

HCS HBs 1538 & 1900 -- PROSECUTING AND CIRCUIT ATTORNEYS

SPONSOR: Murphy

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Judiciary by a vote of 13 to 3.

The following is a summary of the House Committee Substitute for HB 1538.

This bill specifies that a prosecuting or circuit attorney performing discretionary functions will not be liable for civil damages if his or her conduct does not violate a clearly established statutory or constitutional right.

Additionally, this bill specifies certain provisions pertaining to the City of St. Louis. It specifies that the Attorney General will have concurrent jurisdiction with any circuit attorney to prosecute under the provisions of this section. It also specifies how the Attorney General may proceed when receiving a referral from a law enforcement agency, as well as how the Attorney General may proceed if the circuit attorney has commenced a prosecution.

The bill also adds the offense of vehicle hijacking, which is a class B felony unless it meets certain criteria specified in the bill, in which case it is a class A felony.

This bill has an emergency clause.

The following is a summary of the public testimony from the committee hearing. The testimony was based on the introduced version of the bill.

PROPOSERS: Supporters say that prosecuting attorneys are given wide discretion whether to prosecute. When prosecutors and police work together, the public is protected, but, when they don't, they are not. There are some prosecutors who are more interested in changing the system than doing the job they were hired to do. We need a check on the prosecutors. More than 67 prosecutors have left St. Louis. Violent criminals being found not guilty at alarming rates. The victims of these crimes depend on the process, and this is not an attempt to usurp the will of the voter (to vote a prosecutor in or out), but they are trying to assist. St. Louis city has a problem with murders and carjackings and it's experiencing a massive spike in violent crimes so it would be a good concept for the AG's office to have concurrent jurisdiction to prosecute. There's a backlog of dozens of cases that the Attorney General's Office could help prosecute. This is not about invading prosecutorial discretion. For one reason or another, there are

tons of crimes that have gone uncharged. Prosecutors are creatures of statute; they have no constitutional authority.

Testifying for the bill was Representative Murphy.

OPPONENTS: Those who oppose the bill say that prosecutors are trying to figure out why the legislature is trying to pass this legislation. It is likely law enforcement is not behind it and neither are the prosecutors. This is not the right remedy. Since 1875, the people of this state wanted prosecution power in their prosecutors and that's an elected position. This bill will take away the responsibility from prosecutors and why do they need to be stripped of their authority to prosecute? There has not been one good reason expressed. Each prosecutor is responsible for his or her jurisdiction and this will undermine the relationship between prosecutors and law enforcement. Mediation between the Attorney General and the prosecutor would be in the best interest of everyone. This bill would require a ton more prosecutors in the Attorney General's office if they want them to have concurrent jurisdiction to prosecute. You cannot prosecute based on popularity. That would not be smart on crime. Prosecutors know their areas and should be given deference.

Testifying against the bill were Darrell L. Moore, Missouri Association of Prosecuting Attorneys; Missouri Office Prosecutor Service; Richard G. Callahan; American Civil Liberties Union of Missouri; and Sharon Jones, Missouri NAACP State Conference.