

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0572S.01I
 Bill No.: SB 146
 Subject: Crimes and Punishment; Civil Penalties; Civil Procedure; Department of Higher Education and Workforce Development; Attorney General; General Assembly
 Type: Original
 Date: February 17, 2023

Bill Summary: This proposal creates provisions relating to compensation for wrongful convictions.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
General Revenue*	Could exceed (\$369,255)	Could exceed (\$419,723)	Could exceed (\$429,706)
Total Estimated Net Effect on General Revenue	Could exceed (\$369,255)	Could exceed (\$419,723)	Could exceed (\$429,706)

*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
Colleges and Universities***	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

**Indicates numbers that net to zero.

***Oversight assumes the fiscal impact to colleges and universities will not exceed the \$250,000 threshold. 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

§105.711 – State Legal Expense Fund

Officials from the **Office of Administration (OA)** state this legislation adds a provision that the Legal Expense Fund (LEF) shall be available for payment of claims for wrongful conviction under the new Section 506.400. Section 506.400 specifies the measure of damages for wrongful conviction and 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 assumes 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 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.

§§506.400 and 506.403 – Tuition assistance

Officials from the **Department of Higher Education and Workforce Development (DHEWD)** state Section 506.400 of the legislation defines a “claimant” means a person convicted and subsequently imprisoned for one or more offenses that such person did not commit. Based on data from the Prison Policy Initiative, there are approximately 32,000 individuals incarcerated in state facilities. According to the Innocence Project, between two and ten percent of the prison population have likely been wrongly convicted. If DHEWD assumes the low end of that estimate, there may be 640 currently incarcerated individuals that meet the definition of claimant. Anyone that successfully pursues a claim as described in this section will receive tuition assistance as described in Section 506.403.

Subsection 1 of Section 506.403 requires public institutions of higher education to waive tuition and fees for a successful claimant as described in Section 506.400 for up to 120 semester credit hours. Subsection 2 of that section requires the Department of Higher Education, subject to appropriation, to reimburse individuals who received the tuition waiver referenced above for additional fees including, but not limited to, fees for room and board, technical equipment, and course-required books.

There is insufficient data to accurately determine how many successful claimants there would be and how many of those would enroll in a public college or university and thus would be eligible for the reimbursement described in subsection 2. If DHEWD assumes one percent of the estimated 640 individuals identified above, there would be six individuals eligible for the cost reimbursement.

While these individuals could attend any public institution in Missouri, in order to ensure this estimate is sufficient to cover actual costs, the estimate is based on the costs at the University of Missouri. Based on 2021-2022 data from The Integrated Postsecondary Education Data System (IPEDS), those costs are \$10,796 for room and board, \$1,529 in fees, and \$1,032 for books and equipment. The result is a potential reimbursement requirement of \$13,357 for each individual. To reimburse six individuals would result in a total cost of \$80,142.

Since the reimbursement is subject to appropriation, the estimated cost related to the Department of Higher Education and Workforce Development ranges from zero to \$80,142 for FY 2024. Assuming an annual inflationary increase of five percent per year, the costs for FY 2025 would range from zero to \$84,149 and for FY 2026 would range from zero to \$88,356.

Oversight does not have any information contrary to that provided by DHEWD. Therefore, Oversight will reflect DHEWD’s impact for fiscal note purposes.

Officials from the **University of Missouri** state that 120 credit hours tuition cost \$46,414 in academic year 2023. This fiscal impact would be this amount multiplied by the number of students who were eligible to receive this waiver, which cannot be estimated at this time.

Officials from the **Northwest Missouri State University** state the fiscal impact will be contingent on the number of individuals wrongfully convicted that would enroll at Northwest. It is anticipated that this number would be low. However, for estimation purposes, Northwest will assume \$30,000 annually per individual or \$150,000 per individual per degree.

Officials from the **University of Central Missouri** state an indeterminate fiscal impact.

