

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1004-03
Bill No.: Truly Agreed To and Finally Passed SCS for HCS for HB 547
Subject: Attorneys; Courts; Crimes and Punishment; County Officials; Liability; Military Affairs; Veterans
Type: Original
Date: June 13, 2019

Bill Summary: This proposal provides alternative methods for the disposal of cases including through the use of treatment courts and prosecution diversion programs.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	(Up to \$138,250 to \$234,359 or Unknown)	(Up to \$138,250 to \$234,359 or Unknown)	(Up to \$138,250 to \$234,359 or Unknown)
Total Estimated Net Effect on General Revenue	(Up to \$138,250 to \$234,359 or Unknown)	(Up to \$138,250 to \$234,359 or Unknown)	(Up to \$138,250 to \$234,359 or Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Drug Court Resources Fund (0733)*	\$0	\$0	\$0
Office of Prosecution Services Fund (0680)	Could exceed \$497,963	Could exceed \$597,556	Could exceed \$597,556
Total Estimated Net Effect on <u>Other</u> State Funds	Could exceed \$497,963	Could exceed \$597,556	Could exceed \$597,556

*Distribution increases (decreases) net to zero.

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on FTE	0	0	0

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Local Government	Could exceed \$497,963	Could exceed \$597,556	Could exceed \$597,556

FISCAL ANALYSIS

ASSUMPTION

§§56.765 & 557.014 - Increase in the Prosecution Services Fund

Officials at the **Department of Revenue (DOR)** assume a \$553,722 per year increase in court fees from this proposal. Based on DOR records, the total amount deposited into the Missouri Office of Prosecution Services Fund in Fiscal Year 2018 was \$138,430.40. This creates the notion that the total amount assessed as costs in each court proceeding filed in any court in the state in all criminal cases totaled \$276,860.80 (amount deposited into MO Office of Prosecution Services Fund x 2 due to only half of the fee is deposited into this fund). The DOR then estimates that the total amount collected, at a rate of five dollars, rather than the current rate of collection at one dollar, would be \$1,384,304 (\$276,860.80 (\$1 dollar) x \$5).

The DOR further estimates that the Missouri Office of Prosecution Services Fund will increase by \$553,721.60 (\$1,384,304 / 2 - \$138,430.40) and the amount payable to the county treasurer's offices of each county from which such funds were generated will increase by \$553,721.60.

Assuming this proposed legislation takes effect August 28, 2019, the DOR estimates surcharge collections at the five dollar rate of \$461,434.67 in FY 2020.

Officials at the **Office of Prosecution Services (MOPS)** state they believe increasing the funding in §56.765, RSMo, from \$1 to \$5 is necessary to continue operating MOPS and provide additional training funds for local prosecutors. This surcharge has not been increased for at least thirty years, perhaps even longer.

MOPS is funded through two primary revenue streams- bad check fees and the \$1 surcharge added to court costs in criminal and traffic cases. The revenue from bad check fees has been in a rapid decline for the past decade given the increased use of debit cards and other electronic payment options. The court cost surcharge has been at \$1 (50 cents to MOPS, 50 cents to the local prosecutor) for at least thirty years, if not longer. MOPS needs an increase in order to continue meeting its statutory obligations.

Current annual revenue from MOPS share of the \$1 court cost surcharge is approximately \$135,000 (which has also been declining slightly each year). It is anticipated that MOPS \$2 share of the total court surcharge increase will generate revenue of an additional minimum of \$135,000 a year to a possible maximum of an additional \$540,000 a year. This increase in funding ensures that for the foreseeable future MOPS can continue to fulfill its statutory duties including, but not limited to, providing training and other assistance to prosecutors, the ongoing implementation and maintenance of a uniform case management system for use by all prosecutor offices, and

ASSUMPTION (continued)

integrating that case management system with law enforcement and the courts. This increase will also assist in MOPS helping prosecutors develop and implement diversion and other new programs.

Oversight notes that the Missouri Office of Prosecution Service fund (0680) has had the following deposits made over the last 3 years:

FY 2018 - \$138,430.40
FY 2017 - \$152,267.84
FY 2016 - \$157,468.53

This would result in a 3 year average in deposits of \$149,389. Since this proposal will increase the fees collected on court cases by \$4 per case, there is a potential increase to this fund that could exceed \$597,556 ($\$149,389 * \4) each year to the Office of Prosecution Services Fund and the County Treasurers' Funds in Local Governments. Therefore, Oversight will reflect an increase in revenue that could, in total, exceed \$597,556 for all of these funds for this proposal.

§478.001 - Requires each judicial circuit to establish a treatment court

Officials at the **Office of the State Courts Administrator (OSCA)** assume the proposed legislation provides alternative methods for the disposal of cases including through the use of treatment courts and prosecution diversion programs.

