

SECOND REGULAR SESSION

HOUSE BILL NO. 1906

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE VIEBROCK.

Read 1st time March 1, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

5356L.01I

AN ACT

To repeal section 559.021, RSMo, and to enact in lieu thereof two new sections relating to costs in criminal cases.

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

Section A. Section 559.021, RSMo, is amended by adding thereto two new sections, to
2 be known as sections 550.012, and 559.021, to read as follows:

**550.012. 1. In all criminal cases, convicted persons or persons who plead guilty or
2 are found guilty are liable for payment of the documented costs of prosecution, including
3 investigative costs incurred by law enforcement agencies and by fire departments for arson
4 investigations.**

**2. The court shall require the defendant to pay the costs within a specified period
6 or in specified installments. The end of such period or the last such installment shall not
7 be later than:**

(1) The end of the period of probation or parole, if probation or parole is ordered;

**(2) Five years after the end of the term of imprisonment imposed, if the court does
10 not order probation or parole;**

(3) Five years after the date of sentencing in any other case.

12

**13 However, in no event shall the obligation to pay any unpaid amounts expire if not paid in
14 full within the period specified in this subsection.**

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. If not otherwise provided by the court under this section, costs shall be paid**
16 **immediately.**

17 **4. If a defendant is placed on probation or parole, payment of any costs under this**
18 **section shall be a condition of such probation or parole. The court may revoke probation**
19 **or parole if the defendant fails to pay these costs under the provisions of section 559.021,**
20 **RSMo.**

21 **5. Any dispute as to the proper amount or type of costs shall be resolved by the**
22 **court by a preponderance of the evidence. The burden of demonstrating the amount of**
23 **costs incurred is on the prosecuting or circuit attorney. The burden of demonstrating the**
24 **financial resources of the defendant and the financial needs of the defendant is on the**
25 **defendant. The burden of demonstrating such other matters as the court deems**
26 **appropriate is upon the party designated by the court as justice requires.**

27 **6. Any default in payment of costs may be collected by any means authorized by**
28 **law for enforcement of a judgment.**

29 **7. The clerk of the court shall collect and dispense cost payments in all cases.**

30 **8. Investigative costs which are recovered shall be returned to the appropriate**
31 **investigative agency which incurred the expense. Costs shall include actual expenses**
32 **incurred in conducting the investigation and prosecution of the criminal case; however,**
33 **costs may also include the salaries of permanent employees.**

34 **9. Costs that are collected by the prosecuting or circuit attorney under this section**
35 **shall be deposited into an account set up by the prosecuting or circuit attorney for that**
36 **purpose and may be used during the fiscal year in which the funds are collected, or in any**
37 **subsequent fiscal year, for actual expenses incurred in investigating and prosecuting**
38 **criminal cases, which may include the salaries of permanent employees.**

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

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

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

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

15 (3) Offender treatment programs;

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

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

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

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

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

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

45 **7. In addition to such other authority as exists to order conditions of probation, in**
46 **the case of a plea of guilty or a finding of guilt, the court may order the defendant to pay**
47 **as part of the costs of the case reimbursement for the costs of prosecution as provided in**
48 **section 550.012, RSMo.**

49 **8. A defendant who fails to make reimbursement as provided for in subsection 7**
50 **of this section may not have his or her probation or parole revoked solely for failing to**
51 **make such payment unless the judge, after evidentiary hearing, makes a finding supported**
52 **by a preponderance of the evidence that the defendant either willfully refused to make the**
53 **payment or that the defendant willfully, intentionally, and purposefully failed to make**
54 **sufficient bona fide efforts to acquire the resources to pay.**

55 [7.] **9.** The court may modify or enlarge the conditions of probation at any time prior to
56 the expiration or termination of the probation term.

✓