

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0089-07
Bill No.: Truly Agreed To and Finally Passed CCS for HCS for SS for SB 34
Subject: Crimes and Punishment; Immigration
Type: #Updated
Date: June 20, 2017
 # Updated response from the Department of Corrections

Bill Summary: This proposal modifies and creates new provisions relating to criminal offenses.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
#General Revenue	(\$36,524)	(\$89,411)	(\$135,597)
#Total Estimated Net Effect on General Revenue	(\$36,524)	(\$89,411)	(\$135,597)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Criminal Records Fund	(\$93,575)	(\$113,434)	(\$114,586)
Total Estimated Net Effect on <u>Other State Funds</u>	(\$93,575)	(\$113,434)	(\$114,586)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Criminal Records	2 FTE	2 FTE	2 FTE
Total Estimated Net Effect on FTE	2 FTE	2 FTE	2 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 2018	FY 2019	FY 2020
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

#Officials from the **Department of Corrections (DOC)** state version 0089-07 incorporates many other fiscal notes: FN 4481-02, FN 0189-01, and FN 1083-02 - all 3 involved leaving the scene of an accident and the Blue Alert System. None of these had a fiscal impact. Also included in the current bill are FN 1890-03 regarding domestic assault 4th, harassment 2nd, and DWI changes, FN 1100-02 regarding nonsupport expungement, and FN 0042-03 regarding crimes against special victims (only the crimes of involuntary manslaughter and property damage 1st of FN 0042-03 were included in FN 0089-07. Involuntary manslaughter 2nd degree is a new offense and the department has no sentencing data to make an impact estimate. The total increase in the prison population is expected to be 11 and the increase in the parole is 2.)

FN 0089-01 creates the crime of illegal reentry - The bill creates the offense of illegal reentry if a person who has been deported under the provisions of 8 U.S.C. Section 1326b returns to the state of Missouri. The new offense would be a class C felony. The enforcement of immigration laws is a federal responsibility and US law may take precedence over a state statute. The department has no information on the number of deported persons who have returned to Missouri without valid immigration documents.

The department estimates three people will be sentenced to prison and five to probation. The average sentence for a nonviolent Class C offense is 4.8 years of which 2.9 years will be served in prison while the remaining 1.9 years will be on parole and probation sentences will be 3 years. The cumulative impact on DOC is 8.7 additional offenders in prison and 20.7 on field supervision by FY 2021. The offense is parole eligible and will serve 1.9 years on parole, unless the offender is detained by the US Citizenship and Immigration Services.

New Class C (D) Nonviolent Offense

	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027
Admissions & probation										
Admissions	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
Releases to parole			0.3	3.0	3.0	3.0	3.0	3.0	3.0	3.0
Probation	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Prison and Field Population (admissions * length of stay)										
Admissions	3.0	6.0	8.7	8.7	8.7	8.7	8.7	8.7	8.7	8.7
Parole			0.3	3.3	5.7	5.7	5.7	5.7	5.7	5.7
Probation	5.0	10.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0
Impact										
Total prison population	3.0	6.0	8.7	8.7	8.7	8.7	8.7	8.7	8.7	8.7
Field Population	5.0	10.0	15.3	18.3	20.7	20.7	20.7	20.7	20.7	20.7
	8.0	16.0	24.0	27.0	29.4	29.4	29.4	29.4	29.4	29.4

ASSUMPTION (continued)

FN 1890-02/03 modifies the crime of domestic assault - The only change expected to have an impact on the Missouri Department of Corrections is under 575.076. Under this proposed updated statute, a new E violent felony will be created with the following anticipated impact:

	<u>FY18</u>	<u>FY19</u>	<u>FY20</u>	<u>FY21</u>	<u>FY22</u>	<u>FY23</u>	<u>FY24</u>	<u>FY25</u>	<u>FY26</u>	<u>FY27</u>
New										
Admissions	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0
Parole				2.0	2.0	2.0	2.0	2.0	2.0	2.0
Probation	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Culmulative Populations										
Prison	2.0	4.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0
Parole				2.0	2.0	2.0	2.0	2.0	2.0	2.0
Probation	1.0	2.0	3.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0
Impact										
Prison	2.0	4.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0
Field	1.0	2.0	3.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0
Population Change										
	3.0	6.0	9.0	12.0	12.0	12.0	12.0	12.0	12.0	12.0

FN 1100-02 modifies the crime of criminal nonsupport regarding arrearage and expungement - HB 490 modified the definition of criminal nonsupport so that an individual must have an arrearage of at least 24 monthly payments (instead of 12) to be guilty of a class E felony. Further, it allowed for the expungement of one conviction for criminal nonsupport after successful completion of sentence and payment of all arrearages (the previous versions required eight years to have passed).

