

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1137-03  
Bill No.: HCS for HB 371  
Subject: Children and Minors; Family Law; Courts  
Type: Original  
Date: April 10, 2013

Bill Summary: This proposal changes the laws regarding judicial procedure.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Less than \$100,000)</b>	<b>(Less than \$100,000)</b>	<b>(Less than \$100,000)</b>

\* Potential fiscal impact to the Department of Corrections is beyond the time period (scope) reflected in this fiscal note.

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
MODEX	\$426,402	\$511,683	\$511,683
<b>Total Estimated Net Effect on Other State Funds</b>	<b>\$426,402</b>	<b>\$511,683</b>	<b>\$511,683</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 15 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
<b>Local Government</b>	<b>Up to \$1,304,306</b>	<b>Up to \$1,565,168</b>	<b>Up to \$1,565,168</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### § 32.056 - Department of Revenue release of information;

Officials from the **Department of Revenue (DOR)** state this part of the proposal eliminates the requirement for a member of the judiciary enrolled in the Department's confidential records system to notify the Department once their qualification for enrollment comes to an end.

Currently, if a participant's qualification for enrollment comes to an end, but does not notify the Department of such change, the participant remains within the confidential records system. The Department would retain the ability of an individual who is enrolled in the Department's confidential records system to be removed from the confidential records system if such person's status changes, but would not require it.

DOR states:

- The DMPO Confidential Records Process manual will need to be revised by a Management Analyst Specialist I requiring 40 hours of overtime at a cost of \$1,206 in FY 14; and
- The Restriction of Information, form 4568, will need to be revised requiring 40 hours of overtime for a Management Analyst Specialist I, at a cost of \$1,206 in FY 14.

In summary, DOR assumes a cost of \$2,412 in FY 2014 to implement this change.

**Oversight** assumes DOR is provided with core funding to handle a certain amount of activity each year. Oversight assumes DOR could absorb the costs related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, DOR could request funding through the appropriation process.

#### § 56.807 - Prosecuting Attorneys and Circuit Attorneys; Retirement System Fund;

Officials from the **Prosecutor's and Circuit Attorney's Retirement System (PACARS)** state the amendments to section 56.807.5 makes the payments from the general revenues of the respective counties respond to the funded ratio of the assets and liabilities of PACARS, as determined by its actuaries. As such, the amendatory language operates to assure that PACARS is neither over funded nor underfunded. Thus, the system will be able to pay its pension liabilities as provided by law without concern that the funding mechanisms will result in excess funds in the system.

RS:LR:OD

ASSUMPTION (continued)

The amendment to sections 56.807.7 and 488.026 responds to the reduction in funding to PACARS which has resulted from the migration of counties to the Fine Collection Center in the recent past. As such, this amending language replaces a revenue stream which had previously guaranteed PACARS' ability to pay its pension liabilities as they arose. Taken together with the amendments to 56.807.5, the fiscal impact of the proposed legislation would secure PACARS' ability to pay its pension obligations as defined by law.

Officials from the **Joint Committee on Public Retirement** state that based on information provided by Office of the State Courts Administrator (CTS) in 2012, provisions included in this proposal would increase the surcharge contribution to PACARS. The estimated revenue as provided by the CTS of the inclusion of the \$4 fee paid to the fine collection center would be approximately \$611,988.00. Depending on the PACARS annual actuarial valuation and the resulting funded ratio, the county monthly contribution may be adjusted. The current funded ratio of 99% would allow for current monthly contribution levels to remain unchanged.

Officials from the **Office of Prosecution Services** assume the current proposal would not fiscally impact their agency.

Officials from the **Office of the State Courts Administrator** state that based on the data for the past five years, FY 08 through FY 12, they assume that the average is approximately 125,145 fine collection center cases on which this \$4.00 surcharge could be applied. The department anticipates the revenue from a \$4.00 surcharge would be approximately \$500,580 in any given year.

§ 57.095 - Immunity for law enforcement officers;

In response to a similar proposal from this year (HB 468), officials from the **Office of the State Courts Administrator**, **Department of Public Safety - Missouri Highway Patrol** and the **Boone County Sheriff** each assumed this part of the proposal would not fiscally impact their respective agencies.

