

FIRST REGULAR SESSION

HOUSE BILL NO. 362

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES GUEST (Sponsor), RUESTMAN, PACE,
LOEHNER AND KELLY (Co-sponsors).

1068L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 217, RSMo, by adding thereto one new section relating to the work for restitution program.

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

Section A. Chapter 217, RSMo, is amended by adding thereto one new section, to be known as section 217.774, to read as follows:

217.774. 1. As used in this section, the following terms mean:

- (1) "Adult offender", any person who pleads guilty to or is found guilty of any offense and who is not a juvenile offender;**
- (2) "Juvenile offender", any person who is adjudicated in juvenile court for an offense that would be a crime if committed by an adult;**
- (3) "Local governing agency", the county, city, community, church organization, or state may form a work restitution program for all nonviolent offenders, any community-based organization recognized by the state can form a restitution program to provide a resource to keep light offenders in their community rather than in jail;**
- (4) "Nonviolent offender", any offender who is convicted of a crime other than murder in the first or second degree, involuntary manslaughter, kidnapping, forcible rape, forcible sodomy, robbery in the first degree, assault in the first degree, or assault of a law enforcement officer, emergency personnel, or probation and parole officer in the first degree;**

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 (5) "Persistent offender", any person who has pleaded guilty to or has been found
16 guilty of three or more felony offenses of the laws of this state or of the United States, or
17 any other state, territory, or district;

18 (6) "Successful completion of the work for restitution program", that an offender
19 who has been placed on probation or parole and has had work for restitution imposed as
20 a condition of probation or parole has paid all rehabilitation fees in full;

21 (7) "Work release", the release of an offender to the community by the court or the
22 state, county, or city to the expiration of his or her term, subject to conditions imposed by
23 the court or the board and to its supervision; to work to provide restitution and to allow
24 the option of not serving imprisonment;

25 (8) "Work restitution", a procedure under which a defendant found guilty of a
26 crime upon verdict or plea is released by the court without imprisonment, subject to
27 conditions imposed by the court and subject to the supervision of the board;

28 (9) "Work for restitution program", a local governing agency program that
29 provides supervised work programs for individuals on probation or parole who are
30 classified as nonviolent offenders.

31 2. Notwithstanding any other provision of law, any person who has pleaded guilty
32 to or nolo contendere to or been found guilty of any nonviolent offense shall be considered
33 by the court for probation. If probation is granted and there is any restitution owed to any
34 victim, in addition to other requirements that may be imposed by the court, the court shall
35 require participation in, and completion of, the work for restitution program. In such
36 cases, the court may not impose incarceration as an additional condition of probation.

37 3. The provisions of subsection 2 of this section shall not apply to:

38 (1) Any person who has pleaded guilty to, or been convicted of a dangerous felony
39 as defined in section 556.061, RSMo;

40 (2) Any person determined to be a persistent offender;

41 (3) Any defendant who has been previously sentenced to probation under the
42 provisions of this section and has been unsuccessful in three separate courses of the work
43 for restitution program and is found by the court by clear and convincing evidence, to be
44 unamenable to the work for restitution program;

45 (4) Any defendant who refuses the work for restitution program as a condition of
46 probation.

47 4. Within seven days of an order imposing probation under the provisions of this
48 section, the board shall notify the work for restitution program designated to provide
49 treatment.

50 5. If at any point during the course of the work for restitution program the
51 program provider notifies the board that the defendant is not following the directives of
52 the work for restitution program provider, the board may move to the court to revoke
53 probation.

54 6. Where a defendant receives probation under the provisions of this section and
55 violates such probation either by being arrested or by violating a condition of probation,
56 and the state moves to revoke probation, the court shall conduct a hearing to determine
57 whether probation shall be revoked. The court may intensify the requirements for the
58 work for restitution program if appropriate, or otherwise modify or revoke probation if
59 the alleged violation is proved.

60 7. Ineligible inmates under the provisions of this section shall be:

61 (1) Inmates serving terms or having past convictions for a dangerous felony as
62 defined in section 556.061, RSMo;

63 (2) Any inmate who has, while under parole supervision been previously
64 unsuccessful in a work for restitution program and who is subsequently regarded by the
65 board as unamenable to any and all forms of the work for restitution program;

66 (3) Any inmate who refuses to participate in a work for restitution program as a
67 condition of parole.

68 8. Inmates approved for early parole release to take part in the work for restitution
69 program shall be required to participate in and successfully complete the work for
70 restitution program as a condition of parole.

71 9. The release of the offender shall be coordinated with the work for restitution
72 program provider so that the offender is admitted into the program within the first seven
73 days of release from prison.

