

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0987-05
Bill No.: SCS for HCS for HB Nos. 374 & 434
Subject: Courts; Judges
Type: Original
Date: April 30, 2013

Bill Summary: This proposal modifies provisions relating to judicial procedures.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	\$0 to (Unknown - could exceed \$347,645)	(\$1,023,766) to (Unknown - could exceed \$1,445,112)	(\$2,033,703) to (Unknown - could exceed \$2,459,262)
Total Estimated Net Effect on General Revenue Fund	\$0 to (Unknown - could exceed \$347,645)	(\$1,023,766) to (Unknown - could exceed \$1,445,112)	(\$2,033,703) to (Unknown - could exceed \$2,459,262)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
MODEX	Less than \$426,402	Less than \$511,683	Less than \$511,683
Total Estimated Net Effect on <u>Other</u> State Funds	Less than \$426,402	Less than \$511,683	Less than \$511,683

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 13 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	16	16
Total Estimated Net Effect on FTE	0	16	16

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	Up to \$3,312,675	Up to \$3,979,384	Up to \$3,983,597

FISCAL ANALYSIS

ASSUMPTION

§ 32.056 - Department of Revenue Release of Information;

In response to a similar proposal from this year (HCS HB 371), officials from the **Department of Revenue (DOR)** stated this part of the proposal eliminates the requirement for a member of the judiciary enrolled in the Department's confidential records system to notify the Department once their qualification for enrollment comes to an end.

Currently, if a participant's qualification for enrollment comes to an end, but does not notify the Department of such change, the participant remains within the confidential records system. The Department would retain the ability of an individual who is enrolled in the Department's confidential records system to be removed from the confidential records system if such person's status changes, but would not require it.

DOR stated:

- The DMPO Confidential Records Process manual will need to be revised by a Management Analyst Specialist I requiring 40 hours of overtime at a cost of \$1,206 in FY 14; and
- The Restriction of Information, form 4568, will need to be revised requiring 40 hours of overtime for a Management Analyst Specialist I, at a cost of \$1,206 in FY 14.

In summary, DOR assumes a cost of \$2,412 in FY 2014 to implement this change.

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.

§ 477.405 & 478.320 - Guidelines for Determining Need for Additional Court Personnel

In response to a similar proposal from this year (HCS for SB 100), officials at **CTS** assumed this section of the proposal would provide the CTS with the ability to determine the need for additional full-time judicial positions indicated in a judicial weighted workload model for three consecutive years or more.

ASSUMPTION (continued)

The judicial weighted workload for the past three consecutive years indicates the following circuits need for additional full-time judicial positions:

Circuit 11	St. Charles County	1 Associate Circuit Judge & 1 Court Clerk III
Circuit 16	Jackson County	1 Associate Circuit Judge & 1 Court Clerk III
Circuit 21	St. Louis County	3 Associate Circuit Judges & 3 Court Clerk III
Circuit 31	Greene County	2 Associate Circuit Judges & 2 Court Clerk III
Circuit 38	Christian County	1 Associate Circuit Judge & 1 Court Clerk III

This results in the addition of eight Associate Circuit Judges at \$116,858.40 per judge, per year, plus fringes and eight Court Clerk III at \$31,800 per clerk, per year, plus fringes. The total cost would be \$934,867.20 (Associate Circuit Judge Annual Salary \$116,858.40), \$711,506 fringes (Associate Circuit Judge Annual Fringes \$88,939.25), \$254,400 (Court Clerk III Salary \$31,800), \$129,095 (Court Clerk II Fringes at 50.745%).

These sections of the proposed legislation would not become effective until January 1, 2015. The total cost in FY 2015 would be \$1,023,766 (six months) and \$2,033,703 (twelve months).

§487.020 - Family Court Commissioners:

In response to a previous version of this proposal, officials from the **Missouri State Employees Retirement System (MOSERS)** stated family court commissioners are covered under the Judicial Plan. MOSERS assumes the proposal keeps the family court commissioners as state employees; therefore, would not fiscally impact their agency.

