

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4453-12
Bill No.: SCS for HCS for HB Nos. 1695, 1742 & 1674
Subject: Drunk Driving; Motor Vehicles; Licenses - Drivers; Crimes and Punishment;
Criminal Procedure; Administrative Law; Alcohol; Courts; Revenue Department
Type: Original
Date: April 29, 2010

Bill Summary: This proposal modifies provisions relating to intoxications-related offenses.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	(\$15,500 to Unknown)	(\$2,500 to Unknown)	(\$2,500 to Unknown)
Total Estimated Net Effect on General Revenue Fund	(\$15,500 to Unknown)	(\$2,500 to Unknown)	(\$2,500 to Unknown)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Road	\$0 or (\$16,000,000)	\$0 or (\$16,000,000)	\$0 or (\$16,000,000)
Highway Safety	\$0 or \$16,000,000	\$0 or \$16,000,000	\$0 or \$16,000,000
Drug and DWI Court Resources*	\$0	\$0	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

* Offsetting revenues and costs of \$418,532 in FY 2011; \$1,004,475 in FY 2012, and \$1,128,913 in FY 2013, net to \$0.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on FTE	0	0	0

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).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Mental Health, Department of Public Safety - Office of the Director, Missouri State Water Patrol, and the Missouri State Highway Patrol, Department of Social Services, Office of Prosecution Services, and the Office of State Treasurer** assume this proposal would have no fiscal impact on their respective agencies.

In response to the previous version of this proposal (FN 4453-11), the **Department of Health and Senior Services** reported no fiscal impact to their agency.

Officials from the **Office of State Courts Administrator (CTS)** state the proposed legislation makes significant revisions to the driving while intoxicated law.

§478.001 to §478.007

The proposed legislation allows Jackson County to establish a DWI docket or court to provide an alternative for the judicial system to dispose of cases which stem from driving while intoxicated. This docket or court may operate in conjunction with a drug court. In addition, the court may assess costs for participation in DWI court against the participant. There may be costs associated with this court, but CTS would not anticipate a fiscal impact in excess of \$100,000.

Oversight assumes the language is permissive and for fiscal note purposes only, will show fiscal impact for Jackson County to be \$0 or (Less than \$100,000).

The proposed legislation allows a circuit court to establish as DWI docket or court to provide an alternative for the judicial system to dispose of cases when stem from driving while intoxicated. This docket may operate in conjunction with a drug court. Since the legislation is permissive, **Oversight** has no way of knowing how many courts would create the programs. Although no estimates are available, **Oversight** assumes the cost would exceed \$100,000.

§478.009.2

Oversight conservatively assumes revenues to the Drug and DWI Court Resources Fund at the 50% felony collection rate. Oversight has adjusted the FY 2011 amounts to reflect 10 months. For fiscal note purposes, Oversight assumes all funds in the Drug and DWI Court Resources Fund would be used annually to support the operation of DWI dockets or courts

ASSUMPTION (continued)

§577.006

The legislation proposes each municipal judge shall receive adequate instruction on the laws related to intoxication-related traffic offenses as defined in §577.023, RSMo. A one-day municipal judge training provided in six regions across the state would cost approximately \$15,500.

Oversight assumes the state-wide training would be necessary in FY 11. In subsequent years, **Oversight** assumes training could be held at one site for new municipal judges that are not licensed to practice law.

Officials from the **Department of Transportation (MoDOT)** state they have submitted a letter to the National Highway Traffic Safety Administration asking for a review by legal counsel to ensure compliance with 23 USC 164 and 23 USC 410 requirements as it relates to the language in the bill dealing with DWI courts. MoDOT has received a response back to this request. MoDOT may be in jeopardy of being found out of compliance and there could be a transfer of approximately \$16 million annually from the Road Fund to the Highway Safety Program within MoDOT. The money could no longer be used strictly for highway projects but would be used to make safety improvements on Missouri's roadways. MoDOT would still get the same amount of federal funds but would be limited to the use of such funds.

This section of the proposal has been amended to create incentives for offenders to enter DWI court, and it does this by increasing the mandatory jail time for prior and persistent offenders, while also offering an alternative of participation in DWI court. MoDOT states that the problem is that 23 USC 164 requires either mandatory jail time or a certain amount of community service for repeat offenders, but this proposal would allow prior and persistent offenders to participate in DWI court and to thereby avoid both jail time and mandatory community service.

Oversight has reflected the transfer from the Road Fund to the Highway Safety Fund as \$0 or \$16,000,000, as it is not known if Department of Transportation will be found to be out of compliance with 23 USC 164 and 23 USC 410. If MoDOT is not found to be out of compliance, there will be no transfer of funds.

Officials from the **Department of Corrections (DOC)** state the bill proposes to specify that courts may establish DWI dockets or courts and modifies other criminal and administrative procedure for certain intoxication-related offenses. The penalty provision component of this bill within existing statutes that will result in potential fiscal impact for DOC, is for up to a class B felony.

