

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 547

AN ACT

To repeal sections 56.765 and 478.001, RSMo, and to enact in lieu thereof three new sections relating to alternative methods for the disposal of cases in the judicial system.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

Section A. Sections 56.765 and 478.001, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 56.765, 478.001, and 557.014, to read as follows:

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

2. One-half of all moneys collected under the provisions of subsection 1 of this section shall be payable to the state of Missouri and remitted to the director of revenue who shall deposit the amount collected pursuant to this section to the credit of the "Missouri Office of Prosecution Services Fund"

which is hereby created in the state treasury. The moneys credited to the Missouri office of prosecution services fund from each county shall be used only for the purposes set forth in sections 56.750, 56.755, and 56.760. The state treasurer shall be the custodian of the fund, and shall make disbursements, as allowed by lawful appropriations. All earnings resulting from the investment of money in the fund shall be credited to the Missouri office of prosecution services fund. The Missouri office of prosecution services may collect a registration fee to pay for expenses included in sponsoring training conferences. The revenues and expenditures of the Missouri office of prosecution services shall be subject to an annual audit to be performed by the Missouri state auditor. The Missouri office of prosecution services shall also be subject to any other audit authorized and directed by the state auditor.

3. One-half of all moneys collected under the provisions of subsection 1 of this section shall be payable to the county treasurer of each county from which such funds were generated. The county treasurer shall deposit all of such funds into the county treasury in a separate fund to be used solely for the purpose of additional training for circuit and prosecuting attorneys and their staffs. If the funds collected and deposited by the county are not totally expended annually for the purposes set forth in this subsection, then the unexpended moneys shall remain in said fund and the balance shall be kept in said fund to accumulate from year to year, or at the request of the circuit or prosecuting attorney, with the approval of the county commission or the appropriate governing body of the county or the City of

St. Louis, and may be used to pay for expert witness fees, travel expenses incurred by victim/witnesses in case preparation and trial, for expenses incurred for changes of venue, for expenses incurred for special prosecutors, and for other lawful expenses incurred by the circuit or prosecuting attorney in operation of that office.

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

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

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

478.001. 1. For purposes of sections 478.001 to 478.009, the following terms shall mean:

(1) "Adult treatment court", a treatment court focused on

addressing the substance use disorder or co-occurring disorder of defendants charged with a criminal offense;

(2) "Community-based substance use disorder treatment program", an agency certified by the department of mental health as a substance use disorder treatment provider;

(3) "Co-occurring disorder", the coexistence of both a substance use disorder and a mental health disorder;

(4) "DWI court", a treatment court focused on addressing the substance use disorder or co-occurring disorder of defendants who have pleaded guilty to or been found guilty of driving while intoxicated or driving with excessive blood alcohol content;

(5) "Family treatment court", a treatment court focused on addressing a substance use disorder or co-occurring disorder existing in families in the juvenile court, family court, or criminal court in which a parent or other household member has been determined to have a substance use disorder or co-occurring disorder that impacts the safety and well-being of the children in the family;

(6) "Juvenile treatment court", a treatment court focused on addressing the substance use disorder or co-occurring disorder of juveniles in the juvenile court;

(7) "Medication-assisted treatment", the use of pharmacological medications, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders;

(8) "Mental health disorder", any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive, volitional, or emotional function and that

constitutes a substantial impairment in a person's ability to participate in activities of normal living;

(9) "Risk and needs assessment", an actuarial tool, approved by the treatment courts coordinating commission and validated on a targeted population of drug-involved adult offenders, scientifically proven to determine a person's risk to recidivate and to identify criminal risk factors that, when properly addressed, can reduce that person's likelihood of committing future criminal behavior;

(10) "Substance use disorder", the recurrent use of alcohol or drugs that causes clinically significant impairment, including health problems, disability, and failure to meet major responsibilities at work, school, or home;

(11) "Treatment court commissioner", a person appointed by a majority of the circuit and associate circuit judges in a circuit to preside as the judicial officer in the treatment court division;

(12) "Treatment court division", a specialized, nonadversarial court division with jurisdiction over cases involving substance-involved offenders and making extensive use of comprehensive supervision, drug or alcohol testing, and treatment services. Treatment court divisions include, but are not limited to, the following specialized courts: adult treatment court, DWI court, family treatment court, juvenile treatment court, veterans treatment court, or any combination thereof;

(13) "Treatment court team", the following members who are assigned to the treatment court: the judge or treatment court

commissioner, treatment court administrator or coordinator, prosecutor, public defender or member of the criminal defense bar, a representative from the division of probation and parole, a representative from law enforcement, substance use disorder treatment providers, and any other person selected by the treatment court team;

(14) "Veterans treatment court", a treatment court focused on substance use disorders, co-occurring disorders, or mental health disorders of defendants charged with a criminal offense who are military veterans or current military personnel.

