

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0386-01
Bill No.: SB 111
Subject: Public Records, Public Meetings; Criminal Procedure; Crimes and Punishment;
Courts
Type: Original
Date: January 24, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue	Less than (\$100,000) to (Unknown)	Less than (\$100,000) to (Unknown)	Less than (\$100,000) to (Unknown)
Total Estimated Net Effect on General Revenue Fund	Less than (\$100,000) to (Unknown)	Less than (\$100,000) to (Unknown)	Less than (\$100,000) to (Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Criminal Records Systems	(\$703,297)	(\$626,191)	(\$642,179)
Highway	More than (\$152,493)	More than (\$156,814)	More than (\$158,242)
Total Estimated Net Effect on Other State Funds	More than (\$855,790)	More than (\$783,005)	More than (\$800,421)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Federal	\$0	(\$22,000,000)	(\$44,000,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	(\$22,000,000)	(\$44,000,000)

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Social Services** and the **Office of State Public Defender** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of Attorney General** assume they will be involved in litigation regarding certain sealed records pursuant to this proposal, but assume such costs can be absorbed.

Officials from the **Office of Prosecution Services** assume prosecutors could absorb the costs of the proposed legislation within existing resources.

Officials from the **Office of State Courts Administrator (CTS)** assume, because of problems interpreting the proposal, it is not possible to estimate the fiscal impact. In recent years, there have been between 60,000 and 63,000 convictions or guilty pleas that could fit the definition of the qualifying crimes. CTS does not have age-of-defendant information. Data on the numbers of cases from over ten years ago where the defendant has had no subsequent conviction is not available.

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** assume they cannot 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 operational cost either through incarceration (FY01 average of \$35.78 per inmate per day, or an annual cost of \$13,060 per inmate) or through supervision provided by the Board of Probation and Parole (FY01 average of \$3.34 per offender per day, or an annual cost of \$1,219 per offender).

The DOC is unable to determine the number of additional inmate beds that may be required as a consequence of passage of this proposal. Estimated construction cost for one new medium to maximum security inmate bed is \$55,000. Utilizing this per-bed cost provides for a conservative estimate by the DOC, as facility start-up costs are not included and entire facilities and/or housing units would have to be constructed to cover the cost of housing new commitments resulting from the cumulative effect of various new legislation, if adopted as statute.

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

Officials from the **Department of Public Safety – Missouri State Highway Patrol (MHP)** assume, according to the MHP's Criminal Records and Identification Division, there is no accurate way to determine the exact fiscal impact of this legislation. The fiscal impact depends on public reaction to being able to expunge criminal records.

These calculations are based on the scenario that all eligible individuals petition the court, meet the requirements and the record of the petitioner is sealed. There are approximately 400,000 individuals without an arrest in the past 10 years. Just over 50% of those arrests fall into the category of nonviolent, nonsexual, nondrug and nonweapon offenses. This means that 200,000 people have records eligible for expungement. MHP estimates 100,000 persons per year would request this process through the courts. Since there are 232 working days in a year, and a Criminal History Record Technician can process 24 per day, the Criminal Records and Identification Division would require 17 FTE: 12 FTE Criminal History Technicians (each at

\$21,720 per year), 4 FTE AFIS Entry Operators (each at \$18,132 per year), and 1 FTE Fingerprint Technician (at \$21,192 per year). The FTE would also require standard office ASSUMPTION (continued)

equipment, as well as one full function AFIS work station (\$120,000). 3,400 (200 square foot x 17 FTE) square foot would be necessary to accommodate the additional FTE. The cost of leasing is approximately \$15 per square foot so the cost of the building would be approximately \$51,000 per year.

The MHP's Information Systems Division (ISD) assumes data would be electronically received, with the necessary information, from the proper authority and would then electronically seal/expunge the designated record(s). This process would be automatic regardless of the sending source. Although it is assumed the electronic order would be coming from the courts, it could come from the MHP's Criminal Records and Identification Division as a result of a court order and their subsequent validation. ISD would, through programming, automatically modify the necessary Criminal History Records as being sealed/expunged. Estimates are calculated based upon the average number of hours required to complete a batch process. Cost figures are calculated based upon utilization of consulting services at the state contract prices.

280 hours for batch and MULES procedures x \$107 per hour = \$29,960. This cost would be incurred in FY 04.

The ISD would also incur recurring costs. There would be a phonic name inquiry (QID) required for every individual wanting a criminal history record expunged, to retrieve the State Identification Number. This would be followed by an inquiry (QMH) to retrieve the specifics of their criminal history. The estimated costs at the State Data Center are \$4,300 per year, based upon 200,000 inquiries per year. ISD estimates their total costs to be \$34,260 to the Criminal Records Systems Fund.

The MHP estimates the total cost to the Criminal Records Systems Fund to be \$703,297 in FY 04; \$626,191 in FY 05; and \$642,179 in FY 06.

