

FIRST REGULAR SESSION

SENATE BILL NO. 331

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHMITT.

Read 1st time February 14, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1120S.02I

AN ACT

To repeal sections 559.100, 559.105, and 570.120, RSMo, and to enact in lieu thereof three new sections relating to restitution, with existing penalty provisions.

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

Section A. Sections 559.100, 559.105, and 570.120, RSMo, are repealed

2 and three new sections enacted in lieu thereof, to be known as sections 559.100,
3 559.105, and 570.120, to read as follows:

559.100. 1. The circuit courts of this state shall have power, herein
2 provided, to place on probation or to parole persons convicted of any offense over
3 which they have jurisdiction, except as otherwise provided in sections 195.275 to
4 195.296, section 558.018, section 559.115, section 565.020, sections 566.030,
5 566.060, 566.067, 566.151, and 566.213, section 571.015, and subsection 3 of
6 section 589.425.

7 2. The circuit court shall have the power to revoke the probation or parole
8 previously granted under section 559.036 and commit the person to the
9 department of corrections. The circuit court shall determine any conditions of
10 probation or parole for the defendant that it deems necessary to ensure the
11 successful completion of the probation or parole term, including the extension of
12 any term of supervision for any person while on probation or parole. The circuit
13 court may require that the defendant pay restitution for his crime. The probation
14 or parole may be revoked under section 559.036 for failure to pay restitution or
15 for failure to conform his behavior to the conditions imposed by the circuit
16 court. The circuit court may, in its discretion, credit any period of probation or
17 parole as time served on a sentence.

18 **3. Restitution, whether court ordered as provided in subsection**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 2 of this section or agreed to by the parties, or as enforced under
20 section 558.019, shall be paid through the office of the prosecuting
21 attorney or circuit attorney. Nothing in this section shall prohibit the
22 prosecuting attorney or circuit attorney from contracting with or
23 utilizing another entity for the collection of restitution and costs under
24 this section. When ordered by the court, interest shall be allowed
25 under subsection 1 of section 408.040. In addition to all other costs and
26 fees allowed by law, each prosecuting attorney or circuit attorney who
27 takes any action to collect restitution shall collect from the person
28 paying restitution an administrative handling cost. The cost shall be
29 twenty-five dollars for restitution of less than one hundred dollars and
30 fifty dollars for restitution of at least one hundred dollars but less than
31 two hundred fifty dollars. For restitution of two hundred fifty dollars
32 or more an additional fee of ten percent of the total restitution shall be
33 assessed, with a maximum fee for administrative handling costs not to
34 exceed seventy-five dollars total. Notwithstanding the provisions of
35 sections 50.525 to 50.745, the costs provided for in this subsection shall
36 be deposited by the county treasurer into a separate interest-bearing
37 fund to be expended by the prosecuting attorney or circuit
38 attorney. This fund shall be known as the "Administrative Handling
39 Cost Fund", and it shall be the fund for deposits under this section and
40 under section 570.120. The funds shall be expended, upon warrants
41 issued by the prosecuting attorney or circuit attorney directing the
42 treasurer to issue checks thereon, only for purposes related to that
43 authorized by subsection 4 of this section. Notwithstanding the
44 provisions of any other law, in addition to the administrative handling
45 cost, the prosecuting attorney or circuit attorney shall collect an
46 additional cost of five dollars per each crime victim to whom
47 restitution is paid for deposit to the Missouri office of prosecution
48 services fund established in subsection 2 of section 56.765. All moneys
49 collected under this section which are payable to the Missouri office of
50 prosecution services fund shall be transmitted at least monthly by the
51 county treasurer to the director of revenue who shall deposit the
52 amount collected to the credit of the Missouri office of prosecution
53 services fund under the procedure established under subsection 2 of
54 section 56.765. As used in this subsection, "crime victim" may include
55 any natural person or their survivors or legal guardians, the estate of

56 a deceased person, a for-profit corporation or business entity, a
57 nonprofit corporation or entity, a charitable entity, any governmental
58 body, or a political subdivision.

