

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3637H.03C
 Bill No.: HCS for HB 1763
 Subject: Attorneys; Governor and Lt. Governor; General Assembly; Attorney General
 Type: Original
 Date: April 9, 2024

Bill Summary: This proposal establishes and modifies provisions relating to prosecuting and circuit attorneys.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
General Revenue	\$0 or Could Exceed (\$1,750,000)	\$0 or Could Exceed (\$3,500,000)	\$0 or Could Exceed (\$3,500,000)
Total Estimated Net Effect on General Revenue	\$0 or Could Exceed (\$1,750,000)	\$0 or Could Exceed (\$3,500,000)	\$0 or Could Exceed (\$3,500,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Total Estimated Net Effect on <u>Other State Funds</u>	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Total Estimated Net Effect on FTE	0	0	0

- 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 2025	FY 2026	FY 2027
Local Government	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Missouri Office of Prosecution Services (MOPS)** state there will be negative fiscal impact to MOPS. Section 56.602 creation Prosecuting and Circuit Attorney Review Committee will result in additional expenses to MOPS. It is assumed that members of the Review Committee would be paid the state meal per diem and mileage reimbursement rates for days they actually meet , but no other salary or expense. The actual fiscal impact of paying the meal per diem and mileage expenses is not able to be determined at present. Once the Review Committee is established and has functioned for a time, a request may be needed for an additional General Revenue appropriation to cover those new expenses.

MOPS also noted they have a statewide case system already in place (KARPEL) that can fulfil the reporting requirements outlined in the bill, if it is used correctly by the local political subdivisions.

Oversight will reflect a \$0 or (Unknown) amount of costs of the new Prosecuting and Circuit Attorney Review Committee, depending on the frequency and circumstances of their meetings.

Oversight notes in response to a bill from 2023 (Section 56.601 from HCS for HB 301 – 0695.02) in which the proposal allowed the Governor to appoint a special prosecutor and hire up to 15 assistant special prosecuting attorneys and up to 15 staff members, the AGO assumed a total cost of approximately \$3,500,000 for the 31 FTE (1 + 15 + 15) - itemized as follows:

Personal Service (31 FTE)	\$1,943,100
Fringe Benefits	\$1,194,494
Equipment (one time)	\$ 149,947
Other Expenses	<u>\$ 305,070</u>
TOTAL	\$3,592,611

Oversight will assume a special prosecuting attorney’s office, as described in Section 56.602.5-7 would not be state employees, but would be local officials funded by a state General Revenue Fund appropriation. Also, Oversight will assume the Governor may not appoint a special prosecutor; therefore, Oversight will reflect the cost as \$0 or \$3,500,000 to the General Revenue Fund. Oversight will reflect six months of potential impact for FY 2025. Oversight will also assume only one special prosecutor would be appointed by the Governor.

Officials from the **Office of the State Courts Administrator** 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.

Officials from the **Office of the Governor** state this bill adds to the Governor's current load of appointment duties. Individually, additional requirements should not fiscally impact the Office of the Governor. However, the cumulative impact of additional appointment duties across all enacted legislation may require additional resources for the Office of the Governor.

Officials from the **Department of Public Safety – Office of the Director**, the **Missouri Highway Patrol**, the **Phelps County Sheriff's Department**, the **Kansas City Police Department** and the **St. Louis County Police Department** each assume the proposal would not create a fiscal impact to their respective departments.

Oversight notes that the above mentioned agencies have 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.

Officials from the **Branson Police Department** state the first change in this appears to indicate that there will be a new system in place by 2027. If that's correct, there could be big implications in trying to get the existing systems in each agency to communicate with this new system.

Through correspondence with MOPS, **Oversight** assumes the statewide case system is already in place and would not create an additional fiscal impact to local political subdivisions.

Oversight received a limited number of responses from county prosecutors, sheriffs and police departments related to the fiscal impact of this proposal. Oversight has presented this fiscal note on the best current information available. Upon the receipt of additional responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval to publish a new fiscal note.

Officials from the Attorney General's Office have not responded to our request for fiscal impact.