The MHP's Traffic Division also feels there is no accurate way to determine the exact fiscal impact of this legislation because it is based on public reaction. Based on the scenario that all eligible individuals petition the court meet the requirements and the record of the petitioner is sealed, the Traffic Division would require 2 FTE Data Entry Operators (each at \$17,568 per year). There are an estimated 100,000 records in the Traffic Arrest System and the Alcohol and Drug Offense Records System annually that meet the sealed records criteria. It is assumed that 50,000 (or 50%) of this total would actually be sealed. One FTE can process 10 court orders per

hour and with 50,000 orders per year, the division would need 2 FTE, along with standard office equipment. The MHP's Traffic Division estimates the cost of the proposal to the Highway fund to be \$52,493 in FY 04; \$56,814 in FY 05; and \$58,242 in FY 06.

ASSUMPTION (continued)

Officials from the **Department of Revenue (DOR)** assume the requirements of this legislation will allow a court to seal or close records relating to traffic convictions. Although such records will be closed to the public, they will continue to be required to be reported to the DOR for inclusion to the driving record. DOR will be required to mark such records as closed or expunged. This legislation will create significant unknown loss of federal highway funds due to non-compliance with the commercial driver license regulations promulgated by the U.S. Secretary of Transportation and subsequent loss of federal highway funds.

DOR assumes the proposal would have a direct affect on Total State Revenue because the expungement of convictions allowed under this legislation will create a form of "masking" of traffic convictions. Masking is defined by the Federal Motor Carrier Safety Administration (FMCSA) as any method that defers, diverts or otherwise prevents a traffic violation from appearing on an individual's driving record. The FMCSA suggests that these omissions can have a potentially serious effect on safety. As such, the FMCSA has issued a final rule which prohibits such practices of masking traffic convictions. See docket numbers FMCSA-2001-9709 and FMCSA-00-7382, published July 31, 2002, effective September 30, 2002. Specifically, section 384.226 which states as follows:

"The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State."

**ALLOWING THE EXPUNGEMENT OF TRAFFIC CONVICTIONS WILL
CREATE A SUBSTANTIAL NONCOMPLIANCE ISSUE WHICH
JEOPARDIZES FEDERAL HIGHWAY FUNDS. NONCOMPLIANCE WITH
THE REQUIREMENTS OF THIS RULE WILL RESULT IN A LOSS OF 5% OF
FEDERAL-AID HIGHWAY FUNDS FOR THE FIRST YEAR OF NON-
COMPLIANCE AND 10% LOSS OF FEDERAL-AID HIGHWAY FUNDS FOR
THE SECOND AND SUBSEQUENT YEARS OF NON-COMPLIANCE.**

Officials from the **Department of Transportation (MoDOT)** assume the proposal expands authority of courts to set aside past convictions and expunge criminal records. In December 1999, the 106th Congress enacted, and the President signed into law, PL 106-159, the Motor Carrier Safety improvement Act of 1999. Section 202 of that Act amended Title 49 of the United States Code, Section 31311, relating to the commercial drivers license driving record requirements, a state must comply in order to avoid federal withholding of federal highway funds. Subdivisions (18) and (19) were added to this section.

ASSUMPTION (continued)

Pursuant to Subdivision (18), the State shall maintain, as part of its driver information system, a record of each violation of a state or motor vehicle traffic control law while operating a motor vehicle (except a parking violation) for each individual who holds a commercial driver's license. The record shall be available upon request to the individual, the Secretary, employers, prospective employers, state licensing and law enforcement agencies, and their authorized agents.

Pursuant to Subdivision (19), the State shall (A) record in the driving record of an individual who has a commercial drivers' license issued by the state; and (B) make available to all authorized persons and governmental entities having access to such record, all information that State receives under paragraph (9) with respect to the individual and every violation by the individual involving a motor vehicle (including a commercial motor vehicle) of a state or local law on traffic control (except parking violation), not later than 10 days after the date of receipt of such information or the date of such violation, as the case may be. The State may not allow information regarding such violations to be withheld or masked in any way from the record of an individual possessing a commercial driver's license.

Section 610.134 of this legislation does not: (1) authorize the state to maintain, pursuant to subdivision (18), a record of each state or motor vehicle traffic violation (such as speeding, improper passing, careless and imprudent driving) and then make available to the driver, the driver's employer or prospective employers or the secretary of the U.S. DOT these violations; and (2) comply with the provisions in subdivision (19) that prohibits traffic violations from being masked in any way from the record of an individual possessing a commercial driver's license.

Any violation of these two subdivisions would appear to put the state in non-compliance with federal law that according to 49 U.S.C. 31311(a), would subject Missouri to the penalties in 49U.S.C. 31314. Section 31314 provides that for the first year that a state is in non-compliance with federal commercial motor vehicle masking requirements, the Secretary of U.S. DOT shall withhold 5 percent of funds apportioned to the state under sections 104(b)(1)(NHS funds,

104(b)(3) (STP funds) and 104(b)(5)(Interstate Maintenance), of Title 23 of the United States Code. For the second year and subsequent years of non-compliance, 10 percent of the above funds will be withheld.

