

FIRST REGULAR SESSION

SENATE BILL NO. 384

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR GANNON.

1580S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 217.035, 217.650, 217.670, 217.710, 217.720, 217.810, and 548.241, RSMo, and to enact in lieu thereof eight new sections relating to the supervision of adult offenders on probation or parole from other states.

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

Section A. Sections 217.035, 217.650, 217.670, 217.710, 217.720, 217.810, and 548.241, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 217.035, 217.650, 217.670, 217.710, 217.720, 548.241, 589.564, and 589.565, to read as follows:

217.035. The director shall have the authority to:

- (1) Establish, with approval of the governor, the internal organization of the department and file the plan thereof with the secretary of state in the manner in which administrative rules are filed, the commissioner of administration and the revisor of statutes;
- (2) Exclusively prepare the budgets of the department and each division within the department in the form and manner set out by statute or by the commissioner of administration;
- (3) Designate by written order filed with the governor, the president pro tem of the senate, and the chairman of the joint committee on corrections, a deputy director of the department to act for and exercise the powers of the director during the director's absence for

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

16 official business, vacation, illness or incapacity. The
17 deputy director shall serve as acting director no longer
18 than six months; however, after the deputy director has
19 acted as director for longer than thirty days the deputy
20 director shall receive compensation equal to that of the
21 director;

22 (4) Procure, either through the division of purchasing
23 or by other means authorized by law, supplies, material,
24 equipment or contractual services for the department and
25 each of its divisions;

26 (5) Establish policy for the department and each of
27 its divisions;

28 (6) Designate any responsibilities, duties and powers
29 given by sections 217.010, [217.810,] 558.011 and 558.026 to
30 the department or the department director to any division or
31 division director.

217.650. As used in sections 217.650 to [217.810]
2 **217.805**, unless the context clearly indicates otherwise, the
3 following terms mean:

4 (1) "Chairperson", chairperson of the parole board who
5 shall be appointed by the governor;

6 (2) "Diversionary program", a program designed to
7 utilize alternatives to incarceration undertaken under the
8 supervision of the division of probation and parole after
9 commitment of an offense and prior to arraignment;

10 (3) "Parole", the release of an offender to the
11 community by the court or the state parole board prior to
12 the expiration of his term, subject to conditions imposed by
13 the court or the parole board and to its supervision by the
14 division of probation and parole;

15 (4) "Parole board", the state board of parole;

16 (5) "Prerelease program", a program relating to an
17 offender's preparation for, or orientation to, supervision
18 by the division of probation and parole immediately prior to
19 or immediately after assignment of the offender to the
20 division of probation and parole for supervision;

21 (6) "Pretrial program", a program relating to the
22 investigation or supervision of persons referred or assigned
23 to the division of probation and parole prior to their
24 conviction;

25 (7) "Probation", a procedure under which a defendant
26 found guilty of a crime upon verdict or plea is released by
27 the court without imprisonment, subject to conditions
28 imposed by the court and subject to the supervision of the
29 division of probation and parole;

30 (8) "Recognizance program", a program relating to the
31 release of an individual from detention who is under arrest
32 for an offense for which he or she may be released as
33 provided in section 544.455.

217.670. 1. The board shall adopt an official seal of
2 which the courts shall take official notice.

3 2. Decisions of the board regarding granting of
4 paroles, extensions of a conditional release date or
5 revocations of a parole or conditional release shall be by a
6 majority vote of the hearing panel members. The hearing
7 panel shall consist of one member of the board and two
8 hearing officers appointed by the board. A member of the
9 board may remove the case from the jurisdiction of the
10 hearing panel and refer it to the full board for a
11 decision. Within thirty days of entry of the decision of
12 the hearing panel to deny parole or to revoke a parole or
13 conditional release, the offender may appeal the decision of
14 the hearing panel to the board. The board shall consider

15 the appeal within thirty days of receipt of the appeal. The
16 decision of the board shall be by majority vote of the board
17 members and shall be final.

18 3. The orders of the board shall not be reviewable
19 except as to compliance with the terms of sections 217.650
20 to [217.810] **217.805** or any rules promulgated pursuant to
21 such section.

22 4. The board shall keep a record of its acts and shall
23 notify each correctional center of its decisions relating to
24 persons who are or have been confined in such correctional
25 center.

26 5. Notwithstanding any other provision of law, any
27 meeting, record, or vote, of proceedings involving
28 probation, parole, or pardon, may be a closed meeting,
29 closed record, or closed vote.

