

SECOND REGULAR SESSION

# HOUSE BILL NO. 1451

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE LIPKE.

3992L.011

D. ADAM CRUMBLISS, Chief Clerk

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### 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 penalty provisions.

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*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Section A. Sections 559.100, 559.105, and 570.120, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 559.100, 559.105, and 570.120, to read as follows:

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

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

**3. Restitution, whether court ordered as provided in subsection 2 of this section or agreed to by the parties, or as enforced under section 558.011, shall be paid through the**

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.

17 office of the prosecuting attorney or circuit attorney. In addition to all other costs and fees  
18 allowed by law, each prosecuting attorney or circuit attorney who takes any action to  
19 collect restitution shall collect from the person paying restitution an administrative  
20 handling cost. The cost shall be twenty-five dollars for restitution less than one hundred  
21 dollars and fifty dollars for restitution of one hundred dollars but less than two hundred  
22 fifty dollars. For restitution of two hundred fifty dollars or more an additional fee of ten  
23 percent of the total restitution shall be assessed, with a maximum fee for administrative  
24 handling costs not to exceed seventy-five dollars total. In addition to the administrative  
25 handling costs, an installment cost shall be assessed in the amount of two dollars per  
26 installment, excepting the first installment, until such total amount of restitution is paid in  
27 full. Notwithstanding the provisions of sections 50.525 to 50.745, the costs provided for in  
28 this subsection shall be deposited by the county treasurer into a separate interest-bearing  
29 fund to be expended by the prosecuting attorney or circuit attorney. This fund shall be  
30 known as the "Administrative Handling Cost Fund", and it shall be the fund for deposits  
31 under this section and under section 570.120. The funds shall be expended, upon warrants  
32 issued by the prosecuting attorney or circuit attorney directing the treasurer to issue  
33 checks thereon, only for purposes related to that authorized by subsection 4 of this section.  
34 Notwithstanding the provisions of any other law, in addition to the administrative handling  
35 cost, the prosecuting attorney or circuit attorney shall collect an additional cost of five  
36 dollars per each crime victim to whom restitution is paid for deposit to the Missouri office  
37 of prosecution services fund established in subsection 2 of section 56.765. All moneys  
38 collected under this section which are payable to the Missouri office of prosecution services  
39 fund shall be transmitted at least monthly by the county treasurer to the director of  
40 revenue who shall deposit the amount collected to the credit of the Missouri office of  
41 prosecution services fund under the procedure established under subsection 2 of section  
42 56.765. As used in this subsection, "crime victim" means any natural person or their  
43 survivors or legal guardians, the estate of a deceased person, a for-profit corporation or  
44 business entity, a nonprofit corporation or entity, a charitable entity, or any governmental  
45 body or a political subdivision thereof.

46       4. The moneys deposited in the fund may be used by the prosecuting attorney or  
47 circuit attorney for office supplies, postage, books, training, office equipment, capital  
48 outlay, expenses of trial and witness preparation, additional employees for the staff of the  
49 prosecuting or circuit attorney, employees' salaries, and for other lawful expenses incurred  
50 by the prosecuting or circuit attorney in the operation of that office.

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

53           **6. If the moneys collected and deposited into this fund are not totally expended**  
54 **annually, then the unexpended balance shall remain in the fund and the balance shall be**  
55 **kept in the fund to accumulate from year to year.**

56           **7. Nothing in this section shall be construed to prohibit a crime victim from**  
57 **pursuing other lawful remedies against a defendant for restitution.**

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

6           (1)] a victim's reasonable expenses to participate in the prosecution of the crime[;

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

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

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

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

21           **4. The court may set an amount of restitution to be paid by the defendant. Said**  
22 **amount may be taken from the inmate's account at the department of corrections while the**  
23 **defendant is incarcerated. Upon conditional release or parole, if any amount of such court-**  
24 **ordered restitution is unpaid, the payment of the unpaid balance may be enforced as a**  
25 **condition of conditional release or parole by the prosecuting attorney or circuit attorney**  
26 **under section 559.100.**

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 or other similar  
3 sight order or any other form of presentment involving the transmission of account information  
4 for the payment of money, knowing that it will not be paid by the drawee, or that there is no such  
5 drawee; or

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

16           2. As used in subdivision (2) of subsection 1 of this section, "actual notice in writing"  
17 means notice of the nonpayment which is actually received by the defendant. Such notice may  
18 include the service of summons or warrant upon the defendant for the initiation of the  
19 prosecution of the check or checks which are the subject matter of the prosecution if the  
20 summons or warrant contains information of the ten-day period during which the instrument may  
21 be paid and that payment of the instrument within such ten-day period will result in dismissal  
22 of the charges. The requirement of notice shall also be satisfied for written communications  
23 which are tendered to the defendant and which the defendant refuses to accept.

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

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

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

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

31           5. (1) In addition to all other costs and fees allowed by law, each prosecuting attorney  
32 or circuit attorney who takes any action pursuant to the provisions of this section shall collect  
33 from the issuer in such action an administrative handling cost. The cost shall be twenty-five  
34 dollars for checks of less than one hundred dollars, and fifty dollars for checks of one hundred  
35 dollars but less than two hundred fifty dollars. For checks of two hundred fifty dollars or more  
36 an additional fee of ten percent of the face amount shall be assessed, with a maximum fee for  
37 administrative handling costs not to exceed seventy-five dollars total. Notwithstanding the  
38 provisions of sections 50.525 to 50.745, RSMo, the costs provided for in this subsection shall  
39 be deposited by the county treasurer into a separate interest-bearing fund to be expended by the  
40 prosecuting attorney or circuit attorney. **This fund shall be known as the administrative**  
41 **handling cost fund, and it shall be the fund for deposits under this section and under**

42 **section 559.100.** The funds shall be expended, upon warrants issued by the prosecuting attorney  
43 or circuit attorney directing the treasurer to issue checks thereon, only for purposes related to that  
44 previously authorized in this section. Any revenues that are not required for the purposes of this  
45 section may be placed in the general revenue fund of the county or city not within a county.  
46 Notwithstanding any law to the contrary, in addition to the administrative handling cost, the  
47 prosecuting attorney or circuit attorney shall collect an additional cost of five dollars per check  
48 for deposit to the Missouri office of prosecution services fund established in subsection 2 of  
49 section 56.765, RSMo. All moneys collected pursuant to this section which are payable to the  
50 Missouri office of prosecution services fund shall be transmitted at least monthly by the county  
51 treasurer to the director of revenue who shall deposit the amount collected pursuant to the credit  
52 of the Missouri office of prosecution services fund under the procedure established pursuant to  
53 subsection 2 of section 56.765, RSMo.

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

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

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

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

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

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

75 7. When any financial institution returns a dishonored check to the person who deposited  
76 such check, it shall be in substantially the same physical condition as when deposited, or in such

77 condition as to provide the person who deposited the check the information required to identify  
78 the person who wrote the check.

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