

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1675-02  
Bill No.: HCS for HB 1095  
Subject: Drugs and Controlled Substances; Crimes and Punishment; Attorneys; Courts  
Type: Original  
Date: April 12, 2019

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Bill Summary: This proposal modifies provisions relating to criminal offenses.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>				
<b>FUND AFFECTED</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>Fully Implemented (FY 2026)</b>
General Revenue	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0 to Unknown</b>	<b>\$0 to Unknown</b>	<b>\$0 to Unknown</b>	<b>\$0 to Unknown</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>				
<b>FUND AFFECTED</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>Fully Implemented (FY 2026)</b>
Office of Prosecution Services Fund (0680)	Could exceed \$497,963	Could exceed \$597,556	Could exceed \$597,556	Could exceed \$597,556
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>Could exceed \$497,963</b>	<b>Could exceed \$597,556</b>	<b>Could exceed \$597,556</b>	<b>Could exceed \$597,556</b>

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	Fully Implemented (FY 2026)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

☐ 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	Fully Implemented (FY 2026)
<b>Local Government</b>	<b>Less than \$497,963 to More than \$497,963</b>	<b>Less than \$597,556 to More than \$597,556</b>	<b>Less than \$597,556 to More than \$597,556</b>	<b>Less than \$597,556 to More than \$597,556</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### §§56.765, 557.014, 579.015, 579.020, 579.030, and 579.074 - Criminal offenses

Officials from the **Department of Corrections (DOC)** state section 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 Department of Corrections. The department'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 department 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 Suspended Imposition of Sentence (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 department is estimating that the prosecution diversion programs will increase the number of defendants with nonviolent offenses (excluding drug and DWI offenses) by 5%.

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 which will occur by FY2022. The reduction will not reduce the number of probation and parole staff.

Sections 579.015, 579.020, and 579.030 add to the controlled substance exemption list for the amount equivalent to 35 grams or less of cannabis concentrate from the penalties imposed by 579.015 and 579.020. This bill clarifies that, by weight, cannabis concentrate is not equivalent to leaf marijuana. Therefore a person with 35 grams of cannabis concentrate would not be exempt; the exemption is only for the equivalent amount. However, how much cannabis concentrate is too much to qualify for the exemptions in the proposed 579.015 and 579.020 is not spelled out. The enactment of this bill would result in some persons to be in violation of these statutes that might not have been considered before. The provision under the proposed 579.015.4 to use a prosecution diversion program is already provided for under drug courts and thus has no impact on DOC.

ASSUMPTION (continued)

In 2018, thirty people were incarcerated and 383 given probationary terms of cannabis-only violations. How many of these were related to cannabis concentrate is not able to be determined. This being said, currently in Missouri, many drug charges are being diverted to drug courts. Therefore, the changes to 579.015 and 579.020 are estimated to have no impact on DOC.

The proposed section 579.030 changes distance, time, and weight amounts of cannabis concentrate that generate a violation of distribution of a controlled substance in a protected location. In FY2018, seven persons were charged under 579.030, RSMo. No accessible data exist on distance, time, and weight of drug; therefore how these changes would affect the number of persons charged with this violation is unknown.

If this impact statement has changed from statements submitted in previous years, it is because the DOC has changed the way probation and parole daily costs are calculated to more accurately reflect the way the Division of Probation and Parole is staffed across the entire state.

In December 2017, the DOC reevaluated the calculation used for computing the Probation and Parole average daily cost of supervision and revised the cost calculation to be used for 2019 fiscal notes. The new calculation estimates the increase/decrease in caseloads at each Probation and Parole district due to the proposed legislative change. For the purposes of fiscal note calculations, the DOC averaged district caseloads across the state and came up with an average caseload of 51 offender cases per officer. The new calculation assumes that an increase/decrease of 51 cases in a district would result in a change in costs/cost avoidance equal to the cost of one FTE staff person in the district. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

In instances where the proposed legislation would only affect a specific caseload, such as sex offenders, the DOC will use the average caseload figure for that specific type of offender to calculate cost increases/decreases. For instances where the proposed legislation affects a less specific caseload, DOC projects the impact based on prior year(s) actual data. When projecting the impact in those circumstances, DOC uses actual caseload dispersion data to determine the caseload impact per district, and therefore project the number of officers needed.

The DOC cost of incarceration is \$17.224 per day or an annual cost of \$6,287 per offender. The DOC cost of probation or parole is determined by the number of P&P Officer II positions that would be needed to cover the new caseload.

