

SCOMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1640-02
Bill No.: SB 451
Subject: Cities, Towns, and Villages; Counties; Courts; Crimes and Punishment; Criminal Procedure; Fees; Highway Patrol; Law Enforcement Officers and Agencies; Public Records, Public Meetings
Type: Original
Date: March 16, 2015

Bill Summary: This proposal modifies provisions relating to petitions for the expungement of criminal records.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	Up to \$551,164,754	Up to \$551,260,903	Up to \$551,260,517
Total Estimated Net Effect on General Revenue	Up to \$551,164,754	Up to \$551,260,903	Up to \$551,260,517

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Criminal Records	(\$26,198,802)	(\$27,893,323)	(\$28,158,065)
Highway Funds	(\$10,436,983)	(\$10,855,488)	(\$10,957,447)
Total Estimated Net Effect on Other State Funds	(\$36,635,785)	(\$38,748,811)	(\$39,115,512)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 14 pages.

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

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	1 FTE	1 FTE	1 FTE
Criminal Records	469 FTE	469 FTE	469 FTE
Highway Funds	218 FTE	218 FTE	218 FTE
Total Estimated Net Effect on FTE	688 FTE	688 FTE	688 FTE

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

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Public Safety's Missouri Highway Patrol (DPS/MHP) Criminal Justice Information Services Division (CJIS)** state under §610.140 there are currently 5.8 million arrests that could potentially qualify for expungement/sealing under this legislation. In its current form, the bill would only exclude 283 criminal charges from expungement process. While it is unrealistic to project that 100% of the persons eligible each year would file petitions for expungement, it would be a conservative estimate that ten percent would file resulting in 580,000 (5,800,000 x .10) petitions filed. Clearly, if a large number of these expungements/sealing of records were to be granted with even 469 FTE, the backlog would compound greatly to the point it may take several years to catch up.

$$10\% = 5,800,000 \times .10 = 580,000 / 1,237 = 468.87 \text{ FTE}$$

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 = $111,360 / 90$. These FTE (Criminal Justice Information Services Technicians (CJIS Technicians, Range 16) 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 at \$54,240 and the ability of that employee to process 1,237 expungements per year, the cost alone per expungement is $\$54,240 / 1,237 = \43.85 . It is suggested that a 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. 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.

§488.650 assesses five hundred dollar surcharge on all petitions filed under 610.140; however, all funds for the surcharge are payable to the General Revenue fund. The CJIS Division does not receive operating funds from General Revenue; therefore, it is recommended that a specific fee be dedicated to cover the operational expenses that would be incurred by the CJIS Division with the passing of this legislation.

ASSUMPTION (continued)

There will be recurring costs of \$650 per year per FTE for office supplies and phone charges. Standard equipment and office furniture would be required at a one-time cost of \$6,094 per FTE.

469 CJIS Technicians (\$1,208.50 x 24) (salary only)	\$13,602,876
Equipment/Office Furniture	\$6,094

RECURRING COSTS

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

In a previous fiscal note and bill review for the current legislative session, the **Patrol Records Division (PRD)** calculated costs for expungement of records relating to arrests completed by the Missouri State Highway Patrol prior to 2009 for violations of misdemeanor offenses under §567.020, Chapter 195, §568.040, Chapter 301, Chapter 302, Chapter 303, Chapter 304, Chapter 307 and Chapter 390, RSMo. While there are hundreds of thousands of additional Traffic Arrests System (TAS) records that would meet the criteria for expungement under this proposed legislation, the aforementioned were used considering they were specifically noted in the bill and cover a majority of the traffic-related arrests completed by the Highway Patrol.

At that time, there were over 9.7 million arrests records in TAS that met the above noted criteria, and this number has not diminished. Additionally, there are over 299,000 Highway Patrol misdemeanor DWI-related arrest records and 780,000 local law enforcement misdemeanor/ordinance DWI-related arrest records prior to 2012 in the TAS/DWITS that would meet the criteria of Senate Bill 451. Given this, if only five percent of the individuals who qualify to have his or her record expunged were granted an expungement order by the court, there would be approximately 538,950 (10,779,000 x .05) petitions for expungement submitted to PRD and would require 218 FTE (538,950 / 2,475). There is an average of 117,281 arrests made each year for violations of 304.010 alone, 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.

