

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1997-01
Bill No.: SB 398
Subject: Crimes and Punishment; County Officials; Courts
Type: Original
Date: March 22, 2019

Bill Summary: This proposal authorizes prosecuting attorneys to divert criminal cases to a prosecution diversion program.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
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

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 9 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

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 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.

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.

Officials at the **Department of Corrections (DOC)** assume the proposed legislation 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				Total	Diversion/
		SIS	SES	120-day	Prison		SIS Prob. 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)

Officials at the **Office of the State Public Defender** assume no fiscal impact from this proposal.

Oversight notes that the Department of Corrections, the Office of the State Courts Administrator, and the Office of the State Public Defender each has stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

Officials at the Office of the Attorney General did not respond to **Oversight's** request for fiscal impact.

Officials at the **City of Kansas City** assume no fiscal impact from this proposal.

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 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.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
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**OFFICE OF PROSECUTION
SERVICES FUND**

<u>Revenue</u> - 50% of additional revenue from increased court fees from \$1 to \$5 per Section 56.765	Could exceed <u>\$497,963</u>	Could exceed <u>\$597,556</u>	Could exceed <u>\$597,556</u>
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**ESTIMATED NET EFFECT ON
OFFICE OF PROSECUTION
SERVICES**

Could exceed <u>\$497,963</u>	Could exceed <u>\$597,556</u>	Could exceed <u>\$597,556</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
LOCAL POLITICAL SUBDIVISIONS			
<u>Revenue</u> - 50% of additional revenue from increased court fees from \$1 to \$5 per Section 56.765	Could exceed <u>\$497,963</u>	Could exceed <u>\$597,556</u>	Could exceed <u>\$597,556</u>
ESTIMATED NET EFFECT ON 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

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

FISCAL DESCRIPTION (continued)

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.

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.

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 Revenue
Office of Prosecution Services
Department of Corrections
Office of the State Courts Administrator
Office of the State Public Defender
City of Kansas City
City of Excelsior-Springs

NOT RESPONDING

Office of Attorney General



Kyle Rieman
Director
March 22, 2019

Ross Strobe
Assistant Director
March 22, 2019