<u>FISCAL IMPACT – State Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
GENERAL REVENUE			
<u>Costs</u> – §56.602 – MOPS – administrative expenses of the Prosecuting and Circuit Attorney Review Committee	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Costs</u> – Special Prosecutor (§56.602.5-7) costs – assumed to be a local cost reimbursed by state General Revenue for up to 31 FTE	\$0 or Could Exceed (\$1,750,000)	\$0 or Could Exceed (\$3,500,000)	\$0 or Could Exceed (\$3,500,000)
ESTIAMTED NET EFFECT TO THE GENERAL REVENUE FUND	\$0 or Could Exceed (\$1,750,000)	\$0 or Could Exceed (\$3,500,000)	\$0 or Could Exceed (\$3,500,000)

<u>FISCAL IMPACT – Local Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
LOCAL POLITICAL SUBDIVISIONS			
<u>Savings</u> – potential savings – 10% of prosecuting attorneys’ salary could be withheld IF they haven’t collected and submitted information correctly §56.265.3	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Savings</u> – potential savings – 5% of prosecuting attorneys’ salary could be withheld IF they haven’t provided discovery correctly §56.265.4	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Income</u> – §56.602.7 Special Prosecuting Attorney – if Governor appointment is made – costs are borne by the state’s General Revenue Fund	\$0 or \$1,750,000	\$0 or \$3,500,000	\$0 or \$3,500,000

<u>FISCAL IMPACT – Local Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
<u>Costs – §56.602.5 Special Prosecuting Attorney – if Governor appointment is made – (reimbursed/paid by the state)</u>	\$0 or <u>(\$1,750,000)</u>	\$0 or <u>(\$3,500,000)</u>	\$0 or <u>(\$3,500,000)</u>
ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	\$0 or <u>Unknown</u>	\$0 or <u>Unknown</u>	\$0 or <u>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 bill requires that, beginning January 1, 2027, all police officers statewide, county sheriffs and their deputies, and city law enforcement officials and their officers submit referrals for any traffic violation, ordinance violation, or misdemeanor or felony offense to Prosecuting or Circuit Attorneys in the form and manner approved by the Missouri Office of Prosecution Services. For felony offenses, referrals must include a probable cause statement and an investigative report.

Currently, prosecuting attorneys are eligible to receive \$2,000 of their authorized salary if they complete a minimum of 20 hours of annual classroom instruction related to the operations of their office, approved by a professional association of Missouri county prosecuting attorneys. Exemption from this training is possible if approved by the professional association. Upon completion, the professional association provides a certificate to each Prosecuting Attorney, and a list of certified attorneys is sent to treasurer of each county. This bill specifies that these provisions will also apply to the City of Saint Louis.

This bill requires that 10% of a Prosecuting Attorney's salary will be paid only if they collect and make accessible the data described in this bill, following an approved method by the Prosecutors Coordinators Training Council. The Missouri Office of Prosecution Services will issue a certificate of compliance to attorneys who adhere to this requirement, and a list of certified attorneys will be sent to the respective treasurer of each county or city. Additionally, 5% of the salary will be paid if the Prosecuting Attorney provides discovery according to an approved method by the Prosecutors Coordinators Training Council.

This bill establishes the "Prosecuting and Circuit Attorney Review Committee" to review complaints formally lodged with the Committee. The Committee will consist of the Executive Director for the Missouri Office of Prosecution Services (MOPS) and four current or former elected prosecuting or circuit attorneys appointed by the Council. Two of the members must have been elected as Republicans and two of the members must have been elected as Democrats.

The four members must have served a minimum of two full terms as an elected or appointed prosecuting or circuit attorney. The appointments must be made by December 1st and the initial members will start on January 1, 2028. If a vacancy occurs during a term, a qualified current or former prosecuting or circuit attorney will be selected to finish the existing term and a member must not serve more than three terms or 12 years.

A formal complaint will be made to MOPS when there is a threat to public safety and health in a jurisdiction. A threat to public safety and health in a jurisdiction is considered to exist if:

- (1) The number of occurrences of homicide cases in the 24 months immediately preceding exceeds a rate of 35 cases per every 100,000 people within the prosecuting or circuit attorney's jurisdiction;
- (2) The prosecuting or circuit attorney has specified cases that include murder, assault, sodomy, rape, robbery, vehicle hijacking and armed criminal action, and the prosecuting or circuit attorney has not filed charges, requested further investigation, or refused to file charges within 10 days; or
- (3) Additional investigation has been requested and a decision to file or not to file has not been made in these specified criminal offenses within six months.

This bill requires that the Executive Director convenes a meeting of the Committee within 10 business days of the receipt of a formal complaint. The Committee meetings will be closed and any complaints, correspondences, votes, or remediation recommendations are closed records. Any request to the Governor, to appoint a special prosecuting attorney, will be an open record.

