

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0593-04  
Bill No.: HCS for HB 111  
Subject: Courts; Domestic Relations  
Type: Original  
Date: March 8, 2011

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Bill Summary: This proposal makes various changes relating to courts.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	Unknown	Unknown	Unknown
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>Unknown</b>	<b>Unknown</b>	<b>Unknown</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Missouri Office of Prosecution Services	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 12 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

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).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Office of the State Courts Administrator** assume the proposal would not fiscally impact the courts.

Officials from the **Attorney General's Office** assume that any potential costs arising from this proposal can be absorbed with existing resources.

Officials from the **Department of Social Services, Office of the State Auditor** and the **Department of Public Safety - Highway Patrol** each assume the proposal would not fiscally impact their respective agencies.

### §32.056 & 301.146

In response to a similar proposal from 2010 (HB 1811), officials from the **Department of Revenue (DOR)** assumed this proposed legislation will require an update of the restriction of information form and updates of procedures for acceptance and processing of restriction of information forms.

2 Management Analysis Specialist 1	80 hrs @ \$21.00	\$1,680
1 Revenue Band Manager	10 hrs @ \$30.00/hr	\$ 300
1 Revenue Section Supervisor	10 hrs @ \$20.00/hr	\$ 200
1 Administrative Office Support Assistant	10 hrs @ \$22.50 (1 ½)	\$ 225
	Total	<u>\$2,405</u>

### Forms Cost

Estimated Cost to print updated forms: 500 forms x .025 = \$12.50

Through conversation with the Office of State Courts Administrator (OSCA), Missouri has 7 Supreme Court judges, 32 Appellate Court judges, and 335 Circuit/Associate Court judges. OSCA also advises that municipal court judges are empowered through the Circuit Court system and should be considered a qualifying judge. There are 540 Municipal court judges and 35 Federal judges that would fall into this proposal.

DOR currently has a process in place for designated persons to include their information in the confidential records system. This proposal expands the parameters of who may be included in the confidential records system which would increase the DOR work load to record this

ASSUMPTION (continued)

information. DOR made the following assumptions:

- There are 949 total judges that would be available for this process.
- It is assumed that only 10% (95) of those judges will participate in FY 11.
- As knowledge and awareness increases it is assumed that 50% (475) will participate in FY 12, and 75% (712) in FY 13.
- A Revenue Processing Tech can process 5 confidential transactions per hour resulting in 19 hours of overtime in FY 11 at a cost of \$288; 98 hours of overtime in FY 12 at a cost of \$1,481; and 147 hours of overtime in FY 13 at a cost of \$2,221.

**Oversight** assumes DOR is provided with core funding to handle a certain amount of activity each year. **Oversight** assumes DOR could absorb the costs related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, DOR could request funding through the appropriation process.

§56.089, 302.020, 302.321, 302.025, & 311.325 (Similar to HB 253)

In response to a similar proposal from this year (HB 253), officials from the **County of Platte** stated this proposal would have a positive impact for the State of Missouri and county governments. While the precise amount of the impact is difficult to estimate, a portion of the funds generated will fund statewide court automation. The remaining funds would offset the costs for diverting cases from criminal prosecution, which will also decrease state-funded public defender caseloads and state-funded criminal court caseloads.

In response to a similar proposal from this year (HB 253), officials from the **Office of the State Public Defender (MSPD)** stated the SPD provided representation in 5,941 cases in the designated categories during fiscal year 2010. That number includes all cases, not just the first offenses. The MSPD does not track first offenses separately from subsequent cases.

The creation of an inclusion of defender clients in any new diversion programs authorized by the other part of the legislation is at the discretion of the prosecutor. As a result, MSPD has no way of knowing how many cases this might save us, but it will undoubtedly save MSPD some.

ASSUMPTION (continued)

**Oversight** assumes the MSPD could see a reduction in caseloads if the proposal passes; however, Oversight assumes the MSPD would not realize any fiscal impact from the proposal.

