

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4877-06
Bill No.: SS for SCS for SB Nos. 880, 780, & 836
Subject: Courts; Crimes and Punishment; Criminal Procedure; Drunk Driving/Boating;
Fees; Law Enforcement Officers and Agencies
Type: Original
Date: April 22, 2010

Bill Summary: The proposal modifies various provisions related to intoxication-related traffic offenses.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	(More than \$321,689)	(More than \$363,125)	(More than \$373,554)
Total Estimated Net Effect on General Revenue Fund	(More than \$321,689)	(More than \$363,125)	(More than \$373,554)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 18 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Highway	\$5,642,408	\$6,770,888	\$6,770,888
Road	\$0 or (\$16,000,000)	\$0 or (\$16,000,000)	\$0 or (\$16,000,000)
Highway Safety	\$0 or \$16,000,000	\$0 or \$16,000,000	\$0 or \$16,000,000
Drug and DWI Court Resources*	\$0	\$0	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	\$5,642,408	\$6,770,888	\$6,770,888

* Offsetting revenues and costs of \$418,532 in FY 2011; \$1,004,475 in FY 2012, and \$1,128,913 in FY 2013, net to \$0.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on FTE	0	0	0

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Local Government	(Unknown) to \$1,880,714	(Unknown) to \$2,256,963	(Unknown) to \$2,256,963

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Mental Health, Department of Health and Senior Services, Department of Public Safety – Missouri State Water Patrol, – Director’s Office, Boone County Sheriff’s Department, Jefferson City Police Department,** and the **City of Centralia** assume the proposal would have no fiscal impact on their agencies.

In response to a previous version of the proposal (SCS for SB Nos. 880, 780, & 836, LR # 4877-02), officials from the **Department of Social Services** and the **Office of the State Treasurer** assumed the proposal would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator (CTS)** state the proposed legislation would make numerous revisions to laws relating to driving while intoxicated.

Beginning August 28, 2010, the proposed legislation would impose a \$500 surcharge on intoxicated-related traffic offenses with persistent, prior, chronic, and aggravated offenders. This money is to be deposited into the “Drug and DWI Court Resources Fund,” which is created in the bill.

In FY 2009, there were 4,311 charges that fall under section 577.023, RSMo. CTS assumes that approximately 90% of these charges are individual cases. Therefore, CTS assumes 1,889 prior offender cases or misdemeanor cases will be filed and 1,991 combined persistent, chronic, and aggravated or felony cases will be filed.

CTS calculation takes into account the fact that felony collection rates are only between 50% and 60%, and misdemeanor collection rates average 80%. This surcharge is assessed on misdemeanor and felony cases. Since these defendants often do not have steady employment or cash reserves, the court often gives the defendants the period of probation to pay the costs and fines. Therefore, the revenue generated the first year is less than that generated in subsequent years. The felony collection rate increases over a period of four years, which CTS believes to be the average probation served for felonies. The collection rate for misdemeanors increases over two years, the average probation time for misdemeanants.

Based on a 50% felony collection rate, CTS calculations indicate that the legislation will produce \$502,238 in the 1st 12 months, \$1,004,475 in the 2nd 12 months, \$1,128,913 in the 3rd 12 months, and \$1,253,350 annually thereafter. Based on a 60% felony collection rate, our calculations indicate that the legislation will produce \$527,125 in the 1st 12 months, \$1,054,250 in the 2nd 12 months, \$1,203,575 in the 3rd 12 months, and \$1,352,900 annually thereafter.

ASSUMPTION (continued)

The proposed legislation allows a circuit court to establish a DWI docket or court to provide an alternative for the judicial system to dispose of cases which stem from driving while intoxicated. This docket or court may operate in conjunction with a drug court. Since the legislation is permissive, CTS has no way of knowing how many courts would create the programs. Although they are unable to provide an estimate at this time, CTS assumes the cost would exceed \$100,000.

The proposed legislation would require each municipal judge to receive adequate instruction on the laws related to intoxication-related traffic offenses as §577.023. A one-day municipal judge training provided in six regions across the state would cost approximately \$15,500.

Oversight conservatively assumes revenues to the Drug and DWI Court Resources Fund at the 50% felony collection rate. Oversight has adjusted the FY 2011 amounts to reflect 10 months. For fiscal note purposes, Oversight assumes all funds in the Drug and DWI Court Resources Fund would be used annually to support the operation of DWI dockets or courts.

