FIRST REGULAR SESSION

HOUSE BILL NO. 890

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WINDHAM.

1361H.01I DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 217.690 and 217.692, RSMo, and to enact in lieu thereof four new sections relating to incarceration.

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

Section A. Sections 217.690 and 217.692, RSMo, are repeated and four new sections enacted in lieu thereof, to be known as sections 217.182, 217.690, 217.692, and 557.055, to read as follows:

217.182. The director shall annually notify each prosecuting and circuit attorney in the state of an estimate of the average cost per day to incarcerate an offender. Such estimate shall also be posted on the official department website.

217.690. 1. All releases or paroles shall issue upon order of the board, duly adopted.

2. Before ordering the parole of any offender, the board shall conduct a validated risk and needs assessment and evaluate the case under the rules governing parole that are promulgated by the board. The board shall then have the offender appear before a hearing panel and shall conduct a personal interview with him, unless waived by the offender**[**,**]** or if the guidelines indicate the offender may be paroled without need for an interview. The guidelines and rules shall not allow for the waiver of a hearing if a victim requests a hearing. The appearance or presence may occur by means of a videoconference at the discretion of the board. A parole may be ordered for the best interest of society when there is a reasonable probability, based on the risk assessment and indicators of release readiness, that the person can be supervised under parole supervision and successfully reintegrated into the community, not as an award of clemency; it shall not be considered a reduction of sentence or a pardon. Every

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.

offender while on parole shall remain in the legal custody of the department but shall be subject to the orders of the board.

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

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

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

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

7. A victim who has requested an opportunity to be heard shall receive notice that the board is conducting an assessment of the offender's risk and readiness for release and that the victim's input will be particularly helpful when it pertains to safety concerns and specific protective measures that may be beneficial to the victim should the offender be granted release.

8. Parole hearings shall, at a minimum, contain the following procedures:

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

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

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

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

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

(6) The board **[**~~shall evaluate~~**] evaluating** information listed in the juvenile sex offender registry pursuant to section 211.425, provided the offender is between the ages of seventeen and twenty-one, as it impacts the safety of the community**; and**

(7) The board estimating the expected cost to the state of the offender serving the remainder of his or her sentence.

9. The board shall notify any person of the results of a parole eligibility hearing if the person indicates to the board a desire to be notified.

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

11. Special parole conditions shall be responsive to the assessed risk and needs of the offender or the need for extraordinary supervision, such as electronic monitoring. The board shall adopt rules to minimize the conditions placed on low-risk cases, to frontload conditions upon release, and to require the modification and reduction of conditions based on the person's continuing stability in the community. Board rules shall permit parole conditions to be modified by parole officers with review and approval by supervisors.

12. Nothing contained in this section shall be construed to require the release of an offender on parole nor to reduce the sentence of an offender heretofore committed.

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

14. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and 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 incarcerated in a correctional institution serving any sentence of life with no parole for fifty years or life without parole, whose plea of guilt was entered or whose trial commenced prior to December 31, 1990, and who:

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

(2) Has no prior violent felony convictions;

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

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

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

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

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

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

(1) Length of time served;

(2) Prison record and self-rehabilitation efforts;

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

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

(5) Any victim information outlined in subsection 8 of section 217.690 and section 595.209;

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

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

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

(9) The presence of a workable parole plan; **[**~~and~~**]**

(10) Community and family support**; and**

(11) The expected cost to the state of the offender serving the remainder of his or her sentence.

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

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

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

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

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

557.055. 1. If a prosecutor requests or recommends an authorized disposition under section 557.011 and the request or recommendation includes a term of incarceration in a jail or prison, the prosecutor shall include the expected cost of the incarceration as part of the request or recommendation. The expected cost shall state the cost per day and the total cost if the entire sentence is served.

2. If an offender is likely to be incarcerated in a jail, the prosecutor shall be responsible for obtaining an estimate of the average cost per day to incarcerate an offender from the local jail. If an offender is likely to be incarcerated in a prison, the prosecutor shall rely on the department of corrections' estimate under section 217.182.

3. Upon sentencing, the court shall enter a finding of the expected cost of incarceration into the docket. Such finding shall be included in the docket entries that are made available on the court's public website that allows the public to access the court's automated case management system, known at the time of the enactment of this section as Case.net.

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