

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 547
100TH GENERAL ASSEMBLY

1004S.03T

2019

AN ACT

To repeal sections 56.765, 478.001, and 650.058, RSMo, and to enact in lieu thereof four new sections relating to alternative methods for the disposal of cases in the judicial system.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 56.765, 478.001, and 650.058, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 56.765, 478.001, 557.014, and 650.058, to read as follows:

56.765. 1. A surcharge of [~~one dollar~~] **five dollars** shall be assessed as costs in each court proceeding filed in any court in the state in all criminal cases including violations of any county ordinance or any violation of a criminal or traffic law of the state, including an infraction; except that no such surcharge shall be collected in any proceeding in any court when the proceeding or the defendant has been dismissed by the court or when costs are to be paid by the state, county or municipality.

2. One-half of all moneys collected under the provisions of subsection 1 of this section shall be payable to the state of Missouri and remitted to the director of revenue who shall deposit the amount collected pursuant to this section to the credit of the "Missouri Office of Prosecution Services Fund" which is hereby created in the state treasury. The moneys credited to the Missouri office of prosecution services fund from each county shall be used only for the purposes set forth in sections 56.750, 56.755, and 56.760. The state treasurer shall be the custodian of the fund, and shall make disbursements, as allowed by lawful appropriations. All earnings resulting

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 from the investment of money in the fund shall be credited to the Missouri office of prosecution
15 services fund. The Missouri office of prosecution services may collect a registration fee to pay
16 for expenses included in sponsoring training conferences. The revenues and expenditures of the
17 Missouri office of prosecution services shall be subject to an annual audit to be performed by the
18 Missouri state auditor. The Missouri office of prosecution services shall also be subject to any
19 other audit authorized and directed by the state auditor.

20 3. One-half of all moneys collected under the provisions of subsection 1 of this section
21 shall be payable to the county treasurer of each county from which such funds were generated.
22 The county treasurer shall deposit all of such funds into the county treasury in a separate fund
23 to be used solely for the purpose of additional training for circuit and prosecuting attorneys and
24 their staffs. If the funds collected and deposited by the county are not totally expended annually
25 for the purposes set forth in this subsection, then the unexpended moneys shall remain in said
26 fund and the balance shall be kept in said fund to accumulate from year to year, or at the request
27 of the circuit or prosecuting attorney, with the approval of the county commission or the
28 appropriate governing body of the county or the City of St. Louis, and may be used to pay for
29 expert witness fees, travel expenses incurred by victim/witnesses in case preparation and trial,
30 for expenses incurred for changes of venue, for expenses incurred for special prosecutors, and
31 for other lawful expenses incurred by the circuit or prosecuting attorney in operation of that
32 office.

33 4. There is hereby established in the state treasury the "Missouri Office of Prosecution
34 Services Revolving Fund". Any moneys received by or on behalf of the Missouri office of
35 prosecution services from registration fees, federal and state grants or any other source
36 established in section 56.760 in connection with the purposes set forth in sections 56.750,
37 56.755, and 56.760 shall be deposited into the fund.

38 5. The moneys in the Missouri office of prosecution services revolving fund shall be kept
39 separate and apart from all other moneys in the state treasury. The state treasurer shall
40 administer the fund and shall disburse moneys from the fund to the Missouri office of
41 prosecution services pursuant to appropriations for the purposes set forth in sections 56.750,
42 56.755 and 56.760.

43 6. Any unexpended balances remaining in the Missouri office of prosecution services
44 fund and the Missouri office of prosecution services revolving fund at each biennium shall be
45 exempt from the provisions of section 33.080 relating to the transfer of unexpended balances to
46 general revenue.