30 6. Notwithstanding any other provision of law, when
31 the appearance or presence of an offender before the board
32 or a hearing panel is required for the purpose of deciding
33 whether to grant conditional release or parole, extend the
34 date of conditional release, revoke parole or conditional
35 release, or for any other purpose, such appearance or
36 presence may occur by means of a videoconference at the
37 discretion of the board. Victims having a right to attend
38 parole hearings may testify either at the site where the
39 board is conducting the videoconference or at the
40 institution where the offender is located. The use of
41 videoconferencing in this section shall be at the discretion
42 of the board, and shall not be utilized if either the victim
43 or the victim's family objects to it.

217.710. 1. Probation and parole officers,
2 supervisors and members of the parole board, who are
3 certified pursuant to the requirements of subsection 2 of

4 this section shall have the authority to carry their
5 firearms at all times. The department of corrections shall
6 promulgate policies and operating regulations which govern
7 the use of firearms by probation and parole officers,
8 supervisors and members of the parole board when carrying
9 out the provisions of sections 217.650 to [217.810]

10 **217.805.** Mere possession of a firearm shall not constitute
11 an employment activity for the purpose of calculating
12 compensatory time or overtime.

13 2. The department shall determine the content of the
14 required firearms safety training and provide firearms
15 certification and recertification training for probation and
16 parole officers, supervisors and members of the parole
17 board. A minimum of sixteen hours of firearms safety
18 training shall be required. In no event shall firearms
19 certification or recertification training for probation and
20 parole officers and supervisors exceed the training required
21 for officers of the state highway patrol.

22 3. The department shall determine the type of firearm
23 to be carried by the officers, supervisors and members of
24 the parole board.

25 4. Any officer, supervisor or member of the parole
26 board that chooses to carry a firearm in the performance of
27 such officer's, supervisor's or member's duties shall
28 purchase the firearm and holster.

29 5. The department shall furnish such ammunition as is
30 necessary for the performance of the officer's, supervisor's
31 and member's duties.

32 6. Any rule or portion of a rule, as that term is
33 defined in section 536.010, that is promulgated under the
34 authority of this chapter, shall become effective only if
35 the agency has fully complied with all of the requirements

36 of chapter 536 including but not limited to, section
37 536.028, if applicable, after August 28, 1998. All
38 rulemaking authority delegated prior to August 28, 1998, is
39 of no force and effect and repealed as of August 28, 1998,
40 however nothing in section 571.030 or this section shall be
41 interpreted to repeal or affect the validity of any rule
42 adopted and promulgated prior to August 28, 1998. If the
43 provisions of section 536.028 apply, the provisions of this
44 section are nonseverable and if any of the powers vested
45 with the general assembly pursuant to section 536.028 to
46 review, to delay the effective date, or to disapprove and
47 annul a rule or portion of a rule are held unconstitutional
48 or invalid, the purported grant of rulemaking authority and
49 any rule so proposed and contained in the order of
50 rulemaking shall be invalid and void, except that nothing in
51 section 571.030 or this section shall affect the validity of
52 any rule adopted and promulgated prior to August 28, 1998.

217.720. 1. At any time during release on parole or
2 conditional release the division of probation and parole may
3 issue a warrant for the arrest of a released offender for
4 violation of any of the conditions of parole or conditional
5 release. The warrant shall authorize any law enforcement
6 officer to return the offender to the actual custody of the
7 correctional center from which the offender was released, or
8 to any other suitable facility designated by the division.
9 If any parole or probation officer has probable cause to
10 believe that such offender has violated a condition of
11 parole or conditional release, the probation or parole
12 officer may issue a warrant for the arrest of the offender.
13 The probation or parole officer may effect the arrest or may
14 deputize any officer with the power of arrest to do so by
15 giving the officer a copy of the warrant which shall outline

16 the circumstances of the alleged violation and contain the
17 statement that the offender has, in the judgment of the
18 probation or parole officer, violated conditions of parole
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. If no violation
46 is established and found, then the parole or conditional
47 release shall continue. If at any time during release on

48 parole or conditional release the offender is arrested for a
49 crime which later leads to conviction, and sentence is then
50 served outside the Missouri department of corrections, the
51 board shall determine what part, if any, of the time from
52 the date of arrest until completion of the sentence imposed
53 is counted as time served under the sentence from which the
54 offender was paroled or conditionally released.

55 3. An offender for whose return a warrant has been
56 issued by the division shall, if it is found that the
57 warrant cannot be served, be deemed to be a fugitive from
58 justice or to have fled from justice. If it shall appear
59 that the offender has violated the provisions and conditions
60 of his parole or conditional release, the board shall
61 determine whether the time from the issuing date of the
62 warrant to the date of his arrest on the warrant, or
63 continuance on parole or conditional release shall be
64 counted as time served under the sentence. In all other
65 cases, time served on parole or conditional release shall be
66 counted as time served under the sentence.

