

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 6058-01
Bill No.: SB 942
Subject: Courts; Crimes and Punishment; Criminal Procedure; Law Enforcement Officers and Agencies; Public Safety, Department; Public Records; Public Meetings
Type: Original
Date: January 25, 2016

Bill Summary: This proposal creates a petition process for the expungement of records relating to certain criminal offenses.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	(\$77,760)	\$0	\$0
Total Estimated Net Effect on General Revenue	(\$77,760)	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Criminal Records	(\$815,788)	(\$880,361)	(\$890,243)
Highway Funds	(\$9,123,818)	(\$9,641,988)	(\$9,752,494)
Total Estimated Net Effect on Other State Funds	(\$9,939,606)	(\$10,522,349)	(\$10,642,737)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 14 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Federal Funds	\$0 or (\$31,100,000)	\$0 or (\$62,200,000)	\$0 or (\$62,200,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (\$31,100,000)	\$0 or (\$62,200,000)	\$0 or (\$62,200,000)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Criminal Records	15 FTE	15 FTE	15 FTE
Highway Funds	196 FTE	196 FTE	196 FTE
Total Estimated Net Effect on FTE	211 FTE	211 FTE	211 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

Oversight was unable to receive some of the agency responses in a timely manner due to the short fiscal note request time. Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

In response to similar legislation from 2015 (SB 165), officials at the **Department of Public Safety's Missouri Highway Patrol (MHP)** reported that the **Criminal Justice Information Services Division (CJIS)** states that there are currently 1,208,503 arrests with corresponding court actions that could potentially qualify for expungement under this new legislation. Of those, at least 831,646 are old enough to qualify under the year 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 831,646 petitions for expungement and this would require 672 FTE (831,646/1,237). Over the past five years, there is an average of 75,311 arrests with corresponding actions received by the Central Repository for offenses covered under this section, providing for the potential number of petitions each year after the initial eligible petitions are 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 831,646 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% = 831,646 x .10 = 83,164 / 1,237 = 62.23 FTE
20% = 831,646 x .20 = 166,329 / 1,237 = 134.46 FTE
30% = 831,646 x .30 = 249,493 / 1,237 = 201.69 FTE
40% = 831,646 x .40 = 332,658 / 1,237 = 268.92 FTE
50% = 831,646 x .50 = 415,823 / 1,237 = 336.15 FTE
60% = 831,646 x .60 = 498,987 / 1,237 = 403.38 FTE

ASSUMPTION (continued)

$$70\% = 831,646 \times .70 = 582,152 / 1,237 = 470.61 \text{ FTE}$$

$$80\% = 831,646 \times .80 = 665,316 / 1,237 = 537.84 \text{ FTE}$$

$$90\% = 831,646 \times .90 = 748,481 / 1,237 = 605.07 \text{ FTE}$$

$$100\% = 831,646 / 1,237 = 672.30 \text{ FTE}$$

The CJIS Division realizes this is an extraordinary number of new FTE and would be willing to initiate the hiring process based on the average number of arrests (75,311) with corresponding court actions that the CJIS Division has received over the past five years. 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 20 to 30 percent would file requiring an additional 12-18 employees. For purposes of this fiscal note, the Patrol will request 15 which is the middle of that range. Clearly, if a large number of these expungements were to be granted with even 15 FTE the backlog would compound greatly to the point it may take several years to catch up.

$$75,317 / 1,237 = 60.88 \times 20\% = 12.76 \text{ FTE}$$

$$75,317 / 1,237 = 60.88 \times 30\% = 18.26 \text{ FTE}$$

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 at \$53,366 and the ability of that employee to process 1,237 expungements per year, the cost alone per expungement is $\$53,366 \div 1,237 = \43.14 . 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.

These FTE will most likely be 2nd and 3rd shift employees so they would not require any equipment. However, there would be recurring costs of \$650 per year per FTE for office supplies and phone charges. If any FTE were placed on the 1st shift, standard equipment would be required at a one-time cost of \$6,094 per FTE. Any more than 65 additional FTE would require more physical space even with splitting up the FTE on second and third shifts.