ASSUMPTION (continued)

Changing the fact that DWI cases are transferred from municipal to state court for prior offenders will cause a fiscal impact for the DOC. These offenders would now be supervised or incarcerated by the DOC. Additional treatment sources could also be needed to meet the growing number of referrals.

DOC assumes they cannot currently predict the number of new commitments which may result from the creation 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 additional persons are sentenced to 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 (FY09 average of \$16.04 per offender, per day or an annual cost of \$5,855 per inmate) or through supervision provided by the Board of Probation and Parole (FY09 average of \$3.71 per offender, per day or an annual cost of \$1,354 per offender).

At this time, the DOC is unable to determine the exact number of people who would be convicted under the provisions of this bill and whether or not additional inmate beds may be required as a consequence of passage of this proposal. The cumulative effect of various new legislation, if adopted as statute may require institutional facility expansion.

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

According to officials from the **Department of Revenue (DOR)** the proposed legislation would require DOR to key court ordered LDP's that have been denied for any reason, after a 45 day period, when the person is a participant in or a graduate of the DWI court program. DOR would also need to make procedure changes. Both requirements would result in minimal impact.

Officials from the **Office of State Public Defender** did not respond to a request for fiscal impact. **Oversight** assumes, for fiscal note purposes only, that any associated costs will not be reflected in the fiscal note.

Oversight assumes cities could incur losses of fees that are no longer considered court costs, charges, or fines as a result of the proposed legislation. Oversight has reflected the statewide loss to local political subdivisions as (Unknown).

Officials from the **City of Kansas City** requested that the same response be used as was used in FN 4453-11; however, the section referenced in that version that applied to the City of Kansas

ASSUMPTION (continued)

City (\$479.170.6) is no longer included in this version of the proposal. **Oversight**, for fiscal note purposes only, will show no fiscal impact to the City of Kansas City.

Officials from the **City of Centralia** state this proposal will have no fiscal impact on their city.

Officials from the **Boone County Sheriff's Department** and the **Jefferson City Police Department** state this proposed legislation will have no fiscal impact on their respective departments.

Officials from the Office of State Public Defender, various Local Law Enforcement agencies, various Missouri Cities and Counties did not respond to Oversight's request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
GENERAL REVENUE FUND			
<u>Costs – Office of State Courts Administrator (CTS)</u>			
Municipal judge training (\$577.006)	(\$15,500)	(\$2,500)	(\$2,500)
<u>Costs – Department of Corrections</u>			
Incarceration/probation costs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$15,500 to Unknown)</u>	<u>(\$2,500 to Unknown)</u>	<u>(\$2,500 to Unknown)</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2011 (10 Mo.)	FY 2012	FY 2013
ROAD FUND			
<u>Losses</u> – Department of Transportation			
Restrictions on use of federal funds	<u>\$0 or</u> <u>(\$16,000,000)</u>	<u>\$0 or</u> <u>(\$16,000,000)</u>	<u>\$0 or</u> <u>(\$16,000,000)</u>
ESTIMATED NET EFFECT ON ROAD FUND	<u>\$0 or</u> <u>(\$16,000,000)</u>	<u>\$0 or</u> <u>(\$16,000,000)</u>	<u>\$0 or</u> <u>(\$16,000,000)</u>
HIGHWAY SAFETY FUND			
<u>Revenues</u> – Department of Transportation			
Restrictions on use of federal funds	<u>\$0 or</u> <u>\$16,000,000</u>	<u>\$0 or</u> <u>\$16,000,000</u>	<u>\$0 or</u> <u>\$16,000,000</u>
ESTIMATED NET EFFECT ON HIGHWAY SAFETY FUND	<u>\$0 or</u> <u>\$16,000,000</u>	<u>\$0 or</u> <u>\$16,000,000</u>	<u>\$0 or</u> <u>\$16,000,000</u>

<u>FISCAL IMPACT - State Government</u>	FY 2011	FY 2012	FY 2013
(continued)	(10 Mo.)		

**DRUG AND DWI COURT
 RESOURCES FUND**

Revenues – Office of State Courts
 Administrator

Increased surcharge on intoxication- related traffic offenses (§478.009.2)	\$418,532	\$1,004,475	\$1,128,913
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Costs – Office of State Courts
 Administrator

Operation of DWI dockets or courts (§478.001 to §478.007)	<u>(\$418,532)</u>	<u>(\$1,004,475)</u>	<u>(\$1,128,913)</u>
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**ESTIMATED NET EFFECT ON
 DRUG AND DWI COURT
 RESOURCES FUND**

\$0 \$0 \$0

<u>FISCAL IMPACT - Local Government</u>	FY 2011	FY 2012	FY 2013
	(10 Mo.)		

LOCAL GOVERNMENT

Cost - Jackson County - Costs associated with DWI docket or court (§478.002.2)	\$0 or (Less than \$100,000)	\$0 or (Less than \$100,000)	\$0 or (Less than \$100,000)
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Losses – Cities

Court fees, surcharges, and fines	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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**ESTIMATED NET EFFECT ON
 LOCAL GOVERNMENT**

(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

This proposed legislation relates to intoxication-related traffic offenses.