In response to a similar proposal from this year (HB 253), officials from the **Office of Prosecution Services (OPS)** stated this proposal will have a positive fiscal impact on the agency. The revenue that would be generated under this proposal would be dependent on the number of cases that prosecutors place into diversion programs. OPS states because no such formal structure currently exists, there is no existing benchmark on which to base an estimate of a dollar amount.

In response to a similar proposal from this year (HB 253), officials for the **County of St. Louis** assumed that the County would generate approximately \$30,000.00 of revenue if the County diverts 60 felony cases and 150 misdemeanors. The County assumes the Department of Corrections, Board of Probation and Parole will supervise these cases at their expense pursuant to Section 217.777, RSMo.

Officials from the **Department of Corrections (DOC)** state §56.089 will have a legal impact on the DOC. For offenders who are incarcerated it has the potential to increase the custody level, due to pending charges. It could also implicate the Uniform Mandatory Disposition of Detainers Law (UMDDL) (217.450) which permits a person confined in the DOC to request a final disposition of any untried indictment, information or complaint pending in this state on the basis of which the Department receives a certified warrant and request that a detainer be lodged against an offender. The language states that the statute of limitations will be tolled during the diversion period, but it does not specify its impact on the UMDDL time limits.

It will also impact employee disciplines. Section 36.370.1 RSMo and 1CSR 20-3.070 (3) provide that an employee may be suspended pending the investigation or trial of any charges against him. Employees who enter into a diversion agreement will be suspended during the time period the employee completes the program.

In response to a similar proposal from this year (HB 253), officials from the **Department of Corrections (DOC)** stated this bill authorizes prosecuting attorneys to utilize prosecution diversion programs and changes the penalties for various first offense misdemeanors. The Probation and Parole staff are frequently assigned to work with Diversion program clients and passage of this bill has the capability to increase caseloads for Probation and Parole staff. Additional FTE may be required to meet the demands of the diversion cases dependent on how the program is set up and utilized and the resulting impact on Probation and Parole. Therefore,

ASSUMPTION (continued)

any fiscal impact due to passage of this proposal is an Unknown cost per each year for the DOC.

**Oversight** assumes this bill authorizes prosecuting attorneys to utilize prosecution diversion programs and changes the penalties for various first offense misdemeanors. Oversight assumes it is unknown how many cases prosecutors would place into diversion programs; therefore, the impact to the DOC is an unknown cost.

**Oversight** assumes the administrative handling costs would be deposited into the county Administrative Handling Cost Fund and then distributed to the county prosecuting attorney. Oversight assumes the administrative handling cost would not be collected on all cases. Therefore, Oversight assumes the deposits in this fund to be equal to the costs of the county prosecuting attorney.

**Oversight** assumes the additional cost of five dollars per case paid by persons paying restitution would be deposited into the Missouri Office of Prosecution Services Fund. Oversight assumes the additional five dollars would not be collected on all cases. Oversight assumes the deposits into this would be used by the Office of Prosecution Services, as specified in Sections 56.750, 56.755, and 56.760, RSMo. Oversight assumes the deposits to be equal to the costs of the Office of Prosecution Services.

§221.025, 221.105, 544.455, 544.470, & 557.011 (Similar to HB 159)

In response to a similar proposal from 2010 (HB 2442), officials from **St. Louis County** stated the overall fiscal impact to Justice Services would be favorable. The cost benefit would be the potential for persons to be on Electronic Home Detention (EHD) as opposed to being in jail and the associated cost. However, a need would exist to hire an additional case manager to monitor persons on EHD as the number of persons on EHD increases. Reimbursement by the person on EHD and by the state would be critical to keeping the fiscal impact more manageable.

Officials from the **Department of Corrections (DOC)** state §221.025 and 544.455.9 – the language for §221.025 now applies only to defendants charged with a nonviolent crime, and it has language stating that any period of electronic monitoring under that statute shall be considered custody for the purposes of granting jail credit. There is no language indicating whether a defendant who cannot make bail prior to appearing before a judge and who is placed on electronic monitoring by the sheriff under §544.455.9 should receive jail credit for the time spent on electronic monitoring.

