

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1820-03  
Bill No.: SB 414  
Subject: Attorneys; Courts; Crimes and Punishment; Criminal Procedure; Judges; Law Enforcement Officers and Agencies  
Type: Original  
Date: April 2, 2013

Bill Summary: This proposal modifies provisions relating to the legal defense of indigent persons.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	(Unknown) to More than \$100,000	(Unknown) to More than \$100,000	(Unknown) to More than \$100,000
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Unknown) to More than \$100,000</b>	<b>(Unknown) to More than \$100,000</b>	<b>(Unknown) to More than \$100,000</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
<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 8 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</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 2014</b>	<b>FY 2015</b>	<b>FY 2016</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 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials at the **Department of Corrections (DOC)** assume passage of this proposal would require significant alterations to the current process as offenders are not currently brought before a judge for either a preliminary hearing or parole revocation hearing as they are held under the purview of the DOC's Parole Board. There were 4,453 referrals for a board hearing following a revocation in 2012. Specifically, the statute imposes a new requirement to ensure counsel is offered by a judge for offenders under parole or conditional release in conjunction with a preliminary hearing, or final hearing if the preliminary hearing is waived (RSMo 217.720.2). A new administrative structure would have to be created, involving significant ongoing staff time commitments, to allow for judicial involvement in preliminary and/or final revocation hearings related to cases under the auspices of the Parole Board. This will be a significant additional burden to the courts, the DOC and the public defender system. It is believed passage of this proposed legislation would have a significant financial impact for the DOC.

Officials at the **Office of the State Public Defender (SPD)** assume it is the risk of jail time that is the constitutional trigger requiring the appointment of counsel to the indigent accused. This proposal has the potential to reduce the number of cases requiring public defender services. The extent of that reduction will depend upon how the Prosecuting Attorneys and Judges utilize the new statutes.

Requiring the Prosecuting Attorney to indicate at the beginning of a misdemeanor case whether he intends to seek jail time could eliminate a number of public defender cases that usually wind up without receiving jail time.

Currently by statute, public defenders are required to handle all Probation Revocation cases. This proposal changes this by requiring public defenders in cases only when a judge determines that the appointment of counsel is necessary to protect the person's due process rights under section 217.720 or section 559.036. The number of Probation Violation cases will undoubtedly be reduced. However, the extent of that reduction cannot be determined at this time.

Because of the overload the Public Defender System is operating under, it is not anticipated that the pending legislation would reduce current staffing but it could reduce the number of attorneys required to bring the caseloads of the Missouri State Public Defender System to the American Bar Association standards.

**Oversight** will assume the proposal would result in a significant savings to the SPD. Although SPD was unable to quantify the savings, Oversight assumes the savings could exceed \$100,000

ASSUMPTION (continued)

per fiscal year.

Officials from the **Office of Prosecution Services (OPS)** did not respond to our request for fiscal impact. In response to a similar proposal from 2009 (SB 37), officials from the OPS assumed the proposal would not have a significant direct fiscal impact on county prosecutors or their office.

Officials at the **Office of State Courts Administrator** assume there may be some impact but it is unquantifiable at this time. Any significant change in workload will be reflected in future budget requests.

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

Officials at the **Missouri Highway Patrol** assume there is no fiscal impact from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
<b>GENERAL REVENUE</b>			
<u>Costs</u> - Department of Corrections			
Increased costs of having preliminary hearings and/or parole revocations before a judge instead of Parole Board	(Unknown)	(Unknown)	(Unknown)
<u>Costs</u> - Office of the State Courts Administrator			
Increased costs of having preliminary hearings and/or parole revocations before a judge instead of Parole Board	(Unknown)	(Unknown)	(Unknown)
<u>Savings</u> – Office of the State Public Defender			
Reduced cases	<u>More than</u> <u>\$100,000</u>	<u>More than</u> <u>\$100,000</u>	<u>More than</u> <u>\$100,000</u>
<b>ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND</b>	<b>(Unknown) to</b> <b>More than</b> <b><u>\$100,000</u></b>	<b>(Unknown) to</b> <b>More than</b> <b><u>\$100,000</u></b>	<b>(Unknown) to</b> <b>More than</b> <b><u>\$100,000</u></b>

<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

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

## FISCAL DESCRIPTION

This act modifies provisions relating to the legal defense of indigent persons.

