

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0284-02
Bill No.: HCS for HB 215
Subject: Attorneys; Office of Administration; Crimes and Punishment; Criminal Procedure
Type: Original
Date: March 5, 2013

Bill Summary: This proposal revises various laws regarding public defenders, requires that restitution be paid through the office of the prosecuting or circuit attorney and allows them to charge various administrative handling costs.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$9,978,159)	(Unknown - could exceed \$10,511,189)
Total Estimated Net Effect on General Revenue	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$9,978,159)	(Unknown - could exceed \$10,511,189)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Missouri Office of Prosecution Services	\$100,000	\$100,000	\$100,000
Total Estimated Net Effect on <u>Other</u> State Funds	\$100,000	\$100,000	\$100,000

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 14 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	0	(302 FTE)	(302 FTE)
Total Estimated Net Effect on FTE	0	(302 FTE)	(302 FTE)

☒ 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 2014	FY 2015	FY 2016
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

§§ 559.100, 559.105 & 570.120 - restitutions paid:

Officials from the **Missouri Office of Prosecution Services (MOPS)** state this bill would have a positive fiscal impact on the Missouri Office of Prosecution Services. The estimated MINIMAL annual impact could be \$41,420. However the impact could be greater.

MOPS attempted to survey all 115 counties (which includes the City of St. Louis) as to how many cases in FY2010 that restitution was ordered. It should be noted restitution did not include cases of bad checks. Fifty-seven (57) counties responded to the survey. Of those 57 counties, there were a total of 8,284 cases in which restitution was ordered.

Assuming that the other 58 counties all have similar numbers, fiscal impact could be \$83,565 to \$115,020. The theory to determine the fiscal impact of HB 215 on the Missouri Office of Prosecution Services was to survey all counties as to how many cases there were in FY 2010 that restitution was ordered, then, add the total number of cases and multiple times the proposed minimum \$5.00 fee.

The counties that responded to the survey included: Adair, Andrew, Atchison, Audrain, Barry, Bates, Buchanan, Callaway, Camden, Cape Girardeau, Cedar, Christian, Clay, Cole, Cooper, Dade, Dent, Franklin, Gasconade, Gentry, Greene, Grundy, Harrison, Henry, Howard, Howell, Jasper, Jefferson, Johnson, Knox, Laclede, Livingston, Maries, Marion, Mercer, Miller, Newton, Oregon, Osage, Pemiscot, Pike, Platte, Randolph, Ray, Ripley, Saline, Shelby, St. Charles, St. Francois, St. Genevieve, St. Louis City, St. Louis County, Stone, Taney, Warren, Worth, Wright.

Based upon the estimate provided by MOPS, **Oversight** will assume an additional \$100,000 of restitution paid to the Missouri Office of Prosecution Services Fund annually.

Officials from the **Department of Corrections (DOC)** state the bill enhances the restitution statute to include not only tampering and stealing offenses, but for any offense the courts so choose. Once the court orders restitution it is considered a mandate and the DOC is authorized to remove funding from the inmate's account (if it exists) while the defendant is incarcerated. Failure to pay mandated restitution may result in extension to the maximum term of parole which keeps the offender under supervision longer with Probation and Parole (P&P) or a revocation may mean time served in prison. Monitoring offender's restitution payment status is now enhanced for P&P staff since the volume of restitution cases will increase.

ASSUMPTION (continued)

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 (FY11 average of \$16.878 per offender, per day, or an annual cost of \$6,160 per inmate) or through supervision provided by the Board of Probation and Parole (FY11 average of \$5.12 per offender, per day or an annual cost of \$1,869 per offender).

In summary, passage of this bill has the potential for costs to the department and the exact fiscal impact is unknown for the DOC per each year.

Oversight assumes the cost anticipated by the DOC could exceed \$100,000 each year.

Oversight will assume the proceeds collected into the local Administrative Handling Cost Fund would be used in the same year by prosecuting attorneys and circuit attorneys.

The **Office of the Secretary of State (SOS)** assumes many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Officials from the **Joint Committee on Administrative Rules** assume this legislation is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Office of the State Auditor** assume the proposal would not fiscally impact their agency.

Officials from the counties of Jefferson, Lincoln, Nodaway and Pulaski did not respond to our request for fiscal impact.

