

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0467-01  
Bill No.: SB 100  
Subject: Courts; Controlled Substances; Crimes and Punishment  
Type: Original  
Date: March 16, 2015

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Bill Summary: This proposal expands the list of offenses eligible for expungement and requires courts to accept certain petitions for expungement under seal and to close hearings on those petitions.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
General Revenue	Up to \$11,702,915	Up to \$11,801,074	Up to \$11,800,693
<b>Total Estimated Net Effect on General Revenue</b>	<b>Up to \$11,702,215</b>	<b>Up to \$11,801,074</b>	<b>Up to \$11,800,693</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
Criminal Records	(\$1,305,359)	(\$1,475,799)	(\$1,492,355)
Highway Funds	(\$3,012,565)	(\$3,362,101)	(\$3,400,609)
<b>Total Estimated Net Effect on Other State Funds</b>	<b>(\$4,317,924)</b>	<b>(\$4,837,900)</b>	<b>(\$4,892,964)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 14 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
Federal Highway	\$0 or (\$31,000,000)	\$0 or (\$62,000,000)	\$0 or (\$62,000,000)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0 or (\$31,000,000)</b>	<b>\$0 or (\$62,000,000)</b>	<b>\$0 or (\$62,000,000)</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
General Revenue	1 FTE	1 FTE	1 FTE
Criminal Records	25 FTE	25 FTE	25 FTE
Highway Funds	68 FTE	68 FTE	68 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>94 FTE</b>	<b>94 FTE</b>	<b>94 FTE</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials at the **Department of Public Safety's Missouri Highway Patrol** assume the Criminal Justice Information Services Division (CJIS) states that there are currently 922,906 arrest charges that could potentially qualify for expungement under this new legislation. Of those, at least 311,455 are old enough to qualify under the required number of years for a felony or misdemeanor restriction created by this bill. If every person who is qualified to have his or her record expunged would submit a petition, there would be approximately 311,455 petitions for expungement and this would require 252 FTE ( $311,455/1,237$ ). There are an average of 85,000 arrests made each year for violations of these sections which provides the potential number for petitions each year after the initial eligible petitions were processed.

1 FTE = 1,856 hours (average work hours per year) x 60 minutes per hour = 111,360 minutes per year.

The current average time per petition to log, process, research, review, create related correspondences, and to expunge the information when the order is received is 90 minutes. Therefore, one FTE can handle 1,237 expungements per year =  $111,360 / 90$ .

With the current estimated potential of approximately 311,455 petitions eligible for expungement upon enactment of this legislation, the following percentages of persons actually requesting an expungement will directly relate to the number of FTE required:

10% =  $311,455 \times .10 = 31,146 / 1,237 = 25.18$  FTE  
20% =  $311,455 \times .20 = 62,291 / 1,237 = 50.36$  FTE  
30% =  $311,455 \times .30 = 93,437 / 1,237 = 75.53$  FTE  
40% =  $311,455 \times .40 = 124,582 / 1,237 = 100.71$  FTE  
50% =  $311,455 \times .50 = 155,728 / 1,237 = 125.89$  FTE  
60% =  $311,455 \times .60 = 186,873 / 1,237 = 151.07$  FTE  
70% =  $311,455 \times .70 = 218,019 / 1,237 = 176.25$  FTE  
80% =  $311,455 \times .80 = 249,164 / 1,237 = 201.43$  FTE  
90% =  $311,455 \times .90 = 280,310 / 1,237 = 226.60$  FTE  
100% =  $311,455 / 1,237 = 251.78$  FTE

ASSUMPTION (continued)

While it is unrealistic to project that 100% of the persons eligible would file petitions for expungement, it would be a conservative estimate that 20 to 30 percent would file each year. CJIS realizes this is a significant number of new FTE and would be willing to initiate the hiring process based on the ten percent range of possible expungements which would require a minimum of 25 FTE. However, additional funds would be necessary if the actual number of expungement petitions were to exceed this initial estimate. With any significant change in expungement eligibility, there will be a larger amount of expungements filed in the first three years due to the large number of persons already eligible when the law becomes effective which would increase the number of FTE during this timeframe. It is anticipated, based on the number of expungements resulting from arrests in this statute, the number of necessary FTE would drop after this initial period.

These FTE (CJIS Technicians) would be necessary to process all expungement requests, review criminal history records, contact any agency associated with the arrests or convictions, and collect the necessary data for the court orders.

