

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4148-03
Bill No.: HCS for HB Nos. 1538 & 1900
Subject: Attorneys; Counties; Attorney General; Crimes and Punishment
Type: Original
Date: March 16, 2020

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

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2025)
General Revenue	Could exceed (\$119,158)	Could exceed (\$139,082)	Could exceed (\$159,796)	Could exceed (\$203,686)
Total Estimated Net Effect on General Revenue	Could exceed (\$119,158)	Could exceed (\$139,082)	Could exceed (\$159,796)	Could exceed (\$203,686)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2025)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0	\$0

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2025)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2025)
Total Estimated Net Effect on FTE	0	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	Fully Implemented (FY 2025)
Local Government	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

FISCAL ANALYSIS

ASSUMPTION

§556.065 - Jurisdiction of the Attorney General

Officials from the **Attorney General’s Office (AGO)** assume a negative fiscal impact of \$0 to Unknown as a result of 556.065.

Oversight notes upon receiving a referral from a law enforcement agency alleging a violation of sections 565.020, 565.021, or 570.027, the attorney general may commence prosecution within sixty days by filing a complaint, information, or indictment. Oversight assumes because the potential for litigation is speculative that the AGO may or may not incur significant costs related to this proposal. If a fiscal impact were to result, the AGO may require additional resources. Therefore, Oversight will reflect the AGO’s impact as \$0 to (Unknown) to General Revenue.

§570.027 - Vehicle hijacking

Officials from the **Department of Corrections (DOC)** state §570.027 creates a class B felony offense for vehicle hijacking. As this is a new offense, the department will use a standard B felony response to estimate a fiscal impact. For each new class B felony, it is estimated that three people will be sentenced to prison and four to probation. The average sentence for a class B felony offense is 8.7 years, of which 5.1 years will be served in prison with 3.4 years to first release. The remaining 3.6 years will be on parole. Probation sentences will be 3 years.

The cumulative impact on the department is estimated to be 15 additional offenders in prison and 12 on field supervision by FY 2025.

	# to prison	Cost per year	Total Costs for prison	# to probation & parole	Cost per year	Total cost for probation and parole	Grand Total - Prison and Probation (includes a 2% inflation)
Year 1	3	(\$6,386)	(\$19,158)	4	absorbed	\$0	(\$19,158)
Year 2	6	(\$6,386)	(\$39,082)	8	absorbed	\$0	(\$39,082)
Year 3	9	(\$6,386)	(\$59,796)	12	absorbed	\$0	(\$59,796)
Year 4	12	(\$6,386)	(\$81,322)	12	absorbed	\$0	(\$81,322)
Year 5	15	(\$6,386)	(\$103,686)	12	absorbed	\$0	(\$103,686)
Year 6	15	(\$6,386)	(\$105,760)	15	absorbed	\$0	(\$105,760)
Year 7	15	(\$6,386)	(\$107,875)	18	absorbed	\$0	(\$107,875)
Year 8	15	(\$6,386)	(\$110,033)	21	absorbed	\$0	(\$110,033)
Year 9	15	(\$6,386)	(\$112,233)	23	absorbed	\$0	(\$112,233)
Year 10	15	(\$6,386)	(\$114,478)	23	absorbed	\$0	(\$114,478)

ASSUMPTION (continued)

If this impact statement has changed from statements submitted in previous years, it is because the DOC has changed the way probation and parole daily costs are calculated to more accurately reflect the way the Division of Probation and Parole is staffed across the entire state.

In December 2019, the DOC reevaluated the calculation used for computing the Probation and Parole average daily cost of supervision and revised the cost calculation to be used for 2020 fiscal notes. For the purposes of fiscal note calculations, the DOC averaged district caseloads across the state and came up with an average caseload of 51 offender cases per officer. The new calculation assumes that an increase/decrease of 51 cases would result in a change in costs/cost avoidance equal to the cost of one FTE staff person. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

In instances where the proposed legislation would only affect a specific caseload, such as sex offenders, the DOC will use the average caseload figure for that specific type of offender to calculate cost increases/decreases. For instances where the proposed legislation affects a less specific caseload, DOC projects the impact based on prior year(s) actual data for DOC's 44 probation and parole districts.

The DOC cost of incarceration is \$17,496 per day or an annual cost of \$6,386 per offender. The DOC cost of probation or parole is determined by the number of P&P Officer II positions that would be needed to cover the new caseload.

Oversight does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC's impact for fiscal note purposes.

Bill as a Whole

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** state they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the proposed new crime of vehicle hijacking - a new class B felony. If armed or if a child or special victim is involved, the charge could be escalated to a class A felony. Under certain circumstances, the offense of vehicle hijacking could be charged as a new class A felony. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

This proposed legislation could result in additional cases for SPD assuming the Attorney General files the case and that the defendant is indigent.

ASSUMPTION (continued)

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

Oversight notes over the last three fiscal years, the SPD has lapsed a total of \$153 of General Revenue appropriations (\$2 out of \$28.0 million in FY 2017; \$150 out of \$42.5 million in FY 2018; and \$1 out of \$46.0 million in FY 2019). Therefore, Oversight assumes the SPD is at maximum capacity, and the increase in workload resulting from this bill cannot be absorbed with SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, Oversight assumes the cost for a new APD could approach \$100,000 per year.