§§ 160.261 & numerous others - Sexual assault;

Officials from the **Office of the State Public Defender** assume the proposal would not create a fiscal impact. Although, SPD believes the bill, specifically as it pertains to Section 566.030 and 566.060, would increase the punishments associated with certain sex crimes, it would not convert any misdemeanors into felonies, or vice versa, and therefore, would not have any impact

ASSUMPTION (continued)

under our protocol, since all felony sex cases have the same weight no matter the degree of felony.

Officials from the **Department of Social Services (DSS)** state sections 566.030 to 566.101 of the proposal renames and redefines several crimes dealing with sexual assault.

Old Name	New Name
Forcible Rape	Rape in the First Degree
Sexual Assault	Rape in the Second Degree
Forcible Sodomy	Sodomy in the First Degree
Deviate Sexual Assault	Sodomy in the Second Degree
Sexual Abuse	Sexual Abuse in the First Degree
Sexual Abuse in the First Degree	Sexual Abuse in the Second Degree
Sexual Misconduct in the First Degree	Sexual Abuse in the Second Degree
Sexual Misconduct in the Second Degree	Sexual Misconduct in the First Degree
Sexual Misconduct in the Third Degree	Sexual Misconduct in the Second Degree

The penalties for each crime remain basically the same. The rest of the bill consists of the necessary statutory revisions to bring related statutory sections into alignment with the new nomenclature.

There is no fiscal impact to the Department of Social Services. Although the names of the offenses are different, there is no change to DSS's responsibilities. For instance, it would still be the Division of Youth Services' (DYS) responsibility under Section 160.261 to report acts of school violence in DYS facilities to the appropriate law enforcement agency. The same is true of Section 211.447, which allows the court to terminate the parental rights of the biological father when the child was conceived as a result of forcible (now first degree) rape.

Officials from the **Department of Corrections (DOC)** state the penalty provision component of this bill resulting in potential fiscal impact for DOC, is for up to a class B felony and states that specific charges shall run concurrent. Currently, the DOC cannot predict the number of extended commitments which may result from the enhancement of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If persons are sentenced to longer incarcerations in the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender cost either through incarceration (FY12 average of \$17.059 per offender, per day, or an annual cost of

ASSUMPTION (continued)

\$6,227 per inmate) or through supervision provided by the Board of Probation and Parole (FY12 average of \$4.960 per offender, per day, or an annual cost of \$1,810 per offender).

In summary, supervision by the DOC through probation or incarceration would result in additional costs to the department and the exact fiscal impact is unknown.

However, in response to a bill from earlier this year (HB 280) that had many of the same provisions, DOC stated passage of this proposal would result in certain sex offenders sentenced to DOC for longer incarceration periods and for serving sentences consecutively instead of concurrently. These years of incarceration would be served in addition to their current sentence and fiscal impact would occur after the scope of this fiscal note.

In summary, supervision by the DOC through incarceration would result in additional costs to the department and the exact fiscal impact is unknown, but it will be past the scope of this fiscal note.

**Oversight** will utilize DOC's response to HB 280 for this proposal.

Officials from the **Department of Elementary and Secondary Education (DESE)** state there is no anticipated state cost to the foundation formula associated with this proposal. To the extent fine revenues exceed 2004-2005 collections, any increase in this money distributed to school districts increases the deduction in the foundation formula the following year. Therefore the affected districts will see an equal decrease in the amount of funding received through the formula the following year; unless the affected districts are hold-harmless, in which case the districts will not see a decrease in the amount of funding received through the formula (any increase in fine money distributed to the hold-harmless districts will simply be additional money). An increase in the deduction (all other factors remaining constant) reduces the cost to the state of funding the formula.

Officials from the **Office of Prosecution Services, Department of Insurance, Financial Institutions and Professional Registration, Department of Mental Health, Office of the State Courts Administrator, Department of Public Safety - Missouri Highway Patrol,** and the **Parkway School District** each assume the proposal would not fiscally impact their respective agencies.

ASSUMPTION (continued)

§ 432.047 - Credit Agreement;

Officials from the **Department of Insurance, Financial Institutions and Professional Registration and Office of the State Courts Administrator** each assume the current proposal would not fiscally impact their respective agencies.

Officials from the **Attorney General's Office** assume that any potential costs arising from this proposal can be absorbed with existing resources.

§ 452.400 - Paternity testing;

Officials from the **Office of State Courts Administrator and Department of Social Services - Family Support Division** each assume the proposal would not fiscally impact their respective agencies.

No officials from the Circuit Court Clerks offices or the St. Louis Family Court responded to **Oversight's** request for a statement of fiscal impact.