ASSUMPTION (continued)

§§ 600.042.600.044, 600.052.600.053 & 600.090 - State Public Defender:

Officials from the **Office of the State Public Defender (SPD)** state the proposal would have the following impact on caseload: this legislation would contract out over 61,000 of the over 84,000 cases that made up the total FY 2012 public defender caseload. SPD states that a little over 24,000 are non-sex C/D cases; around 18,000 are misdemeanor & traffic cases; and just under 19,000 are probation violation cases (felony & misdemeanor).

Impact on Staffing:

SPD's best estimate at this time is that this legislation would result in a reduction in 230 attorney positions and 77 support staff.

CAVEAT: This estimate may change after completion of the new weighted workload study SPD was directed to complete by the auditor. The new study should be done by the fall of 2013, and will be available in time for the spring, 2014 legislative session when the appropriations decisions associated with this legislation would be made. More information on the new weighted workload study is available upon request.

For purposes of this fiscal note, SPD utilized the standard 2,080 state employee annual work hours, less the 216 minimum hours of annual leave SPD is required to provide and the 15 hours continuing legal education attorneys must have each year to maintain their licenses to practice law. **IMPORTANT** - No time was deducted for attorney travel hours to courts or jails in other counties, for time spent by the managing attorney in supervising / mentoring other lawyers rather than working on his/her cases, for FMLA, sick, or military leave, or for time attorneys spent doing necessary tasks other than direct work on cases -- even though all of these things impact the amount of time an attorney has to work on cases and all will be part of the weighted workload study underway.

The interim case weights used here were the ABA recommended minimums for felony cases except where MSPD's own time study in 2006 indicated that attorneys were spending more time than the recommended minimum, in which case the actual time recorded by the attorneys for that particular case type was used as the case weight. See Principle 5, Footnote 19 of ABA's Ten Principles of Public Defense Systems, available upon request or on the ABA's website.

Fiscal Impact:

If SPD is correct on the number of FTE reductions, the state would have \$20.9 million to put toward the cost of contracting. If the cases were contracted at the rates SPD currently pays for contracts of those case types, it would cost the state an additional \$9.4 million to contract out

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ASSUMPTION (continued)

these 61,000+ cases. SPD's current contract rate for misdemeanors and probation violations is \$375 and \$750 for non-sex C/D felonies.

Note: This estimate does not include any mileage reimbursements, additional fees for trials, either bench or jury, or for unexpectedly complex cases, both of which MSPD currently pays contract counsel. It assumes that fees for litigation expenses remain separate, as described above.

Costs to Counties / Office Space Issues:

SPD has 33 trial district offices serving 45 judicial circuits and 115 counties. By statute, office space for these district offices is provided and paid for by the counties served by that district office, each county paying a proportion of the total rent and utilities according to comparative population. This is significant to both the provision requiring public defender districts to align with judicial circuits and to the impact upon the counties of the significant reduction of their local public defender staff, if not complete closure of some defender offices, due to the move toward privatization.

Each time the geographic boundaries of a defender office's area of service are changed, the leases which the counties have signed and the respective payment obligations of all the counties involved, are also impacted. Counties pulling out of a particular office's service area are no longer receiving services from that office but are obligated under the signed lease to pay a proportion of the cost of the lease of that office. If the lease could be renegotiated, the remaining counties would be required to pick up a larger portion of the lease even though that was never planned for in their budgets. Even where the switch in coverage areas does not change the number of counties (i.e. one is removed and a different one is added) the amounts owed by each county can and usually do shift. The obligation of the counties is allocated by population, so the removal of a more populous county and its replacement with a lesser populated county shifts a higher percentage of the rent costs for the public defender office to the other counties in the district.

It is impossible to determine the cost of public defender offices realigning to match judicial circuits until the Public Defender Commission determines the new geographic boundaries. Only then can it be determined which offices need to move, the costs of those moves, which offices are closing, where are new offices opening, what the counties will agree to pay for in terms of office space adjustments and where are the gaps that MSPD may have to step in and cover to keep an office from becoming homeless as has happened before.