Officials from the **Department of Transportation (MoDOT)** state they have submitted a letter to the National Highway Traffic Safety Administration asking for a review by legal counsel to ensure compliance with 23 USC 164 and 23 USC 410 requirements as it relates to the language in the bill dealing with DWI courts. MoDOT has not yet received a response back to this request. If MoDOT is found out of compliance, there would be a transfer of approximately \$16 million annually from the Road Fund to the Highway Safety Program within MoDOT. The money could no longer be used strictly for highway projects but would be used to make safety improvements on Missouri's roadways. MoDOT would still get the same amount of federal funds but would be limited to the use of such funds.

The proposal creates incentives for offenders to enter DWI court, and it does this by increasing the mandatory jail time for prior and persistent offenders, while also offering an alternative of participation in DWI court. The problem is that 23 USC 164 requires either mandatory jail time or a certain amount of community service for repeat offenders, but this bill would allow prior and persistent offenders to participate in DWI court and to thereby avoid both jail time and mandatory community service.

MoDOT states the provisions in Section 302.541 would impact the department. Currently, this section establishes an additional \$25 reinstatement fee for any driver whose license was suspended or revoked due to a DWI/BAC offense. The legislation amends this section to increase that additional reinstatement fee from \$25 to \$500. MoDOT assumes an unknown positive impact to the Road Fund but defers to DOR for a more exact amount.

ASSUMPTION (continued)

Oversight has reflected the transfer from the Road Fund to the Highway Safety Fund as \$0 or \$16,000,000, as it is not known if Department of Transportation will be found to be out of compliance with 23 USC 164 and 23 USC 410. If MoDOT is not found to be out of compliance, there will be no transfer of funds.

Officials from the **Department of Corrections (DOC)** state the bill proposes to specify that courts may establish DWI dockets or courts and modifies other criminal and administrative procedure for certain intoxication-related offenses. The penalty provision component of this bill within existing statutes that will result in potential fiscal impact for DOC, is for up to a class B felony.

Changing the fact that DWI cases are transferred from municipal to state court for prior offenders will cause a fiscal impact for the DOC. These offenders would now be supervised or incarcerated by the DOC. Additional treatment sources could also be needed to meet the growing number of referrals.

DOC assumes they cannot currently predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender cost either through incarceration (FY09 average of \$16.04 per offender, per day or an annual cost of \$5,855 per inmate) or through supervision provided by the Board of Probation and Parole (FY09 average of \$3.71 per offender, per day or an annual cost of \$1,354 per offender).

At this time, the DOC is unable to determine the exact number of people who would be convicted under the provisions of this bill and whether or not additional inmate beds may be required as a consequence of passage of this proposal. The cumulative effect of various new legislation, if adopted as statute may require institutional facility expansion.

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the department.

Officials from the **Department of Revenue (DOR)** assume the following provisions could fiscally impact DOR:

ASSUMPTION (continued)

Section 302.309.3(1): Allows a commissioner operating under section 478.007 to grant limited driving privileges (LDP).

Section 302.309.3(9): Allows a DWI court established pursuant to section 478.007 to grant LDPs when the person participates in the DWI program. The LDP may be granted to persons who would otherwise be ineligible for such privilege under another provision of law. The LDP shall not be granted during the persons initial forty-five days of participation in the program. The DOR may see an increase in court ordered LDPs.

Section 302.541.1: Increases the additional fee for alcohol suspensions and revocations from \$25 dollars to \$500 dollars. Fees collected will be distributed, 75% highway fund, 15% cites, and 10% counties.

Section 577.010.2: Changes the required term of imprisonment when a person is convicted of a DWI with a blood alcohol content of .15% to .20% and those with a blood alcohol content of greater than .20%. Language added to not allow for a suspended imposition of sentence for a first offense of a DWI with a blood alcohol level of .15% or more. DOR may see an increase of DWI convictions to add to the driving record.

Section 577.012.3: Same changes as in section 577.010.2, DOR may see an increase of BAC convictions to add to the driving record.

DOR assumes the following Administrative Impact:

Driver License Bureau

This proposed legislation requires:

- DOR to key court ordered LDPs that have been denied for any reason, after a 45 day hard walk, when the person is a participant in the DWI court program.
- DOR to make changes to MODL programs relating to reinstatement fees. The extra fee for alcohol related suspensions and revocations are being increased from \$25 to \$500.
- Requires the Notice of Suspension and Notice of Revocation to be revised. The current forms will need to be destroyed and new forms will be mailed to all law enforcement agencies prior to implementation of the law. DOR will incur cost for this as follows:

ASSUMPTION (continued)

- Approximately 180,000 new forms will need to be printed. Of that volume, 94,720 will be kept at Central Stores and 85,280 of those will be mailed to 656 law enforcement agencies, including Highway Patrol (85,280/656 = 130 forms). Each form costs \$0.12. The postage to mail 130 forms to each law enforcement agency is \$5.05.