ASSUMPTION (continued)

	Number to prison	Cost per year	Total Costs for <b>prison</b>	Number to/from probation & parole	Change in Probation /Parole Officers	Total cost for <b>probation and parole</b>	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	0	(\$6,287)	\$0	(86)	0	\$0	\$0
Year 2	0	(\$6,287)	\$0	(172)	0	\$0	\$0
Year 3	0	(\$6,287)	\$0	(257)	0	\$0	\$0
Year 4	0	(\$6,287)	\$0	(257)	0	\$0	\$0
Year 5	0	(\$6,287)	\$0	(257)	0	\$0	\$0
Year 6	0	(\$6,287)	\$0	(257)	0	\$0	\$0
Year 7	0	(\$6,287)	\$0	(257)	0	\$0	\$0
Year 8	0	(\$6,287)	\$0	(257)	0	\$0	\$0
Year 9	0	(\$6,287)	\$0	(257)	0	\$0	\$0
Year 10	0	(\$6,287)	\$0	(257)	0	\$0	\$0

**Oversight** does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC's \$0 to Unknown impact for fiscal note purposes.

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 also estimates 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 would pass in August 2019, the DOR only estimates ten out of twelve months would collect the surcharge at the five dollar rate in the first fiscal year, or \$461,434.67 in FY 2020.

ASSUMPTION (continued)

Officials from the **Missouri Office of Prosecution Services (MOPS)** state there will be a possible negative fiscal impact to MOPS and county prosecutors in developing and implementing new diversion programs, but that cost is difficult to determine. However, the proposed surcharge increase will minimize and offset that impact. This increase helps MOPS and prosecutors develop and implement diversion programs, which are needed as a critical part of criminal justice reform, as provided in the proposed new section 557.014, RSMo. Also, increasing the funding in section 56.765, RSMo, from \$1 to \$ 5 creates a positive fiscal impact for MOPS and 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 integrating that case management system with law enforcement and the courts. Additionally, the prosecutors' portion of the funding increase in section 56.765, RSMo, as discussed above, enables the development and implementation of new diversion 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

ASSUMPTION (continued)

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.

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.

Officials from the **Office of State Public Defender (SPD)** state although this bill may have no impact on the number of cases for which the Public Defender System is required to provide representation, the changes in the indicated procedures may impact the necessary workload to defend the indigent accused.

In response to a previous version, officials from the **St. Louis County Police Department** state this bill would require the St. Louis County Police Department to provide 30 minutes of training for 930 commissioned officers at an average cost of \$46.72 per hour per officer or approximately \$21,725 ( $\$46.72 * 0.50 * 930$ ).

**Oversight** notes the cost for the St. Louis County Police Department. Oversight is unable to project a statewide cost; therefore, the impact to local governments - police and sheriffs' departments will be presented as \$0 to (Unknown). Also, Oversight assumes police departments and sheriffs departments would realize some amount of savings in jail costs resulting from this proposal.

**Oversight** notes that the **Attorney General's Office, Department of Public Safety - Missouri State Highway Patrol, Joplin Police Department, Springfield Police Department, St. Louis County Department of Justice Services and City of Kansas City** have stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

In response to a similar proposal (SB 398), officials at the **City of Excelsior-Springs** assume 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 counties, cities and police and sheriffs' departments 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](http://www.legislativeoversight.mo.gov).

**FISCAL IMPACT -**  
**State Government**

FY 2020  
 (10 Mo.)

FY 2021

FY 2022

Fully  
 Implemented  
 (FY 2026)

**GENERAL  
 REVENUE FUND**

Savings - DOC  
 (§§557.014 and  
 579.030)

Reduction in the  
 number of persons  
 incarcerated or on  
 probation/parole

\$0 to Unknown

\$0 to Unknown

\$0 to Unknown

\$0 to Unknown

**ESTIMATED NET  
 EFFECT TO THE  
 GENERAL  
 REVENUE FUND**

\$0 to Unknown

\$0 to Unknown

\$0 to Unknown

\$0 to Unknown

**OFFICE OF  
 PROSECUTION  
 SERVICES FUND  
 (0680)**

Revenue - MOPS  
 (§56.765)