§§ 453.030 & 453.050 - Adoption consent;

Officials from the **Office of the State Courts Administrator** assume this part of the proposal would not fiscally impact the courts.

Officials from the **Department of Social Services (DOS)** state this bill makes some procedural changes to the requirements for adoption consent.

Section 453.030.4 - Consent to Adoption - currently, written consent to an adoption must be acknowledged before a notary public. Alternatively, this bill allows written consent to be executed in front of a judge.

Section 453.03.50 - Waiver of Consent to Adoption - currently, a parent may waive the necessity of his or her consent to the future adoption of a child; however, such approval cannot be granted until the child is at least two days old. This bill shortens that time period to "at least twenty-four hours old."

Section 453.030.7 - Withdrawal of Written Consent to Adoption - current law allows written consent to be withdrawn anytime until it has been reviewed and accepted by a judge. This bill

ASSUMPTION (continued)

deletes that provision and makes consent final when executed, unless the consenting party, prior to a final decree of adoption, alleges and proves by clear and convincing evidence that consent was not freely and voluntarily given. The burden of proof rests with the consenting party.

There is no direct fiscal impact to the Department of Social Services. Taken as a whole, these procedures may make the adoption procedure smoother and quicker in some instances, but will not substantively change DOS procedures for adoptions of children in the department's care. Execution of consent before a notary public remains an option.

§ 479.085 - Springfield allowed to impose \$10 surcharge on municipal code violations;

Officials from the City of Springfield did not respond to our request for fiscal impact.

Officials from **Office of the State Courts Administrator** state this section would allow Springfield to impose a surcharge of \$10 on all municipal code violations for the purpose of funding the construction, remodel, repair and maintenance of the municipal court building.

CTS states there were 30,646 municipal code violations in FY 12, not including parking tickets, if parking tickets are included the total would be 36,421. If an additional \$10 was assessed on every case, and collections were 100%, the income would be approximately \$306,460 or \$364,210 if parking tickets were included.

Oversight will reflect a reflect a potential increase in income to Springfield of \$300,000 annually from this section.

§§ 488.026 & 488.5320 - MODEX;

Officials from the **Office of the State Courts Administrator (CTS)** state the proposed legislation allows charges for cases disposed of by a traffic violations bureau and distributes the proceeds to MODEX and inmate security funds and creates the MODEX fund.

Based on FY 2012 data, there were approximately 170,561 traffic cases on which the \$6.00 surcharge could be applied. CTS anticipates the MODEX revenue from the surcharge would be approximately \$511,683 (170,561 x \$6 / 2) in any given year, with an equal amount going to the counties' inmate security funds.



ASSUMPTION (continued)

In response to similar legislation filed this year (HB 86), officials from the **Department of Public Safety - Missouri Highway Patrol, Office of the State Treasurer** and the **Department of Corrections** each assumed this proposal would not fiscally impact their respective agencies.

With an August 28, 2013, effective date, **Oversight** will reflect 10 months of activity in FY 2014.

§ 488.426 - Court surcharge;

Officials from the **Office of the State Courts Administrator (CTS)** state the proposed legislation would allow certain circuits (Clay County, Boone and Callaway Counties, St. Louis County, St. Louis City and Greene County) to charge up to a \$20 law library surcharge. The limit is now \$15.

CTS states during the past five years (2008 to 2012) an average of 150,697 civil cases were filed in these counties. If an additional \$5.00 fee was assessed on every case and collections were 100%, the additional income would total approximately \$753,485 in a given year.

<u>Circuit</u>	<u>Civil Cases</u>	<u>Potential additional \$5 library surcharge revenue</u>
Clay County (7 <sup>th</sup> )	16,395	\$81,975
Boone and Callaway Counties (13 <sup>th</sup> )	10,227	\$51,135
St. Louis County (21 <sup>st</sup> )	69,197	\$345,985
St. Louis City (22 <sup>nd</sup> )	35,445	\$177,225
Greene County (31 <sup>st</sup> )	19,433	\$97,165
<b>TOTALS</b>	<b><u>150,697</u></b>	<b><u>\$753,485</u></b>

**Oversight** assumes the proposal is permissive to the specific circuit courts and allows them to increase their this fee from \$15 to \$20. Oversight assumes not all circuits would choose to increase their fees; therefore, Oversight will range the fiscal impact from the proposal as "Up to \$753,485". Oversight will reflect these additional revenues as potential income to local political subdivisions. Oversight will reflect ten months of potential impact in FY 2014.