Based on the average yearly salary and benefit rate per FTE of \$53,702 and the ability of that employee to process 1,237 expungements per year, the cost per expungement is  $\$53,702 \div 1,237 = \$43.41$ . It is suggested that a \$75.00 fee, similar to the criminal history background check fee, be implemented for the cost of researching and reviewing the criminal histories, as well as contacting of the various agencies associated with the arrests. If the state charged \$75 per expungement, this would bring in approximately \$2,335,950 in revenue ( $31,146 \times \$75$ ). Without this revenue, the Patrol does not know if the Criminal Records System Fund could sustain these costs. In researching other states with similar expungement requirements, they all charge a fee to offset the cost of the time required to process the expungements. Their fees ranged from \$50 to \$450 per petition per arrest date.

There would be recurring costs of \$650 per year per FTE for office supplies and phone charges, and standard equipment would be required at a one-time cost of \$3,566.

25 CJIS Technicians (\$28,716 annually)	\$717,900
Office Equipment/HW/SW	\$3,566
<b>RECURRING COSTS</b>	
Phone Charges per FTE	\$350
Office Supplies per FTE	\$300

ASSUMPTION (continued)

Additionally, all arrests made and citations issued by the Patrol are entered into the Patrol's Traffic Arrest System (TAS), which is managed by the Patrol Records Division (PRD). The new statutes included in this legislation would increase the number of eligible expungements from the TAS by several million arrests. The largest number would include those under section 304.010, which includes charges for exceeding the posted speed limit. There are currently 4,577,328 arrest charges under 304.010 in TAS. Approximately 3.38 million of these charges are over ten years old and could potentially qualify for expungement under this new legislation. Given this, if only five percent of the individuals who qualify to have his or her record expunged would submit a petition, there would be approximately 169,000 ( $3,380,000 \times .05$ ) petitions for expungement submitted to PRD and would require 68 FTE. There is an average of 117,281 arrests made each year for violations of 304.010, which provides the potential number of petitions each year after the initial eligible petitions were processed.

1 FTE = 1,856 hours (average work hours per year) x 60 minutes per hour = 111,360 minutes per year.

The current average time per petition to log, process, research, review, create related correspondences, and to expunge the information when the order is received is 45 minutes. Therefore, one FTE can handle 2,475 expungements per year =  $111,360 / 45$ .

With the current estimated potential of 3.38 million petitions for expungement upon enactment of this legislation, the following percentages of persons actually requesting an expungement will directly relate to the number of FTE required:

1% =  $3,380,000 \times .01 = 33,800 / 2,475 = 13.66$  FTE  
5% =  $3,380,000 \times .05 = 169,000 / 2,475 = 68.28$  FTE

Given a large segment of the population has received at least one excessive speed citation, it is realistic to assume a significant number of these individuals will file a petition to expunge these records. A conservative estimate would be five percent; however, it is impossible to estimate the number with any certainty. These FTE (Quality Control Clerks) would be necessary to process all expungement requests, review records, contact agencies, and collect the necessary data for the court orders.

ASSUMPTION (continued)

Based on the average yearly salary and benefit rate per FTE of \$44,209 and the ability of that employee to process 2,475 expungements per year, the cost per expungement is  $\$44,209 \div 2,475 = \$17.86$ . It is suggested that a \$20.00 fee, similar to the criminal history background check fee, be implemented for the cost of researching and reviewing the criminal histories. If the state charged \$20 per expungement, this would bring in approximately \$3,380,000 in revenue ( $169,000 \times \$20$ ).

The Patrol Records Division would have to initiate the use of work shifts (sharing work stations) in order to physically accommodate 14 FTE needed to process only 1% of the possible expungements. Processing five percent of the possible expungements would require additional workspace. The physical requirements would increase with the number of FTE required to meet the demand for expungements. There would be recurring costs of \$650 per year per FTE for office supplies and phone charges, and standard equipment would be required at a one-time cost of \$3,566 per FTE.

68 Quality Control Clerks (\$985 x 24)	\$1,607,520
Office Equipment/HW/SW	\$3,566

RECURRING COSTS

Phone Charges per FTE	\$350
Office Supplies per FTE	\$300

A significant processing backlog would occur if sufficient FTE are not assigned to accommodate the number of expungements ordered.