478.001. 1. For purposes of sections 478.001 to 478.009, the following terms shall
2 mean:

- 3 (1) "Adult treatment court", a treatment court focused on addressing the substance use
4 disorder or co-occurring disorder of defendants charged with a criminal offense;
- 5 (2) "Community-based substance use disorder treatment program", an agency certified
6 by the department of mental health as a substance use disorder treatment provider;
- 7 (3) "Co-occurring disorder", the coexistence of both a substance use disorder and a
8 mental health disorder;
- 9 (4) "DWI court", a treatment court focused on addressing the substance use disorder or
10 co-occurring disorder of defendants who have pleaded guilty to or been found guilty of driving
11 while intoxicated or driving with excessive blood alcohol content;
- 12 (5) "Family treatment court", a treatment court focused on addressing a substance use
13 disorder or co-occurring disorder existing in families in the juvenile court, family court, or
14 criminal court in which a parent or other household member has been determined to have a
15 substance use disorder or co-occurring disorder that impacts the safety and well-being of the
16 children in the family;
- 17 (6) "Juvenile treatment court", a treatment court focused on addressing the substance use
18 disorder or co-occurring disorder of juveniles in the juvenile court;
- 19 (7) "Medication-assisted treatment", the use of pharmacological medications, in
20 combination with counseling and behavioral therapies, to provide a whole-patient approach to
21 the treatment of substance use disorders;
- 22 (8) "Mental health disorder", any organic, mental, or emotional impairment that has
23 substantial adverse effects on a person's cognitive, volitional, or emotional function and that
24 constitutes a substantial impairment in a person's ability to participate in activities of normal
25 living;
- 26 (9) "Risk and needs assessment", an actuarial tool, approved by the treatment courts
27 coordinating commission and validated on a targeted population of drug-involved adult
28 offenders, scientifically proven to determine a person's risk to recidivate and to identify criminal
29 risk factors that, when properly addressed, can reduce that person's likelihood of committing
30 future criminal behavior;
- 31 (10) "Substance use disorder", the recurrent use of alcohol or drugs that causes clinically
32 significant impairment, including health problems, disability, and failure to meet major
33 responsibilities at work, school, or home;
- 34 (11) "Treatment court commissioner", a person appointed by a majority of the circuit and
35 associate circuit judges in a circuit to preside as the judicial officer in the treatment court
36 division;
- 37 (12) "Treatment court division", a specialized, nonadversarial court division with
38 jurisdiction over cases involving substance-involved offenders and making extensive use of

39 comprehensive supervision, drug or alcohol testing, and treatment services. Treatment court
40 divisions include, but are not limited to, the following specialized courts: adult treatment court,
41 DWI court, family treatment court, juvenile treatment court, veterans treatment court, or any
42 combination thereof;

43 (13) "Treatment court team", the following members who are assigned to the treatment
44 court: the judge or treatment court commissioner, treatment court administrator or coordinator,
45 prosecutor, public defender or member of the criminal defense bar, a representative from the
46 division of probation and parole, a representative from law enforcement, substance use disorder
47 treatment providers, and any other person selected by the treatment court team;

48 (14) "Veterans treatment court", a treatment court focused on substance use disorders,
49 co-occurring disorders, or mental health disorders of defendants charged with a criminal offense
50 who are military veterans or current military personnel.

51 2. A treatment court division [~~may~~] **shall** be established, **prior to August 28, 2021**, by
52 any circuit court pursuant to sections 478.001 to 478.009 to provide an alternative for the judicial
53 system to dispose of cases which stem from, or are otherwise impacted by, substance use. The
54 treatment court division may include, but not be limited to, cases assigned to an adult treatment
55 court, DWI court, family treatment court, juvenile treatment court, veterans treatment court, or
56 any combination thereof. A treatment court shall combine judicial supervision, drug or alcohol
57 testing, and treatment of participants. Except for good cause found by the court, a treatment
58 court making a referral for substance use disorder treatment, when such program will receive
59 state or federal funds in connection with such referral, shall refer the person only to a program
60 which is certified by the department of mental health, unless no appropriate certified treatment
61 program is located within the same county as the treatment court. Upon successful completion
62 of the treatment court program, the charges, petition, or penalty against a treatment court
63 participant may be dismissed, reduced, or modified, unless otherwise stated. Any fees received
64 by a court from a defendant as payment for substance treatment programs shall not be considered
65 court costs, charges or fines.

66 3. An adult treatment court may be established by any circuit court under sections
67 478.001 to 478.009 to provide an alternative for the judicial system to dispose of cases which
68 stem from substance use.

69 4. Under sections 478.001 to 478.009, a DWI court may be established by any circuit
70 court to provide an alternative for the judicial system to dispose of cases that stem from driving
71 while intoxicated.

