

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4423-01
Bill No.: SB 603
Subject: Courts; Crimes and Punishment; Criminal Procedure
Type: Original
Date: January 25, 2016

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

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	Up to \$107,243,947	Up to \$107,337,943	Up to \$107,337,632
Total Estimated Net Effect on General Revenue	Up to \$107,243,947	Up to \$107,337,943	Up to \$107,337,632

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Criminal Records	(\$26,138,041)	(\$25,762,456)	(\$25,926,435)
Highway Funds	(\$11,070,505)	(\$11,525,794)	(\$11,643,369)
Total Estimated Net Effect on Other State Funds	(\$37,208,546)	(\$37,288,250)	(\$37,569,804)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	274 FTE	274 FTE	274 FTE
Criminal Records	467 FTE	467 FTE	467 FTE
Highway Funds	232 FTE	232 FTE	232 FTE
Total Estimated Net Effect on FTE	973 FTE	973 FTE	973 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 2017	FY 2018	FY 2019
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 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 467 FTE, the backlog would compound greatly to the point it may take several years to catch up.

1 FTE = 1,864 hours (average work hours per year) x 60 minutes per hour = 111,840 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 1,243 expungements per year = 111,840 / 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.

10% = 5,800,000 x .10 = 580,000 / 1,243 = 467 FTE

Based on the average yearly salary and benefit rate per FTE at \$54,266 and the ability of that employee to process 1,243 expungements per year, the cost alone per expungement is $\$54,266 \div 1,243 = \43.65 . It is suggested that a \$75 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 a one hundred dollar surcharge on each petition 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.

467 CJIS Technicians (\$1,208.50 x 24) (salary only)	\$13,544,868
Equipment/Office Furniture	\$6,094

RECURRING COSTS

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

The **Patrol Records Division (PRD)** calculated costs for expungement of records relating to arrests completed by the Missouri State Highway Patrol prior to 2012 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.

Currently, there are 10,432,044 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 House Bill 1555. (HB 1555, LR 4464-1, from the 2016 session offers similar chance to expunge records.) 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 575,552 $((10,432,044 + 299,000 + 780,000) \times .05)$ petitions for expungement submitted to PRD and would require 232 FTE $(575,552 / 2,485)$. There is an average of 115,178 arrests made each year by the Highway Patrol for violations of 304.010 alone, which provides the potential number of petitions each year after the initial eligible petitions were processed.

1 FTE = 1,864 hours (average work hours per year) x 60 minutes per hour = 111,840 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 2,485 expungements per year = $111,840/45$.

ASSUMPTION (continued)

With the current conservative estimate of 11,511,044 (10,432,044 + 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:

$$\begin{aligned} 1\% &= 11,511,044 \times .01 = 115,110 / 2,485 = 46.32 \text{ FTE} \\ 5\% &= 11,511,044 \times .05 = 575,552 / 2,485 = 231.61 \text{ FTE} \\ 10\% &= 11,511,044 \times .10 = 1,151,104 / 2,485 = 463.22 \text{ FTE} \\ 20\% &= 11,511,044 \times .20 = 2,302,209 / 2,485 = 926.44 \text{ FTE} \end{aligned}$$

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 \$44,659 and the ability of that employee to process 2,485 expungements per year, the cost per expungement is $\$44,659 / 2,485 = \17.97 . 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 46 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.

232 Quality Control Clerks (\$995 x 24)	\$5,540,160
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 699 (467 + 232) 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. For purposes of this fiscal note, the above mentioned costs would be split accordingly between the two funds involved.

Officials at the **Office of Administration (OA)** state to accommodate the Department of Public Safety's Missouri Highway Patrol space need, there would be a need for 699 additional FTE. OA-Facilities Management, Design and Construction would have to acquire new lease space. Each FTE would require 230 square feet X 699 FTE X \$17.50 square feet(includes rent, janitorial and Fuel & Utilities) would come to

FY 2017 = \$2,813,475 (\$1,920,478 for Criminal Records; \$892,997 for Highway fund)

FY 2018 = \$2,841,610 (\$1,939,683 for Criminal Records; \$901,927 for Highway fund)

FY 2019 = \$2,870,026 (\$1,959,080 for Criminal Records; \$910,946 for 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.

Allowing misdemeanor driving while intoxicated (DWI) offenses to be expunged after three years and felony DWIs after five years from date of conviction will compromise the state's enforcement of the provisions of §302.060, RSMo, regarding five and ten-year alcohol/drug license denials. It will also compromise the enhancement provisions of §302.525, RSMo, as well as the state's ignition interlock programs requiring offenders with multiple offenses to have an interlock device on any vehicle they operate for a minimum period of six months from the date of license reinstatement. The federal regulations and state statutes both consider any person who has been convicted of more than one impaired driving offense in five years to be a repeat offender. Missouri law denies a driver license for five years when this occurs. In addition, Missouri denies a driver license for ten years to any person who has three or more impaired driving convictions in a lifetime. If a person is allowed to expunge these offenses after three and five years, these laws will not be enforceable. As such, the state will be ineligible to seek "Impaired Driving" federal grants.

ASSUMPTION (continued)

The language in this bill also conflicts with the provisions of §577.054, RSMo, (until December 31, 2016), and §610.130, RSMo, (beginning January 1, 2017), which does not allow a DWI offense to be expunged until after ten years from date of conviction and only if the person has no other DWI offense on record or pending.

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.

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) \$23,580 (12 months)
FY2017 Total = \$19,590 (10 months)
FY2018 Total = \$23,743
FY2019 Total = \$23,981

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 2017. 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 2 Management Analysis Specialist I positions. A review of administrative rules and internal procedures will also be required for possible revisions.