74 10. A work for restitution program plan shall be provided to the board within
75 thirty days of the individual's admission to the work for restitution program.

76 11. On a monthly basis, the work for restitution program provider shall prepare
77 and forward a monthly progress report to the board's designee.

78 12. If at any point during the course of the work for restitution program the
79 program provider notifies the board that the parolee is unamenable to the work for
80 restitution program, but may be amenable to and in need of a treatment program, the
81 board may modify the terms of parole to ensure that the individual receives the treatment
82 program.

83 13. If at any point during the course of the work for restitution program the
84 program provider notifies the board that the parolee is unamenable to the work for

85 restitution program and is unamenable to or does not need any other treatment program,
86 the board may act to revoke parole.

87 14. Each offender in the work for restitution program and under the supervision
88 of the board shall be required to:

89 (1) Pay restitution to all victims in full;

90 (2) Pay a rehabilitation fee in an amount equal to the total amount of restitution the
91 offender is ordered to pay to all victims;

92 (3) Work a total of twelve hours per day, with eight hours for the offender's own
93 income and four hours for restitution, six days per week, until the total amount of
94 restitution and rehabilitation fees have been paid. If the offender is currently employed,
95 then the offender's hours worked at their regular job will be counted as part of the hours
96 but not part of the restitution;

97 (4) Work the required hours per day as deemed by the presiding judge or local
98 community enforcement. The juvenile offenders must work until the total amount of
99 restitution and rehabilitation fees have been paid. If the offender is currently employed,
100 then the offender's hours worked at their regular job will be counted as part of the hours
101 but not part of the restitution;

102 (5) The amount of the wages in the work for restitution program shall not exceed
103 the current federal minimum wage.

104 15. The requirement of rehabilitation fees shall become effective on August 28,
105 2009, and shall not be applied retroactively to offenders for any past period of supervision.

106 16. The payment of restitution and rehabilitation fees shall be a written condition
107 of each offender's probation or parole and no offender shall be released from supervision
108 until such restitution and fees have been collected.

109 17. Fees may be waived on a temporary or permanent basis for an offender only
110 when the board has determined that the offender would suffer a serious financial hardship
111 due to:

112 (1) Temporary or permanent employment disability;

113 (2) Temporary unemployment for bonafide and authorized reasons.

114 18. The required fees shall be collected and remitted to the work for restitution
115 fund created under this section within sixty days of receipt. The local governing agency
116 is authorized to enter into agreements with other governmental entities for the collection
117 of the required fees, or into contracts with nongovernmental entities, for the collection of
118 the required fees. An annual report shall be prepared that identifies the funds collected
119 and the funds remitted to the work for restitution fund.

120 **19. Any person who is ordered to participate in the work for restitution program**
121 **to make restitution for damage or loss caused by his or her offense under the provisions**
122 **of this section shall not be considered an employee as defined in section 290.500, RSMo.**

123 **20. There is hereby created a community based work restitution fund to be known**
124 **as the "Work for Restitution Fund" that shall be administered by the local city, county,**
125 **or state. The governing agency shall credit to the fund any interest earned from investing**
126 **the moneys in the fund. Notwithstanding the provisions of section 33.080, RSMo, money**
127 **in the work for restitution fund shall not be transferred and placed to the credit of general**
128 **revenues at the end of the biennium.**

129 **21. Fees received pursuant to the provisions of this section shall be deposited in the**
130 **work for restitution fund. The moneys received from such fees shall be appropriated solely**
131 **for the purpose of funding the work for restitution program required by this section.**

132 **22. The local governing agency shall promulgate rules and regulations to implement**
133 **and administer the provisions of this section. Any rule or portion of a rule, as that term**
134 **is defined in section 536.010, RSMo, that is created under the authority delegated in this**
135 **section shall become effective only if it complies with and is subject to all of the provisions**
136 **of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter**
137 **536, RSMo, are nonseverable and if any of the powers vested with the general assembly**
138 **pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and**
139 **annul a rule are subsequently held unconstitutional, then the grant of rulemaking**
140 **authority and any rule proposed or adopted after August 28, 2009, shall be invalid and**
141 **void.**

142 **23. The local governing agency shall provide an annual report that describes the**
143 **effectiveness and financial impact of the requirements of this section. The study shall**
144 **include, but not be limited to: a description of the number served and outcomes, a study**
145 **of the implementation process, a review of lower incarceration costs, reductions in crime,**
146 **reductions in substance abuse, reduced welfare costs, and the adequacy of the funding**
147 **mechanism to implement the provisions of this section.**

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