Currently there are 45 out of 46 circuits currently providing treatment courts services with an estimated 7,420 participants in FY 2019. While not all circuits have veterans treatment courts, veterans can participate in adult treatment courts. Potential treatment court participants may also utilize a treatment court in a nearby county when there is not a treatment court in their own county

Based upon FY 2018 expenditures for treatment courts using Treatment Court Resources Fund, cost per participant is \$1,739. There are many other factors that affect the operating costs associated with establishing and maintaining treatment courts which vary from county to county throughout the state.

Oversight notes that §478.001.2 changes the word “may” to “shall” in this proposal. This section also states “A treatment court division shall be established by any circuit court...” A treatment court division is explained in §478.001.1(12) as including, but are not limited to, the following specialized courts: adult treatment courts, DWI court, family treatment court, juvenile treatment court, veterans treatment court, or any combination thereof.

ASSUMPTION (continued)

Oversight notes, according to OSCA budget submissions, there are some circuits that have treatment courts in one or more counties, but not in all. For example,

8th Circuit	Carroll County is not served (Ray County is)
10th Circuit	Monroe County is not served (Marion and Ralls counties are)
30th Circuit	Polk, Dallas, and Hickory Counties are not served (Benton Co. is)
37th Circuit	Shannon, Carter, and Oregon Counties are not served (Howell is)
34th Circuit	Pemiscot County is not served (New Madrid County is)
43rd Circuit	Dekalb, Clinton, Daviess, Caldwell, and Livingston are not served

Oversight notes OSCA's FY 19 budget under section 12.370 for the Drug Court Resources fund (0733) has an appropriated amount of \$6,726,131 for funding treatment programs that is being transferred in from the General Revenue Fund. Currently, the 43rd circuit does not have any treatment courts within their circuit. There are 47 treatment court services (some circuits have more than one) being funded through the appropriated amount of \$6,726,131 which would average out to an appropriated amount of \$143,109 per treatment court service. The 43rd circuit is more similar in demographics to the 3rd circuit which has an appropriated budget request of \$47,000. Therefore, Oversight will reflect a cost range of \$47,000 to \$143,109 each year transferred out of the General Revenue Fund into the Drug Court Resources Fund to fund a treatment court in the 43rd circuit. Oversight notes these funds will be transferred to the counties of the 43rd circuit in the year they are appropriated.

Officials at the **Office of Prosecution Services** assume a minimal negative fiscal impact from this proposal.

§557.014 - Diversion supervision

Officials at the **Department of Corrections (DOC)** assume the proposed legislation (§557.014) allows for diversion supervision at the discretion of a prosecuting attorney for non-violent, non-sexual offenses. The program has the potential to divert offenders from supervision by the DOC. The DOC's impact estimate is based on the assumption that those from drug courts will not be diverted since they are already providing treatment, and the success of the prosecution diversion programs will be similar to that of drug courts.

In FY18, the DOC received 11,143 offenders for a nonviolent offense, of which the DOC supervised 336 for a court diversion program and 227 of those were new offenders. Because court and prosecution diversion programs are most likely to divert offenders sentenced to SIS probation, diversion programs are expressed as a percent of SIS probation sentences (7%). A similar calculation for drug offenders received in FY18 shows that diversion accounted for 12% of SIS probations. Therefore, the DOC is estimating that the prosecution diversion programs will increase the number of defendants with nonviolent offenses (excluding drug and DWI offenses) by 5% (12%-7%).

ASSUMPTION (continued)

Nonviolent New Sentences in FY2018- Sentence Disposition and Supervision status at time of offense

Supervision Status	Diversion	Probation		120-day	Prison	Total	Diversion/ SIS Prob.
		SIS	SES				Percent
New Sentence	227	2,940	2,190	482	955	6,794	7%
Probation	105	616	1,375	367	992	3,455	15%
Parole	4	54	261	126	449	894	7%
Total	336	3,610	3,826	975	2,396	11,143	9%

A 5% increase in diversion programs will result in 153 defendants being enrolled and 86 defendants completing the programs per year (using the court diversion program's success rate of 56%). The legislation does not state that the defendants will be supervised other than reporting to the prosecuting attorney, therefore, the impact on the DOC will be the diversion of three years of probation. Nonviolent offenders on probation with a five year term are expected to serve three years after earning compliance discharge credits. The impact on the DOC is a reduction of 257 on probation which will occur by FY2022 and there would be no cost/savings from this proposal.