This legislation has been changed over previous versions to allow expungement upon the successful completion of sentence and the payment of all arrearages. Additionally, the requirement that the expunged offense be the first offense for criminal nonsupport has been removed, along with the requirement that the individual have no other felony sentences; this version allows for expungement if the only other sentences are also expungable under another section of the revised statutes. The requirement that only one expungement be allowed under this section remains.

ASSUMPTION (continued)

The only difference between this legislation and that from FN 5083-01 is that the offense is now a class E felony; the earlier response dealt with the effects of the criminal code revision. Thus, the response provided below is the same as that for FN 5083-01, with the exception that the numbers have been updated to reflect current sentencing rates and to include the effects of recidivism.

HB 2191 modifies two parts of the current statute regarding child support arrearages by changing the minimum requirements for expungement under this statute and also altering the conditions under which a person in arrears is guilty of a Class D Felony for nonsupport. The extended time one can be in arrears before being found guilty of a Class D Felony (a class E Felony after January 1, 2017) under this proposed change and the changes regarding the expungement of records are identical in each version of this proposed legislation.

The changes regarding expungement under this proposed legislation, also in a response to FN 0352-01N, remain as follows:

For a person to receive an expungement of a criminal non support conviction they must meet the following criteria:

- It must be their first felony offense for criminal nonsupport under this section;
- Eight years must have elapsed after they have successfully completed probation or their sentence;
- Have not had any subsequent offense;
- Does not have any other felony pleas of guilt, findings of guilt or convictions;
- Is current on all child support obligations;
- Has paid off all arrearages;
- Has no other criminal charges or administrative child support actions pending at the time of the hearing on the application for expungement with respect to all children subject to orders of payment of child support or that the defendant has successfully completed a criminal nonsupport courts program under section 478.1000.

If the criteria are met, the court shall enter an order of expungement. Upon granting the order of expungement, the records and files maintained in any court proceeding in an associate or circuit division of the circuit court under this section shall be confidential and only available to the parties or by order of the court for good cause shown. The effect of such order shall be to restore such person to the status he or she occupied prior to such arrest, plea or conviction. A person is entitled to one expungement under this section. Nothing in this section shall prevent the director

ASSUMPTION (continued)

of the Department of Social Services from maintaining such records as to ensure that an individual receives only one expungement under this section for the purpose of informing the proper authorities of the contents of any record maintained under this section."

Regarding the class D/E Felony, the time required to meet the criteria of nonsupport for the Class D Felony would increase. Currently RSMo 568.040 subsection 5 states:

"5. The offense of criminal nonsupport is a class A misdemeanor, unless the total arrearage is in excess of an aggregate of twelve monthly payments due under any order of support issued by any court of competent jurisdiction or any authorized administrative agency, in which case it is a class E felony."

#There are no changes to this subsection concerning non-support arrearages, so no additional impact will be felt. The previous response from DOC incorrectly reflected a savings from changing this subsection from 12 months to 24 months (as done in HB 490).

Effect of Legislation

Regarding the expungement proposed under this bill, there would be no effect on the DOC, as was previously found with FN0352-01N. Records can still be accessed by agencies with "good cause," including DHSS who is responsible for ensuring a defendant is only entitled to one expungement.

FN 0042-03 Modifies crimes against special victims

Proposed Sentencing

RSMo	Offense	Enhanced Felony Class	Admissions	Estimated 7% Special Victims	Average Sentence (yrs.)	Percent Time Served	Time Served (yrs)	Remaining time (yrs)	Recidivism at 42% (yrs)	Total Prison Time	Parole at 68% (yrs)	Prison Time (yrs)	Supervisor Time (yrs)
565.024	Involuntary Manslaughter 1st degree	B	37	2	12.4	63.6%	7.9	4.5	1.9	9.8	2.6	18	5
569.100	Property Damage 1st degree	D	29	1	5.7	38.0%	2.2	3.5	1.5	3.7	2.0	5	3
Total			66	3	9.1	56.8%	5.1	3.9	1.6	6.8	2.3	20	7

Impact of enhanced sentences

	Admission	Prison time			Supervision time		
		Before	After	Increase	Before	After	Increase
565.024 Involuntary Manslaughter 1st degree	2	9	18	9	3	5	2
569.100 Property Damage 1st degree	1	3	5	2	2	3	1
Total	3	12	23	11	5	8	3

ASSUMPTION (continued)

Impact of enhanced sentences by year

	FY 18	FY 19	FY20	FY21	FY22	FY23	FY24	FY 25	FY26	FY27
Prison										
Admissions	3	3	3	3	3	3	3	3	3	3
Cumulative population - current		6	9	10	10	10	10	10	10	10
Cumulative population - enhanced		6	9	12	20	20	20	20	20	20
Increase		-	-	2	11	11	11	11	11	11
Supervision										
Cumulative population - current			0	3	5	5	5	5	5	5
Cumulative population - enhanced						3	6	7	7	7
Increase		0	0	-3	-5	-2	2	2	2	2

#In summary, DOC assumes the following cost from this proposal.