ASSUMPTION (continued)

With the current conservative estimate of 10,779,000 (9,700,000+299,000+780,000) records eligible for expungement upon enactment of this legislation, the following percentages of persons actually requesting an expungement will directly relate to the number of PRD FTE required:

1% = $10,779,000 \times .01 = 107,790 / 2,475 = 43.48$ FTE
5% = $10,779,000 \times .05 = 538,950 / 2,475 = 217.75$ FTE
10% = $10,779,000 \times .10 = 1,077,900 / 2,475 = 435.51$ FTE
20% = $10,779,000 \times .20 = 2,155,800 / 2,475 = 871.93$ FTE

Given a large segment of the population has received at least one traffic-related 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, Range 10) would be necessary to process all expungement requests, review records, contact agencies, and collect the necessary data for the court orders.

Based on the average yearly salary and benefit rate per FTE of \$44,658 and the ability of that employee to process 2,475 expungements per year, the cost per expungement is $\$44,658 / 2,475 = \18.04 . It is suggested that a fee, similar to the criminal history background check fee, be implemented for the cost of researching and reviewing the criminal histories.

The Patrol Records Division would have to initiate the use of work shifts (sharing work stations) in order to physically accommodate 43 FTE needed to process only 1% of the possible expungements. The division currently has workspace for 30 full-time employees, not including supervisors. 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. Employees sharing cubicles would not require additional equipment; however, there would be recurring costs of \$650 per year per FTE for office supplies and phone charges. FTE requiring new work stations and equipment would incur a one-time cost of \$6,094 per FTE.

218 Quality Control Clerks (\$995 x 24)	\$5,205,840
Equipment/Office Furniture	\$6,094
RECURRING COSTS	
Phone Charges per FTE	\$350
Office Supplies per FTE	\$300

ASSUMPTION (continued)

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 687 (469 + 218) new FTE which does not include any supervisors, administrative or support personnel to process the expungement requests resulting from this legislation. The Patrol would need to rent office space for this additional staff and defers to the Office of Administration for the amount of square footage required.

Oversight inquired with the Office of Administration (OA) regarding the additional space needed by the Department of Public Safety for this proposal. Per the Office of Administration's Facilities Management, Design and Constructions, the total square foot cost based on Cole County needed would be 158,010 sq. ft. for this proposal. Therefore, 687 FTE x 230 sq. ft. per FTE = 158,010 sq. ft. x \$17.50 sq. ft. = \$2,765,175 annual rent and services (\$1,887,725 for the Criminal Records fund and \$877,450 for the Highway fund).

Officials at the **Department of Revenue (DOR)** assume §610.140 would require the Department, if named as a party defendant, to honor a court order for expungement of certain felony offenses and any infraction, municipal ordinance violations, and misdemeanor offenses. Under these provisions, if the felony offense is at least five years old or a misdemeanor, municipal offense or infraction is at least three years old, a person may apply to the court where he or she was found guilty to expunge all criminal records of the offense. Class A Felony offenses and any felony offense involving a death or physical injury are not eligible for expungement under these provisions. A person is only allowed one expungement under these provisions.

Administratively, 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) \$23,880 (10 months)
FY2016 Total = \$19,900
FY2017 Total = \$24,119
FY2018 Total = \$24,360

ASSUMPTION (continued)

Because a person is allowed only one expungement, programming and user acceptance testing of the Missouri Driver License (MODL) system will be required to allow the Driver License Bureau to maintain records of an expungement under these provisions. This cost is estimated to be \$77,760 through OA-ITSD in FY 2016. Under the programming requirements and user acceptance testing for expungement, the Driver License Bureau estimates 320 hours of user acceptance system testing and training for both an Administrative Analyst I and a Management Analysis Specialist II. A review of administrative rules and internal procedures will also be required for possible revisions.

Additional staffing costs for FY 2016 also include the following:

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 = <u>\$4,000</u>
	\$19,360

DOR officials noted that the proposal would, in their opinion, cause Missouri to be out of compliance with federal Commercial Driver License (CDL) provisions prohibiting masking of traffic violations and record keeping requirements for convictions and license actions committed in any type of vehicle under 49 CFR §384, specifically, the provisions of §384.225(d), as adopted in Missouri under §302,347, for offenses committed by those required to possess a CDL

If the Department is found noncompliant and federal highway funds are withheld, the first year of non-compliance could result in a 4% reduction (approximately \$31 million), and each subsequent year is subject to an 8% reduction (approximately \$62 million). Missouri may lose the ability to issue CDL's if not compliant with federal regulations. This proposal could potentially result in the Department violating 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.

