

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5028-01
Bill No.: SB 741
Subject: Courts; Crimes and Punishment; Criminal Procedure; Law Enforcement Officers and Agencies; Liability; Sovereign or Official Immunity; Civil Rights; Attorney General; Civil Procedure
Type: Original
Date: February 1, 2016

Bill Summary: This proposal creates a cause of action for persons who have been deprived of certain rights and modifies the statute specifying when police officers are justified in using force.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	(Could exceed \$285,193)	(Could exceed \$313,568)	(Could exceed \$315,692)
Total Estimated Net Effect on General Revenue	(Could exceed \$285,193)	(Could exceed \$313,568)	(Could exceed \$315,692)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 8 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	0 or 3 FTE	0 or 3 FTE	0 or 3 FTE
Total Estimated Net Effect on FTE	0 or 3 FTE	0 or 3 FTE	0 or 3 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	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

In response to a similar proposal from 2015 (Perfecting SB Nos. 199, 417, & 42), officials from the **Office of Administration - General Services Division** noted that the state self-assumes its own liability under the state Legal Expense Fund, Section 105.711 RSMo. It is a self-funding mechanism whereby funds are made available for the payment of any claim or judgment rendered against the state in regard to the waivers of sovereign immunity or against employees and specified and individuals. Investigation, defense, negotiation or settlement of such claims is provided by the Office of the Attorney General. Payment is made by the Commissioner of Administration with the approval of the Attorney General.

If a claim were successfully brought against a state agency or a state employee alleging a violation of this proposal, the Legal Expense Fund could be required to pay such claim or claims.

Office of Administration-General Services assumed that neither any state agency nor any state employee would violate the proposal. Therefore, it is assumed that no successful claims will be made against the Legal Expense Fund and the proposal would thus have no fiscal impact upon the Office of Administration-General Services. However, should that assumption prove incorrect, significant costs could be incurred by the Legal Expense Fund.

Officials from the **Office of the State Courts Administrator, Department of Public Safety - Capitol Police, the Department of Natural Resources and the Department of Public Safety - Missouri Highway Patrol** each assume the proposal would not fiscally impact their respective agencies.

Officials from the **Missouri Department of Conservation** state this proposal would have an unknown impact on their agency due to lack of quantifiable data.

Officials from the **Cole County Sheriff's Department** and the **Boone County Sheriff's Department** each assumed the proposal would not fiscally impact their respective agencies.

Officials from the **Attorney General's Office (AGO)** did not respond to our request for fiscal impact. However, in response to a similar provision, officials from the AGO stated this proposal authorizes them to bring civil action on behalf of any citizen against a person acting under color of law, for an alleged violation of constitutional rights of freedom of assembly and petition and from unreasonable search and seizure. The AGO represents various public agencies, including the Highway Patrol, St. Louis Metropolitan Police Department and the Kansas City Police Board, which could be named as defendants. Due to the potential conflict of interest, should the

ASSUMPTION (continued)

proposal be enacted, the AGO may need to retain outside counsel. Consequently, while the number of cases is unknown, the potential cost could exceed \$100,000.

Officials from the **Department of Social Services - Division of Legal Services (DSS - DLS)** state the bill creates a new cause of action for damages and injunctive relief against state agencies and employees. DSS - DLS does not have sufficient data to provide an accurate estimate of the fiscal impact.

This statute establishes a legal cause of action for damages and injunctive relief against state and local governmental employees who allegedly interferes with a person's rights, privileges or immunities under the constitution and the laws of the State of Missouri. The liability could arise out of almost any aspect of DSS operations. Because DSS's programs cover a wide range of issues - from Medicaid to child welfare, from blind pensions to TANF, and touching the lives of over a million Missourians each year the scope of the risk of lawsuits, even baseless lawsuits, is very high.

The Attorney General's office represents DSS employees who are sued for money damages during the course of their employment through the legal expense fund. The bill may pose a potential conflict for the AGO's office because the AGO's office has enforcement responsibilities under the law. However, in the past the AGO's office has provided legal counsel to defend state employees even where a conflict exists because they defend liability under the state legal expense fund. DSS assumes that the AGO's office will provide legal representation and pay any liability through the state legal expense fund.

Even in cases where the AGO's office represents DSS in court, DLS provides substantial litigation support to the AGO's office and legal advice to DSS in the defense of these cases. DLS, for example, routinely works closely with the AGO's office in responding to discovery requests and providing technical assistance on specialized areas of the law. Therefore, DLS staff will have a role in defending any lawsuits brought under this new statute.