59 4. The moneys deposited in the fund may be used by the
60 prosecuting attorney or circuit attorney for office supplies, postage,
61 books, training, office equipment, capital outlay, expenses of trial and
62 witness preparation, additional employees for the staff of the
63 prosecuting or circuit attorney, employees' salaries, and for other
64 lawful expenses incurred by the prosecuting or circuit attorney in the
65 operation of that office.

66 5. This fund may be audited by the state auditor's office or the
67 appropriate auditing agency.

68 6. If the moneys collected and deposited into this fund are not
69 totally expended annually, then the unexpended balance shall remain
70 in the fund and the balance shall be kept in the fund to accumulate
71 from year to year.

72 7. Nothing in this section shall be construed to prohibit a crime
73 victim from pursuing other lawful remedies against a defendant for
74 restitution.

559.105. 1. Any person who has been found guilty of or has pled guilty
2 to [a violation of subdivision (2) of subsection 1 of section 569.080 or paragraph
3 (a) of subdivision (3) of subsection 3 of section 570.030] **an offense** may be
4 ordered by the court to make restitution to the victim for the victim's losses due
5 to such offense. Restitution pursuant to this section shall include, but not be
6 limited to[, the following:

7 (1)] A victim's reasonable expenses to participate in the prosecution of the
8 crime[;

9 (2) A victim's payment for any repairs or replacement of the motor vehicle,
10 watercraft, or aircraft; and

11 (3) A victim's costs associated with towing or storage fees for the motor
12 vehicle caused by the acts of the defendant].

13 2. No person ordered by the court to pay restitution pursuant to this
14 section shall be released from probation until such restitution is complete. If full
15 restitution is not made within the original term of probation, the court shall order
16 the maximum term of probation allowed for such offense.

17 3. Any person eligible to be released on parole [for a violation of

18 subdivision (2) of subsection 1 of section 569.080 or paragraph (a) of subdivision
19 (3) of subsection 3 of section 570.030 may] **shall** be required, as a condition of
20 parole, to make restitution pursuant to this section. The board of probation and
21 parole shall not release any person from any term of parole for such offense until
22 the person has completed such restitution, or until the maximum term of parole
23 for such offense has been served.

24 **4. The court may set an amount of restitution to be paid by the**
25 **defendant. Said amount may be taken from the inmate's account at the**
26 **department of corrections while the defendant is incarcerated. Upon**
27 **conditional release or parole, if any amount of such court-ordered**
28 **restitution is unpaid, the payment of the unpaid balance may be**
29 **collected as a condition of conditional release or parole by the**
30 **prosecuting attorney or circuit attorney under section 559.100. The**
31 **prosecuting attorney or circuit attorney may refer any failure to make**
32 **such restitution as a condition of conditional release or parole to the**
33 **parole board for enforcement.**

570.120. 1. A person commits the crime of passing a bad check when:

2 (1) With purpose to defraud, the person makes, issues or passes a check
3 or other similar sight order or any other form of presentment involving the
4 transmission of account information for the payment of money, knowing that it
5 will not be paid by the drawee, or that there is no such drawee; or

6 (2) The person makes, issues, or passes a check or other similar sight
7 order or any other form of presentment involving the transmission of account
8 information for the payment of money, knowing that there are insufficient funds
9 in or on deposit with that account for the payment of such check, sight order, or
10 other form of presentment involving the transmission of account information in
11 full and all other checks, sight orders, or other forms of presentment involving the
12 transmission of account information upon such funds then outstanding, or that
13 there is no such account or no drawee and fails to pay the check or sight order or
14 other form of presentment involving the transmission of account information
15 within ten days after receiving actual notice in writing that it has not been paid
16 because of insufficient funds or credit with the drawee or because there is no such
17 drawee.

18 2. As used in subdivision (2) of subsection 1 of this section, "actual notice
19 in writing" means notice of the nonpayment which is actually received by the
20 defendant. Such notice may include the service of summons or warrant upon the

21 defendant for the initiation of the prosecution of the check or checks which are
22 the subject matter of the prosecution if the summons or warrant contains
23 information of the ten-day period during which the instrument may be paid and
24 that payment of the instrument within such ten-day period will result in
25 dismissal of the charges. The requirement of notice shall also be satisfied for
26 written communications which are tendered to the defendant and which the
27 defendant refuses to accept.