Impact of Prosecution Diversion Programs

Diversion/ SIS Prob. Percent	Percent after Pros. Pgm.	Estimated diversion population	Success rate of program	Defendants completing programs	population reduction of 3 years
7%	12%	153	56%	86	257

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
Probation										
Current Law	86	86	86	86	86	86	86	86	86	86
After Legislation	0	0	0	0	0	0	0	0	0	0
Cumulative Populations										
Prison	0	0	0	0	0	0	0	0	0	0
Parole	0	0	0	0	0	0	0	0	0	0
Probation	-86	-172	-257	-257	-257	-257	-257	-257	-257	-257
P&P Officers + or -	0	0	0	0	0	0	0	0	0	0

Officials at the **Office of the State Courts Administrator** assume there may be some impact but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

ASSUMPTION (continued)

In response to similar legislation from this year, SB 398, officials at the **City of Excelsior-Springs** assumed this proposal would increase the court cost rate. The City's current rate is \$29.50 per case.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other cities and counties were requested to respond to this proposed legislation but did not. For a general listing of political subdivisions included in our database, please refer to www.legislativeoversight.mo.gov.

§650.058 - Wrongfully imprisoned persons

Officials from the **Department of Corrections (DOC)** state this legislation increases the amount a wrongfully imprisoned person may receive from \$50 per day to \$100 per day.

Section 650.058 states that any individual who was found guilty of a felony in a Missouri court and was later determined to be actually innocent of such crime solely as a result of DNA profiling analysis may be paid restitution. Currently, these individuals may receive an amount of \$50 per day for each day of post-conviction incarceration for the crime for which the individual is determined to be actually innocent. These payments are capped at \$36,500 per year which constitutes restitution for two years of wrongful incarceration. This legislation proposes to raise the amount to \$100 per day but leaves the payments capped at \$36,500 per year. No individual would receive more in a given year than he/she is currently receiving but would receive the payment for a longer period of time.

Since FY07, the DOC has paid restitution for up to five offenders per year. In FY19, there are two offenders receiving restitution payments. The DOC is unable to project the number of offenders who will be found "actually innocent" as a result of DNA analysis in any given year. However, if this legislation passes, each of those individuals will receive \$36,500 per year for each year of wrongful incarceration.

It is unclear if this legislation would allow people who have already filed a petition to receive restitution for time wrongfully served in the DOC to refile and seek the extra \$50 per day. The DOC is unable to determine the impact of this legislation; therefore, the DOC's response will be an "unknown" cost.

Oversight notes the DOC in the past has paid restitution for up to five offenders per year at a daily cost of \$50 or \$91,250 (5 offenders x \$50 x 365 days) for each year of wrongful incarceration. This legislation increases the amount a wrongfully imprisoned person may receive from \$50 to \$100 per day. Since it is unknown whether the DOC could have to pay for more than five offenders annually, Oversight will reflect DOC's impact as (Up to \$91,250 or Unknown) due to a variance in the number of persons granted restitution.

ASSUMPTION (continued)

Bill as a Whole

Officials at the **Office of the Attorney General**, the **Missouri Veterans Commission** and the **Office of the State Public Defender** each assume no fiscal impact to their agency from this proposal.

Officials at the **Office of Prosecution Services** assumes no additional fiscal impacts other than what is already stated in the fiscal note for this agency.

Officials at the **City of Kansas City** and the **City of Columbia** each assume no fiscal impact to their respective entities from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
GENERAL REVENUE FUND			
Transfer Out - to the Drug Court Resources Fund (§478.001) p. 5	(\$47,000 to \$143,109)	(\$47,000 to \$143,109)	(\$47,000 to \$143,109)
Costs - DOC (§650.058) Increased payouts to wrongfully imprisoned persons p. 7	(Up to \$91,250 <u>or Unknown</u>)	(Up to \$91,250 <u>or Unknown</u>)	(Up to \$91,250 <u>or Unknown</u>)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	(Up to \$138,250 to \$234,359 or <u>Unknown</u>)	(Up to \$138,250 to \$234,359 or <u>Unknown</u>)	(Up to \$138,250 to \$234,359 or <u>Unknown</u>)

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
DRUG COURT RESOURCES FUND			
<u>Transfer In</u> - from General Revenue (\$478.001) p. 5	\$47,000 to \$143,109	\$47,000 to \$143,109	\$47,000 to \$143,109
Cost - to establish a treatment court division in the 43rd circuit (\$478.001) p. 5	(\$47,000 to \$143,109)	(\$47,000 to \$143,109)	(\$47,000 to \$143,109)
ESTIMATED NET EFFECT ON THE DRUG COURT RESOURCES FUND	\$0	\$0	\$0

**OFFICE OF PROSECUTION
SERVICES FUND**

Revenue - 50% of additional revenue from increased court fees from \$1 to \$5 (\$56.765) p. 4	Could exceed \$497,963	Could exceed \$597,556	Could exceed \$597,556
ESTIMATED NET EFFECT ON OFFICE OF PROSECUTION SERVICES	Could exceed \$497,963	Could exceed \$597,556	Could exceed \$597,556

