

FIRST REGULAR SESSION

SENATE BILL NO. 611

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Read 1st time February 27, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2363S.021

AN ACT

To repeal sections 178.653, 302.137, 304.027, 304.028, 488.5332, 600.011, 600.042, RSMo, and to enact in lieu thereof nine new sections relating to operations of the state courts.

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

Section A. Sections 178.653, 302.137, 304.027, 304.028, 488.5332, 600.011, 2 and 600.042, RSMo, are repealed and nine new sections enacted in lieu thereof, 3 to be known as sections 178.653, 302.137, 304.027, 304.028, 488.5359, 600.011, 4 600.042, 600.047, and 600.092, to read as follows:

178.653. 1. There is hereby created in the state treasury the 2 "Independent Living Center Fund" which shall be administered by the division 3 of vocational rehabilitation of the department of elementary and secondary 4 education. Moneys in the fund shall, upon appropriation, be used to establish 5 and maintain centers for independent living, as defined in section 178.651, in 6 accordance with the long-term plans developed pursuant to the provisions of 7 section 178.652.

8 2. The independent living center fund shall be funded with [fees payable 9 pursuant to the provisions of section 178.653] **moneys transferred from the 10 state general revenue fund.**

11 3. [The provisions of section 33.080, RSMo, to the contrary 12 notwithstanding,] All moneys in the fund created by this section shall [not] be 13 transferred and placed to the credit of the general revenue fund at the end of 14 each biennium.

302.137. [1.] There is hereby created in the state treasury for use by the 2 department of public safety a fund to be known as the "Motorcycle Safety Trust

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

3 Fund". All [judgments collected pursuant to this section,] appropriations of the
4 general assembly **from moneys transferred from the state general revenue**
5 **fund**, federal grants, private donations and any other moneys designated for the
6 motorcycle safety education program established pursuant to sections 302.133 to
7 302.138 shall be deposited in the fund. Moneys deposited in the fund shall, upon
8 appropriation by the general assembly to the department of public safety, be
9 received and expended by the department of public safety for the purpose of
10 funding the motorcycle safety education program established under sections
11 302.133 to 302.138. [Notwithstanding the provisions of section 33.080, RSMo, to
12 the contrary,] Any unexpended balance in the motorcycle safety trust fund at the
13 end of any biennium shall [not] be transferred to the general revenue fund.

14 [2. In all criminal cases, including violations of any county ordinance or
15 any violation of criminal or traffic laws of this state, including an infraction,
16 there shall be assessed as costs a surcharge in the amount of one dollar. No such
17 surcharge shall be collected in any proceeding involving a violation of an
18 ordinance or state law when the proceeding or defendant has been dismissed by
19 the court or when costs are to be paid by the state, county or municipality.

20 3. Such surcharge shall be collected and distributed by the clerk of the
21 court as provided in sections 488.010 to 488.020, RSMo. The surcharge collected
22 pursuant to this section shall be paid to the state treasury to the credit of the
23 motorcycle safety trust fund established in this section.]

304.027. [1.] There is hereby created in the state treasury for use by the
2 board of curators of the University of Missouri a fund to be known as the "Spinal
3 Cord Injury Fund". All [judgments collected pursuant to this section,]
4 appropriations of the general assembly **from moneys transferred from the**
5 **state general revenue fund**, federal grants, private donations and any other
6 moneys designated for the spinal cord injury fund established pursuant to this
7 section, shall be deposited in the fund. Moneys deposited in the fund shall, upon
8 appropriation by the general assembly to the board of curators, be received and
9 expended by the board for the purpose of funding research projects that promote
10 an advancement of knowledge in the area of spinal cord injury. [Notwithstanding
11 the provisions of section 33.080, RSMo, to the contrary,] Any unexpended balance
12 in the spinal cord injury fund at the end of any biennium shall [not] be
13 transferred to the general revenue fund.

14 [2. In all criminal cases including violations of any county ordinance or
15 any violation of criminal or traffic laws of this state, including an infraction,

16 there shall be assessed as costs a surcharge in the amount of two dollars. No
17 such surcharge shall be collected in any proceeding involving a violation of an
18 ordinance or state law when the proceeding or defendant has been dismissed by
19 the court or when costs are to be paid by the state, county or municipality. Such
20 surcharge shall be collected and disbursed by the clerk of the court as provided
21 by sections 488.010 to 488.020. The surcharge collected pursuant to this section
22 shall be paid into the state treasury to the credit of the spinal cord injury fund
23 created in this section.]