**PROBATION AND PAROLE VIOLATIONS (§§ 217.720.2, 559.036.6, & 600.042.4(3)) -**  
Under current law, public defenders represent indigent persons who are detained or charged with a violation of probation or parole.

This act provides that indigent persons who are charged with a violation of probation or parole must be represented by a public defender if the judge in the case determines that such representation is necessary to protect the person's due process rights. At any preliminary or final hearing to determine whether a person has violated the terms of probation or parole, the judge must inform the person of the right to request an attorney. If the person requests an attorney, the judge must then determine whether counsel is necessary to protect the person's due process rights. If the judge finds that the appointment of counsel is not necessary, then the judge must state the reasons for such decision in the record.

**DEFINITIONS (§§ 600.011, 600.041, & 600.042) -** This act redefines various positions within the Public Defender System, including assistant public defenders, contract counsel, deputy directors, deputy district defenders, and district defenders. The definitions reflect the current administrative structure of the public defender system.

This act specifies that the deputy director exercises the duties of the director on a temporary basis only, when the director is absent or has resigned, until the commission appoints a new director.

**CASES ELIGIBLE FOR REPRESENTATION (§§ 600.042.4(2) &(6)) -** Currently, indigent persons are eligible for public defender services when detained or charged with a misdemeanor which will likely result in confinement. Under this act, such persons are only eligible when the prosecuting attorney has requested a jail sentence.

**CASELOAD RELIEF (§ 600.062) -** This act provides that, notwithstanding the rulemaking authority of the Director of the State Public Defender System and the Public Defender Commission, neither the Director nor the Commission may limit the availability of a district office or a public defender to accept cases based on a determination that the office has exceeded a caseload standard.

In addition, this act allows any district defender to file a motion to request a conference to discuss caseload issues with the presiding judge of a circuit court served by the office. The circuit clerk must provide a copy of the motion to the prosecuting attorney who serves the circuit court. If the motion is approved, a date for the conference must be set within 30 days of the filing of the

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FISCAL DESCRIPTION (continued)

motion and notice of the date must be sent to the district defender and the prosecuting attorney.

Within 30 days of the conference, the judge must issue an order either granting or denying relief. In this order, the judge may appoint private counsel to represent any eligible defendant, investigate the financial status of any eligible defendant, determine whether any cases can be disposed of without the imposition of a jail or prison sentence and allow those cases to proceed without counsel, modify the conditions of release for a defendant represented by a public defender, place cases on a waiting list for a public defender, and grant continuances.

The prosecuting attorney and district defender have 10 days to appeal the order. Such appeals must be expedited by the appellate court in every manner practicable.

This act gives the Public Defender Commission and the Missouri Supreme Court authority to make rules to implement the above process.

**REQUIREMENTS FOR APPOINTING PRIVATE COUNSEL (§ 600.064)** - This act requires judges, before appointing private counsel to represent an indigent defendant, to investigate the defendant's financial status to verify the defendant does not have the means to obtain counsel, and provide each appointed lawyer, upon request, with an evidentiary hearing on the propriety of the appointment. A judge who finds that an appointment will cause undue hardship on an attorney must appoint a different attorney to represent the defendant.

This act prohibits a judge from requiring a lawyer to advance any amount of personal funds for the cost of defending an indigent defendant. The judge must discharge a defendant when necessary to protect the defendant's constitutional rights if funds are not available to pay for a defense within the time required by law for trial and the court is unable to appoint another attorney who can prepare for trial in time.

In addition, this act provides that, when an employee of the General Assembly is appointed to represent an indigent defendant during the legislative, special, or veto session, or an out-of-session committee hearing, the judge must postpone the trial and other court proceedings to a date that does not fall during such times or appoint a different lawyer who is not an employee of the General Assembly.

This act provides that private counsel appointed to represent an indigent defendant may seek payment of litigation expenses from the Public Defender System, but such expenses shall not include counsel fees and shall be approved in advance by the director.

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

Department of Corrections  
Missouri Highway Patrol  
Office of Attorney General  
Office of State Courts Administrator  
Office of the State Public Defender

**Not Responding:**

Office of Prosecution Services



Ross Strope  
Acting Director  
April 2, 2013