There is another complication in this process: The duration of leases also vary by district office all around the state -- i.e. they do not all expire at one time making it possible to conveniently

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ASSUMPTION (continued)

rearrange all into new geographic boundaries and then sign new leases. While the lease in two of the counties that make up one-half of a judicial circuit may expire this year, the lease for two other counties that need to move into that circuit may not expire for five years. This makes transitioning offices to congruency with judicial circuits a very complicated task. Counties are certainly not going to pay for overlapping leases, which means that leases entered into by the counties will have to be broken to make this happen. Each lease generally has a fiscal year end out clause if the legislature no longer funds the public defender office -- or, as in this case, so drastically reduces the size of the offices that office space changes will need to be made. However, not only does that often cost county commissioners good will with their local constituents who are the landlords for the building, there is also a cost penalty involved. Most leases amortize the costs of renovation and build-out over the life of the lease. If the lease is terminated early, those build-out costs become immediately due in full, payable by the counties who signed the leases. This is without regard to whether the counties have budgeted for such large payments to come due all at once.

Probable Costs Not Yet Calculated

MSPD's initial estimate is that approximately ten public defender offices are likely to close altogether as a result of this legislation because the remaining staff would be insufficient to adequately cover the geographic spread of multiple county dockets and court appearances. This fiscal note has not yet calculated the costs associated with such office closures since that would be dependent on the impact of aligning PD districts with judicial circuits, but there would be additional fiscal impact.

In summary, the SPD assumed a savings from the reduction of 230 Assistant Public Defenders and the 77 support staff to total approximately \$22.5 million annually, starting in FY 2015. The SPD also assumes the cost to contract private counsel to provide the legal services to total approximately \$32 million annually.

According to Section B, the changes in Sections 600.042 - 600.090 would become effective July 1, 2014. Therefore, **Oversight** will reflect the fiscal impact of these sections starting in FY 2015. Oversight will utilize SPD's estimates regarding savings from the reduction of SPD personnel as well as the cost for the contract services.

Officials from the **Office of Administration** revised their original "no fiscal impact" that was submitted to Oversight regarding the original bill. The **Division of Purchasing and Materials Management (OA-DPMM)** now states Section 600.042.11 would require DPMM to bid for legal services with private attorneys to provide legal defense for criminal defendants qualified to receive public defender services for all nonsexual class C and D felonies, all misdemeanor cases,

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ASSUMPTION (continued)

all traffic cases, and all probation violation cases.

Conducting bidding, evaluating competing bids, awarding and administering contracts for criminal defense services would significantly increase DPMM's workload. Currently, the Public Defender's office has 70,000 contracts for the type of cases stated in this bill section.

DPMM has determined that a minimum of (5) Buyer IV positions (each at \$52,176 annually) are needed to oversee the fulfillment of the tasks stated in the bill. The Buyer IV position salary is based on the range A32 beginning Step H. This position will be responsible for handling the complete bidding process from bid specification writing to the awarding and some contract administration of these anticipated 70,000 contracts.

In summary, OA-DPMM assumes the cost the five additional buyers would total roughly \$410,000 in FY 2015 and FY 2016.

§ 488.2250 - court reported fees:

Officials from the **Office of the State Courts Administrator** state the current expense for transcripts is a total of \$106,458. This proposal raises the page rate for transcripts from \$2.00 per page where the party/attorney is paying for the transcript to \$3.50 and \$2.60 for indigents. The total amount for original transcripts (\$51,677) and transcript copies (\$13,395) would be \$65,072 at \$2.00 per page. The increase to \$2.60 per page would be an increase of \$19,522 for indigents.

In addition, the proposal also does not address the charge for additional copies, paper or electronic which could result in confusion in the future.

Oversight will reflect this additional cost as "Less than \$100,000" in each fiscal year to the General Revenue Fund.

§ 545.417 - depositions in criminal cases:

In response to a similar proposal from this year (HB 213), officials from the **Office of the State Public Defender (SPD)** stated this would require them to begin paying for the prosecutor's copy of depositions. The FY 2012 SPD statewide payments for depositions and the subsequent copies was \$494,302. Local Public Defender Office budgets also paid for depositions of less than \$500. For the purpose of this fiscal note, they assumed that another 25% was paid from local budgets for a total of \$617,877. They further assumed that another 5% of this cost would cover the cost of providing a copy of the deposition to the prosecuting attorney. (\$31,666 per year)

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ASSUMPTION (continued)

Oversight notes that the SPD did not indicate how often their office pays for copies of depositions received from prosecutors. With this bill, public defenders would not have to pay for those copies.