Officials from **CTS** state the proposal would reduce General Revenue receipts by \$347,310 in FY 2014, \$420,940 in FY 2015, and \$425,149 in FY 2016. Currently, these costs are paid by the state and then reimbursed by the county. However, this proposal states “and in the thirty-first judicial circuit may, in substitution of [a] each family court commissioner currently appointed pursuant to this section whose salary is reimbursable, appoint [one] a family court commissioner whose compensation shall be payable by the state without necessity of reimbursement.” This will result in a costs savings to the county for the above amounts and could; therefore, reduce General Revenue receipts because of the loss of reimbursement from the county.

Currently, there are four Family Court Commissioners in the 31st circuit; however, CTS states for one of them already, Greene County does not reimburse the state. Therefore, with passage of this proposal, Greene County would no longer be required to reimburse the state for three commissioners.

RS:LR:OD

ASSUMPTION (continued)

Yearly reimbursable salary for a Family Court Commissioner (3 reimbursed Family Court Commissioners in the 31st judicial circuit):

Annual Salary	\$116,858
Fringe Benefits:	
Social Security (6.200%)	\$ 6,826
Medicare (1.45%)	\$ 1,695
Long-Term Disability (0.495%)	\$ 578
Health Insurance (\$656 / month)	\$ 7,872
Retiree Health	\$ 4,709
Basic Life (0.330%)	\$ 386
Sub-Total	\$138,924
	x 3
Total	<u>\$416,772</u>

CTS's estimate (\$347,310 in FY 2014, \$420,940 in FY 2015 and \$425,149 in FY 2016) reflects ten months of impact in FY 2014 (effective date of August 28, 2013) and one percent anticipated growth in costs for the next two years.

§ 488.305 - Garnishment Fee:

In response to a similar proposal from this year (SB 462), Oversight received the following responses:

Officials at the CTS assume this proposal authorizes circuit clerks to collect a surcharge for processing garnishments. Based on data for the past four years, FY 2009 through FY 2012, we assume that the average is approximately 237,354 executions and garnishments on which this surcharge could be applied. We assume all circuit courts would collect a \$10 surcharge and anticipate the revenue would be approximately \$2,373,540 in any given year.

FY 09	211,043
FY 10	231,258
FY 11	250,212
FY 12	<u>256,904</u>
Average	237,354

ASSUMPTION (continued)

Officials at the **Office of Administration - Budget and Planning** assume this proposal establishes an additional court surcharge; therefore, 18e calculations will be impacted, based on the number of garnishments on which the surcharge could be applied. It is unclear from this proposal where the additional surcharge is to be deposited. If these monies are deposited into the state treasury, Total State Revenue will be increased by a corresponding amount.

Since clerks of the circuit courts *may* collect a surcharge *not to exceed* \$10 and based on CTS' response, **Oversight** will reflect a potential income of up to \$2.3 million per year to the local circuit clerks. Oversight will reflect ten months of impact in FY 2014.

\$488,426 - Allowance of \$20 surcharge:

Officials from the **Office of the State Courts Administrator (CTS)** state the proposed legislation would allow certain circuits (Clay County, Boone and Callaway Counties, St. Louis County, St. Louis City and Greene County) to charge up to a \$20 law library surcharge. The limit is now \$15.

CTS states during the past five years (2008 to 2012) an average of 149,271 civil cases were filed in these counties. If an additional \$5.00 fee was assessed on every case and collections were 100%, the additional income would total approximately \$746,355 in a given year.

<u>Circuit</u>	<u>Civil Cases</u>	<u>Potential additional \$5 library surcharge revenue</u>
Clay County (7 th)	15,611	\$78,055
Boone and Callaway Counties (13 th)	11,287	\$56,435
St. Louis County (21 st)	69,226	\$346,130
St. Louis City (22 nd)	33,714	\$168,570
Greene County (31 st)	<u>19,433</u>	<u>\$97,165</u>
TOTALS	<u>149,271</u>	<u>\$746,355</u>

Oversight assumes the proposal is permissive to the specific circuit courts and allows them to increase their this fee from \$15 to \$20. Oversight assumes not all circuits would choose to increase their fees; therefore, Oversight will range the fiscal impact from the proposal as "Up to \$746,355". Oversight will reflect these additional revenues as potential income to local political subdivisions. Oversight will reflect ten months of potential impact in FY 2014.

The proposal does not change or expand the requirements of the circuit courts or how this additional revenue must be spent. Therefore, for purposes of the fiscal note, Oversight will only

ASSUMPTION (continued)

reflect the potential additional income that may be realized by specific circuit courts as a result of the proposal.