The provisions of the bill would require approximately 93 new FTE to process the expungement requests resulting from this legislation. The Patrol would need to rent office space for this additional staff. Per the Office of Administration's Statewide Space Standards, each FTE would require 64 square feet of office space for a total of 5,952 square foot building ( $64 \times 93$ ). The rental cost per square foot is \$14. Therefore, the total yearly cost of renting office space would be \$83,328 ( $5,952 \times \$14$ ). Additionally, there would be janitorial/trash costs of \$1.50 per square foot for a yearly cost of \$8,928 ( $5,952 \times \$1.50$ ). There would also be utility costs of \$2.00 per square foot for a yearly cost of \$11,904 ( $5,952 \times \$2.00$ ). For purposes of this fiscal note, the above mentioned costs have been split accordingly between the two funds involved.

ASSUMPTION (continued)

**Oversight** inquired DPS/MHP about the FTE and where they would be located. Officials at the DPS/MHP assume the FTE would be located in Jefferson City. Oversight then made some inquiries to the officials at the Office of Administration's Facilities Management and Design Construction about the number of FTE in DPS/MHP's response to see if a new building would need to be considered. Officials at the Office of Administration's Facilities Management and Design Construction assume there would be a need for 21,390 square feet for the 93 FTE. At \$14 a square foot for rent and \$3.50 a square foot for utilities and janitorial supplies, the total cost for the 93 FTE would be \$374, 325. This would be split between the Criminal Records fund and the Highway fund.

Officials at the **Department of Revenue** assume this proposal would require the Department, if named as a party defendant, to honor a court order for expungement a felony offense involving a motor vehicle including tampering, stealing, and property damage or misdemeanor speeding offense. Under these provisions, a person may apply to any court where he or she was found guilty of the felony or misdemeanor offenses to expunge all criminal record or conviction provided that he or she has "not been convicted" of a felony or misdemeanor during the time period specified (excluding any moving traffic violations).

This proposal would likely require the Department to expunge all eligible felony and misdemeanor speeding convictions including the "serious offense" of excessive speeding for CDL holders.

Additionally, this would require the Department, if named as a party defendant, to potentially violate Section 302.347, RSMo, which contains Missouri provisions adopting federal record keeping requirements (49 CFR § Part 384) to report to the CDLIS (Commercial Driver's License Information System) all convictions and license actions committed in any type of vehicle for a CDL holder or those required to hold a CDL. A person may be granted more than one expungement under this section provided that no person shall be granted more than one expungement from the same court.

Administrative Impact - The Department is unable to determine how many court-order expungements will be received. A Revenue Processing Tech I can process 50 court-ordered expungements per day. If we receive 50 per day, the Department will require one FTE to process the additional court-ordered expungements. If the volume exceeds 50 per day, additional FTE will be required and requested through the appropriations process.

One Revenue Processing Tech (A10/L) \$21,990 (10 months)

ASSUMPTION (continued)

FY2016 Total = \$21,990

FY2017 Total = \$26,652

FY2018 Total = \$26,918

Programming changes and testing of the Missouri Driver License (MODL) system will be required to:

Allow the Driver License Bureau to expunge:

Any conviction as required by court order; and

Any suspension, revocation, or disqualification as a result of the conviction(s) being expunged.

Program requirements and testing for expungements:

The Driver License Bureau estimates 320 hours of system testing and training by one Administrative Analyst I;

The Driver License Bureau estimates 320 hours of system testing and training by one Management Analysis Specialist II; and

Maintain records on which court granted the expungement so more than one is not granted by the same court.

Make updates to the following:

Internal staff procedures;

Correspondence letters; and

Department's website.

Train internal staff.

Review administrative rules for possible revisions.

FY16 (DLB)

Administrative Analyst I - 320 hrs @ \$25 (1 ½) per hr = \$8,000

Management Analyst Specialist II - 320 hrs @ \$23 per hr = \$7,360

Revenue Band Manager I - 160 hrs @ \$25 per hr = \$4,000

Total=\$19,360

**Oversight** assumes the Revenue Processing Technician would start at an annual salary of \$23,508 per year and has reflected fiscal impact of the recalculation in the fiscal note.



ASSUMPTION (continued)

The following changes will need to be made by the DOR Personnel Service Bureau:

FY 16 (PSB)

Update web page - Administrative Analyst III	10 hrs @ \$23 = \$230
Update forms - Management Analysis Spec I	40 hrs @ \$21 = \$840
Update procedures - Management Analysis Spec I	40 hrs @ \$21 = \$840
	Total = \$1,910

OA-ITSD estimates a cost of 1,036.8 hours at \$75 per hour for a total of \$77,760.

