

HCS HB 215 -- DEFENSE OF INDIGENT DEFENDANTS AND RESTITUTION OF  
CRIME VICTIMS

SPONSOR: Cox

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Judiciary by  
a vote of 7 to 4.

Currently, the court reporter for all transcripts of testimony given or proceedings in any circuit court must receive \$2 per 25-line page for the original of the transcript and 35 cents per 25-line page for each regular size page; a judge may order a transcript of all or any part of the evidence or oral proceedings and the court reporter's fee to be paid by the state; and the court must order the court reporter to furnish three copies of the transcripts of the notes of the evidence for which the court reporter must receive \$2 per legal page and 20 cents per page for the copies. This substitute repeals these provisions and specifies that in cases where an appeal is taken, the court reporter must receive the sum of \$3.50 per legal page for the preparation of a paper and an electronic version of the transcript. In criminal cases where an appeal is taken and the court determines the defendant is unable to pay the costs of the transcript, the court reporter must receive a fee of \$2.60 per legal page and an electronic version of the transcript. Any judge, in his or her discretion, may order a transcript of all or any part of the evidence or oral proceedings and the court reporter must receive \$2.60 per legal page for the preparation of a paper and an electronic version of the transcript. The court reporter's fees for an appeal in a criminal case where the court determines that the defendant is unable to pay the costs or in a case where the judge orders a transcript must be paid by the state. The cost to prepare all other transcripts of testimony or proceedings must be paid by the party requesting the preparation and production. All transcripts must be prepared and provided by a court reporter certified by the Missouri Supreme Court. Any party who takes a deposition in a criminal case must be responsible for the costs of providing one copy of the transcript of the deposition to the opposing party.

The substitute requires restitution to be paid through the office of the prosecuting or circuit attorney. The provisions cannot prohibit the prosecuting attorney or circuit attorney from contracting with or utilizing another entity for the collection of the restitution and costs. Each prosecuting or circuit attorney who takes any action to collect restitution must collect from the person paying restitution an administrative handling cost of \$25 for restitution in an amount of less than \$100, \$50 for an amount between \$100 and \$249, and an additional fee of 10% of the total

restitution for an amount of \$250 or more. The maximum fee for administrative handling costs cannot exceed \$75. A \$2 installment cost must also be assessed for each installment payment, except for the first installment, until the amount of restitution is paid in full.

The moneys collected by the prosecuting or circuit attorney must be deposited into the newly created Administrative Handling Cost Fund to be expended by the prosecuting or circuit attorney for office supplies and equipment, capital outlay, trial preparation expenses, additional staff, and employees' salaries.

In addition to the administrative handling cost, the prosecuting or circuit attorney must collect \$5 for each crime victim to whom restitution is paid to be deposited into the Missouri Office of Prosecution Services Fund.

Currently, any person who has been found guilty of or pled guilty to the offense of tampering or stealing may be ordered by the court to make restitution to the victim. The substitute allows the court to order restitution to be paid by any person who has been found guilty or has pled guilty to any offense. The list of allowable expenses for restitution is revised to only include, but not be limited to, a victim's reasonable expenses to participate in the prosecution of the crime.

Currently, any person eligible to be released on parole for the offense of tampering or stealing may be required as a condition of parole to make restitution. The substitute requires any person eligible to be released on parole to make restitution as a condition of parole.

The court may set an amount of restitution to be paid by any person who has been found guilty of an offense to the victim for the victim's losses due to the offense that may be taken from the inmate's account at the Department of Corrections while he or she is incarcerated; and upon release from imprisonment, the payment of any unpaid balance may be collected as a condition of conditional release or parole.

Currently, the Director of the Office of State Public Defender must contract for legal services with private attorneys on a case-by-case basis and with assigned counsel as the Public Defender Commission deems necessary considering the needs of the area. The substitute repeals this provision and requires the director to contract out legal services with private attorneys for all nonsexual class C and class D felonies, all misdemeanor cases, all traffic cases, and all probation violation cases. The Office of Administration must handle the bidding process for all the

contracts. Contracts must be awarded through a competitive bidding process with the approval of the presiding judge of the judicial circuit where the services are rendered. The process must be designed to award contracts to the lowest and best bidder and must give priority to bidders who exhibit experience in criminal law, demonstrate the capacity to provide effective representation in all assigned cases, and carry sufficient malpractice insurance. The Office of Administration must also administer all contracts made by the director, including contracts for cases that are conflicts of the public defender. The Office of Administration must establish a quality assistance program, with the assistance of each presiding circuit judge, to ensure that defendants are being provided quality representation by private attorneys awarded contracts under these provisions. The director may contract out for legal services with private attorneys direct appeals of any cases handled by public defenders.

