

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0395S.01I
 Bill No.: SB 253
 Subject: Civil Penalties; Crimes and Punishment; Judges; Courts
 Type: Original
 Date: February 17, 2023

Bill Summary: This proposal creates a civil action awarding damages for wrongful convictions.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
General Revenue*	Could exceed (\$289,113)	Could exceed (\$335,574)	Could exceed (\$341,350)
Total Estimated Net Effect on General Revenue	Could exceed (\$289,113)	Could exceed (\$335,574)	Could exceed (\$341,350)

*Oversight notes this bill creates compensation for wrongful convictions. An individual may receive \$179 per day but no more than \$65,000 per fiscal year, as well as at least \$25,000 for each additional year served on parole or post-release supervision or each year the individual was required to register as a sex offender. Oversight notes to reach the \$250,000 threshold, one individual would have to remain in prison approximately 4 years (\$250,000 / \$65,000).

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Other State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Legal Expense Fund (0692)**	\$0	\$0	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

**Revenue and expenditures net to zero.

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
General Revenue	3 FTE	3 FTE	3 FTE
Total Estimated Net Effect on FTE	3 FTE	3 FTE	3 FTE

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Local Government	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Repeals §650.058 and implements §506.400 – Wrongful convictions

Officials from the **Department of Corrections (DOC)** state this legislation creates a civil cause of action allowing claimants to seek damages from the state for wrongful conviction. It repeals 650.058 which orders the DOC to make restitution payments to people who are found actually innocent of their crime solely as a result of DNA profiling analysis.

As a result of the repeal, the DOC would no longer be responsible for making these payments. Instead, the payments would be made from the state's Legal Expense Fund. This will create an unknown cost avoidance for the DOC since the DOC is unable to project the number of individuals who will be found actually innocent for each fiscal year

Oversight does not have any information contrary to that provided by DOC. Oversight assumes the General Revenue Fund will reimburse the Legal Expense Fund for any litigation payouts. Therefore, Oversight will reflect DOC's Unknown cost avoidance for fiscal note purposes.

Oversight notes the Midwest Innocence Project 2021 Annual Report states they are reviewing 389 cases in 63 counties in Missouri [MIP April 2021 annual report](#). In November of 2021, the Death Penalty Information Center reported Governor Parsons citing a backlog of more than 3,000 clemency requests, [Kevin Strickland Exonerated 42 Years After Wrongful Capital Murder Conviction in Missouri](#)

Officials from the **Office of Administration (OA)** state this legislation specifies the measure of damages payable under the Legal Expense Fund (LEF) in cases of wrongful conviction. The proposed legislation also appears to change the burden of proof. This change will be subject to judicial construction; therefore, the cost impact to the state is unknown.

The state self-assumes its own liability under the LEF, Section 105.711 RSMo. It is a self-funding mechanism whereby funds are made available for the payment of any claim or judgment rendered against the state in regard to the waivers of sovereign immunity or against employees and specified individuals. Investigation, defense, negotiation or settlement of such claims is provided by the Office of the Attorney General. Payment is made by the Commissioner of Administration with the approval of the Attorney General.

Because this bill creates a possible new cause of action, **Oversight** will show a net \$0 direct fiscal impact for the LEF, and a possible \$0 to (unknown) fiscal impact to General Revenue and other state funds. Oversight notes this possible litigation exposure as described by OA could also apply to colleges and universities, federal funds, as well as local political subdivisions.

Officials from the **Attorney General's Office (AGO)** assume this proposal will result in a significant increase in litigation because it expands the number of individuals who are able to bring legal action.

Under this proposal, a claimant convicted, imprisoned, and released from custody before August 28, 2023, must commence an action no later than August 28, 2024. Therefore, the AGO expects an influx of cases especially between August 28, 2023, and August 28, 2024.

The AGO states two (2) additional attorneys are necessary to review and litigate the additional cases. Given the scope of the cases, the AGO expects the cases will take longer to review. Additionally, the requested additional attorneys would review the newly enacted provision and review additional payments made from the Legal Expense Fund. One (1) additional staff person is also requested to support the additional attorneys.

Oversight does not have any information contrary to that provided by AGO. Therefore, Oversight will reflect the AGO's estimated impact for fiscal note purposes.

Oversight notes damages awarded will be \$179 per day for each day of imprisonment but no more than \$65,000 per fiscal year, as well as at least \$25,000 for each additional year served on parole or post-release supervision or each year the claimant was required to register as a sexual offender, whichever is greater. A claimant will not receive compensation for any period of incarceration during which the claimant was concurrently serving a sentence for a conviction of another crime for which he or she was lawfully incarcerated.