If a court-ordered expungement is received for a conviction involving the operation of a commercial vehicle or by a commercial driver license holder, the state of Missouri could be found to be in noncompliance based on the following federal regulations: Title 49 part 384 section 384.225, Title 49 part 384 section 384.226, Title 49 part 383 section 383.51 and Title 49 part 384, section 384.231.

If a court-ordered expungement is received for an offense involving the use of a commercial or noncommercial motor vehicle by a CDL holder or a person required to have a CDL and a state is found to be in noncompliance, federal highway funds are subject to a reduction or could be withheld. The first year of non-compliance resulting in 4% reduction (approximately \$31 million), and each subsequent year subject to an 8% reduction (approximately \$62 million). Missouri may lose the ability to issue CDLs if not compliant.

**Oversight** inquired the Missouri Department of Transportation (MoDOT) about the issue of being out of compliance with the federal highway fund. MoDOT is currently working with the Federal Highway Administration in getting a response to this issue and will respond to Oversight's request once it is available. Due to the uncertainty if this proposal would put Missouri out of compliance, Oversight will reflect the possibility as an impact of \$0 or (\$31,000,000) in FY16 and \$0 or (\$62,000,000) in FY17 and FY18 to the federal highway fund.

Officials at the **Office of the State Courts Administrator (OSCA)** assume the proposed legislation expands the list of offenses eligible for expungement and requires courts to accept certain petitions for expungement under seal and to close hearings on those petitions. During the past five years there was an average of 22,299 non-violent felony offenses and 160,780 misdemeanor non-violent offenses disposed by guilty outcome.

ASSUMPTION (continued)

Based upon our clerical weighted workload statistics, it would take 324 minutes or 5.4 hours to process the non-violent felony offenses, 73 court clerk FTE and 122 minutes or 2.03 hours, 200 court clerk FTE, to process the misdemeanor non-violent offenses. In FY16 we estimate the cost will be \$0 to \$8,176,565.

**Oversight** inquired of the OSCA and assumes the 273 FTE are not additional, but existing FTE. There would be a one-time cost in FY 2016 as outlined in OSCA's response. Then the costs going forward in FY 2017 and 2018 would be in OSCA's budget or appropriation.

Using MHP's estimates, Oversight also assumes the average expungements each year could be up to 200,146 (31,146 + 169,000). Therefore, Oversight will reflect \$20,014,600 in revenue each year based on \$488.650 allowing a surcharge of \$100 to the General Revenue Fund per expungement.

Officials at the **Department of Corrections (DOC)** assume the legislation may cause an increase in workload for Institutional Records Office Staff as it expands the list of offenses for which an individual can request expungement. Expunging these records for the specified offenses through destruction, redacting or removal (electronic) will result in an increase in workload for our Institutional Records Officers, as they are the custodian of records for our offender files. This could also affect records kept at Probation and Parole Offices. While it represents an increase in workload, it is not anticipated that petitions for expungement will occur often enough to significantly impact the DOC.

While the department assumes a \$0 impact, the use of expungement by offenders is unknown. Also, the exact records to be expunged are not clearly defined. There is some concern for tracking previous medical, mental health, substance abuse treatment and education records should the offender return to supervision by the department.

If there should be a significant number of additional requests for expungement or a significant expansion in the number of offenses that could be expunged, it could result in additional costs to the DOC.

Officials at the **Office of the Attorney General (AGO)** assume the proposal expands the number of instances in which certain criminal records may be expunged. The AGO assumes costs associated with the proposal can be absorbed with existing resources, but will seek additional appropriation if the number of records it is required to locate and expunge increases significantly.

ASSUMPTION (continued)