Expenses	Units	Unit Cost	Total Cost (FY11)
Forms	180,000	\$0.12	\$21,600
Postage	656 (# agencies)	\$5.05	\$3,313
Envelopes	656 (# agencies)	\$0.04	\$26
Total Expense			\$24,939

- Forms changes in addition to the Notice of Suspension and Revocation
- Testing modification to MODL programs
- Website Changes
- Procedure Changes
- Training of Staff

Driver License Bureau would incur the following costs to implement the law:

1 – Management Analysis Specialist II
 80 hours of testing @ \$22.94 = \$1,835.20

1 – Administrative Analyst
 80 hours of testing @ \$16.88 = \$1,350.40

1 – Revenue Band Manager
 40 hours @ \$25.21 = \$1,008.40

2 – Management Analysis Specialist I for forms and Internal Procedures development
 40 hours at \$20.13 = \$805.20 x 2 = \$1,610.40

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ASSUMPTION (continued)

1 – Administrative Analyst III for web page updates
 10 hours at \$21.79 = \$217.80

Total Driver License Bureau implementation costs are assumed to be \$6,021 in FY 2011.

OA–ITSD Information Technology

The DOR’s response to a proposal similar to or identical to this one in a previous session indicated the department planned to absorb the administrative costs to implement the proposal. Due to budget constraints, reduction of staff and the limitations within the department’s drivers license systems, changes cannot be made without significant impact to the department’s resources and budget. Therefore, the IT portion of the fiscal impact is estimated with a level of effort valued at \$4,240. The value of the level of effort is calculated on 160 FTE hours.

DOR assumes the following Revenue Impact:

- This proposal increases the additional alcohol fee from \$25 dollars to \$500 dollars. In FY09, there were 57,593 alcohol related suspensions and revocations added to the system that requires the additional fee. Based on the Department average of 33% for reinstatements, 19,006 (57,593 X 33%) reinstatement fees that may be collected is \$9,027,850 dollars per fiscal year. However, with the substantial increase in fees along with the fact that most people will have 2 or more alcohol related suspensions or revocations on record, the number of reinstatements may decrease due to the financial burden. Per Amendment 3, the fees will be disbursed as follows: 75% Highway Fund, 15% Cities and 10% Counties.

	FY11	FY12	FY13
Hwy (75%)	\$5,642,408	\$6,770,888	\$6,770,888
Cities (15%)	\$1,128,482	\$1,354,178	\$1,354,178
Counties (10%)	\$752,232	\$902,785	\$902,785

ASSUMPTION (continued)

Oversight assumes the DOR's internal implementation costs can be absorbed within existing resources. Oversight also assumes DOR OA–ITSD is provided with core funding to handle a certain amount of activity each year. Oversight assumes DOR OA–ITSD could absorb the costs related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, DOR OA–ITSD could request funding through the appropriation process.

Officials from the **Department of Public Safety – Missouri State Highway Patrol (MSHP)** assume they can meet the requirements of this legislation with minimal impact, including the accountability reports required in section 577.005.3.

In response to a similar proposal from the current session (SB 836, LR # 3645-02), officials from the **Office of the State Public Defender (SPD)** stated that in FY 2009, the State Public Defender System provided representation in 3,677 state Driving While Intoxicated cases and 5,413 Driving While Revoked cases. If these numbers increase by just 10%, the State Public Defender would require funds to contract out an additional 900 cases. At an average cost of \$375 per case, the additional costs would be \$337,500. SPD assumes they would incur additional costs of approximately \$337,500 per year as a result of the proposal.

In response to a previous version of the proposal (SCS for SB Nos. 880, 780, & 836, LR # 4877-02), officials from **Jackson County** assumed section 478.007.2 of the proposal would result in a negative fiscal impact estimated to be \$750,000 per year.

Officials from the **City of Kansas City (CKC)** assume the proposal will have a negative fiscal impact on CKC because it takes away jurisdiction over certain DUI cases from Kansas City's municipal Court. The following types of cases would no longer be filed in Kansas City's Municipal Court:

1. If defendant has a prior intoxication related traffic offense or contacts;
2. If defendant has a blood alcohol content of .15 and above; and
3. If defendant refuses to submit to chemical test.

CKC states currently those types of convictions in municipal court result in maximum fines allowed by ordinance. This revenue will be lost.

Oversight assumes cities could incur losses of fees that are no longer considered court costs, charges, or fines as a result of the proposed legislation. Oversight has reflected the statewide loss as (Unknown).