The new statute is modeled on the federal statute that authorizes a cause of action for damages and injunctive relief in federal court for alleged violations of federal rights (See 42 USC 1983). DLS therefore assumes that litigation of these cases will follow the same general pattern as the similar types of cases in federal court. Lawsuits filed under 42 USC 1983 typically involve complex legal and factual issues. They are time intensive to defend and it sometimes can take several years to bring these cases to a conclusion. It is not unusual for a DLS lawyer to spend well over 20 hours on these types of cases, even where the AGO's office is the attorney of record.

ASSUMPTION (continued)

The American Bar Association has recommended a caseload of between 40 and 60 cases for attorneys who handle child and family welfare matters. DLS estimates that a DLS lawyer could provide litigation support of about 40 of these types of cases.

DLS does not have data to determine the number of cases that may be filed under this new statute, how long they will take to litigate and how the courts will interpret the scope and extent of liability under this statute.

If we assume that DSS will have 100 such cases pending at one time DLS estimates it could need up to 3 additional FTE per 100 cases.

In summary, DSS - DLS ranges the fiscal impact of the proposal from \$0 to approximately \$215,000 per year for three additional Litigation Attorneys (each at \$42,500).

Officials from the Buchanan County Sheriff's Office, the Clark County Sheriff's Office, the Columbia Police Department, the Jackson County Sheriff's Office, the Independence Police Department, the Jackson County Sheriff's Department, the Platte County Sheriff's Department, the Springfield Police Department, the St. Joseph Police Department, the St. Louis Police Department, and the St. Louis County Police Department did not respond to **Oversight's** request for fiscal impact.

Oversight assumes state and local law enforcement agencies would be able to implement the changes in this proposal without incurring a material fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2017	FY 2018	FY 2019
GENERAL REVENUE			
<u>Costs</u> - DSS - DLS - potential need for additional attorneys to assist the AGO	\$0 to...	\$0 to...	\$0 to...
Personal Service (3 FTE)	(\$106,250)	(\$128,775)	(\$130,063)
Fringe Benefits	(\$54,258)	(\$65,457)	(\$65,809)
Expense and Equipment	<u>(\$24,685)</u>	<u>(\$19,336)</u>	<u>(\$19,820)</u>
<u>Total Costs</u> - DSS - DLS	\$0 to (\$185,193)	\$0 to (\$213,568)	\$0 to (\$215,692)
FTE Change - DSS	0 or 3 FTE	0 or 3 FTE	0 or 3 FTE
 <u>Costs</u> - AGO - to bring civil action on behalf of any citizen acting under color of law, for an alleged violation of constitutional rights	(Could exceed <u>\$100,000</u>)	(Could exceed <u>\$100,000</u>)	(Could exceed <u>\$100,000</u>)
 ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	(Could exceed <u>\$285,193</u>)	(Could exceed <u>\$313,568</u>)	(Could exceed <u>\$315,692</u>)
 Estimated Net FTE Change for General Revenue	0 or 3 FTE	0 or 3 FTE	0 or 3 FTE
 <u>FISCAL IMPACT - Local Government</u>	FY 2017	FY 2018	FY 2019
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

Current law provides that the use of physical force when making an arrest is not justified unless the arrest is lawful or the officer reasonably believes the arrest is lawful. This act adds a provision stating that the use of force when making an arrest is also not justified unless the amount of force used was objectively reasonable in light of the totality of the facts and

FISCAL DESCRIPTION (continued)

circumstances confronting the officer, regardless of the officer's intent or motivation.

Under current law, a law enforcement officer may use deadly force when he or she reasonably believes the force is immediately necessary to effect an arrest and reasonably believes the suspect has committed or attempted to commit a felony, is attempting to escape by use of a deadly weapon, or may otherwise endanger life or seriously injure another person.

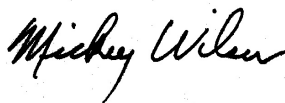
This act allows a law enforcement officer to use deadly force when effecting an arrest or preventing an escape from custody if the officer reasonably believes the force is immediately necessary to make the arrest or prevent the escape and reasonably believes the person has committed or attempted to commit a felony involving the infliction or threatened infliction of serious physical injury, is attempting to escape by use of a deadly weapon, or may otherwise pose a threat of serious physical injury to the officer or others unless arrested without delay.

This act contains an emergency clause.

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

Attorney General's Office
Office of Administration
Office of the State Courts Administrator
Department of Public Safety
Department of Natural Resources
Missouri Department of Conservation
Department of Social Services
Cole County Sheriff's Office
Boone County Sheriff's Office



Mickey Wilson, CPA
Director

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