Officials at the **Missouri Department of Transportation**, the **Office of the State Public Defender** and the **Office of Prosecution Services** each assume no fiscal impact to their respective agencies from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
<b>GENERAL REVENUE</b>			
<u>Revenue - Office of State Court Administrators - surcharge on expungement from §488.650</u>			
	Up to \$20,014,600	Up to \$20,014,600	Up to \$20,014,600
<u>Costs - OSCA - staff needed to process the expungement of records</u>			
	\$0 or (Up to \$8,176,565)	\$0 or (Up to \$8,176,565)	\$0 or (Up to \$8,176,565)
<u>Costs - Department of Revenue</u>			
Personal Service	(\$40,860)	(\$23,743)	(\$23,981)
Fringe Benefits	(\$10,188)	(\$12,348)	(\$12,471)
Equipment and Expense	(\$84,072)	(\$870)	(\$890)
<u>Total Costs - DOR</u>	<u>(\$135,120)</u>	<u>(\$36,961)</u>	<u>(\$37,342)</u>
FTE Change - DOR	1 FTE	1 FTE	1 FTE
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE</b>	<b><u>Up to \$11,702,915</u></b>	<b><u>Up to \$11,801,074</u></b>	<b><u>Up to \$11,800,693</u></b>
Estimated Net FTE change for General Revenue	1 FTE	1 FTE	1 FTE

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2016 (10 Mo.)	FY 2017	FY 2018
<b>CRIMINAL RECORDS FUND</b>			
<u>Cost - DPS/MHP</u>			
Personal Service	(\$598,250)	(\$725,079)	(\$732,330)
Fringe Benefits	(\$520,537)	(\$630,891)	(\$637,200)
Equipment and Expense	(\$102,692)	(\$16,657)	(\$17,073)
Office Space/Janitorial/Utilities	(\$83,880)	(\$103,172)	(\$105,752)
<u>Total Costs - DPS/MHP</u>	<u>(\$1,305,359)</u>	<u>(\$1,475,799)</u>	<u>(\$1,492,355)</u>
FTE Change - DPS/MHP	25 FTE	25 FTE	25 FTE
<b>ESTIMATED NET EFFECT ON CRIMINAL RECORDS FUND</b>			
	<b><u>(\$1,305,359)</u></b>	<b><u>(\$1,475,799)</u></b>	<b><u>(\$1,492,355)</u></b>
Estimated Net FTE Change for Criminal Records Fund	25 FTE	25 FTE	25 FTE
<b>HIGHWAY FUNDS</b>			
<u>Cost - DPS/MHP</u>			
Personal Service	(\$1,339,600)	(\$1,623,595)	(\$1,639,831)
Fringe Benefits	(\$1,165,586)	(\$1,412,690)	(\$1,426,817)
Equipment and Expense	(\$279,321)	(\$45,305)	(\$46,438)
Office Space/Janitorial/Utilities	(\$228,058)	(\$280,511)	(\$287,523)
<u>Total Costs - DPS/MHP</u>	<u>(\$3,012,565)</u>	<u>(\$3,362,101)</u>	<u>(\$3,400,609)</u>
FTE Change - DPS/MHP	68 FTE	68 FTE	68 FTE
<b>ESTIMATED NET EFFECT ON HIGHWAY FUNDS</b>			
	(\$3,012,565)	(\$3,362,101)	(\$3,400,609)
Estimated Net FTE Change for Highway Funds	68 FTE	68 FTE	68 FTE

<u>FISCAL IMPACT - State Government</u>	FY 2016	FY 2017	FY 2018
(continued)	(10 Mo.)		

**FEDERAL FUNDS**

<u>Loss</u> - DOR - potential loss of federal highway funding if proposal puts Missouri out of compliance	\$0 or <u>(\$31,000,000)</u>	\$0 or <u>(\$62,000,000)</u>	\$0 or <u>(\$62,000,000)</u>
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<b>ESTIMATED NET EFFECT TO FEDERAL FUNDS</b>	<b>\$0 or <u>(\$31,000,000)</u></b>	<b>\$0 or <u>(\$62,000,000)</u></b>	<b>\$0 or <u>(\$62,000,000)</u></b>
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<u>FISCAL IMPACT - Local Government</u>	FY 2016	FY 2017	FY 2018
	(10 Mo.)		

	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

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

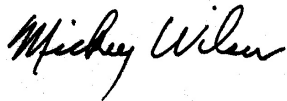
FISCAL DESCRIPTION

Under current law, records relating to certain felony and misdemeanor offenses may be expunged by petition to the circuit court in which the person was found guilty. This act expands the list of offenses eligible for expungement to include possession of a controlled substance or imitation controlled substance, criminal nonsupport, first degree tampering, first degree property damage, stealing offenses, misdemeanor speeding offenses, and the Class A misdemeanor of peace disturbance. In addition, this act specifies that, when a petitioner requests the expungement of records that have been closed because the person received a suspended imposition of sentence, the court must accept the petition under seal and the hearing is only open to the named defendants.

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



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