The **Patrol Records Division (PRD)** states that the calculations below include possible expungements from arrests completed by the Highway Patrol prior to 2009 for violations of misdemeanor offenses under section 567.020, Chapter 195, section 568.040, Chapter 301,

ASSUMPTION (continued)

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.

There are currently 9,722,657 arrests records in TAS that meet the above noted criteria. 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 486,133 ($9,722,657 \times .05$) petitions for expungement submitted to PRD and would require 196 FTE. 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 9,722,657 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% = $9,722,657 \times .01 = 97,226 / 2,475 = 39$ FTE
5% = $9,722,657 \times .05 = 486,133 / 2,475 = 196$ FTE
10% = $9,722,657 \times .10 = 972,265 / 2,475 = 392$ FTE
20% = $9,722,657 \times .20 = 1,944,531 / 2,475 = 785$ 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) 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 \$43,963 and the ability of that employee to process 2,475 expungements per year, the cost per expungement is $\$43,963 \div 2,475 = \17.76 . 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 37 FTE needed to process only 1% of the possible expungements. The division currently has workspace for 39 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 would incur a one-time cost of \$6,094 per FTE.

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 211 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 13,504 square foot building (64 x 211). The rental cost per square foot is \$14. Therefore, the total yearly cost of renting office space would be \$189,056 (13,504 x \$14). Additionally, there would be janitorial/trash costs of \$1.50 per square foot for a yearly cost of \$20,256 (13,504 x \$1.50). There would also be utility costs of \$2.00 per square foot for a yearly cost of \$27,008 (13,504 x \$2.00). For purposes of this fiscal note, the above mentioned costs have been split accordingly between the two funds involved.

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 48,530 square feet (45,080 for Quality Control Clerks and 3,450 for CJIS) for the 211 FTEs. At \$14 a square foot for rent and \$3.50 a square foot for utilities and janitorial supplies, the total cost for the 211 FTEs would be \$849,275. This would be split between the Criminal Records fund and the Highway fund.

ASSUMPTION (continued)

In response to similar legislation from 2015 (SB 165), officials at the **Department of Revenue (DOR)** assumed although this proposal is not federally mandated, the proposal will violate 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. This proposal would likely jeopardized federal compliance (49 CFR Part 384) for Missouri's CDL program, and risk the loss of substantial federal highway funding to the state via withholding (49 CFR § 383.401) and possible decertification (49 CFR § 384.405), resulting in the inability for Missouri to issue CDL credentials.

Provisions of the proposed section 610.108.2(4) which permit the expungement of any municipal ordinance or misdemeanor violation for driving while intoxicated (DWI) or driving with excessive blood alcohol content (BAC) appear to conflict with the provisions of Section 577.054, RSMo, in regard to the expungement of such. Section 577.054, RSMo, allows expungement of such offenses only after a ten-year period from conviction, upon a showing that the applicant's habits and conduct show that they no longer pose a threat to the public safety, and excludes CDL holders and those required to possess a CDL. The current proposal would allow after as little as five years, without any required showing of reformation.

This section would require the Department, if named as a party defendant, to honor a court order for expungement of felony drug offenses, municipal ordinance violations, and misdemeanor offenses with certain exceptions such as DWI's, BAC's and any offense involving a CDL holder in any vehicle. Under these provisions, a person may apply to any civil division of the circuit court in any county where he or she was found guilty. There are no statistics available to determine exactly how many additional expungements will result from this proposal. If the volume is so significant that it cannot be absorbed by existing staff, additional FTE(s) will be requested through the appropriation process.

Due to the increase in court-ordered expungements received by the Department, programming 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.
 - Any associated suspension or revocation.

ASSUMPTION (continued)

- Programming requirements and testing for expungements:
 - Driver License Bureau estimates 320 hours of user acceptance testing and training by one Administrative Analyst I.
 - Driver License Bureau estimates 320 hours of user acceptance testing and training by one Management Analyst Specialist II.
- Requires a review of administrative rules and internal procedures for revisions by one Revenue Band Manager I at 160 hours.