304.028. [1.] There is hereby created in the state treasury for use by the
2 Missouri Head Injury Council a fund to be known as the "Head Injury
3 Fund". All [judgments collected pursuant to this section,] **appropriations of**
4 **the general assembly from moneys transferred from the state general**
5 **revenue fund**, federal grants, private donations and any other moneys
6 designated for the head injury fund shall be deposited in the fund. Moneys
7 deposited in the fund shall, upon appropriation by the general assembly to the
8 office of administration, be received and expended by the council for the purpose
9 of transition and integration of medical, social and educational services or
10 activities for purposes of outreach and short-term supports to enable individuals
11 with traumatic head injury and their families to live in the community, including
12 counseling and mentoring the families. [Notwithstanding the provisions of
13 section 33.080, RSMo, to the contrary,] Any unexpended balance in the head
14 injury fund at the end of any biennium shall [not] be transferred to the general
15 revenue fund.

16 [2. In all criminal cases including violations of any county ordinance or
17 any violation of criminal or traffic laws of this state, including an infraction,
18 there shall be assessed as costs a surcharge in the amount of two dollars. No
19 such surcharge shall be collected in any proceeding involving a violation of an
20 ordinance or state law when the proceeding or defendant has been dismissed by
21 the court or when costs are to be paid by the state, county or municipality.

22 3. Such surcharge shall be collected and distributed by the clerk of the
23 court as provided in sections 488.010 to 488.020, RSMo. The surcharge collected
24 pursuant to this section shall be paid to the state treasury to the credit of the
25 head injury fund established in this section.]

488.5359. As provided by section 600.047, RSMo, there shall be
2 **assessed and collected a surcharge of five dollars in all criminal cases**
3 **filed in the courts of this state, including violations of any county**

4 ordinance or any violation of criminal or traffic laws of this state,
5 including infractions, but no such surcharge shall be assessed when the
6 proceeding or defendant has been dismissed by the court or when costs
7 are to be paid by the state, county, or municipality. The clerk
8 responsible for collecting court costs in criminal cases shall collect and
9 disburse such amounts as provided by sections 488.010 to 488.020. Such
10 funds shall be payable to the contract indigent defense fund for the
11 purposes provided in section 600.047, RSMo.

600.011. The following words and phrases as used in this chapter have the
2 following meanings, unless the context otherwise requires:

3 (1) "Assigned counsel" [means], private attorneys who are hired by the
4 state public defender director to handle the cases of eligible persons from time to
5 time on a case basis;

6 (2) "Chief deputy director" [means], the attorney appointed by the
7 commission to assist the state public defender director and to exercise the duties
8 and powers of the director in his absence or upon his resignation;

9 (3) "Commission" [means], the public defender commission;

10 (4) "Contract counsel", private attorneys hired by the state public
11 defender director on a contract basis to handle a particular docket or
12 category of cases of eligible persons for a specified period of time;

13 (5) "Defender(s)", includes [both] attorneys which serve as staff attorneys
14 in the state defender system [and assigned counsel who provide defense services
15 on a case basis,] but does not include assigned or contract counsel,
16 secretarial, investigative, social service, or paraprofessional staff;

17 [(5)] (6) "Director" [means], the state public defender director;

18 [(6)] (7) "Eligible person" [means], a person who falls within the
19 financial rules for legal representation at public expense prescribed by [section]
20 sections 600.047 and 600.086;

21 [(7)] (8) "State public defender system" [means], a system for providing
22 defense services to every jurisdiction within the state by means of a centrally
23 administered organization having a full-time staff to handle felony cases
24 except for violations under section 570.120, RSMo, and be responsible
25 for retaining contract counsel to handle misdemeanor cases, violations
26 under section 570.120, RSMo, and criminal child support enforcement
27 actions.

600.042. 1. The director shall:

2 (1) Direct and supervise the work of the deputy directors and other state
3 public defender office personnel appointed pursuant to this chapter; and he and
4 the chief deputy director may participate in the trial and appeal of criminal
5 actions at the request of the defender or upon order of the commission;

6 (2) Submit to the commission, between August fifteenth and September
7 fifteenth of each year, a report which shall include all pertinent data on the
8 operation of the state public defender system, the costs, projected needs, and
9 recommendations for statutory changes. Prior to October fifteenth of each year,
10 the commission shall submit such report along with such recommendations,
11 comments, conclusions, or other pertinent information it chooses to make to the
12 chief justice, the governor, and the general assembly. Such reports shall be a
13 public record, shall be maintained in the office of the state public defender, and
14 shall be otherwise distributed as the commission shall direct;