ASSUMPTION (continued)

Officials from the Office of Prosecution Services, Buchanan County Sheriff’s Department, Clark County Sheriff’s Department, Columbia Police Department, Independence Police Department, Jackson County Sheriff’s Department, Platte County Sheriff’s Department, Springfield Police Department, St. Charles Police Department, St. Joseph Police Department, St. Louis County Police Department, St. Louis Metropolitan Police Department, Various Missouri Cities, and Various Missouri Counties did not respond to Oversight’s request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
GENERAL REVENUE FUND			
<u>Costs – Office of State Courts</u>			
Administrator (CTS)			
Municipal judge training	(\$15,500)	(\$15,500)	(\$15,500)
<u>Costs – Department of Corrections</u>			
Incarceration/probation costs	(Unknown)	(Unknown)	(Unknown)
<u>Costs – Department of Revenue</u>			
Forms, postage, envelopes	(\$24,939)	\$0	\$0
<u>Costs – Office of the State Public</u>			
Defender			
Contract counsel	<u>(\$281,250)</u>	<u>(\$347,625)</u>	<u>(\$358,054)</u>
ESTIMATED NET EFFECT ON			
GENERAL REVENUE FUND	<u>(More than</u> <u>\$321,689)</u>	<u>(More than</u> <u>\$363,125)</u>	<u>(More than</u> <u>\$373,554)</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2011 (10 Mo.)	FY 2012	FY 2013
HIGHWAY FUND			
<u>Revenues</u> – Department of Revenue			
Reinstatement fees	<u>\$5,642,408</u>	<u>\$6,770,888</u>	<u>\$6,770,888</u>
ESTIMATED NET EFFECT ON HIGHWAY FUND	<u>\$5,642,408</u>	<u>\$6,770,888</u>	<u>\$6,770,888</u>
ROAD FUND			
<u>Losses</u> – Department of Transportation			
Restrictions on use of federal funds	<u>\$0 or (\$16,000,000)</u>	<u>\$0 or (\$16,000,000)</u>	<u>\$0 or (\$16,000,000)</u>
ESTIMATED NET EFFECT ON ROAD FUND	<u>\$0 or (\$16,000,000)</u>	<u>\$0 or (\$16,000,000)</u>	<u>\$0 or (\$16,000,000)</u>
HIGHWAY SAFETY FUND			
<u>Revenues</u> – Department of Transportation			
Restrictions on use of federal funds	<u>\$0 or \$16,000,000</u>	<u>\$0 or \$16,000,000</u>	<u>\$0 or \$16,000,000</u>
ESTIMATED NET EFFECT ON HIGHWAY SAFETY FUND	<u>\$0 or \$16,000,000</u>	<u>\$0 or \$16,000,000</u>	<u>\$0 or \$16,000,000</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2011 (10 Mo.)	FY 2012	FY 2013
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**DRUG AND DWI COURT
 RESOURCES FUND**

Revenues – Office of State Courts
 Administrator

Increased surcharge on intoxication- related traffic offenses	\$418,532	\$1,004,475	\$1,128,913
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Costs – Office of State Courts
 Administrator

Operation of DWI dockets or courts	<u>(\$418,532)</u>	<u>(\$1,004,475)</u>	<u>(\$1,128,913)</u>
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**ESTIMATED NET EFFECT ON
 DRUG AND DWI COURT
 RESOURCES FUND**

	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
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LOCAL GOVERNMENT

Revenues – Counties

Reinstatement fees	\$752,232	\$902,785	\$902,785
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Revenues – Cities

Reinstatement fees	\$1,128,482	\$1,354,178	\$1,354,178
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Losses – Cities

Court fees, surcharges, and fines	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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**ESTIMATED NET EFFECT ON
 LOCAL GOVERNMENT**

	<u>(Unknown) to</u> <u>\$1,880,714</u>	<u>(Unknown) to</u> <u>\$2,256,963</u>	<u>(Unknown) to</u> <u>\$2,256,963</u>
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FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

The proposal relates to intoxication-related traffic offenses:

Section 302.309

A DWI court may grant a limited driving privilege to individuals who would otherwise be ineligible for such privilege. The DWI docket or court shall not grant a limited driving privilege to a participant during his or her initial forty-five days of participation.

Section 302.541

Currently, when a person has his or her license suspended or revoked following a determination that such person was driving while intoxicated, driving with an excessive blood alcohol content (BAC), refused to submit to a chemical test, violated a controlled substance provision while driving, or is a person under the age of twenty-one who has committed certain alcohol or drug related offenses while driving, he or she shall pay a additional fee of \$25 for reinstatement or reissuance of the license. This fee is increased to \$500.