Oversight notes any individual who receives a monetary judgement shall be entitled to receive a tuition waiver for attendance at a higher education institution for up to 120 credit hours. Oversight notes the impact to the University of Missouri, Northwest Missouri State University, and the University of Central Missouri. However, as the exact number of individuals that will seek tuition waivers may vary annually, Oversight will reflect a \$0 to (Unknown) impact to colleges and universities.

§650.058 – Restitution for 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. Individuals are paid \$50 per day restitution for every day of post-conviction incarceration for the crime for which the individual was found to be "actually innocent." These payments are capped at \$36,500 per year, which constitutes restitution for two years of wrongful incarceration, and are subject to appropriation. House Bill 547 (2019) increased the maximum allowable restitution a judge may order from \$50 per day for each day of post-conviction incarceration to \$100 per day. Since FY07, the department has paid restitution for up to five offenders per year. Since FY22, the department has paid restitution payments to two offenders.

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 they are 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.

Bill as a Whole

Officials from the **Office of the 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.

Rule Promulgation

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

Officials from the **Office of the Secretary of State (SOS)** note 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 the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes 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 the office can sustain with its core budget. Therefore, the SOS reserves 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 **Department of Revenue, the Department of Public Safety - Missouri Highway Patrol, the Missouri Department of Transportation, the Missouri Office of Prosecution Services, the Office of the Governor, the Office of the State Public Defender, the City of Kansas City, the City of Springfield, the Kansas City Police Department, the St. Joseph Police Department, the St. Louis County Police Department, the Phelps County Sheriff's Department, and St. Charles Community College** 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 note for these organizations.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other cities, colleges and universities, 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>Cost – DHEWD (§506.403) Additional fees (room/board, books, etc.)</u>	\$0 to (\$80,142)	\$0 to (\$84,149)	\$0 to (\$88,356)
<u>Transfer Out – (§506.403) To Legal Expense Fund for new claims</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>Could exceed</u> <u>(\$369,255)</u>	<u>Could exceed</u> <u>(\$419,723)</u>	<u>Could exceed</u> <u>(\$429,706)</u>
Estimated Net FTE Change for the General Revenue Fund	3 FTE	3 FTE	3 FTE
OTHER STATE FUNDS			
<u>Cost – (§506.403) Potential increase in transfer to LEF</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON OTHER STATE FUNDS	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(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 and Other State Funds	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Cost</u> – (§506.403) Payments to litigants	\$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>
COLLEGES AND UNIVERSITIES			
<u>Cost</u> - (§506.403) Tuition waivers	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>
FEDERAL FUNDS			
<u>Cost</u> – (§506.403) Potential increase in transfer to LEF	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT TO FEDERAL FUNDS	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
LOCAL GOVERNMENT			
<u>Cost - (\$506.403) Increase in staff and legal costs</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
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

This act creates provisions relating to compensation for the wrongfully convicted.

STATE LEGAL EXPENSE FUND (Section 105.711)

This act provides that money from the State Legal Expense Fund shall provide payment of any claim or any amount required by any final judgment rendered by a court for the purposes of paying judgments arising from claims for compensation for a wrongful conviction.

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 this resulted in a reversal of the conviction or dismissal of the charges; 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.

TUITION ASSISTANCE (Section 506.403)

Any individual awarded tuition assistance under this act shall receive a waiver of tuition and required fees for attendance at a public institution of higher education as provided in the act.

RESTITUTION FOR WRONGFUL CONVICTIONS (Section 650.058)

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

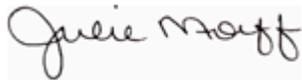
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office
Department of Higher Education and Workforce Development
Department of Corrections
Department of Revenue
Department of Public Safety
Joint Committee on Administrative Rules
Missouri Department of Transportation
Missouri Office of Prosecution Services

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Office of Administration
Office of the Governor
Office of the State Courts Administrator
Office of the Secretary of State
Office of the State Public Defender
City of Kansas City
City of Springfield
Kansas City Police Department
St. Joseph Police Department
St. Louis County Police Department
Phelps County Sheriff's Department
University of Missouri
Northwest Missouri State University
University of Central Missouri
St. Charles Community College



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February 17, 2023



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