72 5. A family treatment court may be established by any circuit court. The juvenile
73 division of the circuit court or the family court, if one is established under section 487.010, may
74 refer one or more parents or other household members subject to its jurisdiction to the family

75 treatment court if he or she has been determined to have a substance use disorder or co-occurring
76 disorder that impacts the safety and well-being of the children in the family.

77 6. A juvenile treatment court may be established by the juvenile division of any circuit
78 court. The juvenile division may refer a juvenile to the juvenile treatment court if the juvenile
79 is determined to have committed acts that violate the criminal laws of the state or ordinances of
80 a municipality or county and a substance use disorder or co-occurring disorder contributed to the
81 commission of the offense.

82 7. **The general assembly finds and declares that it is the public policy of this state**
83 **to encourage and provide an alternative method for the disposal of cases for military**
84 **veterans and current military personnel with substance use disorders, mental health**
85 **disorders, or co-occurring disorders. In order to effectuate this public policy,** a veterans
86 treatment court may be established by any circuit court, or combination of circuit courts upon
87 agreement of the presiding judges of such circuit courts, to provide an alternative for the judicial
88 system to dispose of cases that stem from a substance use disorder, mental health disorder, or
89 co-occurring disorder of military veterans or current military personnel. A veterans treatment
90 court shall combine judicial supervision, drug or alcohol testing, and substance use and mental
91 health disorder treatment to participants who have served or are currently serving the United
92 States Armed Forces, including members of the Reserves or National Guard, **with preference**
93 **given to individuals who have combat service. For the purposes of this section, combat**
94 **service shall be shown through military service documentation that reflects service in a**
95 **combat theater, receipt of combat service medals, or receipt of imminent danger or hostile**
96 **fire pay or tax benefits.** Except for good cause found by the court, a veterans treatment court
97 shall make a referral for substance use or mental health disorder treatment, or a combination of
98 substance use and mental health disorder treatment, through the Department of Defense health
99 care, the Veterans Administration, or a community-based substance use disorder treatment
100 program. Community-based programs utilized shall receive state or federal funds in connection
101 with such referral and shall only refer the individual to a program certified by the department of
102 mental health, unless no appropriate certified treatment program is located within the same
103 circuit as the veterans treatment court.

557.014. 1. As used in this section, the following terms shall mean:

2 **(1) "Accusatory instrument", a warrant of arrest, information, or indictment;**

3 **(2) "Accused", an individual accused of a criminal offense, but not yet charged**
4 **with a criminal offense;**

5 **(3) "Defendant", any person charged with a criminal offense;**

6 **(4) "Deferred prosecution", the suspension of a criminal case for a specified period**
7 **upon the request of both the prosecuting attorney and the accused or the defendant;**

8 (5) "Diversionary screening", the discretionary power of the prosecuting attorney
9 to suspend all formal prosecutorial proceedings against a person who has become involved
10 in the criminal justice system as an accused or defendant;

11 (6) "Prosecution diversion", the imposition of conditions of behavior and conduct
12 by the prosecuting attorney upon an accused or defendant for a specified period of time
13 as an alternative to proceeding to adjudication on a complaint, information, or indictment;

14 (7) "Prosecuting attorney", includes the prosecuting attorney or circuit attorney
15 for each county of the state and the city of St. Louis.

16 2. Each prosecuting attorney in the state of Missouri shall have the authority to,
17 upon agreement with an accused or a defendant, divert a criminal case to a prosecution
18 diversion program for a period of six months to two years, thus allowing for any statute
19 of limitations to be tolled for that time alone. The period of diversion may be extended by
20 the prosecuting attorney as a disciplinary measure or to allow sufficient time for
21 completion of any portion of the prosecution diversion including restitution; provided,
22 however, that no extension of such diversion shall be for a period of more than two years.

23 3. The prosecuting attorney may divert cases, under this program, out of the
24 criminal justice system where the prosecuting attorney determines that the advantages of
25 utilizing prosecution diversion outweigh the advantages of immediate court activity.

