

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1520
100TH GENERAL ASSEMBLY

3763H.04C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 217.147, 217.692, 217.703, 217.720, 217.722, 217.730, 544.457, 544.676, 559.016, and 559.036, RSMo, and to enact in lieu thereof nine new sections relating to criminal punishment, with penalty provisions.

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

Section A. Sections 217.147, 217.692, 217.703, 217.720, 217.722, 217.730, 544.457, 544.676, 559.016, and 559.036, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 217.147, 217.692, 217.720, 217.722, 217.730, 544.457, 544.676, 559.016, and 559.036, to read as follows:

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

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

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

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

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

(b) The chair of the appropriations-public safety and corrections committee of the house of representatives, or any successor committee that reviews similar legislation, who 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 who
17 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 judge
24 member shall be appointed for four years, two of the members appointed by the governor shall
25 be appointed for three years, and one member appointed by the governor shall be appointed for
26 two years. Thereafter, the members shall be appointed to serve four-year terms and shall serve
27 until a successor is appointed. A vacancy in the office of a member shall be filled by
28 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
39 evidence-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 report
44 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 demonstrating
49 those effects. The report may also recommend ways to reinvest any cost savings into
50 evidence-based practices to reduce recidivism and possible changes to sentencing and corrections
51 policies and statutes.

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

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

 217.692. 1. Notwithstanding any other provision of law to the contrary, any offender
2 incarcerated in a correctional institution serving any sentence of life with no parole for fifty years
3 or life without parole, whose plea of guilt was entered or whose trial commenced prior to
4 December 31, 1990, and who:

5 (1) Pleaded guilty to or was found guilty of a homicide of a spouse or domestic partner;

6 (2) Has no prior violent felony convictions;

7 (3) No longer has a cognizable legal claim or legal recourse; and

8 (4) Has a history of being a victim of continual and substantial physical or sexual
9 domestic violence that was not presented as an affirmative defense at trial or sentencing and such
10 history can be corroborated with evidence of facts or circumstances which existed at the time of
11 the alleged physical or sexual domestic violence of the offender, including but not limited to
12 witness statements, hospital records, social services records, and law enforcement records;

13

14 shall be eligible for parole after having served fifteen years of such sentence when the board
15 determines by using the guidelines established by this section that there is a strong and
16 reasonable probability that the person will not thereafter violate the law.

17 2. The board of probation and parole shall give a thorough review of the case history and
18 prison record of any offender described in subsection 1 of this section. At the end of the board's
19 review, the board shall provide the offender with a copy of a statement of reasons for its parole
20 decision.

21 3. Any offender released under the provisions of this section shall be under the
22 supervision of the parole board for an amount of time to be determined by the board.

23 4. The parole board shall consider, but not be limited to the following criteria when
24 making its parole decision:

25 (1) Length of time served;

26 (2) Prison record and self-rehabilitation efforts;

27 (3) Whether the history of the case included corroborative material of physical, sexual,
28 mental, or emotional abuse of the offender, including but not limited to witness statements,
29 hospital records, social service records, and law enforcement records;

30 (4) If an offer of a plea bargain was made and if so, why the offender rejected or
31 accepted the offer;

32 (5) Any victim information outlined in subsection [8] 9 of section 217.690 and section
33 595.209;

34 (6) The offender's continued claim of innocence;

35 (7) The age and maturity of the offender at the time of the board's decision;

36 (8) The age and maturity of the offender at the time of the crime and any contributing
37 influence affecting the offender's judgment;

38 (9) The presence of a workable parole plan; and

39 (10) Community and family support.

40 5. Nothing in this section shall limit the review of any offender's case who is eligible for
41 parole prior to fifteen years, nor shall it limit in any way the parole board's power to grant parole
42 prior to fifteen years.

43 6. Nothing in this section shall limit the review of any offender's case who has applied
44 for executive clemency, nor shall it limit in any way the governor's power to grant clemency.

45 7. It shall be the responsibility of the offender to petition the board for a hearing under
46 this section.

47 8. A person commits the crime of perjury if he or she, with the purpose to deceive,
48 knowingly makes a false witness statement to the board. Perjury under this section shall be a
49 class D felony.

50 9. In cases where witness statements alleging physical or sexual domestic violence are
51 in conflict as to whether such violence occurred or was continual and substantial in nature, the
52 history of such alleged violence shall be established by other corroborative evidence in addition
53 to witness statements, as provided by subsection 1 of this section. A contradictory statement of
54 the victim shall not be deemed a conflicting statement for purposes of this section.