2. A treatment court division [may] shall be established, prior to August 28, 2021, by any circuit court pursuant to sections 478.001 to 478.009 to provide an alternative for the judicial system to dispose of cases which stem from, or are otherwise impacted by, substance use. The treatment court division may include, but not be limited to, cases assigned to an adult treatment court, DWI court, family treatment court, juvenile treatment court, veterans treatment court, or any combination thereof. A treatment court shall combine judicial supervision, drug or alcohol testing, and treatment of participants. Except for good cause found by the court, a treatment court making a referral for substance use disorder treatment, when such program will receive state or federal funds in connection with such referral, shall refer the person only to a program which is certified by the department of mental health, unless no appropriate certified treatment program is located within the same county as the treatment court. Upon successful completion of the treatment court program, the charges, petition,

or penalty against a treatment court participant may be dismissed, reduced, or modified, unless otherwise stated. Any fees received by a court from a defendant as payment for substance treatment programs shall not be considered court costs, charges or fines.

3. An adult treatment court may be established by any circuit court under sections 478.001 to 478.009 to provide an alternative for the judicial system to dispose of cases which stem from substance use.

4. Under sections 478.001 to 478.009, a DWI court may be established by any circuit court to provide an alternative for the judicial system to dispose of cases that stem from driving while intoxicated.

5. A family treatment court may be established by any circuit court. The juvenile division of the circuit court or the family court, if one is established under section 487.010, may refer one or more parents or other household members subject to its jurisdiction to the family treatment court if he or she has been determined to have a substance use disorder or co-occurring disorder that impacts the safety and well-being of the children in the family.

6. A juvenile treatment court may be established by the juvenile division of any circuit court. The juvenile division may refer a juvenile to the juvenile treatment court if the juvenile is determined to have committed acts that violate the criminal laws of the state or ordinances of a municipality or county and a substance use disorder or co-occurring disorder contributed to the commission of the offense.

7. The general assembly finds and declares that it is the public policy of this state to encourage and provide an alternative method for the disposal of cases for military veterans and current military personnel with substance use disorders, mental health disorders, or co-occurring disorders. In order to effectuate this public policy, a veterans treatment court may be established by any circuit court, or combination of circuit courts upon agreement of the presiding judges of such circuit courts, to provide an alternative for the judicial system to dispose of cases that stem from a substance use disorder, mental health disorder, or co-occurring disorder of military veterans or current military personnel. A veterans treatment court shall combine judicial supervision, drug or alcohol testing, and substance use and mental health disorder treatment to participants who have served or are currently serving the United States Armed Forces, including members of the Reserves or National Guard, with preference given individuals who have combat service. For the purposes of this section, combat service shall be shown through military service documentation that reflects service in a combat theater, receipt of combat service medals, or receipt of imminent danger or hostile fire pay or tax benefits. Except for good cause found by the court, a veterans treatment court shall make a referral for substance use or mental health disorder treatment, or a combination of substance use and mental health disorder treatment, through the Department of Defense health care, the Veterans Administration, or a community-based substance use disorder treatment program. Community-based programs utilized shall receive state or federal funds in

connection with such referral and shall only refer the individual to a program certified by the department of mental health, unless no appropriate certified treatment program is located within the same circuit as the veterans treatment court.

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

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

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

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

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

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

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

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

2. Each prosecuting attorney in the state of Missouri shall

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

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

4. Prior to or upon the issuance of an accusatory instrument, with consent of the accused or defendant, other than for an offense enumerated in this section, the prosecuting attorney may forego continued prosecution upon the parties' agreement to a prosecution diversion plan. The prosecution diversion plan shall be for a specified period and be in writing. The prosecuting attorney has the sole authority to develop diversionary program requirements, but minimum requirements are as follows:

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

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

(3) Any newly discovered criminal behavior while in a prosecution diversion program will immediately forfeit his or her

right to continued participation in said program at the sole discretion of the prosecuting attorney;

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

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

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

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

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

7. Any person participating in the program:

(1) Shall have the right to insist on criminal prosecution

for the offense for which he or she is accused at any time; and

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

8. In conducting the program, the prosecuting attorney may require at any point the reinitiation of criminal proceedings when, in his or her judgment, such is warranted.

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

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

11. After completion of the program and any conditions imposed upon the accused or defendant, to the satisfaction of the prosecuting attorney, the individual shall be entitled to a

dismissal or alternative disposition of charges against them.
Such disposition may, in the discretion of the prosecuting
attorney, be without prejudice to the state of Missouri for the
reinstitution of criminal proceedings, within the statute of
limitations, upon any subsequent criminal activity on the part of
the accused. Any other provision of law notwithstanding, such
individual shall be required to pay any associated costs prior to
dismissal of pending charges.