§302.309

A DWI court may grant a limited driving privilege to individuals who would otherwise be ineligible for such privilege. The DWI docket or court shall not grant a limited driving privilege to a participant during his or her initial forty-five days of participation.

§302.750

If a person refuses, upon the request of a law enforcement officer pursuant to §302.745, to submit to any test allowed under that section, evidence of the refusal shall be admissible in any proceeding to determine whether a person was operating a commercial motor vehicle while under the influence of alcohol or controlled substances. In this event, the officer shall make a sworn report to the director that he requested a test pursuant to §302.745 and that the person refused to submit to such testing.

§478.001, 478.003, 478.007, & 478.009

This proposal specifies that any circuit court may establish a docket or court to dispose of cases where a person has pleaded guilty to driving while intoxicated or driving with excessive blood alcohol content. A person is eligible for this docket or court if he or she operated a motor vehicle with at least .15 blood alcohol content, has had a previous conviction for an intoxication-related traffic offense, or has two or more previous alcohol-related enforcement contacts.

The existing Drug Courts Coordinating Commission and the Drug Court Resources Fund are expanded to include DWI courts. DWI courts may operate in conjunction with drug courts and drug court commissioners may preside over DWI courts.

§479.170

Any offense involving the operation of a vehicle in an intoxicated condition shall not be cognizable in municipal court, if the defendant has been convicted of two or more previous intoxicated-related traffic offenses or has had two or more previous alcohol-related enforcement

ASSUMPTION (continued)

contacts.

§542.266

In the case of a law enforcement officer or prosecutor applying for a search warrant to further investigate an alleged intoxication-related traffic offense as defined in §577.023, the officer or prosecutor may apply to a judge who does not have original jurisdiction of criminal offenses within the territorial jurisdiction where the person, place, or movable or immovable thing to be searched is located at the time of making the application.

§542.276

The application or execution of a search warrant shall not be deemed invalid for the sole reason that the application or execution of the warrant relies upon electronic signatures of the peace officer or prosecutor seeking the warrant or judge issuing the warrant.

§577.005

Each law enforcement agency shall adopt a policy requiring arrest information to be forwarded to the Highway Patrol Central Repository for intoxication-related traffic offenses and shall certify adoption of such policy when applying for grants administered by the Department of Public Safety (DPS). Each county prosecuting attorney and municipal prosecutor shall adopt a policy requiring charge information for intoxication-related traffic offenses to be forwarded to such central repository and to certify such policy with DPS.

§577.006

Municipal judges shall receive instruction on intoxication-related traffic offenses including a review of state laws on intoxication-related traffic offenses, including jurisdiction issues relating to such offenses, reporting requirements, and required assessment under the substance abuse traffic offender program (SATOP). Each municipal judge shall adopt a written policy requiring court personnel to report all dispositions for all charges for intoxication-related traffic offenses to the Highway Patrol Central Repository. Each municipal court must provide a copy of its policy to the Office of State Courts Administrator (OSCA) and the Highway Patrol. OSCA may create a model policy.

Each municipal court shall prepare a report every six months to be submitted to the circuit court en banc regarding the number and disposition of intoxication-related traffic offenses.

ASSUMPTION (continued)

§577.010 and 577.012

For a first DWI or excessive BAC offense, if the individual has a BAC of at least .15, the minimum jail time shall be 48 hours, unless the person participates in a DWI court program. If the individual has a BAC of at least .20, the minimum jail time shall be 5 days, unless the person participates in a DWI court program. If a first-time DWI or driving with excessive BAC offender has a BAC higher than .15, he or she shall not receive suspended imposition of sentence.

§577.023

The minimum jail time for a person who has a prior intoxication-related traffic offense is increased from five to ten days, unless the person participates in the existing community service option, or in the DWI court program. The minimum jail time for a person who is considered a persistent offender is increased from ten to thirty days, unless the person participates in the existing community service option, or in the DWI court program.

§577.039

This section removes the provision requiring a DWI arrest without a warrant to occur within 90 minutes after the alleged violation occurred.

§577.041

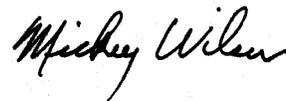
Currently, if a person refuses to submit to a chemical test when arrested or stopped for alleged driving while intoxicated, then none shall be given. Under this proposal, the provision stating that no test shall be given under such circumstances is removed.

SOURCES OF INFORMATION

Office of State Courts Administrator
Department of Transportation
Department of Mental Health
Department of Corrections
Department of Health and Senior Services
Department of Revenue
Department of Social Services
Department of Public Safety
 Office of the Director
 Missouri State Highway Patrol
 Missouri State Water Patrol
Office of Prosecution Services
Local Law Enforcement
 Boone County Sheriff's Department
 Jefferson City Police Department
Cities and Counties
 City of Centralia
 City of Kansas City
 Jackson County

NOT RESPONDING

Office of the State Public Defender
Various Local Law Enforcement Agencies
Various Cities and Counties



Mickey Wilson, CPA
Director
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