

FIRST REGULAR SESSION

SENATE BILL NO. 398

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

Read 1st time February 18, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1997S.011

AN ACT

To repeal section 56.765, RSMo, and to enact in lieu thereof two new sections relating to diversion authority of prosecuting attorneys.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 56.765, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 56.765 and 557.014, to read as
3 follows:

56.765. 1. A surcharge of [one dollar] **five dollars** shall be assessed as
2 costs in each court proceeding filed in any court in the state in all criminal cases
3 including violations of any county ordinance or any violation of a criminal or
4 traffic law of the state, including an infraction; except that no such surcharge
5 shall be collected in any proceeding in any court when the proceeding or the
6 defendant has been dismissed by the court or when costs are to be paid by the
7 state, county or municipality.

8 2. One-half of all moneys collected under the provisions of subsection 1 of
9 this section shall be payable to the state of Missouri and remitted to the director
10 of revenue who shall deposit the amount collected pursuant to this section to the
11 credit of the "Missouri Office of Prosecution Services Fund" which is hereby
12 created in the state treasury. The moneys credited to the Missouri office of
13 prosecution services fund from each county shall be used only for the purposes set
14 forth in sections 56.750, 56.755, and 56.760. The state treasurer shall be the
15 custodian of the fund, and shall make disbursements, as allowed by lawful
16 appropriations. All earnings resulting from the investment of money in the fund
17 shall be credited to the Missouri office of prosecution services fund. The Missouri
18 office of prosecution services may collect a registration fee to pay for expenses

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 included in sponsoring training conferences. The revenues and expenditures of
20 the Missouri office of prosecution services shall be subject to an annual audit to
21 be performed by the Missouri state auditor. The Missouri office of prosecution
22 services shall also be subject to any other audit authorized and directed by the
23 state auditor.

24 3. One-half of all moneys collected under the provisions of subsection 1 of
25 this section shall be payable to the county treasurer of each county from which
26 such funds were generated. The county treasurer shall deposit all of such funds
27 into the county treasury in a separate fund to be used solely for the purpose of
28 additional training for circuit and prosecuting attorneys and their staffs. If the
29 funds collected and deposited by the county are not totally expended annually for
30 the purposes set forth in this subsection, then the unexpended moneys shall
31 remain in said fund and the balance shall be kept in said fund to accumulate
32 from year to year, or at the request of the circuit or prosecuting attorney, with the
33 approval of the county commission or the appropriate governing body of the
34 county or the City of St. Louis, and may be used to pay for expert witness fees,
35 travel expenses incurred by victim/witnesses in case preparation and trial, for
36 expenses incurred for changes of venue, for expenses incurred for special
37 prosecutors, and for other lawful expenses incurred by the circuit or prosecuting
38 attorney in operation of that office.

39 4. There is hereby established in the state treasury the "Missouri Office
40 of Prosecution Services Revolving Fund". Any moneys received by or on behalf
41 of the Missouri office of prosecution services from registration fees, federal and
42 state grants or any other source established in section 56.760 in connection with
43 the purposes set forth in sections 56.750, 56.755, and 56.760 shall be deposited
44 into the fund.

45 5. The moneys in the Missouri office of prosecution services revolving fund
46 shall be kept separate and apart from all other moneys in the state treasury. The
47 state treasurer shall administer the fund and shall disburse moneys from the
48 fund to the Missouri office of prosecution services pursuant to appropriations for
49 the purposes set forth in sections 56.750, 56.755 and 56.760.

50 6. Any unexpended balances remaining in the Missouri office of
51 prosecution services fund and the Missouri office of prosecution services revolving
52 fund at each biennium shall be exempt from the provisions of section 33.080
53 relating to the transfer of unexpended balances to general revenue.

557.014. 1. As used in this section, the following terms shall

2 mean:

3 (1) "Accusatory instrument", a warrant of arrest, information, or
4 indictment;

5 (2) "Accused", an individual accused of a criminal offense, but not
6 yet charged with a criminal offense;

7 (3) "Defendant", any person charged with a criminal offense;

8 (4) "Deferred prosecution", the suspension of a criminal case for
9 a specified period upon the request of both the prosecuting attorney
10 and the accused or the defendant;

11 (5) "Diversionary screening", the discretionary power of the
12 prosecuting attorney to suspend all formal prosecutorial proceedings
13 against a person who has become involved in the criminal justice
14 system as an accused or defendant;

15 (6) "Prosecution diversion", the imposition of conditions of
16 behavior and conduct by the prosecuting attorney upon an accused or
17 defendant for a specified period of time as an alternative to proceeding
18 to adjudication on a complaint, information, or indictment;

19 (7) "Prosecuting attorney", includes the prosecuting attorney or
20 circuit attorney for each county of the state and the city of St. Louis.