67 4. At any time during parole or probation, the
68 division may issue a warrant for the arrest of any person
69 from another jurisdiction[, the visitation and supervision
70 of whom the division has undertaken pursuant to the
71 provisions of the interstate compact for the supervision of
72 parolees and probationers authorized in section 217.810,]
73 for violation of any of the conditions of release[,] or a
74 notice to appear to answer a charge of violation. The
75 notice shall be served personally upon the person. The
76 warrant shall authorize any law enforcement officer to
77 return the offender to any suitable detention facility
78 designated by the division. Any parole or probation officer
79 may arrest such person without a warrant, or may deputize

80 any other officer with power of arrest to do so by issuing a
81 written statement setting forth that the defendant has, in
82 the judgment of the parole or probation officer, violated
83 the conditions of his release. The written statement
84 delivered with the person by the arresting officer to the
85 official in charge of the detention facility to which the
86 person is brought shall be sufficient legal authority for
87 detaining him. After making an arrest the parole or
88 probation officer shall present to the detaining authorities
89 a similar statement of the circumstances of violation.

548.241. 1. All necessary and proper expenses
2 accruing under section 548.221, upon being ascertained to
3 the satisfaction of the governor, shall be allowed on his
4 certificate and paid out of the state treasury as other
5 demands against the state.

6 2. All necessary and proper expenses accruing as a
7 result of a person being returned to this state pursuant to
8 the provisions of section 548.243 [or 217.810] shall be
9 allowed and paid out of the state treasury as if the person
10 were being returned to this state pursuant to section
11 548.221.

12 **3. Any necessary and proper expenses accruing as a**
13 **result of a person being returned to this state under the**
14 **provisions of sections 589.500 to 589.569 may be paid either**
15 **out of the Missouri interstate compact fund established in**
16 **section 589.565 or out of the state treasury.**

589.564. 1. Upon a petition from the state, a circuit
2 court is authorized to add any condition to a term of
3 probation for an offender supervised in this state for a
4 term of probation ordered by another state, including shock
5 incarceration; however, the court shall not reduce, extend,
6 or revoke such a term of probation. The circuit court for

7 the jurisdiction in which a probationer is under supervision
8 shall serve as the authorizing court for the purposes of
9 this section. The prosecuting attorney or circuit attorney
10 for the jurisdiction in which a probationer is under
11 supervision shall serve as the authorized person to petition
12 the court to add a condition of probation. Notwithstanding
13 any provision of section 549.500 or 559.125, the division of
14 probation and parole may submit violation reports to the
15 prosecuting attorney or circuit attorney with authority to
16 petition the court to add a condition to a term of probation
17 under this section.

18 2. Where supervision of a parolee in Missouri is
19 administered pursuant to this compact, the division of
20 probation and parole shall have the authority to impose a
21 sanction or additional conditions in response to written
22 violations of supervision; however, the division of
23 probation and parole shall not reduce, extend, or revoke
24 such a term of parole.

589.565. A Missouri probationer or parolee seeking
2 transfer of their supervision through this compact shall pay
3 a fee for each transfer application submitted in the amount
4 of one hundred seventy-five dollars. The transfer
5 application fee shall be paid to the compact commissioner
6 upon submission of the transfer application. The
7 commissioner or commissioner's designee may waive the
8 application fee if either the commissioner or the
9 commissioner's designee finds that payment of the fee will
10 constitute an undue economic burden on the offender. All
11 fees collected pursuant to this section shall be paid and
12 deposited to the credit of the "Missouri Interstate Compact
13 Fund", which is hereby established in the state treasury.
14 The state treasurer shall be custodian of the fund. In

15 accordance with sections 30.170 and 30.180, the state
16 treasurer may approve disbursements. The fund shall be a
17 dedicated fund and, upon appropriation, moneys in the fund
18 shall be used for the sole benefit of the department of
19 corrections in support of administration of this section;
20 expenses related to retaking, assessment, staff development,
21 and training; and implementation of evidence-based practices
22 in support of offenders under supervision. Notwithstanding
23 the provisions of section 33.080 to the contrary, any moneys
24 remaining in the fund at the end of the biennium shall not
25 revert to the credit of the general revenue fund. The state
26 treasurer shall invest moneys in the fund in the same manner
27 as other funds are invested. Any interest and moneys earned
28 on such investments shall be credited to the fund.

