

FIRST REGULAR SESSION

HOUSE BILL NO. 970

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ELLINGTON.

2066L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 217.690, RSMo, and section 217.692 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and section 217.692 as enacted by house bill no. 583, ninety-fourth general assembly, first regular session, and section 577.023 as enacted by senate bill no. 480, ninety-sixth general assembly, second regular session, and to enact in lieu thereof three new sections relating to repealing intervention fees for offenders placed under board supervision, with penalty provisions.

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

Section A. Section 217.690, RSMo, and section 217.692 as enacted by senate bill no. 2 491, ninety-seventh general assembly, second regular session, and section 217.692 as enacted 3 by house bill no. 583, ninety-fourth general assembly, first regular session, and section 577.023 4 as enacted by senate bill no. 480, ninety-sixth general assembly, second regular session, are 5 repealed and three new sections enacted in lieu thereof, to be known as sections 217.690, 6 217.692, and 577.023, to read as follows:

217.690. 1. When in its opinion there is reasonable probability that an offender of a 2 correctional center can be released without detriment to the community or to himself, the board 3 may in its discretion release or parole such person except as otherwise prohibited by law. All 4 paroles shall issue upon order of the board, duly adopted.

5 2. Before ordering the parole of any offender, the board shall have the offender appear 6 before a hearing panel and shall conduct a personal interview with him **or her**, unless waived 7 by the offender. A parole shall be ordered only for the best interest of society, not as an award 8 of clemency; it shall not be considered a reduction of sentence or a pardon. An offender shall 9 be placed on parole only when the board believes that he **or she** is able and willing to fulfill 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.

10 obligations of a law-abiding citizen. Every offender while on parole shall remain in the legal
11 custody of the department but shall be subject to the orders of the board.

12 3. [The board has discretionary authority to require the payment of a fee, not to exceed
13 sixty dollars per month, from every offender placed under board supervision on probation,
14 parole, or conditional release, to waive all or part of any fee, to sanction offenders for willful
15 nonpayment of fees, and to contract with a private entity for fee collections services. All fees
16 collected shall be deposited in the inmate fund established in section 217.430. Fees collected
17 may be used to pay the costs of contracted collections services. The fees collected may otherwise
18 be used to provide community corrections and intervention services for offenders. Such services
19 include substance abuse assessment and treatment, mental health assessment and treatment,
20 electronic monitoring services, residential facilities services, employment placement services,
21 and other offender community corrections or intervention services designated by the board to
22 assist offenders to successfully complete probation, parole, or conditional release. The board
23 shall adopt rules not inconsistent with law, in accordance with section 217.040, with respect to
24 sanctioning offenders and with respect to establishing, waiving, collecting, and using fees.

25 4.] The board shall adopt rules not inconsistent with law, in accordance with section
26 217.040, with respect to the eligibility of offenders for parole, the conduct of parole hearings or
27 conditions to be imposed upon paroled offenders. Whenever an order for parole is issued it shall
28 recite the conditions of such parole.

29 [5.] 4. When considering parole for an offender with consecutive sentences, the
30 minimum term for eligibility for parole shall be calculated by adding the minimum terms for
31 parole eligibility for each of the consecutive sentences, except the minimum term for parole
32 eligibility shall not exceed the minimum term for parole eligibility for an ordinary life sentence.

33 [6.] 5. Any offender under a sentence for first degree murder who has been denied
34 release on parole after a parole hearing shall not be eligible for another parole hearing until at
35 least three years from the month of the parole denial; however, this subsection shall not prevent
36 a release pursuant to subsection 4 of section 558.011.

37 [7.] 6. Parole hearings shall, at a minimum, contain the following procedures:

38 (1) The victim or person representing the victim who attends a hearing may be
39 accompanied by one other person;

40 (2) The victim or person representing the victim who attends a hearing shall have the
41 option of giving testimony in the presence of the inmate or to the hearing panel without the
42 inmate being present;

43 (3) The victim or person representing the victim may call or write the parole board rather
44 than attend the hearing;

45 (4) The victim or person representing the victim may have a personal meeting with a
46 board member at the board's central office;

47 (5) The judge, prosecuting attorney or circuit attorney and a representative of the local
48 law enforcement agency investigating the crime shall be allowed to attend the hearing or provide
49 information to the hearing panel in regard to the parole consideration; and

50 (6) The board shall evaluate information listed in the juvenile sex offender registry
51 pursuant to section 211.425, provided the offender is between the ages of seventeen and
52 twenty-one, as it impacts the safety of the community.

53 [8.] 7. The board shall notify any person of the results of a parole eligibility hearing if
54 the person indicates to the board a desire to be notified.

55 [9.] 8. The board may, at its discretion, require any offender seeking parole to meet
56 certain conditions during the term of that parole so long as said conditions are not illegal or
57 impossible for the offender to perform. These conditions may include an amount of restitution
58 to the state for the cost of that offender's incarceration.

59 [10.] 9. Nothing contained in this section shall be construed to require the release of an
60 offender on parole nor to reduce the sentence of an offender heretofore committed.