21 2. Each prosecuting attorney in the state of Missouri shall have
22 the authority to, upon agreement with an accused or a defendant,
23 divert a criminal case to a prosecution diversion program for a period
24 of six months to two years, thus allowing for any statute of limitations
25 to be tolled for that time alone. The period of diversion may be
26 extended by the prosecuting attorney as a disciplinary measure or to
27 allow sufficient time for completion of any portion of the prosecution
28 diversion including restitution; provided, however, that no extension
29 of such diversion shall be for a period of more than two years.

30 3. The prosecuting attorney may divert cases, under this
31 program, out of the criminal justice system where the prosecuting
32 attorney determines that the advantages of utilizing prosecution
33 diversion outweigh the advantages of immediate court activity.

34 4. Prior to or upon the issuance of an accusatory instrument,
35 with consent of the accused or defendant, other than for an offense
36 enumerated in this section, the prosecuting attorney may forego
37 continued prosecution upon the parties' agreement to a prosecution
38 diversion plan. The prosecution diversion plan shall be for a specified

39 period and be in writing. The prosecuting attorney has the sole
40 authority to develop diversionary program requirements, but minimum
41 requirements are as follows:

42 (1) The alleged crime is nonviolent, nonsexual, and does not
43 involve a child victim or possession of an unlawful weapon;

44 (2) The accused or defendant must submit to all program
45 requirements;

46 (3) Any newly discovered criminal behavior while in a
47 prosecution diversion program will immediately forfeit his or her right
48 to continued participation in said program at the sole discretion of the
49 prosecuting attorney;

50 (4) The alleged crime does not also constitute a violation of a
51 current condition of probation or parole;

52 (5) The alleged crime is not a traffic offense in which the accused
53 or defendant was a holder of a commercial driver license or was
54 operating a commercial motor vehicle at the time of the offense; and

55 (6) Any other criteria established by the prosecuting attorney.

56 5. During any period of prosecution diversion, the prosecuting
57 attorney may impose conditions upon the behavior and conduct of the
58 accused or defendant that assures the safety and well-being of the
59 community as well as that of the accused or defendant. The conditions
60 imposed by the prosecuting attorney shall include, but are not limited
61 to, requiring the accused or defendant to remain free of any criminal
62 behavior during the entire period of prosecution diversion.

63 6. The responsibility and authority to screen or divert specific
64 cases, or to refuse to screen or divert specific cases, shall rest within
65 the sole judgment and discretion of the prosecuting attorney as part of
66 their official duties as prosecuting attorney. The decision of the
67 prosecuting attorney regarding diversion shall not be subject to appeal
68 nor be raised as a defense in any prosecution of a criminal case
69 involving the accused or defendant.

70 7. Any person participating in the program:

71 (1) Shall have the right to insist on criminal prosecution for the
72 offense for which he or she is accused at any time; and

73 (2) May have counsel of the person's choosing present during all
74 phases of the prosecution diversion proceedings, but counsel is not
75 required and no right to appointment of counsel is hereby created.

76 8. In conducting the program, the prosecuting attorney may
77 require at any point the re-initiation of criminal proceedings when, in
78 his or her judgment, such is warranted.

79 9. Any county, city, person, organization, or agency, or employee
80 or agent thereof, involved with the supervision of activities, programs,
81 or community service that are a part of a prosecution diversion
82 program, shall be immune from any suit by the person performing the
83 work under the deferred prosecution agreement, or any person
84 deriving a cause of action from such person, except for an intentional
85 tort or gross negligence. Persons performing work or community
86 service pursuant to a deferred prosecution agreement as described
87 shall not be deemed to be engaged in employment within the meaning
88 of the provisions of chapter 288. A person performing work or
89 community service pursuant to a deferred prosecution agreement shall
90 not be deemed an employee within the meaning of the provisions of
91 chapter 287.

92 10. Any person supervising or employing an accused or
93 defendant under the program shall report to the prosecuting attorney
94 any violation of the terms of the prosecution diversion program.

95 11. After completion of the program and any conditions imposed
96 upon the accused or defendant, to the satisfaction of the prosecuting
97 attorney, the individual shall be entitled to a dismissal or alternative
98 disposition of charges against them. Such disposition may, in the
99 discretion of the prosecuting attorney, be without prejudice to the state
100 of Missouri for the reinstatement of criminal proceedings, within the
101 statute of limitations, upon any subsequent criminal activity on the
102 part of the accused. Any other provision of law notwithstanding, such
103 individual shall be required to pay any associated costs prior to
104 dismissal of pending charges.

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