Oversight will range the impact of the proposal from \$0 to the estimates calculated by CTS, because the proposal states the circuit may substitute a non-reimbursed commissioner for currently reimbursed commissioners.

§ 488.2250 - Fee for Transcripts

In response to a similar proposal from this year (HCS for SB 100), officials from the **Office of the State Courts Administrator** stated 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.

§ 488.5320 - MODEX:

In response to a similar proposal from this year (SB 52) officials from the **Office of the State Courts Administrator (CTS)** stated the proposed legislation allows sheriffs, county marshals and other officers to charge six dollars for their services in cases disposed of by a traffic violations bureau and creates the MODEX fund.

Based on FY 2012 data, there were approximately 170,561 traffic cases on which the \$6.00 surcharge could be applied. CTS anticipates the MODEX revenue from the surcharge would be approximately \$511,683 (170,561 x \$6 / 2) in any given year, with an equal amount going to the counties' inmate security funds.

With an August 28, 2013, effective date, **Oversight** will reflect 10 months of activity in FY 2014.

ASSUMPTION (continued)

This Senate Committee Substitute excludes St. Louis County and St. Louis City from charging the fee; therefore, **Oversight** will change the fiscal impact as reflected in the original bill to include “Less than” the amount provided by CTS.

§ 544.455 and 557.011 - Criminal Defendants Released on Electronic Monitoring:

Oversight assumes this proposal permits a person who is placed on house arrest with electronic monitoring to pay the costs of monitoring themselves or if the person on house arrest is unable to pay the costs of monitoring themselves have those costs paid by the county commission. The county commission must agree to pay the costs of electronic monitoring from the general revenue of the county.

Oversight assumes the proposal is permissive and some county commissions will elect to pay the cost of electronic monitoring and other county commissions will choose not to pay for the costs of monitoring. **Oversight** will show \$0 or an unknown cost to county commissions dependant on the number of defendants released on electronic monitoring that cannot pay the cost of monitoring.

§ 545.417 - Depositions in Criminal Cases

In response to a similar proposal from this year, Oversight received the following responses:

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)

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

ASSUMPTION (continued)

could be absorbed within current appropriations.

§ 559.115 - 120 day program:

In response to a similar proposal from this year (SB 380), **Oversight** received the following response:

Officials from the **Department of Corrections (DOC)** state this bill proposes to modify provisions relating to criminal offenders participating in the 120-day programs and sexual offender assessment (SOAU) program. The addition to section 3 of this legislation which states an offender's 120 day sentence begins upon being delivered to the DOC is very beneficial to the DOC as it allows process time to get an offender into the appropriate program. Currently an offender's incarceration time in the jail counts toward his/her 120 days of incarceration. So an offender could actually arrive at the diagnostic center without enough time left on his/her 120 day sentence to complete a program to which he/she has been sentenced. Currently DOC reimburses county jails for time an offender serves while in jail. It is unknown whether this will still occur if this bill passes.

Section 5 of this legislation addresses offenders sentenced for a sex offender assessment. It indicates this is not to be considered a 120 day program. Sex offenders are currently not eligible for 120 day programs. It states upon completion of the assessment, the DOC shall provide the court a report so that they can make the decision to release or require the offender to serve his/her term of incarceration.

Subsection 7 addresses the exclusion of prior prison commitments under this section. The proposed language will only exclude offenders placed in a 120 day treatment program under subsection 3 from having their first incarceration prior to release on probation excluded from counting as a previous prison commitment. This means that offender sentenced to shock incarceration under subsection 2 or a sex offender assessment under subsection 5 could have their first commitment count as a prior prison commitment.

Currently, DOC does not count the first commitment of an offender if they are sentenced under any subsection under this section and are successfully released on probation, even though this subsection specifies that it is applicable to program placement only.

If persons are staying longer in 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 (FY12 average of \$17.059 per offender, per day, or an annual cost of \$6,227 per inmate) or

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ASSUMPTION (continued)

through supervision provided by the Board of Probation and Parole (FY12 average of \$4.960 per offender, per day, or an annual cost of \$1,810 per offender).

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Seventeen (17) persons would have to be incarcerated per each fiscal year to exceed \$100,000 annually. Due to the narrow scope of this modification, it is assumed the impact would be less than \$100,000 per year for the DOC.