2 [217.810. 1. The governor is hereby
3 authorized and directed to enter into the
4 interstate compact for the supervision of
5 parolees and probationers on behalf of the state
6 of Missouri with the commonwealth of Puerto
7 Rico, the Virgin Islands, the District of
8 Columbia and any and all other states of the
9 United States legally joining therein and
10 pursuant to the provisions of an act of the
11 Congress of the United States of America
12 granting the consent of Congress to the
13 commonwealth of Puerto Rico, the Virgin Islands,
14 the District of Columbia and any two or more
15 states to enter into agreements or compacts for
16 cooperative effort and mutual assistance in the
17 prevention of crime and for other purposes,
18 which compact shall have as its objective the
19 permitting of persons placed on probation or
20 released on parole to reside in any other state
21 signatory to the compact assuming the duties of
22 visitation and supervision over such
23 probationers and parolees; permitting the
24 extradition and transportation without
25 interference of prisoners, being retaken,
26 through any and all states signatory to the
27 compact under such terms, conditions, rules and
28 regulations, and for such duration as in the
29 opinion of the governor of this state shall be
30 necessary and proper and in a form substantially
31 as contained in subsection 2 of this section.
32 The chairman of the board shall administer the
compact for the state.

33 2. INTERSTATE COMPACT FOR THE SUPERVISION
34 OF PAROLEES AND PROBATIONERS

35 This compact shall be entered into by and
36 among the contracting states, signatories
37 hereto, with the consent of the Congress of the
38 United States of America, granted by an act
39 entitled "An act granting the consent of
40 Congress to any two or more states to enter into
41 agreements or compacts for cooperative effort
42 and mutual assistance in the prevention of crime
43 and for other purposes."

44 The contracting states solemnly agree:

45 (1) That it shall be competent for the
46 duly constituted judicial and administrative
47 authorities of a state party to this compact
48 (herein called "sending state") to permit any
49 person convicted of an offense within such state
50 and placed on probation or released on parole to
51 reside in any other state party to this compact
52 (herein called "receiving state"), while on
53 probation or parole, if

54 (a) Such a person is in fact a resident of
55 or has his family residing within the receiving
56 state and can obtain employment there;

57 (b) Though not a resident of the receiving
58 state and not having his family residing there,
59 the receiving state consents to such person
60 being sent there.

61 Before granting such permission,
62 opportunity shall be granted to the receiving
63 state to investigate the home and prospective
64 employment of such person.

65 A resident of the receiving state, within
66 the meaning of this section, is one who has been
67 an actual inhabitant of such state continuously
68 for more than one year prior to his coming to
69 the sending state and has not resided within the
70 sending state more than six continuous months
71 immediately preceding the commission of the
72 offense for which he has been convicted.

73 (2) The receiving state shall assume the
74 duties of visitation and supervision over
75 probationers or parolees of any sending state
76 transferred under the compact and will apply the
77 same standards of supervision that prevail for
78 its own probationers and parolees.

79 (3) That duly accredited officers of a
80 sending state may at all times enter a receiving
81 state and there apprehend and retake any person
82 on probation or parole. For that purpose no
83 formalities will be required other than
84 establishing the authority of the officer and
85 the identity of the person to be retaken. All
86 legal requirements to obtain extradition of
87 fugitives from justice are hereby expressly
88 waived on the part of states party hereto, as to
89 such persons. The decision of the sending state

90 to retake a person on probation or parole shall
91 be conclusive upon and not reviewable within the
92 receiving state. Provided, however, that if at
93 the time when a state seeks to retake a
94 probationer or parolee there should be pending
95 against him within the receiving state any
96 criminal charge, or he should be suspected of
97 having committed within such state a criminal
98 offense, he shall not be retaken without the
99 consent of the receiving state until discharged
100 from prosecution or from imprisonment for such
101 offense.

102 (4) That the duly accredited officers of
103 the sending state will be permitted to transport
104 prisoners being retaken through any and all
105 states parties to this compact, without
106 interference.

107 (5) Each state may designate an officer
108 who, acting jointly with like officers of other
109 contracting states shall promulgate such rules
110 and regulations as may be deemed necessary to
111 more effectively carry out the terms of this
112 compact.

113 (6) That this compact shall become
114 operative immediately upon its execution by any
115 state as between it and any other state or
116 states so executing. When executed it shall
117 have the full force and effect of law within
118 such state, the form of execution to be in
119 accordance with the laws of the executing state.

120 (7) That this compact shall continue in
121 force and remain binding upon each executing
122 state until renounced by it. The duties and
123 obligations hereunder of a renouncing state
124 shall continue as to parolees or probationers
125 residing therein at the time of withdrawal until
126 retaken or finally discharged by the sending
127 state. Renunciation of this compact shall be by
128 the same authority which executed it, by sending
129 six months' notice in writing of its intention
130 to withdraw from the compact to the other states
131 party hereto.

132 3. If any section, sentence, subdivision
133 or clause within subsection 2 of this section is
134 for any reason held invalid or to be
135 unconstitutional, such decision shall not affect
136 the validity of the remaining provisions of that
137 subsection or this section.

138 4. All necessary and proper expenses
139 accruing as a result of a person being returned
140 to this state by order of a court or the parole
141 board shall be paid by the state as provided in
142 section 548.241 or 548.243.]

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