Sections 478.001, 478.003, 478.007, & 478.009

Any circuit court may establish a docket or court to dispose of cases where a person has pleaded guilty to driving while intoxicated or driving with excessive blood alcohol content. A person is eligible for this docket or court if he or she operated a motor vehicle with at least .15 blood alcohol content, has had a previous conviction for an intoxication-related traffic offense, or has two or more previous alcohol-related enforcement contacts.

The existing Drug Courts Coordinating Commission and the Drug Court Resources Fund are expanded to include DWI courts. DWI courts may operate in conjunction with drug courts and drug court commissioners may preside over DWI courts.

FISCAL DESCRIPTION (continued)

Section 479.170

Any offense involving the operation of a vehicle in an intoxicated condition shall not be cognizable in municipal court, if the defendant has been convicted of two or more previous intoxicated-related traffic offenses or has had two or more previous alcohol-related enforcement contacts.

Section 488.021

This act creates a surcharge of \$500 to be collected by the clerks of the circuit courts in all cases where the defendant pleads guilty to or is found guilty of an intoxication-related traffic offense. Such money shall be deposited into the expanded “Drug and DWI Court Resource Fund” to be used only to support the operation of DWI dockets or courts established under the drug court program.

Section 577.005

Each law enforcement agency shall adopt a policy requiring arrest information to be forwarded to the highway patrol central repository for intoxication-related traffic offenses and shall certify adoption of such policy when applying for grants administered by the Department of Public Safety (DPS). Each county prosecuting attorney and municipal prosecutor shall adopt a policy requiring charge information for intoxication-related traffic offenses to be forwarded to such central repository and to certify such policy with DPS.

Section 577.006

Municipal judges shall receive instruction on intoxication-related traffic offenses including a review of state laws on intoxication-related traffic offenses, including jurisdiction issues relating to such offenses, reporting requirements, and required assessment under the substance abuse traffic offender program (SATOP). Each municipal judge shall adopt a written policy requiring court personnel to report all dispositions for all charges for intoxication-related traffic offenses to the highway patrol central repository. Each municipal court must provide a copy of its policy to the Office of State Courts Administrator (OSCA) and the highway patrol. OSCA may create a model policy.

Each municipal court shall prepare a report every six months to be submitted to the circuit court en banc regarding the number and disposition of intoxication-related traffic offenses.

ASSUMPTION (continued)

Sections 577.010 & 577.012

For a first DWI or excessive BAC offense, if the individual has a BAC of at least .15, the minimum jail time shall be 48 hours, unless the person participates in a DWI court program. If the individual has a BAC of at least .20, the minimum jail time shall be 5 days, unless the person participates in a DWI court program. If a first-time DWI or driving with excessive BAC offender has a BAC higher than .15, he or she shall not receive suspended imposition of sentence.

Section 577.023

The minimum jail time for a person who has a prior intoxication-related traffic offense is increased from five to ten days, unless the person participates in the existing community service option, or in the DWI court program. The minimum jail time for a person who is considered a persistent offender is increased from ten to thirty days, unless the person participates in the existing community service option, or in the DWI court program.

Section 577.039

Removes the provision requiring a DWI arrest without a warrant to occur within 90 minutes after the alleged violation occurred.

Section 577.041

Currently, if a person refuses to submit to a chemical test when arrested or stopped for alleged driving while intoxicated, then none shall be given. Under this act, the provision stating that no test shall be given under such circumstances is removed.

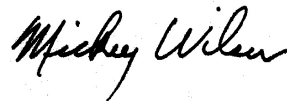
This legislation is not federally mandated, would not duplicate any other program, and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of State Courts Administrator
Department of Transportation
Department of Mental Health
Department of Corrections
Department of Health and Senior Services
Department of Revenue
Department of Social Services
Department of Public Safety
– Director’s Office
– Missouri State Highway Patrol
– Missouri State Water Patrol
Office of the State Public Defender
Boone County Sheriff’s Department
Jefferson City Police Department
City of Centralia
City of Kansas City
Jackson County

NOT RESPONDING

Office of Prosecution Services, Office of the State Treasurer, Buchanan County Sheriff’s Department, Clark County Sheriff’s Department, Columbia Police Department, Independence Police Department, Jackson County Sheriff’s Department, Platte County Sheriff’s Department, Springfield Police Department, St. Charles Police Department, St. Joseph Police Department, St. Louis County Police Department, St. Louis Metropolitan Police Department, Various Missouri Cities, and Various Missouri Counties



Mickey Wilson, CPA
Director

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