

FIRST REGULAR SESSION

# HOUSE BILL NO. 446

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES GUEST (Sponsor) MYERS, SATER, WHORTON,  
DOUGHERTY, DENISON, WILDBERGER, MUNZLINGER, HARRIS (110), ROORDA, DAUS,  
HOSKINS AND MCGHEE (Co-sponsors).

Read 1<sup>st</sup> time February 3, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0902L.011

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### AN ACT

To amend chapter 217, RSMo, by adding thereto one new section relating to the work for restitution program.

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

Section A. Chapter 217, RSMo, is amended by adding thereto one new section, to be  
2 known as section 217.774, to read as follows:

**217.774. 1. As used in this section, the following terms mean:**

2 **(1) "Board", the board of probation and parole;**

3 **(2) "Nonviolent offender", any offender who is convicted of a crime other than**  
4 **murder in the first or second degree, involuntary manslaughter, kidnapping, forcible rape,**  
5 **forcible sodomy, robbery in the first degree, assault in the first degree, or assault of a law**  
6 **enforcement officer or emergency personnel in the first degree;**

7 **(3) "Parole", the release of an offender to the community by the court or the state**  
8 **board of probation and parole to the expiration of his or her term, subject to conditions**  
9 **imposed by the court or the board and to its supervision;**

10 **(4) "Persistent offender", any person who has pleaded guilty to or has been found**  
11 **guilty of two or more felony offenses of the laws of this state or of the United States, or any**  
12 **other state, territory, or district;**

13 **(5) "Probation", a procedure under which a defendant found guilty of a crime**  
14 **upon verdict or plea is released by the court without imprisonment, subject to conditions**

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.

15 imposed by the court and subject to the supervision of the board;

16 (6) "Successful completion of the work for restitution program", that an offender  
17 who has been placed on probation or parole and has had work for restitution imposed as  
18 a condition of probation or parole has paid all restitution and rehabilitation fees in full;

19 (7) "Work for restitution program", a department of corrections program that  
20 provides supervised work programs for individuals on probation or parole who are  
21 classified as nonviolent offenders.

22 2. Notwithstanding any other provision of law, any person who has pleaded guilty  
23 to or nolo contendere to or been found guilty of any nonviolent offense shall be considered  
24 by the court for probation. If probation is granted and there is any restitution owed to any  
25 victim, in addition to other requirements that may be imposed by the court, the court shall  
26 require participation in, and completion of, the work for restitution program. In such  
27 cases, the court may not impose incarceration as an additional condition of probation.

28 3. The provisions of subsection 2 of this section shall not apply to:

29 (1) Any person who has pleaded guilty to, or been convicted of a dangerous felony  
30 as defined in section 556.061, RSMo;

31 (2) Any person determined to be a persistent offender;

32 (3) Any defendant who has been previously sentenced to probation under the  
33 provisions of this section and has been unsuccessful in two separate courses of the work for  
34 restitution program and is found by the court by clear and convincing evidence, to be  
35 unamenable to the work for restitution program;

36 (4) Any defendant who refuses the work for restitution program as a condition of  
37 probation.

38 4. Within seven days of an order imposing probation under the provisions of this  
39 section, the board shall notify the work for restitution program designated to provide  
40 treatment.

41 5. If at any point during the course of the work for restitution program the  
42 program provider notifies the board that the defendant is not following the directives of  
43 the work for restitution program provider, the board may move to the court to revoke  
44 probation.

45 6. Where a defendant receives probation under the provisions of this section and  
46 violates such probation either by being arrested or by violating a condition of probation,  
47 and the state moves to revoke probation, the court shall conduct a hearing to determine  
48 whether probation shall be revoked. The court may intensify the requirements for the  
49 work for restitution program if appropriate, or otherwise modify or revoke probation if  
50 the alleged violation is proved.

51 **7. Ineligible inmates under the provisions of this section shall be:**

52 **(1) Inmates serving terms or having past convictions for a dangerous felony as**  
53 **defined in section 556.061, RSMo;**

54 **(2) Any inmate who has, while under parole supervision been previously**  
55 **unsuccessful in a work for restitution program and who is subsequently regarded by the**  
56 **board as unamenable to any and all forms of the work for restitution program;**

57 **(3) Any inmate who refuses to participate in a work for restitution program as a**  
58 **condition of parole.**

59 **8. Inmates approved for early parole release to take part in the work for restitution**  
60 **program shall be required to participate in and successfully complete the work for**  
61 **restitution program as a condition of parole.**