61 [11.] 10. Beginning January 1, 2001, the board shall not order a parole unless the
62 offender has obtained a high school diploma or its equivalent, or unless the board is satisfied that
63 the offender, while committed to the custody of the department, has made an honest good-faith
64 effort to obtain a high school diploma or its equivalent; provided that the director may waive this
65 requirement by certifying in writing to the board that the offender has actively participated in
66 mandatory education programs or is academically unable to obtain a high school diploma or its
67 equivalent.

68 [12.] 11. Any rule or portion of a rule, as that term is defined in section 536.010, that is
69 created under the authority delegated in this section shall become effective only if it complies
70 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.
71 This section and chapter 536 are nonseverable and if any of the powers vested with the general
72 assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and
73 annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and
74 any rule proposed or adopted after August 28, 2005, shall be invalid and void.

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

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

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

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

24 (1) Length of time served;

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

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

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

31 (5) Any victim information outlined in subsection [7] 6 of section 217.690 and section
32 595.209;

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

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

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

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

38 (10) Community and family support.

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

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

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

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

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

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4 December 31, 1990, and who:

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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;

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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.

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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 [7] 6 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 C 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.
- 577.023. 1. For purposes of this section, unless the context clearly indicates otherwise:
- 2 (1) An "aggravated offender" is a person who:
 - 3 (a) Has pleaded guilty to or has been found guilty of three or more intoxication-related
 - 4 traffic offenses; or
 - 5 (b) Has pleaded guilty to or has been found guilty of one or more intoxication-related
 - 6 traffic offense and, in addition, any of the following: involuntary manslaughter under

7 subdivision (2) or (3) of subsection 1 of section 565.024; murder in the second degree under
8 section 565.021, where the underlying felony is an intoxication-related traffic offense; or assault
9 in the second degree under subdivision (4) of subsection 1 of section 565.060; or assault of a law
10 enforcement officer in the second degree under subdivision (4) of subsection 1 of section
11 565.082;

12 (2) A "chronic offender" is:

13 (a) A person who has pleaded guilty to or has been found guilty of four or more
14 intoxication-related traffic offenses; or

15 (b) A person who has pleaded guilty to or has been found guilty of, on two or more
16 separate occasions, any combination of the following: involuntary manslaughter under
17 subdivision (2) or (3) of subsection 1 of section 565.024; murder in the second degree under
18 section 565.021, where the underlying felony is an intoxication-related traffic offense; assault
19 in the second degree under subdivision (4) of subsection 1 of section 565.060; or assault of a law
20 enforcement officer in the second degree under subdivision (4) of subsection 1 of section
21 565.082; or

22 (c) A person who has pleaded guilty to or has been found guilty of two or more
23 intoxication-related traffic offenses and, in addition, any of the following: involuntary
24 manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024; murder in the
25 second degree under section 565.021, where the underlying felony is an intoxication-related
26 traffic offense; assault in the second degree under subdivision (4) of subsection 1 of section
27 565.060; or assault of a law enforcement officer in the second degree under subdivision (4) of
28 subsection 1 of section 565.082;

29 (3) "Continuous alcohol monitoring", automatically testing breath, blood, or transdermal
30 alcohol concentration levels and tampering attempts at least once every hour, regardless of the
31 location of the person who is being monitored, and regularly transmitting the data[. Continuous
32 alcohol monitoring shall be considered an electronic monitoring service under subsection 3 of
33 section 217.690];

34 (4) An "intoxication-related traffic offense" is driving while intoxicated, driving with
35 excessive blood alcohol content, involuntary manslaughter pursuant to subdivision (2) or (3) of
36 subsection 1 of section 565.024, murder in the second degree under section 565.021, where the
37 underlying felony is an intoxication-related traffic offense, assault in the second degree pursuant
38 to subdivision (4) of subsection 1 of section 565.060, assault of a law enforcement officer in the
39 second degree pursuant to subdivision (4) of subsection 1 of section 565.082, or driving under
40 the influence of alcohol or drugs in violation of state law or a county or municipal ordinance;

41 (5) A "persistent offender" is one of the following:

42 (a) A person who has pleaded guilty to or has been found guilty of two or more
43 intoxication-related traffic offenses;

44 (b) A person who has pleaded guilty to or has been found guilty of involuntary
45 manslaughter pursuant to subdivision (2) or (3) of subsection 1 of section 565.024, assault in the
46 second degree pursuant to subdivision (4) of subsection 1 of section 565.060, assault of a law
47 enforcement officer in the second degree pursuant to subdivision (4) of subsection 1 of section
48 565.082; and

49 (6) A "prior offender" is a person who has pleaded guilty to or has been found guilty of
50 one intoxication-related traffic offense, where such prior offense occurred within five years of
51 the occurrence of the intoxication-related traffic offense for which the person is charged.

52 2. Any person who pleads guilty to or is found guilty of a violation of section 577.010
53 or 577.012 who is alleged and proved to be a prior offender shall be guilty of a class A
54 misdemeanor.

55 3. Any person who pleads guilty to or is found guilty of a violation of section 577.010
56 or 577.012 who is alleged and proved to be a persistent offender shall be guilty of a class D
57 felony.

