

FIRST REGULAR SESSION

SENATE BILL NO. 237

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

Read 1st time January 10, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1320S.01I

AN ACT

To repeal sections 217.785, 559.036, and 559.115, RSMo, and to enact in lieu thereof two new sections relating to postconviction treatment programs.

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

Section A. Sections 217.785, 559.036, and 559.115, RSMo, are repealed

2 and two new sections enacted in lieu thereof, to be known as sections 559.036 and
3 559.115, to read as follows:

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
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 3. If the defendant violates a condition of probation at any time prior to

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

19 the expiration or termination of the probation term, the court may continue him
20 or her on the existing conditions, with or without modifying or enlarging the
21 conditions or extending the term.

22 4. (1) Unless the defendant consents to the revocation of probation, if a
23 continuation, modification, enlargement or extension is not appropriate under this
24 section, the court shall order placement of the offender in [one of] the department
25 of corrections' [one hundred twenty-day programs] **one-hundred-twenty-day**
26 **structured cognitive behavioral intervention program** so long as:

27 (a) The underlying offense for the probation is a class D or E felony or an
28 offense listed in chapter 579 or an offense previously listed in chapter 195; except
29 that, the court may, upon its own motion or a motion of the prosecuting or circuit
30 attorney, make a finding that an offender is not eligible if the underlying offense
31 is involuntary manslaughter in the second degree, stalking in the first degree,
32 assault in the second degree, sexual assault, rape in the second degree, domestic
33 assault in the second degree, assault in the third degree when the victim is a
34 special victim, statutory rape in the second degree, statutory sodomy in the
35 second degree, deviate sexual assault, sodomy in the second degree, sexual
36 misconduct involving a child, incest, endangering the welfare of a child in the
37 first degree under subdivision (1) or (2) of subsection 1 of section 568.045, abuse
38 of a child, invasion of privacy, any case in which the defendant is found guilty of
39 a felony offense under chapter 571, or an offense of aggravated stalking or assault
40 of a law enforcement officer in the second degree as such offenses existed prior
41 to January 1, 2017;

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

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

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

53 (2) Upon receiving the order, the department of corrections shall [conduct
54 an assessment of the offender and] place such offender in the [appropriate one

55 hundred twenty-day] **one-hundred-twenty-day structured cognitive**
56 **behavioral intervention** program [under subsection 3 of section 559.115].

57 (3) Notwithstanding any of the provisions of subsection 3 of section
58 559.115 to the contrary, once the defendant has successfully completed the
59 program under this subsection, the court shall release the defendant to continue
60 to serve the term of probation, which shall not be modified, enlarged, or extended
61 based on the same incident of violation. Time served in the program shall be
62 credited as time served on any sentence imposed for the underlying offense.

63 5. If the defendant consents to the revocation of probation or if the
64 defendant is not eligible under subsection 4 of this section for placement in a
65 program and a continuation, modification, enlargement, or extension of the term
66 under this section is not appropriate, the court may revoke probation and order
67 that any sentence previously imposed be executed. If imposition of sentence was
68 suspended, the court may revoke probation and impose any sentence available
69 under section 557.011. The court may mitigate any sentence of imprisonment by
70 reducing the prison or jail term by all or part of the time the defendant was on
71 probation. The court may, upon revocation of probation, place an offender on a
72 second term of probation. Such probation shall be for a term of probation as
73 provided by section 559.016, notwithstanding any amount of time served by the
74 offender on the first term of probation.

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

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

91 of the probationer to the custody of the court or to any suitable detention facility
92 designated by the court. Upon the filing of the prosecutor's or circuit attorney's
93 motion or on the court's own motion, the court may immediately enter an order
94 suspending the period of probation and may order a warrant for the defendant's
95 arrest. The probation shall remain suspended until the court rules on the
96 prosecutor's or circuit attorney's motion, or until the court otherwise orders the
97 probation reinstated.

98 8. The power of the court to revoke probation shall extend for the duration
99 of the term of probation designated by the court and for any further period which
100 is reasonably necessary for the adjudication of matters arising before its
101 expiration, provided that some affirmative manifestation of an intent to conduct
102 a revocation hearing occurs prior to the expiration of the period and that every
103 reasonable effort is made to notify the probationer and to conduct the hearing
104 prior to the expiration of the period.

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

559.115. 1. Neither probation nor parole shall be granted by the circuit
2 court between the time the transcript on appeal from the offender's conviction has
3 been filed in appellate court and the disposition of the appeal by such court.

4 2. Unless otherwise prohibited by subsection 8 of this section, a circuit
5 court only upon its own motion and not that of the state or the offender shall
6 have the power to grant probation to an offender anytime up to one hundred
7 twenty days after such offender has been delivered to the department of
8 corrections but not thereafter. The court may request information and a
9 recommendation from the department concerning the offender and such offender's
10 behavior during the period of incarceration. Except as provided in this section,
11 the court may place the offender on probation in a program created pursuant to
12 section 217.777, or may place the offender on probation with any other conditions
13 authorized by law.