<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
LOCAL POLITICAL SUBDIVISIONS			
Revenue - counties of the 43rd Circuit - state appropriation for treatment court p. 5	\$47,000 to \$143,109	\$47,000 to \$143,109	\$47,000 to \$143,109
Revenue - 50% of additional revenue from increased court fees from \$1 to \$5 (\$56.765) p. 4	Could exceed \$497,963	Could exceed \$597,556	Could exceed \$597,556
Costs - counties of the 43rd Circuit - to operate a treatment court p. 7	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	Could exceed <u>\$497,963</u>	Could exceed <u>\$597,556</u>	Could exceed <u>\$597,556</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

ALTERNATIVE METHODS FOR DISPOSAL OF CASES IN JUDICIAL SYSTEM

This bill provides alternative methods for the disposal of cases in the judicial system, including through the use of treatment courts and prosecution diversion programs.

TREATMENT COURTS

Prior to August 28, 2021, circuit courts shall establish a treatment court division to provide an alternative for the judicial system to dispose of cases which stem from or are impacted by substance use. This bill provides that it is public policy of the state to encourage and provide an alternative method for the disposal of cases for military veterans and current military personnel with substance use disorders, mental health disorders, or co-occurring disorders. In order to accomplish this policy, circuit courts or any combination of circuit courts may establish a veterans treatment court for cases that stem from such disorders within military veterans or current military personnel, with a preference for individuals who have combat service.

PROSECUTION DIVERSION PROGRAMS

This bill authorizes prosecuting attorneys to divert criminal cases to a prosecution diversion program. This bill increases a criminal case surcharge from \$1 to \$5, which is assessed equally for prosecutor services and prosecutor training.

A prosecuting attorney, with the agreement of the accused or defendant, may divert a criminal case to a prosecution diversion program for a period of six months to two years. Prosecuting attorneys may divert cases out of the criminal justice system when they determine the advantages of utilizing a prosecution diversion program outweighs the advantages of taking immediate court action. The statute of limitations for certain offenses shall be tolled during this time period. The period of a prosecution diversion program may be extended by a prosecuting attorney for purposes detailed in the bill, yet no such extension shall be for a period exceeding two years.

Prior to or upon issuance of an arrest warrant or information of indictment, any prosecuting attorney may forgo continued prosecution if the parties agree to a prosecution diversion program. This program must be in writing and for a specified period of time. While a prosecuting attorney has the authority to develop prosecution diversion programs, this bill details the minimum requirements that a diversion program must meet.

FISCAL DESCRIPTION (continued)

Additionally, a prosecuting attorney may impose conditions on the behavior of the accused or defendant that assures the safety and well-being of the community, as well as that of the accused or defendant. These conditions may be imposed at any time during the prosecution diversion program, and may include, but are not limited to, requiring the accused or defendant to remain free of any criminal behavior during the entire period of the program.

The responsibility and authority on whether or not to screen and divert a case are completely within the discretion of the prosecuting attorney. This responsibility and authority shall be official duties of a prosecuting attorney. The decision of a prosecuting attorney regarding the diversion of a criminal case shall not be appealable, and may not be later raised as a defense in a criminal case involving the accused or defendant.

Section 557.014 enables prosecutors to set the terms of criminal justice diversion programs, and bars program participants right to appointment of counsel. Oversight notes this provision may violate the state and federal constitutional right to an attorney if a prosecutor's diversion program demands prison time while barring a right to appointed counsel.

At any time, a person participating in a prosecution diversion program shall have the right to insist on criminal prosecution for the offense which he or she is accused. Also, any person participating in a diversion program may have legal counsel present at all phases of the diversion proceedings, but nothing in this bill shall create a right to appointment of counsel. Criminal proceedings may be re-initiated at time by a prosecuting attorney for cases that have been diverted.

The potential liability of any county, city, person, organization, or agency, or employee or agent thereof, involved with the supervision of activities, programs, or community service that are a part of a prosecution diversion program is limited by provisions of this bill. Any person supervising or employing an accused or defendant under a prosecution diversion program shall report any violation of the terms of the program to the prosecuting attorney.

The bill provides once the accused or defendant completes a prosecution diversion program to the satisfaction of the prosecuting attorney, the person shall be entitled to a dismissal or alternative disposition of charges against them. The individual shall be required to pay any associated costs prior to the dismissal of pending charges.

WRONGFUL INCARCERATION RESTITUTION

Finally, the bill provides that any person found guilty but later determined to be innocent solely as a result of DNA profiling analysis may be paid restitution of an amount of \$100, increased from \$50, per day for each day of post-conviction incarceration.

SOURCES OF INFORMATION

Department of Revenue
Office of Prosecution Services
Department of Corrections
Office of the State Courts Administrator
Office of the Attorney General
State Public Defender
Missouri Veterans Commission
City of Kansas City
City of Columbia
City of Excelsior-Springs



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