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

Officials from the **Department of Revenue, the Department of Public Safety - Missouri Highway Patrol, the Missouri Department of Transportation, the Missouri Department of Transportation, the Office of the Governor, the Office of the State Public Defender, the City of Kansas City, the City of Springfield, the Branson Police Department, the Kansas City Police Department, the St. Joseph Police Department, the St. Louis County Police Department, and the Phelps County Sheriff's Department** assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal not for these agencies.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other cities, county prosecutors, and local law enforcement were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System (MOLIS) database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
GENERAL REVENUE			
<u>Cost Avoidance – DOC (repeal of §650.058) Litigation payouts</u>	Unknown	Unknown	Unknown
<u>Cost – AGO (\$506.400)</u>			
Personal service	(\$154,167)	(\$188,700)	(\$192,474)
Fringe benefits	(\$96,639)	(\$117,351)	(\$118,763)
Equipment and expense	(\$38,307)	(\$29,523)	(\$30,113)
Total cost - AGO	(\$289,113)	(\$335,574)	(\$341,350)
FTE Change - AGO	3 FTE	3 FTE	3 FTE
<u>Transfer Out - To Legal Expense Fund (\$506.400) for new claims</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>Could exceed (\$289,113)</u>	<u>Could exceed (\$335,574)</u>	<u>Could exceed (\$341,350)</u>
Estimated Net FTE Change for the General Revenue Fund	3 FTE	3 FTE	3 FTE
OTHER STATE FUNDS			
<u>Cost - (\$506.400) Potential increase in transfer to LEF for new claims</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON OTHER STATE FUNDS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

<u>FISCAL IMPACT – State Government</u> (continued)	FY 2024 (10 Mo.)	FY 2025	FY 2026
STATE LEGAL EXPENSE FUND (0692)			
<u>Transfer In</u> – from General Revenue, Federal and Other State Funds	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Cost</u> – (\$506.400) Payments to litigants – new claims	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON THE STATE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
FEDERAL FUNDS			
<u>Cost</u> - (\$506.400) Potential increase in transfer to LEF	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT TO FEDERAL FUNDS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
LOCAL GOVERNMENT			
<u>Cost</u> - (\$506.400) Increase in staff and legal costs	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON LOCAL GOVERNMENT	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

FISCAL IMPACT – Small Business

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

FISCAL DESCRIPTION

CLAIMS FOR DAMAGES FOR WRONGFUL CONVICTIONS (Section 506.400)

Under this act, a claimant may bring an action for damages if he or she can prove by a preponderance of the evidence that:

- The claimant was convicted of a felony offense and subsequently imprisoned;
- The claimant's judgment of conviction was reversed or vacated and either the charges were dismissed or on retrial the claimant was found not guilty;
- The claimant did not commit the offense and was not an accessory to the acts that were the basis of the conviction; and
- The claimant did not commit perjury or fabricate evidence, excluding any confession found to be false.

The claimant shall bring such claim for damages within two years after the dismissal of the charges or finding of not guilty on retrial or two years after the grant of a pardon.

The damages awarded shall be \$179 per day for each day of imprisonment but no more than \$65,000 per fiscal year. Additionally, the damages awarded shall not be less than \$25,000 for each additional year served on parole or post-release supervision or each additional year the claimant was required to register as a sexual offender, whichever is greater. The claimant shall not receive compensation for any sentence he or she was serving concurrently for which he or she was lawfully incarcerated.

The court shall order the award to be paid as a combination of an initial payment not to exceed \$100,000 or 25% of the award, whichever is greater. The remainder of the award shall be paid as an annuity not to exceed \$80,000 per year. The claimant shall designate beneficiaries for the annuity. However, if the court finds that it is in the best interest of the claimant, the court may order the award be paid in one lump sum.

In addition to the damages awarded by this act, the claimant shall be entitled to receive reasonable attorney's fees and court costs not to exceed a total of \$25,000, unless a greater amount is authorized by the court. The claimant is also entitled to nonmonetary relief such as housing assistance or counseling as well as tuition assistance.

If the claimant has won a monetary award against the state or any political subdivision in a civil action related to the wrongful conviction, the amount of the award in the action, less any sums for attorney's fees and other costs, shall be deducted from the sum of money to which the claimant is entitled to under this act.

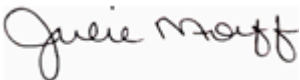
Upon an entry of a certificate of innocence, the claimant shall automatically be granted an order of expungement. The court shall order the expungement and destruction of associated biological samples authorized by and given to the Missouri State Highway Patrol. Finally, this act repeals

the current provisions relating to restitution for wrongfully convicted individuals proven innocent as a result of DNA testing.

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

Attorney General's Office
Department of Corrections
Department of Revenue
Department of Public Safety
Missouri Department of Transportation
Missouri Office of Prosecution Services
Office of Administration
Office of the Governor
Office of the State Courts Administrator
Office of the State Public Defender
City of Kansas City
City of Springfield
Branson Police Department
Kansas City Police Department
St. Joseph Police Department
St. Louis County Police Department
Phelps County Sheriff's Department



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