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

12 conditional release. **The probation officer shall notify the court of any such arrest within**
13 **forty-eight hours of the arrest.** The warrant delivered with the offender by the arresting officer
14 to the official in charge of any facility designated by the division to which the offender is brought
15 shall be sufficient legal authority for detaining the offender. After the arrest the parole or
16 probation officer shall present to the detaining authorities a similar statement of the
17 circumstances of violation. Pending hearing as hereinafter provided, upon any charge of
18 violation, the offender [~~shall remain in custody or incarcerated without consideration of bail~~]
19 **may be ordered held for further proceedings under section 544.676.**

20 2. (1) If the offender is arrested under the authority granted in subsection 1 of this
21 section, the offender shall have the right to a preliminary hearing on the violation charged unless
22 the offender waives such hearing. Upon such arrest and detention, the parole or probation officer
23 shall immediately notify the board and shall submit in writing a report showing in what manner
24 the offender has violated the conditions of his parole or conditional release.

25 (2) The board shall order the offender discharged from such facility, **shall** require as a
26 condition of parole or conditional release **that** the [~~placement of the~~] offender **be placed** in a
27 treatment center operated by the department of corrections, or shall cause the offender to be
28 brought before it for a hearing on the violation charged, under such rules and regulations as the
29 board may adopt. **If the arrest alleges probable cause that an offender committed a felony**
30 **offense in this state or another state while on probation or parole for a separate felony**
31 **offense, the offender shall be presumed to pose a danger to the community, and the parole**
32 **or probation officer or board may order the defendant held for a violation hearing.**

33 (3) If the violation is established and found, the board may continue or revoke the parole
34 or conditional release, or enter such other order as it may see fit. If no violation is established
35 and found, then the parole or conditional release shall continue.

36 (4) If at any time during release on parole or conditional release the offender is arrested
37 for a crime [~~which~~] **that** later leads to conviction[~~;~~] and sentence is then served outside the
38 Missouri department of corrections, the board shall determine what part, if any, of the time from
39 the date of arrest until completion of the sentence imposed is counted as time served under the
40 sentence from which the offender was paroled or conditionally released.

41 3. An offender for whose return a warrant has been issued by the division shall, if it is
42 found that the warrant cannot be served, be deemed to be a fugitive from justice or to have fled
43 from justice. If it shall appear that the offender has violated the provisions and conditions of his
44 parole or conditional release, the board shall determine whether the time from the issuing date
45 of the warrant to the date of his arrest on the warrant, or continuance on parole or conditional
46 release shall be counted as time served under the sentence. In all other cases, time served on
47 parole or conditional release shall be counted as time served under the sentence.

48 4. At any time during parole or probation, the division may issue a warrant for the arrest
49 of any person from another jurisdiction, the visitation and supervision of whom the division has
50 undertaken pursuant to the provisions of the interstate compact for the supervision of parolees
51 and probationers authorized in section 217.810, for violation of any of the conditions of release,
52 or a notice to appear to answer a charge of violation. The notice shall be served personally upon
53 the person. The warrant shall authorize any law enforcement officer to return the offender to any
54 suitable detention facility designated by the division. Any parole or probation officer may arrest
55 such person without a warrant, or may deputize any other officer with power of arrest to do so,
56 by issuing a written statement setting forth that the defendant has, in the judgment of the parole
57 or probation officer, violated the conditions of his release. The written statement delivered with
58 the person by the arresting officer to the official in charge of the detention facility to which the
59 person is brought shall be sufficient legal authority for detaining him. After making an arrest the
60 parole or probation officer shall present to the detaining authorities a similar statement of the
61 circumstances of violation.

 217.722. 1. If any probation officer has probable cause to believe that the person on
2 probation has violated a condition of probation, the probation officer may issue a warrant for the
3 arrest of the person on probation. The officer may effect the arrest or may deputize any other
4 officer with the power of arrest to do so by giving the officer a copy of the warrant which will
5 outline the circumstances of the alleged violation and contain the statement that the person on
6 probation has, in the judgment of the probation officer, violated the conditions of probation. The
7 warrant delivered with the offender by the arresting officer to the official in charge of any jail
8 or other detention facility shall be sufficient authority for detaining the person on probation
9 pending a preliminary hearing on the alleged violation. Other provisions of law relating to
10 release on bail of persons charged with criminal offenses shall be applicable to persons detained
11 on alleged probation violations.