Oversight assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume this proposal will have no measurable fiscal impact to MOPS. As to proposed Section 56.900, RSMo, if the intent of the proposed legislation is to strip prosecuting and circuit attorneys of their existing absolute immunity and only provide them the same qualified immunity as law enforcement (e.g. sheriffs), the impact of this could be a very significant increase and substantial cost to local counties and the city of St. Louis. To reemphasize, currently prosecuting attorneys and the circuit attorney have absolute immunity while law enforcement officers have qualified immunity. This absolute immunity frequently prevents litigation from being filed or results in a dismissal early on in the proceedings. To reduce the level of immunity will undoubtedly increase both the number of and duration of claims filed. If it mirrors what counties pay in litigation costs in response to claims currently filed against sheriffs, for example, then it could lead to an increase in costs in the millions if not tens of millions of dollars. If attorneys of MOPS are appointed as special prosecutors, additional costs of litigation could inure to the state.

Oversight does not have any information contrary to that provided by MOPS. Therefore, Oversight will reflect MOPS' no impact for fiscal note purposes.

ASSUMPTION (continued)

Officials from the **St. Louis County Police Department** state the proposed legislation would require the department to update policy. Policy creation and updating would require eight hours of policy research and four hours of policy authorizing. The average hourly wage of the policy development position is \$46.69. Therefore, the total cost of policy development would be \$560.28.

Oversight assumes the St. Louis County Police Department is provided with core funding to handle a certain amount of activity each year. Oversight assumes the St. Louis County Police Department could absorb the costs related to this proposal.

Oversight notes the **Department of Public Safety - Missouri State Highway Patrol**, the **Department of Social Services**, the **Office of State Courts Administrator**, and the **St. Louis County Department of Justice Services** have each stated the proposal would not have a direct fiscal impact on their respective organizations.

In response to a previous version, Oversight notes the **Springfield Police Department** stated this 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 in the fiscal note for these agencies.

This proposal has an emergency clause.

FISCAL IMPACT -
State Government

Fully
 Implemented
 (FY 2025)

	FY 2021	FY 2022	FY 2023	
GENERAL REVENUE FUND				
<u>Costs - AGO</u> (\$556.065) Potential litigation costs	\$0 to (Unknown)	\$0 to (Unknown)	\$0 or (Unknown)	\$0 to (Unknown)
<u>Costs - DOC</u> (\$570.027) Increased incarceration costs	(\$19,158)	(\$39,082)	(\$59,796)	(\$103,686)
<u>Costs - SPD</u> (§§556.065 and 570.027) Salaries, fringe benefits, and equipment and expense	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>Could exceed (\$119,158)</u>	<u>Could exceed (\$139,082)</u>	<u>Could exceed (\$159,796)</u>	<u>Could exceed (\$203,686)</u>

FISCAL IMPACT -
Local Government

Fully
 Implemented
 (FY 2025)

FY 2021 FY 2022 FY 2023

**LOCAL
 PROSECUTING
 OR CIRCUIT
 ATTORNEYS**

Costs - potential
 qualified immunity
 p. 5

\$0 or (Unknown) \$0 or (Unknown) \$0 or (Unknown) \$0 or (Unknown)

**LOCAL
 PROSECUTING
 OR CIRCUIT
 ATTORNEYS**

\$0 or **\$0 or** **\$0 or** **\$0 or**
(Unknown) **(Unknown)** **(Unknown)** **(Unknown)**

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

PROSECUTING ATTORNEY IMMUNITY (SECTION 56.900)

This bill specifies that a prosecuting or circuit attorney performing discretionary functions shall be immune from civil liability if his or her conduct does not violate a clearly established statutory or constitutional right.

ATTORNEY GENERAL CONCURRENT JURISDICTION (SECTION 556.065)

Under this act, the Attorney General shall have concurrent jurisdiction with the Circuit Attorney of St. Louis for the offenses of first and second degree murder, and vehicle hijacking.

Upon receiving a referral from a law enforcement agency, the Attorney General may commence prosecution within 60 days. Once the Attorney General receives a referral, he or she may prosecute any additional violations connected to the underlying offense. If the Circuit Attorney commences a prosecution prior to the Attorney General, the Attorney General shall also have the authority to adopt or amend the complainant, information, or indictment and the Circuit Attorney must immediately withdraw from the prosecution.

FISCAL DESCRIPTION (continued)

OFFENSE OF VEHICLE HIJACKING (SECTION 570.027)

This act creates the offense of vehicle hijacking, which is committed when an individual knowingly uses or threatens the use of physical force upon another individual to seize or attempt to seize possession or control of a vehicle. This offense is punished as a Class B felony unless one of the aggravating circumstances listed in the act was present during the commission of the offense, in which case it is punished as a Class A felony.

This act contains an emergency clause for sections 556.065 and 570.027.

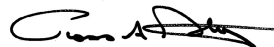
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office
Department of Corrections
Department of Public Safety - Missouri State Highway Patrol
Department of Social Services
Missouri Office of Prosecution Services
Office of State Courts Administrator
State Public Defender's Office
Springfield Police Department
St. Louis County Police Department
St. Louis County Department of Justice Services



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March 16, 2020



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