14 3. The court may recommend placement of an offender in a department
15 of corrections one hundred twenty-day program under this subsection or order
16 such placement under subsection 4 of section 559.036. Upon the recommendation
17 or order of the court, the department of corrections shall assess each offender to

18 determine the appropriate one hundred twenty-day program in which to place the
19 offender, which may include placement in the [shock incarceration] **structured**
20 **cognitive behavioral intervention** program or institutional treatment
21 program. **The placement of an offender in the structured cognitive**
22 **behavioral intervention program or institutional treatment program**
23 **shall be at the sole discretion of the department based on assessment**
24 **and available space.** When the court recommends and receives placement of
25 an offender in a department of corrections one hundred twenty-day program, the
26 offender shall be released on probation if the department of corrections
27 determines that the offender has successfully completed the program except as
28 follows. Upon successful completion of a program under this subsection, the
29 board of probation and parole shall advise the sentencing court of an offender's
30 probationary release date thirty days prior to release. The court shall follow the
31 recommendation of the department unless the court determines that probation is
32 not appropriate. If the court determines that probation is not appropriate, the
33 court may order the execution of the offender's sentence only after conducting a
34 hearing on the matter within ninety to one hundred twenty days from the date
35 the offender was delivered to the department of corrections. If the department
36 determines the offender has not successfully completed a one hundred twenty-day
37 program under this subsection, the offender shall be removed from the program
38 and the court shall be advised of the removal. The department shall report on
39 the offender's participation in the program and may provide recommendations for
40 terms and conditions of an offender's probation. The court shall then have the
41 power to grant probation or order the execution of the offender's sentence.

42 4. If the court is advised that an offender is not eligible for placement in
43 a one hundred twenty-day program under subsection 3 of this section, the court
44 shall consider other authorized dispositions. If the department of corrections one
45 hundred twenty-day program under subsection 3 of this section is full, the court
46 may place the offender in a private program approved by the department of
47 corrections or the court, the expenses of such program to be paid by the offender,
48 or in an available program offered by another organization. If the offender is
49 convicted of a class C, class D, or class E nonviolent felony, the court may order
50 probation while awaiting appointment to treatment.

51 5. Except when the offender has been found to be a predatory sexual
52 offender pursuant to section 566.125, the court shall request the department of
53 corrections to conduct a sexual offender assessment if the defendant has been

54 found guilty of sexual abuse when classified as a class B felony. Upon completion
55 of the assessment, the department shall provide to the court a report on the
56 offender and may provide recommendations for terms and conditions of an
57 offender's probation. The assessment shall not be considered a one hundred
58 twenty-day program as provided under subsection 3 of this section. The process
59 for granting probation to an offender who has completed the assessment shall be
60 as provided under subsections 2 and 6 of this section.

61 6. Unless the offender is being granted probation pursuant to successful
62 completion of a one hundred twenty-day program the circuit court shall notify the
63 state in writing when the court intends to grant probation to the offender
64 pursuant to the provisions of this section. The state may, in writing, request a
65 hearing within ten days of receipt of the court's notification that the court intends
66 to grant probation. Upon the state's request for a hearing, the court shall grant
67 a hearing as soon as reasonably possible. If the state does not respond to the
68 court's notice in writing within ten days, the court may proceed upon its own
69 motion to grant probation.

70 7. An offender's first incarceration under this section prior to release on
71 probation shall not be considered a previous prison commitment for the purpose
72 of determining a minimum prison term under the provisions of section 558.019.

73 8. Notwithstanding any other provision of law, probation may not be
74 granted pursuant to this section to offenders who have been convicted of murder
75 in the second degree pursuant to section 565.021; forcible rape pursuant to
76 section 566.030 as it existed prior to August 28, 2013; rape in the first degree
77 under section 566.030; forcible sodomy pursuant to section 566.060 as it existed
78 prior to August 28, 2013; sodomy in the first degree under section 566.060;
79 statutory rape in the first degree pursuant to section 566.032; statutory sodomy
80 in the first degree pursuant to section 566.062; child molestation in the first
81 degree pursuant to section 566.067 when classified as a class A felony; abuse of
82 a child pursuant to section 568.060 when classified as a class A felony; or an
83 offender who has been found to be a predatory sexual offender pursuant to section
84 566.125; or any offense in which there exists a statutory prohibition against
85 either probation or parole.

 [217.785. 1. As used in this section, the term "Missouri
2 postconviction drug treatment program" means a program of
3 noninstitutional and institutional correctional programs for the
4 monitoring, control and treatment of certain drug abuse offenders.

2. The department of corrections shall establish by regulation the "Missouri Postconviction Drug Treatment Program". The program shall include noninstitutional and institutional placement. The institutional phase of the program may include any offender under the supervision and control of the department of corrections. The department shall establish rules determining how, when and where an offender shall be admitted into or removed from the program.

3. Any first-time offender who has been found guilty of violating the provisions of chapter 195 or 579, or whose controlled substance abuse was a precipitating or contributing factor in the commission of his offense, and who is placed on probation may be required to participate in the noninstitutional phase of the program, which may include education, treatment and rehabilitation programs. Persons required to attend a program pursuant to this section may be charged a reasonable fee to cover the costs of the program. Failure of an offender to complete successfully the noninstitutional phase of the program shall be sufficient cause for the offender to be remanded to the sentencing court for assignment to the institutional phase of the program or any other authorized disposition.

4. A probationer shall be eligible for assignment to the institutional phase of the postconviction drug treatment program if he has failed to complete successfully the noninstitutional phase of the program. If space is available, the sentencing court may assign the offender to the institutional phase of the program as a special condition of probation, without the necessity of formal revocation of probation.

5. The availability of space in the institutional program shall be determined by the department of corrections. If the sentencing court is advised that there is no space available, then the court shall consider other authorized dispositions.

6. Any time after ninety days and prior to one hundred twenty days after assignment of the offender to the institutional phase of the program, the department shall submit to the court a report outlining the performance of the offender in the program. If

41 the department determines that the offender will not participate or
42 has failed to complete the program, the department shall advise
43 the sentencing court, who shall cause the offender to be brought
44 before the court for consideration of revocation of the probation or
45 other authorized disposition. If the offender successfully completes
46 the program, the department shall release the individual to the
47 appropriate probation and parole district office and so advise the
48 court.

49 7. Time spent in the institutional phase of the program
50 shall count as time served on the sentence.]

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Bill

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