15 (3) With the approval of the commission, establish such divisions,
16 facilities and offices and select such professional, technical and other personnel,
17 including investigators, as he deems reasonably necessary for the efficient
18 operation and discharge of the duties of the state public defender system under
19 this chapter;

20 (4) Administer and coordinate the operations of defender services and be
21 responsible for the overall supervision of all personnel, offices, divisions and
22 facilities of the state public defender system, except that the director shall have
23 no authority to direct or control the legal defense provided by a defender to any
24 person served by the state public defender system;

25 (5) Develop programs and administer activities to achieve the purposes
26 of this chapter;

27 (6) Keep and maintain proper financial records with respect to the
28 providing of all public defender services for use in the calculating of direct and
29 indirect costs of any or all aspects of the operation of the state public defender
30 system;

31 (7) Supervise the training of all public defenders, assistant public
32 defenders, deputy public defenders and other personnel and establish such
33 training courses as shall be appropriate;

34 (8) With approval of the commission, promulgate necessary rules,
35 regulations and instructions consistent with this chapter defining the
36 organization of his office and the responsibilities of public defenders, assistant
37 public defenders, deputy public defenders and other personnel;

38 (9) With the approval of the commission, apply for and accept on behalf
39 of the public defender system any funds which may be offered or which may
40 become available from government grants, private gifts, donations or bequests or
41 from any other source. Such moneys shall be deposited in the state general
42 revenue fund;

43 (10) Contract for legal services with private attorneys on a case-by-case
44 basis and with assigned counsel as the commission deems necessary considering
45 the needs of the area, for fees approved and established by the commission;

46 (11) With the approval and on behalf of the commission, contract with
47 private attorneys for the collection and enforcement of liens and other judgments
48 owed to the state for services rendered by the state public defender system.

49 2. No rule or portion of a rule promulgated under the authority of this
50 chapter shall become effective unless it has been promulgated pursuant to the
51 provisions of section 536.024, RSMo.

52 3. The director and defenders shall, within guidelines as established by
53 the commission and as set forth in subsection 4 of this section, accept requests
54 for legal services from eligible persons entitled to counsel under this chapter or
55 otherwise so entitled under the constitution or laws of the United States or of the
56 state of Missouri and provide such persons with legal services when, in the
57 discretion of the director or the defenders, such provision of legal services is
58 appropriate.

59 4. The director and defenders shall provide legal services to an eligible
60 person:

61 (1) Who is detained or charged with a felony **except for a violation of**
62 **section 570.120, RSMo**, including appeals from a conviction in such a case;

63 (2) [Who is detained or charged with a misdemeanor which will probably
64 result in confinement in the county jail upon conviction, including appeals from
65 a conviction in such a case;

66 (3)] Who is detained or charged with a violation of **felony** probation [or
67 parole];

68 [(4)] **(3)** Who has been taken into custody pursuant to section 632.489,
69 RSMo, including appeals from a determination that the person is a sexually
70 violent predator and petitions for release, notwithstanding any provisions of law
71 to the contrary;

72 [(5)] **(4)** For whom, **in a case in which he or she faces a loss or**
73 **deprivation of liberty**, the federal constitution or the state constitution **or any**

74 **law of this state** requires the appointment of counsel; **however, the director**
75 **and the defenders shall not be required to provide legal services to**
76 **persons charged with violations of county or municipal ordinances,**
77 **violations of section 570.120, RSMo, or misdemeanor offenses except as**
78 **provided in section 600.047, or to persons who are a party in a criminal**
79 **child support enforcement action except as provided in section 600.047;**
80 and

81 [(6) For whom, in a case in which he faces a loss or deprivation of liberty,
82 any law of this state requires the appointment of counsel; however, the director
83 and the defenders shall not be required to provide legal services to persons
84 charged with violations of county or municipal ordinances]

85 **(5) Nothing in this section shall prevent the director or his or**
86 **her designee from approving defender representation of an eligible**
87 **person in a misdemeanor case when such person is charged with both**
88 **a felony and misdemeanor.**

89 5. The director may:

90 (1) Delegate the legal representation of any person to any member of the
91 state bar of Missouri;

92 (2) Designate persons as representatives of the director for the purpose
93 of making indigency determinations and assigning counsel.