12 2. **(1)** Any person on probation arrested under the authority granted in subsection 1 of
13 this section shall have the right to a preliminary hearing on the violation charged as long as the
14 person on probation remains in custody or unless the offender waives such hearing. The person
15 on probation shall be notified immediately in writing of the alleged probation violation.

16 **(2)** If arrested in the jurisdiction of the sentencing court[,] and the court which placed
17 the person on probation is immediately available, the preliminary hearing shall be heard by the
18 sentencing court. Otherwise, the person on probation shall be taken before a judge [~~or associate~~
19 ~~circuit judge~~] in the county of the alleged violation or arrest having original jurisdiction to try
20 criminal offenses or before an impartial member of the staff of the division of probation and
21 parole, and the preliminary hearing shall be held as soon as possible after the arrest. Such

22 preliminary hearings shall be conducted as provided by rule of court or by rules of the parole
23 board.

24 (3) If it appears that there is probable cause to believe that the person on probation has
25 violated a condition of probation[;] or if the person on probation waives the preliminary hearing,
26 the judge [~~or associate circuit judge,~~] or member of the staff of the division of probation and
27 parole [~~shall~~] **may, as provided under section 544.676,** order the person on probation held for
28 further proceedings in the sentencing court. If probable cause is not found, the court shall not
29 be barred from holding a hearing on the question of the alleged violation of a condition of
30 probation nor from ordering the person on probation to be present at such a hearing.

31 3. Upon such arrest and detention, the probation officer shall immediately notify the
32 sentencing court and shall submit to the court a written report showing in what manner the
33 person on probation has violated the conditions of probation. Thereupon, or upon arrest by
34 warrant, the court shall cause the person on probation to be brought before it without unnecessary
35 delay for a hearing on the violation charged. Revocation hearings shall be conducted as provided
36 by rule of court.

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

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

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

544.457. Notwithstanding the provisions of Section 20 of Article I of the Missouri
2 Constitution to the contrary, upon a showing that the defendant poses a danger to a crime victim,
3 the community, or any other person, the court may use such information **and shall use the**
4 **evidence described under subsection 2 of section 544.676** in determining the appropriate
5 amount of bail, to increase the amount of bail, to deny bail entirely or impose any special
6 conditions which the defendant and surety shall guarantee.

544.676. 1. Upon a showing by the state that a defendant poses a danger to a crime
2 victim, witness, [~~or~~] the community, **or any other person,** the court may deny bail to a

3 defendant or impose such conditions as it deems appropriate to protect a crime victim, witness
4 [or] , the community, **or any other person.**

5 2. In determining whether a defendant poses a danger **under this section or section**
6 **544.455** to a crime victim, witness, [or] the community, **or any other person**, the court [may]
7 **shall** consider all relevant evidence[,] including, but not limited to:

8 (1) The defendant's criminal record;

9 (2) **The weight of the evidence;**

10 (3) **Whether the defendant is a flight risk;**

11 (4) **Whether the defendant has previously been found guilty of armed criminal**
12 **action, burglary in the first degree, burglary in the second degree, delivery of a controlled**
13 **substance if the offense is a class B or C felony, distribution of a controlled substance,**
14 **manufacture of a controlled substance if the offense is a class A or B felony, any dangerous**
15 **felony as defined in section 556.061, or any felony offense listed under subsection 2 of**
16 **section 558.019;**

17 (5) **Whether the defendant is charged with any dangerous felony as defined in**
18 **section 556.061 or a felony offense under subsection 2 of section 558.019;**

19 (6) Whether the defendant was on probation **or parole** or released on bail at the time the
20 crime for which the court is considering bail was committed;

21 (7) **Whether the defendant violated any term or terms of probation or parole;**

22 [~~3~~] (8) The nature and circumstances of the crime for which bail is being sought; **or**

23 (9) **Any other factor required by rule or law.**

24 3. A defendant who is denied bail because he poses a danger to a crime victim, witness,
25 or the community shall, upon written request filed at arraignment, be entitled to a trial which
26 begins within one hundred twenty days of his arraignment or within one hundred twenty days
27 of an order granting a change of venue, whichever occurs later. The provisions of this subsection
28 shall be waived and of no effect if the defendant requests and receives a continuance or if bail
29 is set for the defendant.

