

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5095-01
Bill No.: HB 2361
Subject: Civil Rights; Prisons and Jails; Crimes and Punishment; Courts
Type: Original
Date: March 3, 2020

Bill Summary: This proposal creates a civil cause of action allowing claimants to seek damages from the state for wrongful conviction.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
State Legal Expense (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)

* Revenue and expenditures net to zero.

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
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 2021	FY 2022	FY 2023
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§105.711, 506.400, 506.403 - Wrongful conviction

Officials from the **Attorney General's Office (AGO)** state §506.400 would have a negative fiscal impact on the Legal Expense Fund of \$0 to Unknown.

Officials from the **Office of Administration - General Services (OA/GS)** state that moneys in the legal expense fund under §105.711.3 shall be available for payment of claims under 506.400 (proposed wrongful incarceration section). Moneys in the legal expense fund are already used for claims against the state for wrongful incarceration, therefore, it does not appear that this provision would have an impact on the LEF. However, this would be subject to judicial interpretation.

Additionally, §506.400 adds requirements for filing wrongful incarceration claims against the state and limits damages that can be awarded for successful claims. This limitation of damages under 506.400.5 could reduce the amount paid for damages under the LEF. However, the actual reduction is unknown, because it would depend on the facts of each case and the number of judgments against the State for which damages under this section were ordered.

The amount of the potential savings resulting from this legislation cannot be reasonably estimated as this language appears to create a new legal standard, subject to judicial interpretation. In addition, the number of potential claims, the severity of those claims, and the ultimate costs associated with any judgment resulting from those claims cannot be forecasted with any degree of assurance to their accuracy.

The state self-assumes its own liability under the state Legal Expense Fund, 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 when there is a waiver 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.

Oversight does not have any information contrary to that provided by OA/GS. Therefore, Oversight will reflect OA/GS's potential unknown impact for fiscal note purposes to the State Legal Expense Fund.

ASSUMPTION (continued)

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 postrelease supervision or each year the claimant was required to register as a sexual offender, whichever is greater. However, 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 **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 we 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 pay outs. Therefore, Oversight will reflect DOC's Unknown impact for fiscal note purposes.

Officials from the **Department of Higher Education and Workplace Development (DHEWD)** state HB 2361 would require individuals who have been wrongfully convicted to bring a civil action to access tuition and fee waivers from a public institution of higher education.

Based upon information received from the Department of Corrections (DOC), there is a very limited number of people that would be eligible to bring this civil action.

Currently, DOC pays restitution for 2 individuals who were found actually innocent due to DNA analysis only. DOC does not pay restitution for any other type of wrongful conviction. In the past DOC paid restitution for up to 7 individuals found actually innocent due to DNA analysis. Next year, DOC will be down to paying only one person, unless another person or persons are added to the load.

Based upon the highest tuition and fees available at the University of Missouri System, DHEWD estimates this cost for one individual per year would range from \$0 to \$15,000. This includes \$12,094 in tuition, indirect costs of \$1,260 for books/supplies and programmatic fees. Programmatic course fees vary based upon degree program.

ASSUMPTION (continued)

Oversight notes DHEWD's fiscal impact of \$0 to \$15,000 per individual. However, §506.403 states DHEWD may make expenditures to reimburse individuals awarded tuition assistance for **additional fees** including, but not limited to, fees for room and board, technical equipment, and course-required books which is estimated by DHEWD at \$1,260 per student. Oversight assumes DHEWD is provided with core funding to handle a certain amount of activity each year. Oversight assumes DHEWD could absorb the costs related to this proposal since the number of individuals that would be eligible to bring this civil action is very limited.

Officials from **Missouri State University (MSU)** state HB 2361 has a potential fiscal impact of an undetermined amount.

Officials from the **University of Missouri (MU)** state this bill could result in lost revenue to MU of an undetermined amount due to the unknown number of potential students. We know with current pricing, the average full-price and required fees per student for MU's four universities is \$10,667 per academic year.

Oversight notes any individual who receives a monetary judgment shall be entitled to receive a tuition waiver for attendance at a higher education institution for up to 120 credit hours. Oversight notes the unknown impact to MSU and MU. 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.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS.

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

Oversight notes the **Department of Public Safety - Missouri State Highway Patrol** has stated the proposal would not have a direct fiscal impact on their organization. The MHP states HB 2361 may significantly increase the amount expended from the State Legal Expense Fund.

Oversight notes the **Department of Revenue**, the **Department of Transportation**, and the **State Public Defender's Office** have each stated the proposal would not have a direct fiscal impact on their respective organizations. Oversight does not have any information to the contrary.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
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GENERAL REVENUE FUND

<u>Savings</u> - DOC (repeal of §650.058) Litigation pay outs	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
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<u>Costs</u> - Tuition Assistance §506.403.2	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
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<u>Transfer Out</u> - To Legal Expense Fund §506.400	<u>\$0 to</u> (Unknown)	<u>\$0 to</u> (Unknown)	<u>\$0 to</u> (Unknown)
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ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>
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**STATE LEGAL EXPENSE FUND
(0692)**

<u>Transfer In</u> - From General Revenue	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
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<u>Cost</u> - Payments to litigants §506.400	<u>\$0 to</u> (Unknown)	<u>\$0 to</u> (Unknown)	<u>\$0 to</u> (Unknown)
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ESTIMATED NET EFFECT ON THE STATE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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COLLEGES AND UNIVERSITIES

<u>Cost</u> - Tuition waivers §506.403.1	<u>\$0 to</u> (Unknown)	<u>\$0 to</u> (Unknown)	<u>\$0 to</u> (Unknown)
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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>
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FISCAL IMPACT - Local Government

FY 2021
(10 Mo.)

FY 2022

FY 2023

\$0

\$0

\$0

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

Currently, a person who was wrongfully convicted and subsequently exonerated through DNA evidence may receive restitution for every day the person was incarcerated for the wrongful conviction. However, the person has no civil cause of action. This bill repeals the language regarding restitution and provides a civil cause of action for any person who was incarcerated for a wrongful conviction, regardless of how that person was subsequently exonerated.

Money in the State Legal Expense Fund must be available for the payment of any claim or amount required by any final judgment rendered by a court of competent jurisdiction for the purposes of paying judgments arising from claims for wrongful convictions.

Damages for such claims will be \$179 per day for every day of wrongful incarceration, up to \$65,000 per fiscal year, as well as at least \$25,000 for each additional year served on parole or postrelease supervision or each year the person was required to register as a sexual offender. A person will not receive compensation for any period of incarceration, served concurrently, for a conviction for a different offense for which he or she was lawfully incarcerated. The bill also specifies how payments will be made to a claimant. A person who receives a monetary judgment as specified in this bill shall also receive a certificate of innocence and, upon entry of a certificate of innocence, the court must order the expungement and destruction of the associated biological samples authorized by and given to the State Highway Patrol.

A person who receives a monetary judgment as specified in the bill will also be entitled to receive a tuition waiver for attendance at an institution of higher education for up to 120 credit hours. The Department of Higher Education may make expenditures to reimburse individuals awarded tuition assistance for additional fees. To remain eligible for the tuition and fees waiver as specified in this section, a person must remain in good standing at the public institution of higher education where the individual is enrolled.

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 Higher Education and Workplace Development
Department of Public Safety - Missouri State Highway Patrol
Missouri Office of Prosecution Services
Office of Administration
Office of State Courts Administrator
Department of Transportation
State Public Defender's Office
Missouri State University
University of Missouri



Julie Morff
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March 3, 2020



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