

# **LITIGATING EXCESSIVE COSTS**

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# **TYPES OF COSTS**

- Court Costs (fees & surcharges)
- Fines (under 558.002, RSMo)
- Restitution (559.105, RSMO)
  - Child Support

# JAIL BOARD BILLS NOT A COURT COST!

- *State v. Richey*, SC97604 (March 19, 2019)
- *State v. Wright*, SC97630 (March 19, 2019)
- *State v. Banderman*, SD35501 (April 1, 2019)
- *State v. Tidwell*, SD35656 (April 19, 2019)



# **CASE PARTY FEE REPORT**

(1) LET- County	\$2.00
(2) Dom. Viol.	\$2.00
(3) Inmate Security	\$2.00
(4) Felony Costs	\$195.50
(5) CVC	\$68.00
(6) LERF	\$300.00
(7) Time Payment Fee	\$25.00
(8) Board Bill	\$3,150.00
(9) Board Bill	\$2,275.00

# STATUTORY AUTHORITY REQUIRED

- “There is no power to tax costs unless a finger can be put upon a statute permitting it. ... There is no statute expressly authorizing the taxation of jail board bills as court costs.” -- *State v. Richey*



# HOW COSTS ARE TAXED IN CRIMINAL CASES

- State pays if defendant unable to pay *and* sentenced to prison (§ 550.020)
- County pays if defendant unable to pay *and* sentenced to jail (§ 550.030)

Generally, county must pay costs when state is not liable. Harry Pener, *The Missouri Criminal Costs System Re-Examined*, 46 U.M.K.C. L. Rev. 1 (1977)

And yet, in every criminal case we see the following docket entry:

“Costs Ordered to Def[endant]”

And in every Sentence and Judgment form we see the following:

“Costs taxed against **Defendant**”

# HOW FINES ARE IMPOSED § 558.004

- Court shall consider financial resources of the individual
- Court shall not impose fine if it will prevent payment of restitution
- Court shall not impose fine in addition to another sentence unless:
  - (1) Derived a pecuniary gain from the offense; or
  - (2) fine is uniquely adapted to deterrence of the type of offense involved
- Currently, nonpayment subject to imprisonment § 558.006
  - 180 days for felony
  - 30 days for misdemeanor
- House Bill 192 (DeGroot) repeals this and provides for civil collection



# LITIGATING ABILITY TO PAY

- “trial court may not assess costs or fees against persons represented by a legal aid society or legal services organization.”—WD80437 (2018)
- MSPD is a legal aid society or legal services organization – *State ex rel. Francis v. McElwain*, 140 S.W.3d 36, 38 (Mo. banc 2004)
- Indigency = inability to pay (“Mr. Fleming was indigent such that he could not pay his court costs.”) – *State ex rel. Fleming v. Board of Probation and Parole*, 515 S.W.3d 224, 226 (Mo. banc 2017)
  - MSPD makes indigency determinations § 600.086.3
  - court can challenge our indigency determination § 600.086.3



# CHANGE OF VENUE



- “In any criminal or civil case in which a change of venue is taken from one county to any other county, ... such costs shall be paid by the county in which the case, indictment or information was originally instituted to the county in which the case is actually tried or where the prisoner is confined.” § 550.120
- Pending now in appellate courts. See *State v. Boston*, ED107198

# PROTECTED (EXEMPT) BENEFITS

- “The right of any person to any future payment under this subchapter shall not be transferable or assignable, ... and none of the moneys paid or payable or rights existing under this subchapter ... shall be subject to other legal process.”

42 U.S.C. § 407(a). See also Mo. Rev. Stat. § 513.430.1(10)

- Social Security
- Disability
- Veteran’s Benefit
- Unemployment
- Public Assistance
- Alimony and/or Child Support



- Arguably, courts cannot order any of this protected income turned over to pay things like court costs, fines, fees, or restitution.
  - This question was left open by the Court in *State v. Tidwell*, SD35656 (April 17, 2019)