If the complaint meets the requirements to be considered a formal complaint, the Committee must deliver the complaint to the prosecuting or circuit attorney, as specified in the bill. The prosecuting or circuit attorney has 10 business days to respond and may provide any relevant information. The Committee has 10 business days to review all information and any data maintained by MOPS. The Committee, by a vote of four or more, may determine that there is a threat to public safety or health within the jurisdiction and the prosecuting or circuit attorney's professional acts or omissions have created or substantially contributed to the threat to public safety or health.

If a determination is made, the Committee, by a vote of three or more members, shall:

- (1) Immediately request the Governor to appoint a special prosecuting or circuit attorney to prosecute specified criminal offenses; or
- (2) Immediately make recommendations to the prosecuting or circuit attorney for remediation with a time line for implementation and a review date within six months of the recommendation.

If the Committee makes recommendations for remediation, the Committee shall assess the effectiveness of the remediation at the conclusion of the six month period. If the Committee determines by a vote of three or more members that there is no longer a threat to public safety or health or that the prosecuting or circuit attorney's professional acts or omissions are not creating

or substantially contributing to a threat to public safety or health, the Committee shall issue a finding as such and the finding will be an open record.

If the Committee finds by a vote of three or more members that there is a threat to public safety or health and that the prosecuting or circuit attorney's professional acts or omissions are creating or substantially contributing to the threat to public safety or health, the Committee shall immediately request the Governor to appoint a special prosecuting attorney to prosecute specified criminal offenses and this finding will be an open record. Upon the request of the Committee, the Governor may appoint a special prosecuting attorney to serve for a specified term that does not to exceed the term of the current elected prosecuting or circuit attorney. The special prosecuting attorney will have exclusive jurisdiction to initiate and prosecute felony offenses that include murder, assault, rape, sodomy, robbery, vehicle hijacking, and armed criminal action, as specified in the bill.

If a special prosecuting attorney files criminal charges they will also have exclusive jurisdiction over any other charges stemming from the same criminal event. If the prosecuting or circuit attorney has commenced prosecution prior to the appointment of the special prosecuting attorney they shall immediately withdraw from the prosecution and the special prosecuting attorney may adopt or amend any complaint, information, or indictment filed by the prosecuting or circuit attorney.

Moneys for the special prosecuting attorney will be provided from the General Revenue Fund. The special prosecuting attorney will be paid the same salary as an associate circuit court judge and, upon appointment, become a member of the Prosecuting Attorneys and Circuit Attorneys' Retirement System. The special prosecuting attorney's provided budget will include funds to hire up to 15 assistant special prosecuting attorneys and up to 15 staff members and the salaries of all employees hired by the special prosecuting attorney are determined by the special prosecuting attorney but must be within the budget provided by the State.

Six months prior to the end of the special prosecuting attorney's term the Committee will meet and determine by a vote of three or more votes:

- (a) Whether a threat to public safety or health exists; and
- (b) Whether the current prosecuting or circuit attorney's professional acts or omissions are creating or substantially contributing to the threat to public safety or health.

If the Committee finds that a threat to public safety or health exists and the current prosecuting or circuit attorney is the cause of the threat the Committee will request the Governor to reappoint the special prosecuting attorney or to appoint another special prosecuting attorney. The Committee may recommend that the Governor appoint the special prosecuting attorney for up to five years.

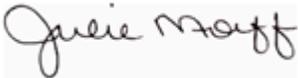
This bill requires MOPS to produce a statewide report based on data from an approved automated case management system beginning March 31, 2028 and annually thereafter. The report will cover various aspects including the total number of felonies, misdemeanors, and

infractions received and processed by Prosecuting and Circuit Attorney offices, as well as specific details such as the number of referrals, cases filed, refused, disposed, and under review. It also mandates the reporting of data on charges by statute number and charge code. These reports are considered public records, but individual data from each office is confidential and not subject to release under Section 610.100 (arrest and incident records).

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

Missouri Office of Prosecution Services
Office of the State Courts Administrator
Department of Public Safety
Office of the Governor
Phelps County Sheriff
Branson Police Department
Kansas City Police Department
St. Louis County Police Department



Julie Morff
Director
April 9, 2024



Ross Strobe
Assistant Director
April 9, 2024