The director must also, with the approval and on behalf of the commission, contract with private attorneys for the collection and enforcement of liens and other judgments owed to the state for services rendered by the State Public Defender System if the prosecuting attorney does not collect and enforce those liens and other judgments.

The director must establish district offices, the boundaries of which must coincide with existing judicial circuits. Any district office may contain more than one judicial circuit within its boundaries, but no judicial boundary can include any geographic region of a judicial circuit without including the entire judicial circuit.

The substitute repeals the provision requiring the director and defenders to provide legal services to an eligible person who is detained or charged with any felony, including appeals from a conviction in the case, or who is detained or charged with a misdemeanor that will probably result in confinement in the county jail upon conviction and requires them to provide legal services to an eligible person who is detained or charged with a class A or class B felony, including appeals from a conviction in the case or a person who is detained or charged with a felony sexual offense. The director may contract out for legal services with private attorneys direct appeals of any cases handled by public defenders. The public defender must provide legal services in those cases in which a private attorney who has a contract for the provision of legal services has a conflict of interest.

The director and defenders are prohibited from providing legal services or contracting out for legal services with private attorneys for motions claiming ineffective assistance of counsel or

the representation of any crime victim or witness.

Currently, 18 C.S.R. 10-4.010 authorizes a local public defender office to certify its maximum caseload has been exceeded and thereafter limit its availability to take additional cases after consultation with the presiding court. The substitute invalidates that rule and prohibits the public defender from refusing to provide any representation required under Chapter 600, RSMo, without prior approval from a court of competent jurisdiction.

The public defender must pay the prosecuting or circuit attorney a collection fee of 20% of the funds collected by the prosecuting or circuit attorney on behalf of the public defender. The fee must be deposited in the same manner as collection fees are deposited in the county treasury for delinquent taxes under Section 136.150.

If the prosecuting attorney does not take action to enforce the judgment within 90 days of entry, the commission may also contract with private collection agencies.

The provisions of the substitute become effective July 1, 2014, except for the provisions of the substitute regarding 18 C.S.R. 10-4.010 that contain an emergency clause.

**PROPONENTS:** Supporters say that when the State Public Defender certifies caseload numbers that currently permit the public defender to refuse to take on additional cases, defendants receive delayed justice because they have to wait for an attorney to become available to represent them. The bill ensures that Missouri's poorest citizens get representation and that restitution is paid. State public defenders are reserved for the most serious criminal cases. The bill will most likely result in a net savings to the state through reduced staff in the Office of the State Public Defender. Prosecutors are facing the same increased workload that the office faces, but with decreased budget and decreased staffing and without the ability to certify out of their caseload.

Testifying for the bill were Representative Cox; Todd Smith, Missouri Association of Counties; Mark Ferguson; and Eric Zahnd, Missouri Association of Prosecuting Attorneys.

**OPPONENTS:** Opponents say that the criminal justice system cannot be operated cheaply. There is a problem in the Office of the State Public Defender, but the bill is not the correct approach to fix it. Contracting cases may lead to attorneys spending as little time as possible on each case in order to maximize profits. The Department of Corrections will have problems controlling their prison population because the inmates will not put money on their books if it will be seized to pay restitution.

Testifying against the bill were Jennifer Bukowsky; Michelle Monahan; Sean O'Brien, Missouri Association of Criminal Defense Attorneys; Clate J. Baker; ACLU-EM; and Cathy Kelly, Missouri State Public Defender.

OTHERS: Others testifying on the bill say that the lowest bidder in this situation is a guarantee to get ineffective assistance of counsel. It will cost more to have private counsel than it does to use the Office of the State Public Defender for these cases.

Testifying on the bill were Patrick Starke, President, Missouri Bar Association; and Professor Rodney Uphoff.