In summary, the Department would need the following existing FTEs to test MODL system at the following overtime rates: cost for one Administrative Analyst I of \$8,000 (320 hours @ \$25 per hour), cost for one Management Analyst Specialist II of \$7,360 (320 hours @ \$23 per hour), and cost for one Revenue Band Manager I of \$4,000 (160 hours @ \$25 per hour) for a total Department overtime testing cost for personnel of \$19,360 in FY16. There would also be programming requirements done by IT Consultants at \$77,760. The grand total cost to the Department would be \$97,120.

Oversight assumes DOR is provided with core funding to handle a certain amount of computer programming activity each year. Oversight assumes DOR could absorb the overtime costs for existing employees related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, DOR could request funding through the appropriation process.

In response to similar legislation from 2015 (SB 165), officials at the **Missouri Department of Transportation (MoDOT)** assumed the penalty for the first year is a withholding of 5% which is \$31.1 million dollars and then a penalty of 10% which is \$62.2 million each year thereafter. The consequences for a State's noncompliance is found in the FMCSRs part 384.401. The consequences do impact funding: "Withholding of funds based on noncompliance. (a) Following the first year of noncompliance. An amount up to 5 percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C. shall be withheld from a State on the first day of the fiscal year following such State's first year of noncompliance under this part. (b) Following second and subsequent year(s) of noncompliance. An amount up to 10 percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C. shall be withheld from a State on the first day of the fiscal year following such State's second or subsequent year(s) of noncompliance under this part.

ASSUMPTION (continued)

Oversight assumes that since MoDOT interpreted the federal regulation as a withholding of federal funds should this proposal pass, Oversight is unable to determine whether this will put MoDOT in noncompliance with the United States Department of Transportation Federal Highway Administration (FHWA). MoDOT has requested guidance from the FHWA, but has not received a response regarding this proposal.

In response to similar legislation from 2015 (SB 165), officials at the **Department of Corrections (DOC)** assumed this 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.

In response to similar legislation from 2015 (SB 165), officials at the **Office of the Attorney General** assumed that any potential costs arising from this proposal can be absorbed with existing resources.

In response to similar legislation from 2015 (SB 165), officials at the **Office of Prosecution Services** assumed no fiscal impact from this proposal.

Officials at the **Office of the State Courts Administrator** assume the proposed legislation creates a petition process for the expungement of records relating to certain criminal offenses. During the past five years there was an average of 10,120 Chapter 195 Associate Level charges and 2,002 Circuit Level charges that may be eligible for expungement. We are unable to determine how many of these charges would have been committed by a commercial driver's license holder. There may be some impact but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

ASSUMPTION (continued)

Officials at the **City of Kansas City**, the **City of Columbia** and the **City of Jefferson** each assume no fiscal impact to their respective entities from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
GENERAL REVENUE			
<u>Cost - DOR - ITSD Programming</u>	<u>(\$77,760)</u>	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(\$77,760)</u>	<u>\$0</u>	<u>\$0</u>
CRIMINAL RECORDS FUND			
<u>Cost - DPS/MHP</u>	(\$356,700)	(\$432,320)	(\$436,644)
Personal Service	(\$310,365)	(\$376,162)	(\$379,924)
Fringe Benefits	<u>(\$148,723)</u>	<u>(\$71,879)</u>	<u>(\$73,675)</u>
Equipment and Expense	<u>(\$815,788)</u>	<u>(\$880,361)</u>	<u>(\$890,243)</u>
<u>Total Costs - DPS/MHP</u>	15 FTE	15 FTE	15 FTE
FTE Change - DPS/MHP			
ESTIMATED NET EFFECT ON CRIMINAL RECORDS FUND	<u>(\$815,788)</u>	<u>(\$880,361)</u>	<u>(\$890,243)</u>
Estimated Net FTE change for Criminal Records Fund	15 FTE	15 FTE	15 FTE
HIGHWAY FUNDS			
<u>Cost - DPS/MHP</u>			
Personal Service	(\$3,839,640)	(\$4,653,644)	(\$4,700,180)
Fringe Benefits	(\$3,340,871)	(\$4,049,136)	(\$4,089,627)
Equipment and Expense	<u>(\$1,943,307)</u>	<u>(\$939,208)</u>	<u>(\$962,687)</u>
<u>Total Costs - DPS/MHP</u>	<u>(\$9,123,818)</u>	<u>(\$9,641,988)</u>	<u>(\$9,752,494)</u>
FTE Change - DPS/MHP	196 FTE	196 FTE	196 FTE
ESTIMATED NET EFFECT ON HIGHWAY FUNDS	<u>(\$9,123,818)</u>	<u>(\$9,641,988)</u>	<u>(\$9,752,494)</u>
Estimated Net FTE change for Highway Funds	196 FTE	196 FTE	196 FTE