Federal funds will be withheld on the first day of the fiscal year following the first year of non-compliance. If this proposal becomes law on August 28, 2003, the first federal distribution affected will be the federal year 2005, which begins October 1, 2004. The FY02 total for the NHS, IM and STP funds was \$436 million. Therefore the negative fiscal impact for FY05 would be \$22 million (\$436 X 5 percent) and the negative fiscal impact for FY06 would be \$44 million (\$436 X 10 percent).

ASSUMPTION (continued)

If Missouri continues to be in non-compliance with the federal commercial motor vehicle masking requirements, the funds transferred can only be spent on highway safety projects, such as eliminating roadside hazards or drunk driving enforcement and cannot be spent on new construction.

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
GENERAL REVENUE FUND			
<u>Costs – Office of State Courts</u>			
Administrator			
Sealing records	(Unknown)	(Unknown)	(Unknown)
<u>Costs – Department of Corrections</u>			
Incarceration/probation costs	Less than <u>(\$100,000)</u>	Less than <u>(\$100,000)</u>	Less than <u>(\$100,000)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	Less than (\$100,000) to <u>(Unknown)</u>	Less than (\$100,000) to <u>(Unknown)</u>	Less than (\$100,000) to <u>(Unknown)</u>

**CRIMINAL RECORDS SYSTEMS
FUND**

Costs – Missouri State Highway Patrol

Personal Service	(\$302,683)	(\$372,299)	(\$381,607)
Fringe Benefits	(\$152,522)	(\$187,601)	(\$192,292)
Equipment and Expense	<u>(\$248,092)</u>	<u>(\$66,291)</u>	<u>(\$68,280)</u>
<u>Total Costs</u> – MHP	(\$703,297)	(\$626,191)	(\$642,179)
ESTIMATED NET EFFECT ON CRIMINAL RECORDS SYSTEMS FUND	<u>(\$703,297)</u>	<u>(\$626,191)</u>	<u>(\$642,179)</u>

HIGHWAY FUND

Costs – Missouri State Highway Patrol

Personal Service (2 FTE)	(\$30,012)	(\$36,915)	(\$37,838)
Fringe Benefits	(\$15,123)	(\$18,601)	(\$19,067)
Equipment and Expense	<u>(\$7,358)</u>	<u>(\$1,298)</u>	<u>(\$1,337)</u>
<u>Total Costs – MHP</u>	(\$52,493)	(\$56,814)	(\$58,242)

<u>Loss – Department of Revenue</u>	More than	More than	More than
Administrative Sanctions	<u>(\$100,000)</u>	<u>(\$100,000)</u>	<u>(\$100,000)</u>

ESTIMATED NET EFFECT ON HIGHWAY FUNDS	More than <u>(\$152,493)</u>	More than <u>(\$156,814)</u>	More than <u>(\$158,242)</u>
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FEDERAL FUNDS

Loss – Department of Transportation

Federal funds withheld	\$0	(\$22,000,000)	(\$44,000,000)
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ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0</u>	<u>(\$22,000,000)</u>	<u>(\$44,000,000)</u>
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FISCAL IMPACT - Local Government

FY 2004 (10 Mo.)	FY 2005	FY 2006
<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

The proposed legislation would authorize courts to set aside criminal convictions and to expunge criminal records under certain circumstances. Current law allows courts to expunge arrest records if there was no probable cause for the arrest, no charges will be filed, and the subject of

the arrest has no criminal convictions. This act adds the additional restriction that the subject not have suspended impositions of sentence (SISs) on his record and that there are no pending

DESCRIPTION (continued)

investigations regarding the arrest. The proposal would also allow expungement, however, based only upon a finding that no criminal charges have been filed against the subject for 10 years after the arrest.

The proposal contains the Missouri Rehabilitation and Sealed Records Act which would authorize a court to set aside a person's criminal convictions and seal a person's criminal record if such person: 1. Has had no more than 1 felony or 2 misdemeanors; 2. Has not been convicted for 10 consecutive years following service of his or her most recent sentence; 3. Has no convictions for violent felonies or a sex-related offense; 4. Has no A or B felony convictions for a drug-distribution offense; 5. Has no convictions on his or her commercial drivers license (CDL) involving a BAC of .04 or higher; and 6. Is at least 25.


The proposal would criminalize knowing use or release of records sealed pursuant to the act. Failure to seal or knowingly releasing such records would be a class B misdemeanor and knowing use of the records for financial gain would be a class D felony.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General
Office of State Courts Administrator
Department of Corrections
Department of Social Services
Department of Public Safety
 – Missouri State Highway Patrol
Office of Prosecution Services
Office of State Public Defender
Department of Revenue
Department of Transportation

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A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
January 24, 2003