

FIRST REGULAR SESSION

HOUSE BILL NO. 821

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE EVANS.

1704H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 217.720, 217.722, 544.457, and 544.676, RSMo, and to enact in lieu thereof four 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Section A. Sections 217.720, 217.722, 544.457, and 544.676, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 217.720, 217.722, 544.457, and 544.676, to read as follows: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 or conditional release. **The probation officer shall notify the court of any such arrest within forty-eight hours of the arrest.** The warrant delivered with the offender by the arresting officer to the official in charge of any facility designated by the division to which the offender is brought shall be sufficient legal authority for detaining the offender. After the arrest the parole or probation officer shall present to the detaining authorities a similar statement of the

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.

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 a 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 ~~ircuit 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.

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, [ø] 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 [ø] , the community, **or any other person**.

2. In determining whether a defendant poses a danger **under this section or section**
6 **544.455** to a crime victim, witness, [ø] 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 [~~3~~] (7) **Whether the defendant violated any term or terms of probation or parole;**

22 **(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.

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