<u>FISCAL IMPACT - State Government -</u> (continued)	FY 2017 (10 Mo.)	FY 2018	FY 2019
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FEDERAL FUND

Loss - MoDOT - State Noncompliance resulting in loss of federal funding	\$0 or <u>(\$31,100,000)</u>	\$0 or <u>(\$62,200,000)</u>	\$0 or <u>(\$62,200,000)</u>
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ESTIMATED NET EFFECT ON FEDERAL FUNDS	\$0 or <u>(\$31,100,000)</u>	\$0 or <u>(\$62,200,000)</u>	\$0 or <u>(62,200,000)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
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	<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

This act allows any person found guilty of prostitution, a misdemeanor or felony drug crime not involving a weapon, a misdemeanor or felony offense of criminal nonsupport, and most municipal ordinance violations and misdemeanors to file a petition for expungement of one or more offenses with the court in which the offenses sought to be expunged were adjudicated.

The following offenses are not eligible for expungement - intoxicated-related driving offenses, sexual offenses, violations of protection orders, second degree endangering the welfare of a child, leaving a child unattended in a motor vehicle, and traffic and drug offenses when the offender holds a commercial driver's license.

The petition must name as defendants all law enforcement agencies, courts, prosecuting or circuit attorneys, central state repositories of criminal records, or others who the petitioner has reason to believe may possess the records subject to expungement for each of the offenses listed in the petition. The court's order of expungement only affects those named as defendants.

FISCAL DESCRIPTION (continued)

The petitioner must demonstrate that five years have elapsed since he or she has completed a sentence of imprisonment, period of probation, or period of parole, that the person has not been found guilty of any misdemeanor or felony during that time, and the person has not had any other petition for expungement granted under the provisions of the act.

If the court determines the person meets all the criteria for each of the offenses listed in the petition for expungement, the court must order expungement and provide the order to each entity named in the petition.

Upon granting an order of expungement, the records and files maintained in a circuit court for any offense ordered expunged under this section shall be confidential and only available to the parties, any law enforcement agency for criminal investigations, any prosecutor for criminal prosecutions, or by order of the court for good cause shown. All other entities named in the petition must destroy their records relating to any offense ordered expunged. The central repository must request the FBI to expunge records from its files.

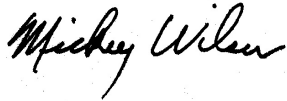
Except as otherwise provided for criminal prosecutions and investigations, the order restores the person to the status he or she occupied prior to the arrest, plea, trial, or conviction. No person whose records have been expunged may be found guilty of perjury or otherwise giving a false statement for failing to disclose the offense.

The court must dismiss the petition if it determines the petitioner did not meet the criteria for all of the offenses listed in the petition for expungement. The petitioner may refile.

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
Missouri Department of Transportation
Department of Corrections
Office of the Attorney General
Office of Prosecution Services
Office of the State Courts Administrator
City of Kansas City
City of Columbia
City of Jefferson



Mickey Wilson, CPA
Director
January 25, 2016

Ross Strobe
Assistant Director
January 25, 2016