The proposal does not change or expand the requirements of the circuit courts or how this additional revenue must be spent. Therefore, for purposes of the fiscal note, Oversight will only reflect the potential additional income that may be realized by specific circuit courts as a result of the proposal.

ASSUMPTION (continued)

Officials from **Clay County, Boone County, St. Louis County, Greene County, and St. Louis City** did not respond to our request for fiscal impact.

§ 488.2250 - Fee for transcripts;

Officials from the **Office of the State Courts Administrator** state the current expense for transcripts is a total of \$106,458. This proposal raises the page rate for transcripts from \$2.00 per page where the party/attorney is paying for the transcript to \$3.50 and \$2.60 for indigents. The total amount for original transcripts (\$51,677) and transcript copies (\$13,395) would be \$65,072 at \$2.00 per page. The increase to \$2.60 per page would be an increase of \$19,522 for indigents.

In addition, the proposal also does not address the charge for additional copies, paper or electronic which could result in confusion in the future.

**Oversight** will reflect this additional cost as "Less than \$100,000" in each fiscal year to the General Revenue Fund.

§ 513.430 - Exemption from attachment;

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** and the **Office of the State Courts Administrator** each assume the proposal would not create a fiscal impact to their respective agencies.

In response to a similar proposal from this year (SB 100), officials from the **Department of Revenue** assumed the proposal would not create a fiscal impact to their agency.

§ 537.602 - Immunity from supervising community service;

Officials from the **Office of Administration (COA)** state this proposal grants limited immunity to state employees who would supervise community service performed by an individual under a written agreement with a federal, state or local prosecutor. The state currently has sovereign immunity for this exposure; however, individual employees may receive additional protection under this act. However, the exclusion for gross negligence or intentional tort would likely be viewed as an additional waiver of sovereign immunity in these instances which could potentially lead to a cost to the Legal Expense Fund. On balance, we assume the potential cost through this added waiver, as limited as this exposure may be, would exceed the potential savings created by providing additional immunities to the individual state employee.

ASSUMPTION (continued)

To the best of our knowledge, there have been no claims against the state or individuals providing supervision of community service workers. We believe the current utilization of community service workers is limited in state government and the risk for loss minimal.

Officials from the **Attorney General's Office** assume that any potential costs arising from this proposal could be absorbed with existing resources.

Officials from the **Office of the State Courts Administrator** and the **Office of Prosecution Services** each assume the proposal would not have a fiscal impact on their respective agencies.

Officials from the Department of Transportation, Missouri Department of Conservation, Taney County, Warren County, and Worth County did not respond to our request for fiscal impact.

**Oversight** assumes the proposal would not have a direct fiscal impact on state or local funds.

§ 545.417 - depositions in criminal cases:

In response to a similar proposal from this year (HB 213), officials from the **Office of the State Public Defender (SPD)** stated this would require them to begin paying for the prosecutor's copy of depositions. The FY 2012 SPD statewide payments for depositions and the subsequent copies was \$494,302. Local Public Defender Office budgets also paid for depositions of less than \$500. For the purpose of this fiscal note, they assumed that another 25% was paid from local budgets for a total of \$617,877. They further assumed that another 5% of this cost would cover the cost of providing a copy of the deposition to the prosecuting attorney. (\$31,666 per year)

**Oversight** notes that the SPD did not indicate how often their office pays for copies of depositions received from prosecutors. With this bill, public defenders would not have to pay for those copies.

**Oversight** assumes costs (providing copies to the opposing party) and savings (receiving free copies from the opposing party) to the SPD (state fiscal impact) and similar costs and savings to prosecuting attorneys (local fiscal impact) would result in a minimal net fiscal impact which could be absorbed within current appropriations.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
<b>GENERAL REVENUE</b>			
<u>Costs - CTS</u>			
§488.2250 - Increase in court reporter fees	(Less than <u>\$100,000</u> )	(Less than <u>\$100,000</u> )	(Less than <u>\$100,000</u> )
<b>ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND*</b>	<b>(Less than <u>\$100,000</u>)</b>	<b>(Less than <u>\$100,000</u>)</b>	<b>(Less than <u>\$100,000</u>)</b>

\*Potential fiscal impact to the Department of Corrections is beyond the time period (scope) reflected in this note. (Sexual assault)