Additional staffing costs for FY 2017 also include the following:

2 Management Analyst Specialist I -	(320 hrs * 2) @ \$21 per hr =	\$13,440
Revenue Band Manager I -	160 hrs @ \$26 per hr =	<u>\$ 4,160</u>
		\$17,600

DOR officials noted that failure to comply with federal regulations (49 CFR Part § 384) could result in the loss of Missouri's portion of federal highway funds, with the first year of non-compliance resulting in 5% reduction (approximately \$25 million), and each subsequent year subject to a 10% reduction (approximately \$50-\$65 million). Missouri may lose the ability to issue CDLs if not compliant.

ASSUMPTION (continued)

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 FY17 we estimate the cost will be \$0 to \$8,176,565 (273 FTE).

Oversight inquired of the OSCA and assumes the 273 FTE are additional FTE, but not cumulative each year.

Using MHP's estimates, **Oversight** also assumes the average expungement each year could be up to 1,155,552 (580,000 + 575,552). Therefore, Oversight will reflect \$115,555,200 in revenue each year based on section 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.

ASSUMPTION (continued)

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 **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 2017 (10 Mo.)	FY 2018	FY 2019
GENERAL REVENUE			
<u>Revenue</u> - surcharge on expungement from Section 488.650	Up to \$115,555,200	Up to \$115,555,200	Up to \$115,555,200
<u>Costs - OSCA</u>			
Personal Service	\$0 or (Up to \$4,594,000)	\$0 or (Up to \$4,594,000)	\$0 or (Up to \$4,594,000)
Fringe Benefits	\$0 or (Up to \$3,441,365)	\$0 or (Up to \$3,441,365)	\$0 or (Up to \$3,441,365)
Equipment and Expense	\$0 or (Up to <u>\$141,200</u>)	\$0 or (Up to <u>\$141,200</u>)	\$0 or (Up to <u>\$141,200</u>)
<u>Total Costs - OSCA</u>	<u>\$8,176,565</u>	<u>\$8,176,565</u>	<u>\$8,176,565</u>
FTE Change - OSCA	273 FTE	273 FTE	273 FTE
<u>Costs - DOR</u>			
Personal Service	(\$37,190)	(\$23,743)	(\$23,981)
Fringe Benefits	(\$13,762)	(\$16,579)	(\$16,643)
Equipment and Expense	<u>(\$83,736)</u>	<u>(\$370)</u>	<u>(\$379)</u>
<u>Total Costs - DOR</u>	<u>(\$134,688)</u>	<u>(\$40,692)</u>	<u>(\$41,003)</u>
FTE Change - DOR	1 FTE	1 FTE	1 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>Up to \$107,243,947</u>	<u>Up to \$107,337,943</u>	<u>Up to \$107,337,632</u>
Estimated Net FTE change for General Revenue	274 FTE	274 FTE	274 FTE

<u>FISCAL IMPACT - State Government -</u> (continued)	FY 2017 (10 Mo.)	FY 2018	FY 2019
CRIMINAL RECORDS FUND			
Personal Service	(\$11,287,390)	(\$13,680,317)	(\$13,817,120)
Fringe Benefits	(\$9,831,317)	(\$9,831,317)	(\$9,831,317)
Equipment and Expense	(\$3,098,856)	(\$311,139)	(\$318,918)
Office Space/Janitorial/Utilities (OA)	(\$1,920,478)	(\$1,939,683)	(\$1,959,080)
Total Costs - DPS/MHP	<u>(\$26,138,041)</u>	<u>(\$25,762,456)</u>	<u>(\$25,926,435)</u>
FTE Change - DPS/MHP	467 FTE	467 FTE	467 FTE
ESTIMATED NET EFFECT ON CRIMINAL RECORDS FUND	<u>(\$26,138,041)</u>	<u>(\$25,762,456)</u>	<u>(\$25,926,435)</u>
Estimated Net FTE Change for Criminal Records Fund	467 FTE	467 FTE	467 FTE
HIGHWAY FUNDS			
Personal Service	(\$4,616,800)	(\$5,595,562)	(\$5,651,517)
Fringe Benefits	(\$4,021,233)	(\$4,873,735)	(\$4,922,471)
Equipment and Expense	(\$1,539,475)	(\$154,570)	(\$158,435)
Office Space/Janitorial/Utilities (OA)	(\$892,997)	(\$901,927)	(\$910,946)
Total Costs - DPS/MHP	<u>(\$11,070,505)</u>	<u>(\$11,525,794)</u>	<u>(\$11,643,369)</u>
FTE Change - DPS/MHP	232 FTE	232 FTE	232 FTE
ESTIMATED NET EFFECT ON HIGHWAY FUNDS	<u>(\$11,070,505)</u>	<u>(\$11,525,794)</u>	<u>(\$11,643,369)</u>
Estimated Net FTE Change for Highway Funds	232 FTE	232 FTE	232 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
LOCAL POLITICAL SUBDIVISIONS			
<u>Costs</u> - Local Political Subdivisions - allows expungement of ordinance violations	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

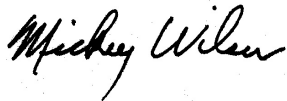
Under current law, a person may petition to have records relating to a limited number of felonies and misdemeanors expunged. This act provides that a person may petition for the expungement of records relating to any infraction, municipal offense, misdemeanor, or felony, except any offense involving 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 not 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
Missouri Department of Transportation
Department of Corrections
Office of the Attorney General
Office of the State Public Defender
Office of Prosecution Services
Office of Administration



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