ASSUMPTION (continued)

§221.025 and §221.105.4 and §557.011.1 – all three of these sections authorize a judge to charge the costs of electronic monitoring to the offender. The bill does not address what happens if the individual does not pay. Obviously, if payment is a condition of probation, then the probation could be revoked. However, is the DOC then responsible for paying the county the cost of electronic monitoring? Can the DOC then pursue reimbursement from the offender? The department's legal responsibility with regard to payment in such instances is unclear.

In summary, DOC may incur costs some costs in some areas while others may provide for a positive fiscal impact. The DOC cannot predict the actions of the courts and cannot estimate the potential fiscal impact for each year due to passage of this bill, but it is estimated to be Unknown Positive.

In response to a similar proposal from this year (HB 1592), officials from the **Department of Corrections (DOC)** stated the bill proposes to allow for house arrest with electronic monitoring (EMP) or shackling for certain nonviolent offenders and requires the reimbursement of the total cost of house arrest by the state in certain cases.

If this bill is passed as law, Sheriffs would be able to place nonviolent offenders on house arrest via EMP or shackling as an alternative to confinement in jail. In cases where the state is determined to be liable for cost, the state would be required to provide counties the reimbursement for total cost of the house arrest or shackling. The state currently reimburses counties for housing offenders in certain circumstances. It is unknown how many offenders to which this would apply and what the reimbursement expenditure would be.

There is a concern for bailable vs. non-bailable language in proposed §544.455.9 as it relates to DOC in calculating jail-time credit pursuant to §558.031., RSMo. It states that a "person shall receive credit toward the service of a sentence of imprisonment for all time in prison, jail, or custody after the offense occurred and before the commencement of the sentence ..." yet precedence holds that when a defendant is under house arrest while out on bond, he is not "in prison, jail or custody" and therefore is not entitled to credit toward his sentence for that time.

In summary, the fiscal impact for the DOC is a negative unknown per each year.

According to the Section 221.105, the Department of Corrections must reimburse a county for the actual cost of housing a prisoner, up to \$37.50 per day. The appropriation for this reimbursement to the county level from the Department of Corrections totaled \$38,060,616 for the current budget year (Section 9.265 of HB 2009), \$43,060,616 for FY 2010 and \$43,060,616 again in FY 2009. Oversight assumes the proposal could result in a net savings to the state if

ASSUMPTION (continued)

reimbursement for the cost of house arrest with electronic monitoring would be lower than the reimbursement rate for jail confinement. The legislation does not state what the reimbursement rate will be for the electronic monitoring; however, Oversight assumes the rate will be lower than the rate for jail. Therefore, Oversight will assume the proposal could result in net unknown savings to the General Revenue Fund. Oversight is also unsure of how many such offenders would be sentenced to house arrest under the new program.

**Oversight** assumes the proposal would not have a fiscal impact to counties since they can receive reimbursement from the state for either jailed confinement under the current statutes or under the new option of house arrest with electronic monitoring under this new program

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
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**GENERAL REVENUE FUND**

Savings - Department of Corrections

Nonviolent offenders sentenced to house arrest with electronic monitoring which is assumed to be reimbursed at a less expensive rate than jail confinement (Sections 221.105, 544.455, 544.470, 557.011)	Unknown	Unknown	Unknown
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Costs - Department of Corrections

Cost for the state to reimburse counties for house arrest via EMP or shackling (Sections 221.105, 544.455, 544.470, 557.011)	(Unknown)	(Unknown)	(Unknown)
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Costs - Department of Corrections

Increase in caseloads for Probation and Parole staff (Sections 56.089, 302.020, 302.321, 302.025, 311.325)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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**ESTIMATED NET EFFECT ON GENERAL REVENUE FUND**

<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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FISCAL IMPACT - State Government  
(continued)

FY 2012  
(10 Mo.)