50% of additional  
 revenue from  
 increased court fees  
 from \$1 to \$5

Could exceed  
\$497,963

Could exceed  
\$597,556

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

Could exceed  
\$597,556



<u>FISCAL IMPACT -</u> <u>Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2026)
<b>POLICE AND SHERIFFS' DEPARTMENTS</b>				
<u>Savings -</u> Police/Sheriffs' Departments - prison costs (§§579.015, 579.020, 579.030)	Unknown	Unknown	Unknown	Unknown
<u>Costs -</u> Police/Sheriffs' Departments (§§579.015, 579.020, 579.030) Increased training costs	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
<b>ESTIMATED NET EFFECT ON POLICE AND SHERIFFS' DEPARTMENTS</b>	<u><u>Unknown to (Unknown)</u></u>	<u><u>Unknown to (Unknown)</u></u>	<u><u>Unknown to (Unknown)</u></u>	<u><u>Unknown to (Unknown)</u></u>
<b>LOCAL GOVERNMENTS - COUNTIES</b>				
<u>Revenue - Counties</u> (§56.765)				
50% of additional revenue from increased court fees from \$1 to \$5	<u>Could exceed \$497,963</u>	<u>Could exceed \$597,556</u>	<u>Could exceed \$597,556</u>	<u>Could exceed \$597,556</u>
<b>ESTIMATED NET EFFECT ON LOCAL GOVERNMENT - COUNTIES</b>	<u><u>Could exceed \$497,963</u></u>	<u><u>Could exceed \$597,556</u></u>	<u><u>Could exceed \$597,556</u></u>	<u><u>Could exceed \$597,556</u></u>

### FISCAL IMPACT - Small Business

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

### FISCAL DESCRIPTION

#### 56.765 and 557.014

This act authorizes prosecuting attorneys to divert criminal cases to a prosecution diversion program.

This act increases a criminal case surcharge from one dollar to five dollars which is assessed equally for prosecutor services and prosecutor training.

Under this act, 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 utilizing a prosecution diversion programs outweighs 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 act, yet no such extension shall be for a period exceeding two years.

Any prosecuting attorney, prior to or upon issuance of an arrest warrant or information of indictment, 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 act details the minimum requirements that a diversion program must meet. 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 of 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 prosecution diversion 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.

FISCAL DESCRIPTION (continued)

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 prosecution diversion program may have legal counsel present at all phases the diversion proceedings, but nothing in this act shall create a right to counsel. Criminal proceedings may be re-initiated at time by a prosecuting attorney for cases that have been diverted to a prosecution diversion program.

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 act. Any person supervising or employing an accused or defendant under a prosecution diversion program shall report any violation of the terms of the prosecution diversion program to the prosecuting attorney.

Finally, this act 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.

579.015, 579.020, and 579.030

Currently, the offense of possession of a controlled substance except 35 grams or less of marijuana or any synthetic cannabinoid is a class D felony. This bill includes an amount equivalent to 35 grams or less of marijuana concentrate. The offense of possession of 10 grams or less of marijuana is currently a D misdemeanor. This bill specifies that the offense of possession of 35 grams or less of marijuana or any synthetic cannabinoid or an amount equivalent to 35 grams or less of marijuana concentrate is a class D misdemeanor.

Any prosecuting attorney upon agreement with an accused or a defendant, may divert an offense involving 100 grams or less of marijuana, any synthetic cannabinoid, or an amount equivalent to 100 grams or less of marijuana concentrate to a prosecution diversion program.

Currently, the offense of delivery of a controlled substance except 35 grams or less of marijuana is a class C felony. This bill includes an amount equivalent to 35 grams or less of marijuana concentrate. The offense of delivery of 35 grams or less of marijuana is a class E felony. This bill includes an amount equivalent to 35 grams or less of marijuana concentrate.

FISCAL DESCRIPTION (continued)

Currently, the offense of delivery of 35 grams or less of marijuana to a person under 17 who is at least two years younger than the defendant is a class C felony. This bill includes an amount equivalent to 35 grams or less of marijuana concentrate.

Currently, 35 grams or less of marijuana is excepted from the offense of distribution of a controlled substance in a protected location. This bill includes an amount equivalent to 35 grams or less of marijuana concentrate. The offense is committed if the distribution, delivery, or sale is committed within 2,000 feet of certain places, and this bill reduces the distance to 1,000 feet. Additionally, the distribution, delivery, or sale must take place between the hours of 6 AM and 10 PM.

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 State Highway Patrol  
Missouri Office of Prosecution Services  
Office of State Courts Administrator  
State Public Defender's Office  
City of Kansas City  
Joplin Police Department  
Springfield Police Department  
St. Louis County Department of Justice Services  
St. Louis County Police Department



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