Due to the uncertainty if this proposal would put Missouri out of compliance, **Oversight** will reflect the possibility as \$0 or (\$62,000,000) impact to federal highway funding.

Officials at the **Office of the State Courts Administrator (OSCA)** assume the proposed legislation modifies provisions relating to petitions for the expungement of criminal records. 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 expungement each year could be up to 1,118,950 (580,000 + 538,950). Therefore, Oversight will reflect \$559,475,000 in revenue each year based on the proposal allowing a surcharge of \$500 to the General Revenue Fund per expungement.

Oversight also assumes the proposal allows for local ordinance violations to be expunged which will result in additional costs to locals to process. Therefore, Oversight will reflect an unknown cost to local political subdivisions for this proposal.

Officials at the **Department of Corrections** assume this legislation may cause an increase in workload for the 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 Department of Corrections.

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 are 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 Department.

Officials at the **Office of the Attorney General** assume that any potential costs arising from this proposal can be absorbed with existing resources.

ASSUMPTION (continued)

Officials at 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.

Officials at the **Boone County Sheriff's Department**, the **Springfield Police Department** and the **Cole County Sheriff's Office** each assume no fiscal impact to their respective entities from this proposal.

Officials at the Missouri Department of Transportation did not respond to **Oversight's** request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
GENERAL REVENUE			
<u>Revenue</u> - OSCA - surcharge on expungement from §488.650	Up to \$559,475,000	Up to \$559,475,000	Up to \$559,475,000
<u>Costs</u> - OSCA - staff needed to process the expungement of records	\$0 or (Up to \$8,176,565)	\$0 or (Up to \$8,176,565)	\$0 or (Up to \$8,176,565)
<u>Costs</u> - DOR			
Personal Service	(\$39,260)	(\$24,119)	(\$24,360)
Fringe Benefits	(\$10,349)	(\$12,543)	(\$12,668)
Equipment and Expense	(\$84,072)	(\$870)	(\$890)
<u>Total Costs</u> - DOR	<u>(\$133,681)</u>	<u>(\$37,532)</u>	<u>(\$37,918)</u>
FTE Change - DOR	1 FTE	1 FTE	1 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>Up to \$551,164,754</u>	<u>Up to \$551,260,903</u>	<u>Up to \$551,260,517</u>
Estimated Net FTE change for General Revenue	1 FTE	1 FTE	1 FTE

FISCAL IMPACT - State Government - FY 2016 FY 2017 FY 2018
 (continued) (10 Mo.)

CRIMINAL RECORDS FUND

<u>Costs - DPS/MHP</u>			
Personal Service	(\$11,335,730)	(\$13,738,905)	(\$13,876,294)
Fringe Benefits	(\$9,863,219)	(\$11,954,221)	(\$12,073,763)
Equipment and Expense	(\$3,112,128)	(\$312,472)	(\$320,283)
Office Space/Janitorial/Utilities	(\$1,887,725)	(\$1,887,725)	(\$1,887,725)
<u>Total Costs - DPS/MHP</u>	<u>(\$26,198,802)</u>	<u>(\$27,893,323)</u>	<u>(\$28,158,065)</u>
FTE Change - DPS/MHP	469 FTE	469 FTE	469 FTE

**ESTIMATED NET EFFECT ON
 CRIMINAL RECORDS FUND** **(\$26,198,802)** **(\$27,893,323)** **(\$28,158,065)**

Estimated Net FTE Change for Criminal Records Fund	469 FTE	469 FTE	469 FTE
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HIGHWAY FUNDS

<u>Cost - DPS/MHP</u>			
Personal Service	(\$4,338,200)	(\$5,257,898)	(\$5,310,477)
Fringe Benefits	(\$3,774,668)	(\$4,574,897)	(\$4,620,646)
Equipment and Expense	(\$1,446,575)	(\$145,243)	(\$148,874)
Office Space/Janitorial/Utilities	(\$877,450)	(\$877,450)	(\$877,450)
<u>Total Costs - DPS/MHP</u>	<u>(\$10,436,893)</u>	<u>(\$10,855,488)</u>	<u>(\$10,957,447)</u>
FTE Change - DPS/MHP	218 FTE	218 FTE	218 FTE

**ESTIMATED NET EFFECT ON
 CRIMINAL RECORDS FUND** **(\$10,436,893)** **(\$10,855,488)** **(\$10,957,447)**

Estimated Net FTE Change for Highway Funds	218 FTE	218 FTE	218 FTE
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FISCAL IMPACT - State Government - FY 2016 FY 2017 FY 2018
 (continued) (10 Mo.)