26 4. Prior to or upon the issuance of an accusatory instrument, with consent of the
27 accused or defendant, other than for an offense enumerated in this section, the prosecuting
28 attorney may forego continued prosecution upon the parties' agreement to a prosecution
29 diversion plan. The prosecution diversion plan shall be for a specified period and be in
30 writing. The prosecuting attorney has the sole authority to develop diversionary program
31 requirements, but minimum requirements are as follows:

32 (1) The alleged crime is nonviolent, nonsexual, and does not involve a child victim
33 or possession of an unlawful weapon;

34 (2) The accused or defendant must submit to all program requirements;

35 (3) Any newly discovered criminal behavior while in a prosecution diversion
36 program will immediately forfeit his or her right to continued participation in said
37 program at the sole discretion of the prosecuting attorney;

38 (4) The alleged crime does not also constitute a violation of a current condition of
39 probation or parole;

40 (5) The alleged crime is not a traffic offense in which the accused or defendant was
41 a holder of a commercial driver license or was operating a commercial motor vehicle at the
42 time of the offense; and

43 (6) Any other criteria established by the prosecuting attorney.

44 **5. During any period of prosecution diversion, the prosecuting attorney may impose**
45 **conditions upon the behavior and conduct of the accused or defendant that assures the**
46 **safety and well-being of the community as well as that of the accused or defendant. The**
47 **conditions imposed by the prosecuting attorney shall include, but are not limited to,**
48 **requiring the accused or defendant to remain free of any criminal behavior during the**
49 **entire period of prosecution diversion.**

50 **6. The responsibility and authority to screen or divert specific cases, or to refuse**
51 **to screen or divert specific cases, shall rest within the sole judgment and discretion of the**
52 **prosecuting attorney as part of their official duties as prosecuting attorney. The decision**
53 **of the prosecuting attorney regarding diversion shall not be subject to appeal nor be raised**
54 **as a defense in any prosecution of a criminal case involving the accused or defendant.**

55 **7. Any person participating in the program:**

56 **(1) Shall have the right to insist on criminal prosecution for the offense for which**
57 **he or she is accused at any time; and**

58 **(2) May have counsel of the person's choosing present during all phases of the**
59 **prosecution diversion proceedings, but counsel is not required and no right to appointment**
60 **of counsel is hereby created.**

61 **8. In conducting the program, the prosecuting attorney may require at any point**
62 **the reinitiation of criminal proceedings when, in his or her judgment, such is warranted.**

63 **9. Any county, city, person, organization, or agency, or employee or agent thereof,**
64 **involved with the supervision of activities, programs, or community service that are a part**
65 **of a prosecution diversion program, shall be immune from any suit by the person**
66 **performing the work under the deferred prosecution agreement, or any person deriving**
67 **a cause of action from such person, except for an intentional tort or gross negligence.**
68 **Persons performing work or community service pursuant to a deferred prosecution**
69 **agreement as described shall not be deemed to be engaged in employment within the**
70 **meaning of the provisions of chapter 288. A person performing work or community**
71 **service pursuant to a deferred prosecution agreement shall not be deemed an employee**
72 **within the meaning of the provisions of chapter 287.**

73 **10. Any person supervising or employing an accused or defendant under the**
74 **program shall report to the prosecuting attorney any violation of the terms of the**
75 **prosecution diversion program.**

76 **11. After completion of the program and any conditions imposed upon the accused**
77 **or defendant, to the satisfaction of the prosecuting attorney, the individual shall be entitled**
78 **to a dismissal or alternative disposition of charges against them. Such disposition may, in**
79 **the discretion of the prosecuting attorney, be without prejudice to the state of Missouri for**

80 **the reinstatement of criminal proceedings, within the statute of limitations, upon any**
81 **subsequent criminal activity on the part of the accused. Any other provision of law**
82 **notwithstanding, such individual shall be required to pay any associated costs prior to**
83 **dismissal of pending charges.**

650.058. 1. Notwithstanding the sovereign immunity of the state, any individual who
2 was found guilty of a felony in a Missouri court and was later determined to be actually innocent
3 of such crime solely as a result of DNA profiling analysis may be paid restitution. The
4 individual may receive an amount of [~~fifty~~] **one hundred** dollars per day for each day of
5 postconviction incarceration for the crime for which the individual is determined to be actually
6 innocent. The petition for the payment of said restitution shall be filed with the sentencing court.
7 For the purposes of this section, the term "actually innocent" shall mean:

8 (1) The individual was convicted of a felony for which a final order of release was
9 entered by the court;

10 (2) All appeals of the order of release have been exhausted;

11 (3) The individual was not serving any term of a sentence for any other crime
12 concurrently with the sentence for which he or she is determined to be actually innocent, unless
13 such individual was serving another concurrent sentence because his or her parole was revoked
14 by a court or the board of probation and parole in connection with the crime for which the person
15 has been exonerated. Regardless of whether any other basis may exist for the revocation of the
16 person's probation or parole at the time of conviction for the crime for which the person is later
17 determined to be actually innocent, when the court's or the board of probation and parole's sole
18 stated reason for the revocation in its order is the conviction for the crime for which the person
19 is later determined to be actually innocent, such order shall, for purposes of this section only, be
20 conclusive evidence that their probation or parole was revoked in connection with the crime for
21 which the person has been exonerated; and

22 (4) Testing ordered under section 547.035, or testing by the order of any state or federal
23 court, if such person was exonerated on or before August 28, 2004, or testing ordered under
24 section 650.055, if such person was or is exonerated after August 28, 2004, demonstrates a
25 person's innocence of the crime for which the person is in custody.

26

27 Any individual who receives restitution under this section shall be prohibited from seeking any
28 civil redress from the state, its departments and agencies, or any employee thereof, or any
29 political subdivision or its employees. This section shall not be construed as a waiver of
30 sovereign immunity for any purposes other than the restitution provided for herein. The
31 department of corrections shall determine the aggregate amount of restitution owed during a
32 fiscal year. If insufficient moneys are appropriated each fiscal year to pay restitution to such

33 persons, the department shall pay each individual who has received an order awarding restitution
34 a pro rata share of the amount appropriated. Provided sufficient moneys are appropriated to the
35 department, the amounts owed to such individual shall be paid on June thirtieth of each
36 subsequent fiscal year, until such time as the restitution to the individual has been paid in full.
37 However, no individual awarded restitution under this subsection shall receive more than
38 thirty-six thousand five hundred dollars during each fiscal year. No interest on unpaid restitution
39 shall be awarded to the individual. No individual who has been determined by the court to be
40 actually innocent shall be responsible for the costs of care under section 217.831.

41 2. If the results of the DNA testing confirm the person's guilt, then the person filing for
42 DNA testing under section 547.035, shall:

43 (1) Be liable for any reasonable costs incurred when conducting the DNA test, including
44 but not limited to the cost of the test. Such costs shall be determined by the court and shall be
45 included in the findings of fact and conclusions of law made by the court; and

46 (2) Be sanctioned under the provisions of section 217.262.

47 3. A petition for payment of restitution under this section may only be filed by the
48 individual determined to be actually innocent or the individual's legal guardian. No claim or
49 petition for restitution under this section may be filed by the individual's heirs or assigns. An
50 individual's right to receive restitution under this section is not assignable or otherwise
51 transferrable. The state's obligation to pay restitution under this section shall cease upon the
52 individual's death. Any beneficiary designation that purports to bequeath, assign, or otherwise
53 convey the right to receive such restitution shall be void and unenforceable.

54 4. An individual who is determined to be actually innocent of a crime under this chapter
55 shall automatically be granted an order of expungement from the court in which he or she pled
56 guilty or was sentenced to expunge from all official records all recordations of his or her arrest,
57 plea, trial or conviction. Upon granting of the order of expungement, the records and files
58 maintained in any administrative or court proceeding in an associate or circuit division of the
59 court shall be confidential and only available to the parties or by order of the court for good cause
60 shown. The effect of such order shall be to restore such person to the status he or she occupied
61 prior to such arrest, plea or conviction and as if such event had never taken place. No person as
62 to whom such order has been entered shall be held thereafter under any provision of any law to
63 be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite
64 or acknowledge such arrest, plea, trial, conviction or expungement in response to any inquiry
65 made of him or her for any purpose whatsoever and no such inquiry shall be made for
66 information relating to an expungement under this section.

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