

SECOND REGULAR SESSION

HOUSE BILL NO. 1520

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE EVANS.

3763H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 217.690, 217.692, 217.720, 217.722, 544.457, and 544.676, RSMo, and to enact in lieu thereof six 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Section A. Sections 217.690, 217.692, 217.720, 217.722, 544.457, and 544.676, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 217.690, 217.692, 217.720, 217.722, 544.457, and 544.676, to read as follows:

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

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

29 4. The board shall adopt rules not inconsistent with law, in accordance with section
30 217.040, with respect to the eligibility of offenders for parole, the conduct of parole hearings or
31 conditions to be imposed upon paroled offenders. Whenever an order for parole is issued it shall
32 recite the conditions of such parole.

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

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

41 **7. All offenders shall be presumed competent for participation in a parole hearing.**
42 **No offender shall be eligible for appointment of counsel at a parole hearing unless, after**
43 **careful consideration, the parole board determines that the offender is unable to**
44 **understand the nature, circumstances, and procedures of the parole hearing.**

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

49 [8-] 9. Parole hearings shall, at a minimum, contain the following procedures:

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

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

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

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

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

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

65 ~~[9-]~~ **10.** The board shall notify any person of the results of a parole eligibility hearing if
66 the person indicates to the board a desire to be notified.

67 ~~[10-]~~ **11.** The board may, at its discretion, require any offender seeking parole to meet
68 certain conditions during the term of that parole so long as said conditions are not illegal or
69 impossible for the offender to perform. These conditions may include an amount of restitution
70 to the state for the cost of that offender's incarceration.

71 ~~[11-]~~ **12.** Special parole conditions shall be responsive to the assessed risk and needs of
72 the offender or the need for extraordinary supervision, such as electronic monitoring. The board
73 shall adopt rules to minimize the conditions placed on low-risk cases, to frontload conditions
74 upon release, and to require the modification and reduction of conditions based on the person's
75 continuing stability in the community. Board rules shall permit parole conditions to be modified
76 by parole officers with review and approval by supervisors.

77 ~~[12-]~~ **13.** Nothing contained in this section shall be construed to require the release of an
78 offender on parole nor to reduce the sentence of an offender heretofore committed.

79 ~~[13-]~~ **14.** Beginning January 1, 2001, the board shall not order a parole unless the
80 offender has obtained a high school diploma or its equivalent, or unless the board is satisfied that
81 the offender, while committed to the custody of the department, has made an honest good-faith
82 effort to obtain a high school diploma or its equivalent; provided that the director may waive this
83 requirement by certifying in writing to the board that the offender has actively participated in
84 mandatory education programs or is academically unable to obtain a high school diploma or its
85 equivalent.

86 ~~[14.]~~ **15.** Any rule or portion of a rule, as that term is defined in section 536.010, that is
87 created under the authority delegated in this section shall become effective only if it complies
88 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.
89 This section and chapter 536 are nonseverable and if any of the powers vested with the general
90 assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and
91 annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and
92 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;

13
14 shall be eligible for parole after having served fifteen years of such sentence when the board
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.

17 2. The board of probation and parole shall give a thorough review of the case history and
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 [8] 9 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 D 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.

217.720. 1. At any time during release on parole or conditional release the division of
2 probation and parole may issue a warrant for the arrest of a released offender for violation of any
3 of the conditions of parole or conditional release. The warrant shall authorize any law
4 enforcement officer to return the offender to the actual custody of the correctional center from
5 which the offender was released[;] or to any other suitable facility designated by the division.
6 If any parole or probation officer has probable cause to believe that such offender has violated
7 a condition of parole or conditional release, the probation or parole officer may issue a warrant
8 for the arrest of the offender. The probation or parole officer may effect the arrest or may
9 deputize any officer with the power of arrest to do so by giving the officer a copy of the warrant
10 which shall outline the circumstances of the alleged violation and contain the statement that the
11 offender has, in the judgment of the probation or parole officer, violated conditions of parole or

12 conditional release. The warrant delivered with the offender by the arresting officer to the
13 official in charge of any facility designated by the division to which the offender is brought shall
14 be sufficient legal authority for detaining the offender. After the arrest the parole or probation
15 officer shall present to the detaining authorities a similar statement of the circumstances of
16 violation. Pending hearing as hereinafter provided, upon any charge of violation, the offender
17 shall remain in custody or incarcerated without consideration of bail.

18 2. (1) If the offender is arrested under the authority granted in subsection 1 of this
19 section, the offender shall have the right to a preliminary hearing on the violation charged unless
20 the offender waives such hearing. Upon such arrest and detention, the parole or probation officer
21 shall immediately notify the board and shall submit in writing a report showing in what manner
22 the offender has violated the conditions of his parole or conditional release.

23 (2) The board shall order the offender discharged from such facility, **shall** require as a
24 condition of parole or conditional release **that** the ~~[placement of the]~~ offender **be placed** in a
25 treatment center operated by the department of corrections, or shall cause the offender to be
26 brought before it for a hearing on the violation charged, under such rules and regulations as the
27 board may adopt. **If the arrest alleges probable cause that a offender committed a felony**
28 **offense in this or another state while on probation or parole for a separate felony offense,**
29 **the offender shall be presumed to pose a danger to the community, and the parole or**
30 **probation officer or board may order the defendant held for a violation hearing. As**
31 **provided under subsection 7 of section 270.690, all offenders shall be presumed competent**
32 **for participation in a parole 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 ~~circuit 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 subsection 4 of section 544.676,** order the person on
28 probation held for further proceedings in the sentencing court. If probable cause is not found,
29 the court shall not be barred from holding a hearing on the question of the alleged violation of
30 a condition of probation nor from ordering the person on probation to be present at such a
31 hearing.

32 3. Upon such arrest and detention, the probation officer shall immediately notify the
33 sentencing court and shall submit to the court a written report showing in what manner the
34 person on probation has violated the conditions of probation. Thereupon, or upon arrest by
35 warrant, the court shall cause the person on probation to be brought before it without unnecessary
36 delay for a hearing on the violation charged. Revocation hearings shall be conducted as provided
37 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, [~~or~~] 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 [~~or~~] , the community, **or any other person.**

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

22 ~~[(3)]~~ **(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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