Oversight assumes costs (providing copies to the opposing party) and savings (receiving free copies from the opposing party) to the SPD (state fiscal impact) and similar costs and savings to prosecuting attorneys (local fiscal impact) would result in a minimal net fiscal impact which could be absorbed within current appropriations.

This proposal could increase Total State Revenues.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
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GENERAL REVENUE

Savings - Office of the State Public Defender - contracting out for legal services affects SPD's workload sufficiently to reduce staff by 230 assistant PDs and 77 support staff

Personal Service	\$0	\$13,386,261	\$13,520,124
Fringe Benefits	\$0	\$6,792,858	\$6,860,787
Expense and Equipment	<u>\$0</u>	<u>\$2,074,623</u>	<u>\$2,126,488</u>
<u>Total Savings - SPD</u>	\$0	\$22,253,742	\$22,507,399
FTE Change - SPD	0 FTE	(307 FTE)	(307 FTE)

Costs - Office of Administration - DPMM

Personal Service	\$0	(\$263,489)	(\$266,124)
Fringe Benefits	\$0	(\$133,707)	(\$135,045)
Expense and Equipment	<u>\$0</u>	<u>(\$12,095)</u>	<u>(\$1,744)</u>
<u>Total Costs - OA - DPMM</u>	\$0	(\$409,291)	(\$402,913)
FTE Change - OA - DPMM	0 FTE	5 FTE	5 FTE

Costs - Office of Administration

Contract to provide legal services		(\$31,722,610)	(\$32,515,675)
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<u>FISCAL IMPACT - State Government</u> (continued)	FY 2014 (10 Mo.)	FY 2015	FY 2016
<u>Costs - CTS</u>			
§488.2250 - Increase in court reporter fees	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<u>Costs - Department of Corrections</u>			
Potential longer incarceration, potential extension to the maximum term of parole (longer supervision) and additional monitoring (Section 559.105)	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$100,000</u>)
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$9,978,159</u>)	(Unknown - could exceed <u>\$10,511,189</u>)
Estimated Net FTE Change for the General Revenue Fund	0	(302 FTE)	(302 FTE)
 MISSOURI OFFICE OF PROSECUTION SERVICES FUND			
<u>Income</u> - \$5 per each crime victim to whom restitution is paid. (559.100.3)	<u>\$100,000</u>	<u>\$100,000</u>	<u>\$100,000</u>
ESTIMATED NET EFFECT TO THE MISSOURI OFFICE OF PROSECUTION SERVICES FUND	<u>\$100,000</u>	<u>\$100,000</u>	<u>\$100,000</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
LOCAL POLITICAL SUBDIVISIONS - ADMINISTRATIVE HANDLING COST FUND			
<u>Income</u> - Administrative Handling Costs - Maximum of \$75 per restitution	Unknown	Unknown	Unknown
<u>Income</u> - Installment Costs - \$2 per installment payment	Unknown	Unknown	Unknown
Costs - restructuring of the public defender district offices (\$600.042(12))	(Unknown)	(Unknown)	(Unknown)
<u>Costs</u> - prosecuting attorney or circuit attorney costs to implement provision of the bill in collecting restitution.	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT TO THE ADMINISTRATIVE HANDLING COST FUND	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This bill requires restitution to be paid through the office of the prosecuting or circuit attorney. The provisions cannot prohibit the prosecuting attorney or circuit attorney from contracting with or utilizing another entity for the collection of the restitution and costs. Each prosecuting or circuit attorney who takes any action to collect restitution must collect from the person paying restitution an administrative handling cost of \$25 for restitution in an amount of less than \$100, \$50 for an amount between \$100 and \$249, and an additional fee of 10% of the total restitution for an amount of \$250 or more. The maximum fee for administrative handling costs cannot exceed \$75. A \$2 installment cost must also be assessed for each installment payment, except for the first installment, until the amount of restitution is paid in full.

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FISCAL DESCRIPTION (continued)

The moneys collected by the prosecuting or circuit attorney must be deposited into the newly created Administrative Handling Cost Fund to be expended by the prosecuting or circuit attorney for office supplies and equipment, capital outlay, trial preparation expenses, additional staff, and employees' salaries. In addition to the administrative handling cost, the prosecuting or circuit attorney must collect \$5 for each crime victim to whom restitution is paid to be deposited into the Missouri Office of Prosecution Services Fund.

