

FIRST REGULAR SESSION

SENATE BILL NO. 154

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAAF.

Pre-filed December 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0252S.02I

AN ACT

To repeal section 559.021, RSMo, and to enact in lieu thereof two new sections relating to mediated conferences between victims and criminal defendants.

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

Section A. Section 559.021, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 488.100 and 559.021, to read as
3 follows:

**488.100. 1. In addition to all other court costs provided by law,
2 in all civil cases filed in the circuit courts of this state and in all
3 criminal cases including violations of any municipal or county
4 ordinance heard by an associate circuit judge or any violation of
5 criminal or traffic laws of this state, including an infraction, a fee of
6 one dollar shall be assessed as costs, except that, no such fee shall be
7 collected in any proceeding involving a violation of an ordinance or
8 state law when a criminal proceeding or defendant has been dismissed
9 by the court or when costs are waived or are to be paid by the state,
10 county or municipality.**

**11 2. The moneys collected by clerks of the courts pursuant to the
12 provisions of this section shall be collected and disbursed as provided
13 by sections 488.010 to 488.020. All such moneys shall be payable to the
14 director of revenue, who shall deposit all amounts collected pursuant
15 to this section to the credit of the restorative justice fund which is
16 established in section 559.021.**

559.021. 1. The conditions of probation shall be such as the court in its
2 discretion deems reasonably necessary to ensure that the defendant will not again
3 violate the law. When a defendant is placed on probation he or she shall be given

4 a certificate explicitly stating the conditions on which he or she is being released.

5 2. In addition to such other authority as exists to order conditions of
6 probation, the court may order such conditions as the court believes will serve to
7 compensate the victim, any dependent of the victim, any statutorily created fund
8 for costs incurred as a result of the offender's actions, or society. Such conditions
9 may include restorative justice methods pursuant to section 217.777 **or**
10 **subsection 8 of this section**, or any other method that the court finds just or
11 appropriate including, but not limited to:

12 (1) Restitution to the victim or any dependent of the victim, or statutorily
13 created fund for costs incurred as a result of the offender's actions in an amount
14 to be determined by the judge;

15 (2) The performance of a designated amount of free work for a public or
16 charitable purpose, or purposes, as determined by the judge;

17 (3) Offender treatment programs;

18 (4) Work release programs in local facilities; and

19 (5) Community-based residential and nonresidential programs.

20 3. The defendant may refuse probation conditioned on the performance of
21 free work. If he or she does so, the court shall decide the extent or duration of
22 sentence or other disposition to be imposed and render judgment
23 accordingly. Any county, city, person, organization, or agency, or employee of a
24 county, city, organization or agency charged with the supervision of such free
25 work or who benefits from its performance shall be immune from any suit by the
26 defendant or any person deriving a cause of action from him or her if such cause
27 of action arises from such supervision of performance, except for an intentional
28 tort or gross negligence. The services performed by the defendant shall not be
29 deemed employment within the meaning of the provisions of chapter 288. A
30 defendant performing services pursuant to this section shall not be deemed an
31 employee within the meaning of the provisions of chapter 287.

32 4. In addition to such other authority as exists to order conditions of
33 probation, in the case of a finding of guilt, the court may order the assessment
34 and payment of a designated amount of restitution to a county law enforcement
35 restitution fund established by the county commission pursuant to section
36 50.565. Such contribution shall not exceed three hundred dollars for any charged
37 offense. Any restitution moneys deposited into the county law enforcement
38 restitution fund pursuant to this section shall only be expended pursuant to the
39 provisions of section 50.565.

40 5. A judge may order payment to a restitution fund only if such fund had
41 been created by ordinance or resolution of a county of the state of Missouri prior
42 to sentencing. A judge shall not have any direct supervisory authority or
43 administrative control over any fund to which the judge is ordering a defendant
44 to make payment.

45 6. A defendant who fails to make a payment to a county law enforcement
46 restitution fund may not have his or her probation revoked solely for failing to
47 make such payment unless the judge, after evidentiary hearing, makes a finding
48 supported by a preponderance of the evidence that the defendant either willfully
49 refused to make the payment or that the defendant willfully, intentionally, and
50 purposefully failed to make sufficient bona fide efforts to acquire the resources
51 to pay.

52 7. The court may modify or enlarge the conditions of probation at any time
53 prior to the expiration or termination of the probation term.

54 **8. The court may allow a defendant who meets the requirements**
55 **of this subsection to participate in a restorative justice process as a**
56 **condition of probation. The process shall be facilitated by a restorative**
57 **justice mediator and may include the victim, victim's representatives,**
58 **victim's supporters, defendant, defendant's supporters, or other persons**
59 **impacted by the defendant's acts. Participation in the process shall be**
60 **voluntary. The processes shall provide an opportunity for the**
61 **defendant to accept responsibility for the harm caused to the victim**
62 **and community, promote victim healing, and enable the participants to**
63 **agree on consequences to repair the harm, to the extent possible,**
64 **including apologies, community service, reparation, restoration, and**
65 **counseling. The process may be used in addition to any other**
66 **conditions, consequences, or sentence imposed by the court. In order**
67 **to participate in a restorative justice process, the defendant shall make**
68 **the request to the prosecuting or circuit attorney or the prosecuting or**
69 **circuit attorney shall refer the defendant to the court. The defendant's**
70 **request shall include a letter of recommendation from a**
71 **court-appointed restorative justice mediator and shall be submitted to**
72 **the court or the prosecuting or circuit attorney. The court-approved**
73 **restorative justice mediator shall then offer the victim or the victim's**
74 **representatives the opportunity to participate in the process. Upon**
75 **receiving notification of the agreement of the prosecuting or circuit**

76 attorney and the victim, the court may appoint a mediator and set a
77 date for the conference. The mediator shall be selected from a list
78 maintained by the court of persons who are qualified and trained to
79 mediate restorative justice processes. If a victim elects not to attend,
80 a restorative justice process may be held with a suitable victim
81 surrogate or victim advocate, and the victim may submit a
82 victim-impact statement. A defendant shall not be eligible to
83 participate in a restorative justice process if he or she has been found
84 guilty of an offense that requires registration as a sex offender, an
85 offense involving a domestic victim as the term "domestic victim" is
86 defined under section 565.002, stalking in the first or second degree, or
87 violating the terms and conditions of an ex parte or full order of
88 protection under sections 455.085 or 455.538. Any statements made
89 during a restorative justice process shall be confidential and shall not
90 be used as a basis for charging or prosecuting the defendant unless the
91 defendant commits a chargeable offense during the conference. Failure
92 to complete the requirements arising from a restorative justice process
93 may be considered a violation of probation. Money from the restorative
94 justice fund may be used to pay for costs associated with restorative
95 justice processes, or reimburse costs incurred by victims participating.

96 9. (1) There is hereby created in the state treasury the
97 "Restorative Justice Fund", which shall consist of money collected
98 under section 488.100. The state treasurer shall be custodian of the
99 fund. In accordance with sections 30.170 and 30.180, the state treasurer
100 may approve disbursements. The fund shall be a dedicated fund and
101 money in the fund shall be used solely by the court for the purpose of
102 subsection 8 of this section.

103 (2) Notwithstanding the provisions of section 33.080 to the
104 contrary, any moneys remaining in the fund at the end of the biennium
105 shall not revert to the credit of the general revenue fund.

106 (3) The state treasurer shall invest moneys in the fund in the
107 same manner as other funds are invested. Any interest and moneys
108 earned on such investments shall be credited to the fund.

✓