FY 2013

FY 2014

**MISSOURI OFFICE OF  
PROSECUTION SERVICES FUND**

Revenues - Office of Prosecution  
Services

Additional cost from persons paying  
restitution (Sections 56.089, 302.020,  
302.321, 302.025, 311.325)

Unknown

Unknown

Unknown

Costs - Office of Prosecution Services

Administrative costs (Sections 56.089,  
302.020, 302.321, 302.025, 311.325)

(Unknown)

(Unknown)

(Unknown)

**ESTIMATED NET EFFECT ON  
MISSOURI OFFICE OF  
PROSECUTION SERVICES FUND**

\$0

\$0

\$0

<u>FISCAL IMPACT - Local Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
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**LOCAL GOVERNMENT**

Revenues - Administrative Handling Cost  
 Fund

Fees collected for each case that is diverted (Sections 56.089, 302.020, 302.321, 302.025, 311.325)	Unknown	Unknown	Unknown
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Costs - Administrative Handling Cost  
 Fund

Administrative costs (Sections 56.089, 302.020, 302.321, 302.025, 311.325)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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<b>ESTIMATED NET EFFECT ON LOCAL GOVERNMENT</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>
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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

Sections 56.089, 302.020, 302.321, 303.025, 311.325 (HB 253);

This bill authorizes a prosecuting attorney, upon agreement with an accused or a defendant, to divert a criminal case to a prosecution diversion program for a period of six months to two years allowing for any statute of limitations to be tolled for that period. The prosecution diversion plan must be in writing and for a specific period of time, and the prosecuting attorney may impose conditions on the behavior and conduct of the accused or defendant that assures the safety and well-being of the community and the accused or the defendant. Any person participating in the program has the right to insist on criminal prosecution for the accused offense

FISCAL DESCRIPTION (continued)

at any time.

The bill also changes the specified class of certain misdemeanor violations to only be a misdemeanor violation and establishes fines and penalties for a violation of the provisions regarding:

- (1) Driver's licenses;
- (2) Motorcycle helmets;
- (3) Driving while revoked;
- (4) Financial responsibility; and
- (5) Purchase, possession, or consumption of alcohol by a minor

Sections 221.025, 221.105, 544.455, 544.470, 557.011 (HB 159);

This bill changes the laws regarding house arrest for certain offenders with electronic monitoring or shackling. In its main provisions, the bill:

- (1) Allows a judge to place any offender ordered to be confined in the county jail for a nonviolent offense, whether before, during, or after trial, on house arrest as an alternative to jail confinement (Section 221.025, RSMo);
- (2) Requires the governing body of any county and the City of St. Louis to establish the amount to be expended for the cost of incarceration of prisoners on house arrest; requires the sheriff or the facility superintendent to certify to the circuit clerk of the county or the chief executive officer of the city the number of days a prisoner accused of a nonviolent offense remained on house arrest; and requires the county commission or the facility superintendent to supply the cost per diem for prisons and for house arrest. If a court or judge places a person accused of a nonviolent offense on house arrest in any case, the judge may require the offender to pay the costs of the electronic monitoring. If the offender is unable to afford the costs, the state must provide reimbursement for the total cost of the house arrest program for that individual (Section 221.105);
- (3) Specifies that any person charged with a bailable nonviolent offense who does not post bail prior to his or her appearance before a judge may be placed on house arrest (Section 544.455); and

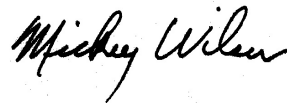
FISCAL DESCRIPTION (continued)

(4) Allows a court to order a defendant who pleads guilty to or is found guilty of a nonviolent offense and sentenced to imprisonment or a period of detention in a county jail as a condition of probation to be placed on house arrest in lieu of any or all of the ordered period of confinement. The court may also order that in a particular case or with certain types of offenses a defendant cannot be placed on house arrest by the sheriff (Section 557.011).

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 the State Courts Administrator  
Department of Corrections  
Office of the Attorney General  
Department of Social Services  
Office of the State Auditor  
Department of Public Safety  
Department of Revenue  
Office of the State Public Defender  
Office of Prosecution Services  
Platte County  
St. Louis County



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Director  
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