Sections 632.498 & 632.505 - Sexually violent predators:

In response to a similar proposal from this year (HCS/SB 188), officials from the **Department of Corrections (DOC)** stated this bill proposes to modify provisions related to sexually violent predators.

Currently, the DOC cannot predict the number of new commitments or extended incarcerations which may result from the expansion of a sexually violent predator as 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 (FY12 average of \$17.059 per offender, per day, or an annual cost of \$6,227 per inmate) or through supervision provided by the Board of Probation and Parole (FY12 average of \$4.960 per offender, per day, or an annual cost of \$1,810 per offender).

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

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
GENERAL REVENUE			
<u>Costs - Office of State Courts</u>			
Administrator			
Personal Service	\$0	(\$594,634)	(\$1,191,811)
Fringe Benefits	\$0	(\$420,300)	(\$841,892)
Expense and Equipment	<u>\$0</u>	<u>(\$8,832)</u>	<u>\$0</u>
<u>Total Costs - CTS §477.405, 478.320</u>	\$0	(\$1,023,766)	(\$2,033,703)
FTE Change - CTS	\$0 FTE	16 FTE	16 FTE
 <u>Loss - potential for the 31st Circuit to not reimburse the state for three Family Court Commissioners. §487.020</u>	\$0 to (\$347,645)	\$0 to (\$421,346)	\$0 to (\$425,559)
 <u>Costs - CTS §488.2250 - Increase in court reporter fees</u>	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
 <u>Costs - Department of Corrections</u>			
Incarceration / Supervision of offenders (§§ 632.498 & 632.505)	(Unknown)	(Unknown)	(Unknown)
 <u>Costs - Department of Corrections</u>			
Potential for additional supervision through incarceration / probation §559.115	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)
 ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	 <u><u>\$0 to</u></u> <u><u>(Unknown -</u></u> <u><u>could exceed</u></u> <u><u>\$347,645)</u></u>	 <u><u>(\$1,023,766) to</u></u> <u><u>(Unknown -</u></u> <u><u>could exceed</u></u> <u><u>\$1,445,112)</u></u>	 <u><u>(\$2,033,703) to</u></u> <u><u>(Unknown -</u></u> <u><u>could exceed</u></u> <u><u>\$2,459,262)</u></u>
 Estimated Net FTE Change for the General Revenue Fund	 0	 16 FTE	 16 FTE

FISCAL IMPACT - State Government FY 2014 FY 2015 FY 2016
 (continued) (10 Mo.)

MODEX FUND

Income - one-half of \$6 surcharge for Less than Less than Less than
 infractions processed through the traffic \$426,402 \$511,683 \$511,683
 violations bureau

ESTIMATED NET EFFECT TO THE **Less than** **Less than** **Less than**
MODEX FUND **\$426,402** **\$511,683** **\$511,683**

FISCAL IMPACT - Local Government FY 2014 FY 2015 FY 2016
 (10 Mo.)

LOCAL POLITICAL SUBDIVISIONS

Income - surcharge not to exceed \$10 in Up to Up to Up to
 cases where a garnishment is granted. \$1,916,666 \$2,300,000 \$2,300,000
 §488.305

Revenue - potential increase in law Up to \$621,962 Up to \$746,355 Up to \$746,355
 library surcharge from \$15 to \$20 in
 certain circuits. §488.426

Savings - Greene County - potential for \$0 to \$0 to \$0 to
 the 31st Circuit to not reimburse the state \$347,645 \$421,346 \$425,559
 for three Family Court Commissioners.
 §487.020

Income into the counties' inmate security Less than Less than Less than
 fund from one-half of \$6 surcharge for \$426,402 \$511,683 \$511,683
 infractions processed through the traffic
 violations bureau (except for St. Louis
 County) §488.5320

ESTIMATED NET EFFECT TO **Up to** **Up to** **Up to**
LOCAL POLITICAL SUBDIVISIONS **\$3,312,675** **\$3,979,384** **\$3,983,597**

FISCAL IMPACT - Small Business

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


FISCAL DESCRIPTION

This bill modifies provisions relating to judicial procedures.

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 Revenue
Office of Administration - Budget and Planning
Office of the State Public Defender
Department of Corrections
Missouri State Employees Retirement System



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Acting Director
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