62 **9. The release of the offender shall be coordinated with the work for restitution**  
63 **program provider so that the offender is admitted into the program within the first seven**  
64 **days of release from prison.**

65 **10. A work for restitution program plan shall be provided to the board within**  
66 **thirty days of the individual's admission to the work for restitution program.**

67 **11. On a monthly basis, the work for restitution program provider shall prepare**  
68 **and forward a monthly progress report to the board's designee.**

69 **12. If at any point during the course of the work for restitution program the**  
70 **program provider notifies the board that the parolee is unamenable to the work for**  
71 **restitution program, but may be amenable to and in need of a treatment program, the**  
72 **board may modify the terms of parole to ensure that the individual receives the treatment**  
73 **program.**

74 **13. If at any point during the course of the work for restitution program the**  
75 **program provider notifies the board that the parolee is unamenable to the work for**  
76 **restitution program and is unamenable to or does not need any other treatment program,**  
77 **the board may act to revoke parole.**

78 **14. Each offender in the work for restitution program and under the supervision**  
79 **of the board shall be required to:**

80 **(1) Pay restitution to all victims in full;**

81 **(2) Pay a rehabilitation fee in an amount equal to the total amount of restitution the**  
82 **offender is ordered to pay to all victims;**

83 **(3) Work a total of twelve hours per day, seven days per week, until the total**  
84 **amount of restitution and rehabilitation fees have been paid. If the offender is currently**  
85 **employed, then the offender's hours worked at their regular job will be counted as part of**  
86 **the hours but not part of the restitution.**

87           **(4) The amount of the wages in the work for restitution program shall not exceed**  
88 **the current federal minimum wage.**

89           **15. The requirement of rehabilitation fees shall become effective on August 28,**  
90 **2005, and shall not be applied retroactively to offenders for any past period of supervision.**

91           **16. The payment of restitution and rehabilitation fees shall be a written condition**  
92 **of each offender's probation or parole and no offender shall be released from supervision**  
93 **until such restitution and fees have been collected.**

94           **17. Fees may be waived on a temporary or permanent basis for an offender only**  
95 **when the board has determined that the offender would suffer a serious financial hardship**  
96 **due to:**

97           **(1) Temporary or permanent employment disability;**

98           **(2) Temporary unemployment for bonafide and authorized reasons.**

99           **18. The required fees shall be collected and remitted to the work for restitution**  
100 **fund created pursuant to this section within sixty days of receipt. The department of**  
101 **corrections is authorized to enter into agreements with other governmental entities for the**  
102 **collection of the required fees, or into contracts with nongovernmental entities, for the**  
103 **collection of the required fees. An annual report shall be prepared that identifies the funds**  
104 **collected and the funds remitted to the work for restitution fund.**

105           **19. Any person who is ordered to participate in the work for restitution program**  
106 **to make restitution for damage or loss caused by his or her offense pursuant to the**  
107 **provisions of this section shall not be considered an employee as defined in section 290.500,**  
108 **RSMo.**

109           **20. There is hereby created in the state treasury a fund to be known as the "Work**  
110 **for Restitution Fund" that shall be administered by the department of corrections. The**  
111 **state treasurer shall credit to the fund any interest earned from investing the moneys in the**  
112 **fund. Notwithstanding the provisions of section 33.080, RSMo, money in the work for**  
113 **restitution fund shall not be transferred and placed to the credit of general revenues at the**  
114 **end of the biennium.**

115           **21. Fees received pursuant to the provisions of this section shall be deposited in the**  
116 **work for restitution fund. The moneys received from such fees shall be appropriated solely**  
117 **for the purpose of funding the work for restitution program required by this section.**

118           **22. The department of corrections shall promulgate rules and regulations to**  
119 **implement and administer the provisions of this section. Any rule or portion of a rule, as**  
120 **that term is defined in section 536.010, RSMo, that is created under the authority delegated**  
121 **in this section shall become effective only if it complies with and is subject to all of the**  
122 **provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section**

123 **and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general**  
124 **assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to**  
125 **disapprove and annul a rule are subsequently held unconstitutional, then the grant of**  
126 **rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be**  
127 **invalid and void.**

128 **23. The department of corrections shall provide an annual report that describes the**  
129 **effectiveness and financial impact of the requirements of this section. The study shall**  
130 **include, but not be limited to: a description of the number served and outcomes, a study**  
131 **of the implementation process, a review of lower incarceration costs, reductions in crime,**  
132 **reductions in substance abuse, reduced welfare costs, and the adequacy of the funding**  
133 **mechanism to implement the provisions of this section.**