600.047. 1. The "Contract Indigent Defense Fund" is hereby
2 **created for the purpose of paying contract counsel to represent eligible**
3 **indigent persons:**

4 **(1) Who are:**

5 **(a) Charged with a misdemeanor offense or a misdemeanor**
6 **probation violation, which will likely result in confinement in the**
7 **county jail and for which the federal or state constitution or any law**
8 **of this state requires the appointment of counsel. The provision of**
9 **legal services for such probation violation shall meet the requirements**
10 **of section 600.092;**

11 **(b) Charged with a violation of section 570.120, RSMo; or**

12 **(c) Parties in a criminal child support enforcement action that**
13 **will likely result in confinement in the county jail or imprisonment in**
14 **a correctional facility and for which the federal or state constitution or**
15 **any law of this state requires the appointment of counsel; or**

16 **(2) When a defender in a state public defender system has a**
17 **conflict of interest when providing legal services under subsection 4 of**

18 section 600.011.

19 The fund shall consist of moneys transferred from the state general
20 revenue fund and the court surcharge created in subsection 6 of this
21 section. The state treasurer shall be custodian of the fund and may
22 approve disbursements from the fund in accordance with sections
23 30.170 and 30.180, RSMo. Upon appropriation, money in the fund shall
24 be used solely for the administration of this section. Any moneys
25 remaining in the fund at the end of the biennium shall revert to the
26 credit of the general revenue fund. The state treasurer shall invest
27 moneys in the fund in the same manner as other funds are
28 invested. Any interest and moneys earned on such investments shall be
29 credited to the fund.

30 2. The court in which the charge is pending shall make a
31 determination of the defendant's eligibility for representation under
32 the contract indigent defense fund.

33 (1) A person shall be considered indigent and eligible for
34 representation under this section when it appears from all the
35 circumstances of the case, including his or her income, ability to make
36 bond, and number of persons dependent upon him or her for support,
37 that the person does not have the means available to obtain counsel
38 and is therefore indigent.

39 (2) Representation of eligible persons under this section shall be
40 provided by contract counsel retained by the office of the state public
41 defender.

42 3. The contract indigent defense fund shall be administered by
43 the office of the Missouri state public defender, which shall have the
44 authority to:

45 (1) Enter into contracts with qualified private counsel for the
46 provision of indigent defense services;

47 (2) Process contract counsel payments and litigation expense
48 reimbursements from the contract indigent defense fund;

49 (3) Make such rules as are necessary for the efficient
50 administration of the contract indigent defense fund. Any rule or
51 portion of a rule, as that term is defined in section 536.010, RSMo, that
52 is created under the authority delegated in this section shall become
53 effective only if it complies with and is subject to all of the provisions
54 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This

55 section and chapter 536, RSMo, are nonseverable and if any of the
56 powers vested with the general assembly pursuant to chapter 536,
57 RSMo, to review, to delay the effective date, or to disapprove and annul
58 a rule are subsequently held unconstitutional, then the grant of
59 rulemaking authority and any rule proposed or adopted after August
60 28, 2007, shall be invalid and void.

61 4. Employees of the Missouri state public defender system and
62 members of the public defender commission may not serve as contract
63 counsel.

64 5. This fund shall not be used to provide legal services to persons
65 charged with county or municipal ordinance violations or misdemeanor
66 offenses in which the accused is not facing the possibility of jail time
67 if found guilty or pleading guilty. Nor shall the fund be used to provide
68 legal services to persons who are a party in a criminal child support
69 enforcement action in which the accused is not facing the possibility of
70 jail time or imprisonment if found or pleading guilty.

71 6. Beginning August 28, 2007, there shall be assessed and
72 collected a surcharge of five dollars in all criminal cases filed in the
73 courts of this state, including violations of any county ordinance or any
74 violation of criminal or traffic laws of this state, including infractions,
75 but no such surcharge shall be assessed when the proceeding or
76 defendant has been dismissed by the court or when costs are to be paid
77 by the state, county, or municipality. Funds collected under section
78 488.5359, RSMo, shall be credited to the contract indigent defense fund.

600.092. Notwithstanding any other provision of law to the
2 contrary, no defender or contract counsel shall be required to provide
3 legal services to an eligible person for a violation of probation unless
4 such violation could result in the charging of a separate offense.

[488.5332. In all criminal cases including violations of any
2 county ordinance or any violation of criminal or traffic laws of this
3 state, including an infraction, there shall be assessed as costs a
4 surcharge in the amount of one dollar. No such surcharge shall be
5 collected in any proceeding involving a violation of an ordinance or
6 state law when the proceeding or defendant has been dismissed by
7 the court or when costs are to be paid by the state, county or
8 municipality. Such surcharge shall be collected and disbursed by
9 the clerk of the court as provided by sections 488.010 to

10 488.020. Moneys collected from this surcharge shall be payable to
11 the independent living center fund created in section 178.653,
12 RSMo.]

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Unofficial

Bill

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