on probation. The court may, upon revocation
123 of probation, place an offender on a second term of
124 probation. Such probation shall be for a term of probation
125 as provided by section 559.016, **[notwithstanding any amount**
126 **of]less any** time served by the offender on the first term of
127 probation.

128 6. Probation shall not be revoked without giving the
129 probationer notice and an opportunity to be heard on the
130 issues of whether such probationer violated a condition of
131 probation and, if a condition was violated, whether
132 revocation is warranted under all the circumstances. Not
133 less than five business days prior to the date set for a
134 hearing on the violation, except for a good cause shown, the
135 judge shall inform the probationer that he or she may have
136 the right to request the appointment of counsel if the
137 probationer is unable to retain counsel. If the probationer
138 requests counsel, the judge shall determine whether counsel
139 is necessary to protect the probationer's due process

140 rights. If the judge determines that counsel is not
141 necessary, the judge shall state the grounds for the
142 decision in the record.

143 7. The prosecuting or circuit attorney may file a
144 motion to revoke probation or at any time during the term of
145 probation, the court may issue a notice to the probationer
146 to appear to answer a charge of a violation, and the court
147 may issue a warrant of arrest for the violation. Such
148 notice shall be personally served upon the probationer. The
149 warrant shall authorize the return of the probationer to the
150 custody of the court or to any suitable detention facility
151 designated by the court. Upon the filing of the
152 prosecutor's or circuit attorney's motion or on the court's
153 own motion, the court may immediately enter an order
154 suspending the period of probation and may order a warrant
155 for the defendant's arrest. The probation shall remain
156 suspended until the court rules on the prosecutor's or
157 circuit attorney's motion, or until the court otherwise
158 orders the probation reinstated. Notwithstanding any other
159 provision of the law to the contrary, the probation term
160 shall be tolled during the time period when the probation is
161 suspended under this section. The court may grant the
162 probationer credit on the probation term for any of the
163 tolled period when reinstating the probation term.

164 8. The power of the court to revoke probation shall
165 extend for the duration of the term of probation designated
166 by the court and for any further period which is reasonably
167 necessary for the adjudication of matters arising before its
168 expiration, provided that some affirmative manifestation of
169 an intent to conduct a revocation hearing occurs prior to
170 the expiration of the period and that every reasonable
171 effort is made to notify the probationer and to conduct the

172 hearing prior to the expiration of the period. If the delay
173 of the hearing is attributable to the probationer's actions
174 or the probationer otherwise consents or acquiesces to the
175 delay, the court shall have been found to have made every
176 reasonable effort to conduct the hearing within the
177 probation term.

178 9. A defendant who was sentenced prior to January 1,
179 2017 to an offense that was eligible at the time of
180 sentencing under paragraph (a) of subdivision (1) of
181 subsection 4 of this section for the court ordered detention
182 sanction shall continue to remain eligible for the sanction
183 so long as the defendant meets all the other requirements
184 provided under subsection 4 of this section.

185 **10. Notwithstanding any other provision of the law,**
186 **there shall be a presumption against ordering a term of**
187 **incarceration following a revocation for a technical**
188 **violation of probation unless the court finds that the**
189 **underlying conduct in the violation demonstrates an**
190 **identifiable, credible, and imminent threat to public safety**
191 **and the person cannot be safely diverted from incarceration**
192 **through less restrictive means. For the purposes of this**
193 **section, a technical violation of probation is defined as a**
194 **violation of the specific terms and conditions of probation**
195 **other than by a conviction of a new offense.**

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