559.016. 1. Unless terminated as provided in section 559.036 [~~or modified under section~~
2 ~~217.703~~], the terms during which each probation shall remain conditional and be subject to
3 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 of
11 any probation may be ordered except that the court may extend the total time on probation by one
12 additional year by order of the court if the defendant admits he or she has violated the conditions
13 of his or her probation or is found by the court to have violated the conditions of his or her
14 probation. Total time on any probation term, including any extension, shall not exceed the
15 maximum term as established in subsection 1 of this section plus one additional year if the
16 defendant admits or the court finds that the defendant has violated the conditions of his or her
17 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 jail,
4 prison, probation or parole term for another offense to which the defendant is or becomes subject
5 during the period, unless otherwise specified by the Missouri court.

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

15 **(2) The division of probation and parole may file a notification of earned discharge**
16 **from probation with the court if the defendant has completed at least twenty-four months**
17 **of the probation term and is compliant with the terms of supervision as ordered by the**
18 **court and the division of probation and parole. The division of probation and parole shall**
19 **notify the prosecuting or circuit attorney when a notification of earned discharge has been**
20 **filed.**

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

25 **(4) The court shall order the defendant discharged from probation within thirty**
26 **days after the division of probation and parole files the notification of earned discharge,**
27 **unless the court determines that discharge is not appropriate after holding a hearing on**
28 **the matter within sixty days after the division of probation and parole files the notification**

29 of earned discharge as requested by the prosecuting or circuit attorney under subdivision
30 (5) of this subsection.

31 (5) The prosecuting or circuit attorney or the judge may request a hearing within
32 thirty days after the notification of earned discharge has been filed with the court. If the
33 state opposes the division of probation and parole's determination, the prosecuting or
34 circuit attorney shall prove by a preponderance of the evidence that the earned discharge
35 is not appropriate and the offender should continue to serve the remainder of the
36 probation term. If the court finds that earned discharge is not appropriate, the court shall
37 order the continuance of the probation term within sixty days after the notification of
38 earned discharge is filed. The court may modify the conditions of probation as appropriate
39 and may order the defendant's continued supervision by either the division of probation
40 and parole or the court.

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

44 4. (1) Unless the defendant consents to the revocation of probation, if a continuation,
45 modification, enlargement or extension is not appropriate under this section, the court shall order
46 placement of the offender in one of the department of corrections' one hundred twenty-day
47 programs so long as:

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

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

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

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

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

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

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

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

97 7. The prosecuting or circuit attorney may file a motion to revoke probation or at any
98 time during the term of probation, the court may issue a notice to the probationer to appear to
99 answer a charge of a violation, and the court may issue a warrant of arrest for the violation. Such
100 notice shall be personally served upon the probationer. The warrant shall authorize the return

101 of the probationer to the custody of the court or to any suitable detention facility designated by
 102 the court. Upon the filing of the prosecutor's or circuit attorney's motion or on the court's own
 103 motion, the court may immediately enter an order suspending the period of probation and may
 104 order a warrant for the defendant's arrest. The probation shall remain suspended until the court
 105 rules on the prosecutor's or circuit attorney's motion, or until the court otherwise orders the
 106 probation reinstated.

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

113 9. A defendant who was sentenced prior to January 1, 2017 to an offense that was
 114 eligible at the time of sentencing under paragraph (a) of subdivision (1) of subsection 4 of this
 115 section for the court ordered detention sanction shall continue to remain eligible for the sanction
 116 so long as the defendant meets all the other requirements provided under subsection 4 of this
 117 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.~~

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

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

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

54 ~~_____ 4. For the purposes of this section, the term "compliance" shall mean the~~
55 ~~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 offender.~~

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

65 ~~earning credits on the first day of the next calendar month following the month~~
66 ~~in which the report was submitted or the motion was filed. If a hearing is held,~~
67 ~~all earned credits shall be rescinded if:~~

68 ~~————— (1) The court or board revokes the probation or parole or the court places~~
69 ~~the offender in a department program under subsection 4 of section 559.036 or~~
70 ~~under section 217.785; or~~

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

75

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

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

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

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

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

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

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

112 ~~12. The application of earned compliance credits shall be suspended upon~~
113 ~~entry into a treatment court, as described in sections 478.001 to 478.009, and~~
114 ~~shall remain suspended until the offender is discharged from such treatment~~
115 ~~court. Upon successful completion of treatment court, all earned compliance~~
116 ~~credits accumulated during the suspension period shall be retroactively applied,~~
117 ~~so long as the other terms and conditions of probation have been successfully~~
118 ~~completed.]~~

✓