Currently, any person who has been found guilty of or pled guilty to the offense of tampering or stealing may be ordered by the court to make restitution to the victim. The bill allows the court to order restitution to be paid by any person who has been found guilty or has pled guilty to any offense. The list of allowable expenses for restitution is revised to only include, but not be limited to, a victim's reasonable expenses to participate in the prosecution of the crime.

Currently, any person eligible to be released on parole for the offense of tampering or stealing may be required as a condition of parole to make restitution. The bill requires any person eligible to be released on parole to make restitution as a condition of parole.

The court may set an amount of restitution to be paid by any person who has been found guilty of an offense to the victim for the victim's losses due to the offense that may be taken from the inmate's account at the Department of Corrections while he or she is incarcerated; and upon release from imprisonment, the payment of any unpaid balance may be collected as a condition of conditional release or parole.

Currently, the State Public Defender Director must contract for legal services with private attorneys on a case-by-case basis and with assigned counsel as the Public Defender Commission deems necessary considering the needs of the area. The bill repeals this provision and requires the director to contract out legal services with private attorneys for all nonsexual class C and class D felonies, all misdemeanor cases, all traffic cases, and all probation violation cases. The Office of Administration must handle the bidding process for all the contracts. Contracts must be awarded through a competitive bidding process designed to award contracts to the lowest and best bidder and must give priority to bidders who exhibit experience in criminal law, demonstrate the capacity to provide effective representation in all assigned cases, and carry sufficient malpractice insurance. The Office of Administration must also administer all contracts made by the director, including contracts for cases that are conflicts of the public defender. The director may contract out for legal services with private attorneys direct appeals of any cases handled by public defenders.

FISCAL DESCRIPTION (continued)

The director must also, with the approval and on behalf of the commission, contract with private attorneys for the collection and enforcement of liens and other judgments owed to the state for services rendered by the state public defender system if the prosecuting attorney does not collect and enforce those liens and judgments.

The director must establish district offices, the boundaries of which must coincide with existing judicial circuits. Any district office may contain more than one judicial circuit within its boundaries, but no judicial boundary can include any geographic region of a judicial circuit without including the entire judicial circuit.

The bill repeals the requirement that the director and defenders must provide legal services to an eligible person who is detained or charged with any felony, including appeals from a conviction in the case, or who is detained or charged with a misdemeanor that will probably result in confinement in the county jail upon conviction and requires them to provide legal services to an eligible person who is detained or charged with a class A or class B felony, including appeals from a conviction in the case or a person who is detained or charged with a felony sexual offense. The director may contract out for legal services with private attorneys direct appeals of any cases handled by public defenders.

The public defender must provide legal services in those cases in which a private attorney who has a contract for the provision of legal services has a conflict of interest.

The director and defenders are prohibited from providing legal services or contracting out for legal services with private attorneys for motions claiming ineffective assistance of counsel or the representation of any crime victim or witness. Currently, 18 C.S.R. 10-4.010 authorizes a local public defender office to certify its maximum caseload has been exceeded and thereafter limit its availability to take additional cases after consultation with the presiding court. The bill invalidates that rule and prohibits the public defender from refusing to provide any representation required under the law without prior approval from a court of competent jurisdiction.

The public defender must pay the prosecuting or circuit attorney a collection fee of 20% of the funds collected by the prosecuting or circuit attorney on behalf of the public defender. The fee must be deposited in the same manner as collection fees are deposited in the county treasury for delinquent taxes. If the prosecuting attorney does not take action to enforce the judgment within 90 days of entry, the commission may contract with private collection agencies.

The provisions of the bill become effective July 1, 2014, except for the provisions of the bill regarding 18 C.S.R. 10-4.010 that contain an emergency clause.

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FISCAL DESCRIPTION (continued)

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
Office of Prosecution Services
Office of the State Public Defender
Office of Administration
Department of Corrections
Office of the State Auditor
Office of the Secretary of State
Joint Committee on Administrative Rules

Not Responding:

Counties of Jefferson, Lincoln, Nodaway and Pulaski



Ross Strope
Acting Director
March 5, 2013