**MODEX FUND**

<u>Income - one-half of \$6 surcharge for infractions processed through the traffic violations bureau §§488.026 &amp; 488.5320</u>	<u>\$426,402</u>	<u>\$511,683</u>	<u>\$511,683</u>
<b>ESTIMATED NET EFFECT TO THE MODEX FUND</b>	<b><u>\$426,402</u></b>	<b><u>\$511,683</u></b>	<b><u>\$511,683</u></b>

<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
 <b>LOCAL GOVERNMENT</b>			
<u>Revenue</u> -Increase in surcharge contribution to Prosecuting Attorneys and Circuit Attorneys Retirement System §56.807	\$417,150	\$500,580	\$500,580
<u>Income</u> into the counties' inmate security fund from one-half of \$6 surcharge for infractions processed through the traffic violations bureau §§488.026 & 488.5320	\$426,402	\$511,683	\$511,683
<u>Revenue</u> - potential increase in law library surcharge from \$15 to \$20 in certain circuits. §488.426	Up to \$627,904	Up to \$753,485	Up to \$753,485
<u>Income</u> - Springfield - allowed to charge a \$10 surcharge on all municipal code violations. §479.085	\$250,000	\$300,000	\$300,000
<u>Expense</u> - Surcharge contribution to Prosecuting Attorneys and Circuit Attorneys Retirement System §56.807	( <u>\$417,150</u> )	( <u>\$500,580</u> )	( <u>\$500,580</u> )
 <b>ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS</b>	 <b><u>Up to \$1,304,306</u></b>	 <b><u>Up to \$1,565,168</u></b>	 <b><u>Up to \$1,565,168</u></b>

FISCAL IMPACT - Small Business

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

## FISCAL DESCRIPTION

Section 56.807 - Currently, each county treasurer must transfer a specified sum of money each month to the Prosecuting Attorneys and Circuit Attorneys' Retirement System Fund for use by the fund.

Beginning August 28, 2013, the county contribution must be adjusted in accordance with the following schedule based on the retirement system's actuarial valuation report:

- (1) If the system's funding ratio exceeds 120%, no monthly sum must be transmitted;
- (2) If the system's funding ratio is between 111% to 120%, the monthly sum transmitted must be reduced 50%;
- (3) If the system's funding ratio is between 90% and 110%, the monthly sum transmitted must remain the same;
- (4) If the system's funding ratio is between 80% and 89%, the monthly sum transmitted must be increased 50%; and
- (5) If the system's funding ratio is less than 80%, the monthly sum transmitted must be increased 100%.

Currently, a surcharge of \$4 is assessed and collected in all criminal cases filed in court, including any violation of a county ordinance or any violation of the state's criminal or traffic laws, including infractions. The proposal adds any person who has pled guilty and paid a fine through a fine collection center to the list of those who are to be assessed the surcharge.

§§ 488.026 & 488.5320 - Currently, law enforcement officers are allowed to charge for their services rendered in criminal cases and in all contempt or attachment proceedings except for cases disposed of by a traffic violations bureau. This bill removes that exception and allows them to also charge for cases disposed of by a traffic violations bureau. However, charges from cases disposed of by a traffic violations bureau must be distributed so that one-half of the charges collected are deposited into the newly-created MODEX Fund for the operational cost of the Missouri data exchange (MODEX) system and one-half of the charges collected are deposited into the inmate security fund of the county or municipal political subdivision where the citation originated. If the county or municipal political subdivision has not established an inmate security fund, the funds must be deposited in the MODEX Fund.

§488.426 - Currently, Jackson County may charge up to a twenty dollar surcharge when a party files a civil court case. All other circuits may charge up to fifteen dollars. This act authorizes circuit courts that reimburse the state for the salaries of family court commissioners to charge up to a twenty dollar surcharge for such cases.

FISCAL DESCRIPTION

§488.2250 - changes the fee charged for transcripts of testimony or proceedings.

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

Office of the State Courts Administrator  
Department of Social Services  
Department of Revenue  
Office of Prosecution Services  
Office of the State Public Defender  
Department of Corrections  
Department of Elementary and Secondary Education  
Department of Insurance, Financial Institutions and Professional Registration  
Department of Mental Health  
Department of Public Safety  
Attorney General's Office  
Office of Administration  
Joint Committee on Public Retirement  
Prosecutors' and Circuit Attorneys' Retirement System  
Parkway School District



Ross Strope  
Acting Director  
April 10, 2013