

SECOND REGULAR SESSION

HOUSE BILL NO. 1785

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FRANZ.

Read 1st time February 15, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4431L.02I

AN ACT

To repeal sections 488.429, 488.2300, and 559.021, RSMo, and to enact in lieu thereof five new sections relating to guardians ad litem.

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

Section A. Sections 488.429, 488.2300, and 559.021, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 488.429, 488.1015, 488.2300, 488.2305, and 559.021, to read as follows:

488.429. 1. Moneys collected pursuant to section 488.426 shall be payable to the judges of the circuit court, en banc, of the county from which such surcharges were collected, or to such person as is designated by local circuit court rule as treasurer of said fund, and said fund shall be applied and expended under the direction and order of the judges of the circuit court, en banc, of any such county for the maintenance and upkeep of the law library maintained by the bar association in any such county, or such other law library in any such county as may be designated by the judges of the circuit court, en banc, of any such county; provided, that the judges of the circuit court, en banc, of any such county, and the officers of all courts of record of any such county, shall be entitled at all reasonable times to use the library to the support of which said funds are applied.

2. In addition, such fund may also be applied and expended for that county's or circuit's family services and justice fund **or a guardian ad litem fund in those counties that have not adopted a family court or family court division.**

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.

14 3. In any county, other than a county on the nonpartisan court plan, such fund may also
15 be applied and expended for courtroom renovation and technology enhancement, **establishing**
16 **and maintaining a pro se education and learning center**, or for debt service on county bonds
17 for such renovation or enhancement projects.

**488.1015. In addition to any other court costs required in any probate proceeding
2 brought under chapter 473, 474, or 475, RSMo, a surcharge of twenty-five dollars shall be
3 imposed for the purpose of compensating guardians ad litem appointed by the court in
4 probate proceedings; except that:**

5 (1) For estates where the net value of the assets of the estate is two hundred fifty
6 thousand dollars or more but less than five hundred thousand dollars, the amount of the
7 surcharge shall be fifty dollars; and

8 (2) For estates where the net value of the assets of the estate is five hundred
9 thousand dollars or more, the surcharge shall be one hundred dollars.

10

11 **The moneys collected under this section shall be deposited in a fund of the probate court**
12 **to be designated as the "Guardian Ad Litem Fund".**

488.2300. 1. A "Family Services and Justice Fund" is hereby established in each county
2 or circuit with a family court, for the purpose of aiding with the operation of the family court
3 divisions and services provided by those divisions. In circuits or counties having a family court,
4 the circuit clerk shall charge and collect a surcharge of thirty dollars in all proceedings falling
5 within the jurisdiction of the family court. The surcharge shall not be charged when no court
6 costs are otherwise required, shall not be charged against the petitioner for actions filed pursuant
7 to the provisions of chapter 455, RSMo, but may be charged to the respondent in such actions,
8 shall not be charged to a government agency and shall not be charged in any proceeding when
9 costs are waived or are to be paid by the state, county or municipality.

10

2. In juvenile proceedings under chapter 211, RSMo, a judgment of up to thirty dollars
11 may be assessed against the child, parent or custodian of the child, in addition to other amounts
12 authorized by law, in informal adjustments made under the provisions of sections 211.081 and
13 211.083, RSMo, and in an order of disposition or treatment under the provisions of section
14 211.181, RSMo. The judgment may be ordered paid to the clerk of the circuit where the
15 assessment is imposed.

16 3. All sums collected pursuant to this section and section 487.140, RSMo, shall be
17 payable to the various county family services and justice funds.

18

4. Any moneys in the family services and justice fund not expended for salaries of
19 commissioners, family court administrators and family court staff shall be used toward funding
20 the enhanced services provided as a result of the establishment of a family court; however, it

21 shall not replace or reduce the current and ongoing responsibilities of the counties to provide
22 funding for the courts as required by law. Moneys collected for the family services and justice
23 fund shall be expended for the benefit of litigants and recipients of services in the family court,
24 with priority given to services such as **guardians ad litem**, mediation, counseling, home studies,
25 psychological evaluation and other forms of alternative dispute-resolution services.
26 Expenditures shall be made at the discretion of the presiding judge or family court administrative
27 judge, as designated by the circuit and associate circuit judges en banc, for the implementation
28 of the family court system as set forth in this section. No moneys from the family services and
29 justice fund may be used to pay for mediation in any cause of action in which domestic violence
30 is alleged.

31 5. From the funds collected pursuant to this section and retained in the family services
32 and justice fund, each circuit or county in which a family court commissioner in addition to those
33 commissioners existing as juvenile court commissioners on August 28, 1993, have been
34 appointed pursuant to sections 487.020 to 487.040, RSMo, shall pay to and reimburse the state
35 for the actual costs of that portion of the salaries of family court commissioners appointed
36 pursuant to the provisions of sections 487.020 to 487.040, RSMo.

37 6. No moneys deposited in the family services and justice fund may be expended for
38 capital improvements.

488.2305. 1. Notwithstanding any other provision of law, any circuit court that
2 **does not have a family court or a family court division may assess a surcharge not to exceed**
3 **thirty dollars for each domestic relations case filed. Such surcharge shall be deposited in**
4 **a fund of the circuit court to be known as the "Guardian Ad Litem Fund". The moneys**
5 **in the fund shall be used exclusively for the payment of guardian ad litem fees and**
6 **expenses.**

7 **2. As used in this section, "domestic relations case" includes all actions brought**
8 **under chapter 452, RSMo, including contempt of court proceedings, and adoption**
9 **proceedings under chapter 453, RSMo.**

10 **3. The amount of the surcharge shall be twenty-five dollars for each case unless the**
11 **circuit court at its annual en banc meeting sets a different amount. Upon establishment**
12 **of the amount of the surcharge, the amount of the surcharge shall remain in effect until**
13 **changed by the court. The court may waive the surcharge in the court's discretion,**
14 **provided the waiver affirmatively appears in the minutes of the court at its en banc**
15 **meeting.**

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 shall be given a certificate explicitly stating the conditions
4 on which he 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 does so, the court shall decide the extent or duration of sentence or other disposition to be
20 imposed and render judgment accordingly. Any county, city, person, organization, or agency,
21 or employee of a county, city, organization or agency charged with the supervision of such free
22 work or who benefits from its performance shall be immune from any suit by the defendant or
23 any person deriving a cause of action from him if such cause of action arises from such
24 supervision of performance, except for an intentional tort or gross negligence. The services
25 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. **In cases of a plea of guilty or a finding of guilt where**
35 **the defendant is represented by an attorney employed by the state public defender, the**
36 **court may also order as a condition of the defendant's probation that the defendant pay**
37 **a designated amount to the state public defender system. The court shall determine the**
38 **defendant's ability to pay the amount ordered and shall fix or order the state board of**

39 **probation and parole to fix a payment schedule. The court may modify the amount to be**
40 **paid at any time prior to the expiration of the defendant's term of probation upon motion**
41 **by the court, the defendant, the state board of probation and parole, or the state public**
42 **defender's office after a hearing on the motion.**

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

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

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

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