28 3. The face amounts of any bad checks passed pursuant to one course of
29 conduct within any ten-day period may be aggregated in determining the grade
30 of the offense.

31 4. Passing bad checks is a class A misdemeanor, unless:

32 (1) The face amount of the check or sight order or the aggregated amounts
33 is five hundred dollars or more; or

34 (2) The issuer had no account with the drawee or if there was no such
35 drawee at the time the check or order was issued, in which cases passing bad
36 checks is a class C felony.

37 5. (1) In addition to all other costs and fees allowed by law, each
38 prosecuting attorney or circuit attorney who takes any action pursuant to the
39 provisions of this section shall collect from the issuer in such action an
40 administrative handling cost. The cost shall be twenty-five dollars for checks of
41 less than one hundred dollars, and fifty dollars for checks of one hundred dollars
42 but less than two hundred fifty dollars. For checks of two hundred fifty dollars
43 or more an additional fee of ten percent of the face amount shall be assessed, with
44 a maximum fee for administrative handling costs not to exceed seventy-five
45 dollars total. Notwithstanding the provisions of sections 50.525 to 50.745, the
46 costs provided for in this subsection shall be deposited by the county treasurer
47 into a separate interest-bearing fund to be expended by the prosecuting attorney
48 or circuit attorney. **This fund shall be known as the "Administrative**
49 **Handling Cost Fund", and it shall be the fund for deposits under this**
50 **section and under section 559.100.** The funds shall be expended, upon
51 warrants issued by the prosecuting attorney or circuit attorney directing the
52 treasurer to issue checks thereon, only for purposes related to that previously
53 authorized in this section. Any revenues that are not required for the purposes
54 of this section may be placed in the general revenue fund of the county or city not
55 within a county. Notwithstanding any law to the contrary, in addition to the
56 administrative handling cost, the prosecuting attorney or circuit attorney shall

57 collect an additional cost of five dollars per check for deposit to the Missouri office
58 of prosecution services fund established in subsection 2 of section 56.765. All
59 moneys collected pursuant to this section which are payable to the Missouri office
60 of prosecution services fund shall be transmitted at least monthly by the county
61 treasurer to the director of revenue who shall deposit the amount collected
62 pursuant to the credit of the Missouri office of prosecution services fund under
63 the procedure established pursuant to subsection 2 of section 56.765.

64 (2) The moneys deposited in the fund may be used by the prosecuting or
65 circuit attorney for office supplies, postage, books, training, office equipment,
66 capital outlay, expenses of trial and witness preparation, additional employees
67 for the staff of the prosecuting or circuit attorney, employees' salaries, and for
68 other lawful expenses incurred by the circuit or prosecuting attorney in operation
69 of that office.

70 (3) This fund may be audited by the state auditor's office or the
71 appropriate auditing agency.

72 (4) If the moneys collected and deposited into this fund are not totally
73 expended annually, then the unexpended balance shall remain in said fund and
74 the balance shall be kept in said fund to accumulate from year to year.

75 6. Notwithstanding any other provision of law to the contrary:

76 (1) In addition to the administrative handling costs provided for in
77 subsection 5 of this section, the prosecuting attorney or circuit attorney may
78 collect from the issuer, in addition to the face amount of the check, a reasonable
79 service charge, which along with the face amount of the check, shall be turned
80 over to the party to whom the bad check was issued;

81 (2) If a check that is dishonored or returned unpaid by a financial
82 institution is not referred to the prosecuting attorney or circuit attorney for any
83 action pursuant to the provisions of this section, the party to whom the check was
84 issued, or his or her agent or assignee, or a holder, may collect from the issuer,
85 in addition to the face amount of the check, a reasonable service charge, not to
86 exceed twenty-five dollars, plus an amount equal to the actual charge by the
87 depository institution for the return of each unpaid or dishonored instrument.

88 7. When any financial institution returns a dishonored check to the person
89 who deposited such check, it shall be in substantially the same physical condition
90 as when deposited, or in such condition as to provide the person who deposited
91 the check the information required to identify the person who wrote the check.

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