

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1700-01  
Bill No.: SB 307  
Subject: Courts; Crimes and Punishment; Criminal Procedure  
Type: Original  
Date: March 16, 2015

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Bill Summary: This proposal expands the crimes eligible for expungement and modifies the time period a person must wait before being eligible to petition for expungement.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	Up to \$103,274,754	Up to \$103,370,903	Up to \$103,370,517
<b>Total Estimated Net Effect on General Revenue</b>	<b>Up to \$103,274,754</b>	<b>Up to \$103,370,903</b>	<b>Up to \$103,370,517</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Criminal Records	(\$26,198,802)	(\$27,893,323)	(\$28,158,065)
Highway Funds	(\$10,389,018)	(\$10,805,694)	(\$10,907,183)
<b>Total Estimated Net Effect on Other State Funds</b>	<b>(\$36,587,820)</b>	<b>(\$38,699,017)</b>	<b>(\$39,065,248)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 12 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 Funds	\$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	469 FTE	469 FTE	469 FTE
Highway Funds	217 FTE	217 FTE	217 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>687 FTE</b>	<b>687 FTE</b>	<b>687 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>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

## 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 250 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  $\$54,240 \div 1,237 = \$43.85$ . 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.

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

ASSUMPTION (continued)

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 284,000 Highway Patrol misdemeanor DWI-related arrest records and 733,000 local law enforcement misdemeanor/ordinance DWI-related arrest records prior to 2010 in the TAS/DWITS that would meet the criteria of Senate Bill 307. 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 535,850 ( $10,717,000 \times .05$ ) petitions for expungement submitted to PRD and would require 217 FTE ( $535,850 / 2,475$ ). 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 =  $111,360/45$ .

With the current conservative estimate of 10,717,000 ( $9,700,000+284,000+733,000$ ) 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:

ASSUMPTION (continued)

1% = 10,717,000 x .01 = 107,170 / 2,475 = 43.30 FTE  
5% = 10,717,000 x .05 = 535,850 / 2,475 = 216.50 FTE  
10% = 10,717,000 x .10 = 1,071,700 / 2,475 = 433.01 FTE  
20% = 10,717,000 x .20 = 2,143,400 / 2,475 = 866.02 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.

217 Quality Control Clerks (\$995 x 24)	\$5,181,960
Equipment/Office Furniture	\$6,094

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 686 (469 + 217) new FTE which does not include any supervisors, administrative or support personnel to process the expungement requests resulting from this legislation. The Patrol would

ASSUMPTION (continued)

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 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 157,780 sq. ft. for this proposal. Therefore,  $686 \text{ FTE} \times 230 \text{ sq. ft. per FTE} = 157,780 \text{ sq. ft.} \times \$17.50 \text{ sq. ft.} = \$2,761,150$  annual rent and services (\$1,887,725 for the Criminal Records fund and \$873,425 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 this section provided that no person shall be granted more than one expungement from the same court.

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

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

ASSUMPTION (continued)

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 = \$4,000
	\$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 §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.

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.

ASSUMPTION (continued)

**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 1,115,850 (580,000 + 535,850). Therefore, Oversight will reflect \$111,585,000 in revenue each year based on \$488.650 allowing a surcharge of \$100 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.

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 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
<b>GENERAL REVENUE</b>			
<u>Revenue</u> - OSCA - surcharge on expungement from §488.650	Up to \$111,585,000	Up to \$111,585,000	Up to \$111,585,000
<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	<u>(\$84,072)</u>	<u>(\$870)</u>	<u>(\$890)</u>
<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
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE</b>	<b><u>Up to \$103,274,754</u></b>	<b><u>Up to \$103,370,903</u></b>	<b><u>Up to \$103,370,517</u></b>
Estimated Net FTE change for General Revenue	1FTE	1 FTE	1 FTE
<b>CRIMINAL RECORDS FUND</b>			
<u>Costs</u> - DPS/MHP			
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	<u>(\$1,887,725)</u>	<u>(\$1,887,725)</u>	<u>(\$1,887,725)</u>
<u>Total Costs</u> - DPS/MHP	<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
<b>ESTIMATED NET EFFECT ON CRIMINAL RECORDS FUND</b>	<b><u>(\$26,198,802)</u></b>	<b><u>(\$27,893,323)</u></b>	<b><u>(\$28,158,065)</u></b>
Estimated Net FTE Change for Criminal Records Fund	469 FTE	469 FTE	469 FTE



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, a person may petition to have records relating to a limited number of felonies and misdemeanors expunged. This act provides that a person may petition for the expungement of records relating to any infraction, municipal offense, misdemeanor, or felony, except any offense involving the use or possession of a weapon or the infliction of forcible compulsion, physical injury, or death upon another person, or any offense requiring registration on the sex offender registry.

In addition, current law requires a person to wait 20 years in the case of a felony and 10 years for a misdemeanor before being eligible to petition for expungement. This act provides that a person may petition for expungement 10 years after completing his or her sentence or probation for a felony and 5 years after completing his or her sentence or probation for a misdemeanor, infraction, or municipal offense.

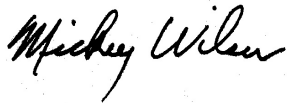
This legislation is not federally mandated, would not duplicate any other program and would require additional capital improvements or rental space.

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

NOT RESPONDING

Missouri Department of Transportation



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March 16, 2015

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March 16, 2015