58 4. Any person who pleads guilty to or is found guilty of a violation of section 577.010
59 or section 577.012 who is alleged and proved to be an aggravated offender shall be guilty of a
60 class C felony.

61 5. Any person who pleads guilty to or is found guilty of a violation of section 577.010
62 or section 577.012 who is alleged and proved to be a chronic offender shall be guilty of a class
63 B felony.

64 6. No state, county, or municipal court shall suspend the imposition of sentence as to a
65 prior offender, persistent offender, aggravated offender, or chronic offender under this section
66 nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011 to the
67 contrary notwithstanding.

68 (1) No prior offender shall be eligible for parole or probation until he or she has served
69 a minimum of ten days imprisonment:

70 (a) Unless as a condition of such parole or probation such person performs at least thirty
71 days involving at least two hundred forty hours of community service under the supervision of
72 the court in those jurisdictions which have a recognized program for community service; or

73 (b) The offender participates in and successfully completes a program established
74 pursuant to section 478.007 or other court-ordered treatment program, if available, and as part
75 of either program, the offender performs at least thirty days of community service under the
76 supervision of the court.

77 (2) No persistent offender shall be eligible for parole or probation until he or she has
78 served a minimum of thirty days imprisonment:

79 (a) Unless as a condition of such parole or probation such person performs at least sixty
80 days involving at least four hundred eighty hours of community service under the supervision
81 of the court; or

82 (b) The offender participates in and successfully completes a program established
83 pursuant to section 478.007 or other court-ordered treatment program, if available, and as part
84 of either program, the offender performs at least sixty days of community service under the
85 supervision of the court.

86 (3) No aggravated offender shall be eligible for parole or probation until he or she has
87 served a minimum of sixty days imprisonment.

88 (4) No chronic offender shall be eligible for parole or probation until he or she has
89 served a minimum of two years imprisonment. In addition to any other terms or conditions of
90 probation, the court shall consider, as a condition of probation for any person who pleads guilty
91 to or is found guilty of an intoxication-related traffic offense, requiring the offender to abstain
92 from consuming or using alcohol or any products containing alcohol as demonstrated by
93 continuous alcohol monitoring or by verifiable breath alcohol testing performed a minimum of
94 four times per day as scheduled by the court for such duration as determined by the court, but not
95 less than ninety days. The court may, in addition to imposing any other fine, costs, or
96 assessments provided by law, require the offender to bear any costs associated with continuous
97 alcohol monitoring or verifiable breath alcohol testing.

98 7. The state, county, or municipal court shall find the defendant to be a prior offender,
99 persistent offender, aggravated offender, or chronic offender if:

100 (1) The indictment or information, original or amended, or the information in lieu of an
101 indictment pleads all essential facts warranting a finding that the defendant is a prior offender
102 or persistent offender; and

103 (2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding
104 beyond a reasonable doubt the defendant is a prior offender, persistent offender, aggravated
105 offender, or chronic offender; and

106 (3) The court makes findings of fact that warrant a finding beyond a reasonable doubt
107 by the court that the defendant is a prior offender, persistent offender, aggravated offender, or
108 chronic offender.

109 8. In a jury trial, the facts shall be pleaded, established and found prior to submission to
110 the jury outside of its hearing.

111 9. In a trial without a jury or upon a plea of guilty, the court may defer the proof in
112 findings of such facts to a later time, but prior to sentencing.

113 10. The defendant shall be accorded full rights of confrontation and cross-examination,
114 with the opportunity to present evidence, at such hearings.

115 11. The defendant may waive proof of the facts alleged.

116 12. Nothing in this section shall prevent the use of presentence investigations or
117 commitments.

118 13. At the sentencing hearing both the state, county, or municipality and the defendant
119 shall be permitted to present additional information bearing on the issue of sentence.

120 14. The pleas or findings of guilt shall be prior to the date of commission of the present
121 offense.

122 15. The court shall not instruct the jury as to the range of punishment or allow the jury,
123 upon a finding of guilt, to assess and declare the punishment as part of its verdict in cases of
124 prior offenders, persistent offenders, aggravated offenders, or chronic offenders.

125 16. Evidence of a prior conviction, plea of guilty, or finding of guilt in an
126 intoxication-related traffic offense shall be heard and determined by the trial court out of the
127 hearing of the jury prior to the submission of the case to the jury, and shall include but not be
128 limited to evidence received by a search of the records of the Missouri uniform law enforcement
129 system, including criminal history records from the central repository or records from the driving
130 while intoxicated tracking system (DWITS) maintained by the Missouri state highway patrol, or
131 the certified driving record maintained by the Missouri department of revenue. After hearing the
132 evidence, the court shall enter its findings thereon. A plea of guilty or a finding of guilt followed
133 by incarceration, a fine, a suspended imposition of sentence, suspended execution of sentence,
134 probation or parole or any combination thereof in any intoxication-related traffic offense in a
135 state, county or municipal court or any combination thereof shall be treated as a prior plea of
136 guilty or finding of guilt for purposes of this section.

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