FEDERAL FUNDS

Loss - DOR - potential loss of federal highway funding if proposal puts Missouri out of compliance \$0 or (\$31,000,000) \$0 or (\$62,000,000) \$0 or (\$62,000,000)

ESTIMATED NET EFFECT ON FEDERAL FUNDS **\$0 or (\$31,000,000)** **\$0 or (\$62,000,000)** **\$0 or (\$62,000,000)**

FISCAL IMPACT - Local Government FY 2016 FY 2017 FY 2018
 (10 Mo.)

LOCAL POLITICAL SUBDIVISIONS

Costs - Local Political Subdivisions - allows expungement of ordinance violations (Unknown) (Unknown) (Unknown)

ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS **(Unknown)** **(Unknown)** **(Unknown)**

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

Current law requires a \$100 surcharge to be paid for petitions for expungement of criminal records. This act raises the amount of the surcharge to \$500 and provides that the judge may waive the surcharge if the petitioner is indigent. Under current law, a person may petition the court in which the person was found guilty for the expungement of records relating to a list of specified offenses. A person may file multiple petitions throughout the state and have multiple offenses expunged, but may only file one petition per circuit court. This act repeals the limitation on the number of petitions per circuit court, allows a person who was arrested but not sentenced to apply for expungement, and allows a person to petition, over the course of a lifetime, for the expungement of records for any number of infractions, no more than two misdemeanor offenses or ordinance violations that carry jail time, and no more than one felony offense. If the violations or offenses were charged at the same time or involve the same course of conduct, the person may include all the related offenses or violations in the same petition and it only counts as a petition for one offense or violation. This act lists certain crimes and ordinance violations that may not be expunged.

Current law requires a person to wait 20 years for a felony and 10 years for a misdemeanor before being eligible to file an expungement petition. This act allows a person to file a petition after three years for the expungement of records relating to a finding of guilt for a misdemeanor, ordinance violation, or infraction, or an arrest for any type of offense or violation. A petition to expunge a finding of guilt for a felony may be filed five years after completion of the sentence.

Currently, a person may be eligible for an expungement petition even if he or she was found guilty of a misdemeanor or felony offense of the state vehicle laws. This act prohibits a person from being eligible if he or she has been found guilty of any misdemeanor or felony offense. This act modifies the information that must be on the petition and repeals a provision of current law requiring the court to dismiss a petition if all the required information is not included.

Current law allows a judge to grant a petition for expungement if the circumstances and behavior of the petitioner warrant the expungement and the expungement is consistent with the public welfare. This act repeals those provisions and requires the judge to grant an expungement if the prosecutor does not object within 30 days and the petitioner has an eligible offense, has not been found guilty of another offense, has no pending charges, and has met all the conditions of his or her sentence. If the prosecutor does object, the court must hold a hearing within 60 days to determine whether the interests of justice warrant the expungement. There is a presumption that the expungement is warranted if the petitioner meets the criteria.

FISCAL DESCRIPTION (continued)

This act requires the Office of State Courts Administrator to create a form for pro se petitioners seeking expungement. Current law requires the petitioner to name as defendants any entity that has records related to the offense the petitioner is seeking to have expunged. This act repeals that requirement and requires the court to provide notice to the office that prosecuted the violations or offenses. Under current law, entities possessing records relating to an expunged offense must destroy the records. This act provides that the entities must seal, not destroy, the records. This act repeals a provision prohibiting a person whose petition was dismissed from refiling another petition for a year after the date of filing the initial petition.

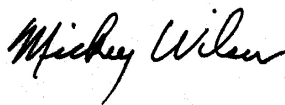
This legislation is not federally mandated, would not duplicate any other program. It would require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Public Safety
Missouri Highway Patrol
Department of Revenue
Office of the State Courts Administrator
Department of Corrections
Office of the Attorney General
Office of the State Public Defender
Office of Prosecution Services
Boone county Sheriff's Department
Springfield Police Department
Cole County Sheriff's Office

NOT RESPONDING

Missouri Department of Transportation



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Director
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