	# to prison	Cost per year	Total Cost for prison	# to probation	Cost per year	Total cost for probation and parole	Grand Total - Prison and Probation
Year 1	5	(\$6,085)	(\$30,425)	6	(\$2,234)	(\$13,404)	(\$36,524)
Year 2	10	(\$6,085)	(\$60,850)	12	(\$2,234)	(\$26,808)	(\$89,411)
Year 3	15	(\$6,085)	(\$89,449)	18	(\$2,234)	(\$40,882)	(\$135,597)
Year 4	17	(\$6,085)	(\$101,620)	21	(\$2,234)	(\$47,584)	(\$158,336)
Year 5	26	(\$6,085)	(\$156,385)	22	(\$2,234)	(\$48,478)	(\$221,750)
Year 6	26	(\$6,085)	(\$156,385)	25	(\$2,234)	(\$55,180)	(\$233,584)
Year 7	26	(\$6,085)	(\$156,385)	29	(\$2,234)	(\$64,116)	(\$248,319)
Year 8	26	(\$6,085)	(\$156,385)	29	(\$2,234)	(\$64,116)	(\$253,286)
Year 9	26	(\$6,085)	(\$156,385)	29	(\$2,234)	(\$64,116)	(\$258,351)
Year 10	26	(\$6,085)	(\$156,385)	29	(\$2,234)	(\$64,116)	(\$263,518)

If this impact statement has changed from statements submitted in previous years, it is because DOC's Budget and Research Section reviewed the way responses had been submitted and has developed a more precise way to calculate the impact. In previous year's responses, the full impact of recidivism for parole releases was not adequately calculated. Now we have been able to quantify the fact that some parolees are returned to prison after release and that has been added into the calculation of the impact. The total number of offenders has not changed but there is an assumption that they will spend more time back in prison rather than being on community supervision, which will increase the amount of the impacts.

Officials from the **Department of Public Safety - Office of the Director** defer to the response from the Missouri Highway Patrol regarding section 650.520.

ASSUMPTION (continued)

Officials from the **Department of Public Safety - Missouri Highway Patrol** state the following sections impact their agency: - Section 568.040 - the Criminal Justice Information Services Division (CJIS) states that there are currently 26,626 individuals that were convicted/plead guilty to felony non-support in the Central Repository prior to 2009 (eight years ago). It is assumed that many of these individuals will not apply for expungement due to not meeting the clean records requirements. However, for the purpose of this estimate, the assumption is that 10% (2,663) of these individuals will qualify and apply for expungement. There are an additional 17,462 felony arrests with corresponding court actions that would become eligible over the next eight years, which averages 2,183 ($17,462 / 8$) per year.

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 (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 \$55,495 and the ability of that employee to process 1,243 expungements per year, the cost alone per expungement is $\$55,495 \div 1,243 = \44.64 . 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.

ASSUMPTION (continued)

2 CJIS Technicians (\$1,232.50 x 24)	\$59,160
Office Equipment/HW/SW	\$6,094
RECURRING COSTS	
Phone Charges per FTE	\$350
Office Supplies per FTE	\$300

In summary, the MHP assumes a cost of 2 FTE to total approximately \$115,000 per year to the Criminal Records Fund.

The MHP assumes no fiscal impact from Section 650.520 (Blue Alert System).

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are faced with the enhanced penalties for a series of offenses, including manslaughter, stalking, and/or property damage, if the offense was directed at a member of law enforcement. The legislation also creates the new crime of illegal reentry, a new class C felony.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

Oversight assumes the SPD can absorb the additional caseload that may result from this proposal.

Officials from the **Department of Social Services**, the **Office of Prosecution Services**, the **Office of the State Courts Administrator**, the **Missouri Department of Conservation**, the **Department of Natural Resources**, the **Department of Transportation**, the **Missouri Lottery Commission**, the **Joint Committee on Administrative Rules**, the **Missouri State Employees' Retirement System**, and the **MoDOT and Patrol Employees' Retirement System**, each assume the proposal would not fiscally impact their respective agencies.

Officials from the **Joint Committee on Public Retirement** state Section 105.669 is the only provision relating to retirement. Our review of this legislation would indicate that such provisions would not create a "substantial proposed change" in future plan benefits as defined in Section 105.660 (10).

ASSUMPTION (continued)

Officials from the **Department of Revenue (DOR)** assume the following sections will impact their agency:

- Section 577.001 - The proposed language adds federal and military offenses to the definition of "intoxication-related traffic offense". It's also removing certain felony DWI-Fatality offenses from this section and adding them to Section 577.010.
- Section 577.010 - The proposed language was removed from 577.001 and placed in this section with all other driving while intoxicated offenses. This will require three new charge codes to be created by State Judicial Records Committee (SJRC). This would require the Department to map the newly created charge codes to our existing MODL codes.

DOR assumes the following administrative impact in FY 2018:

- Updates to Forms and Internal procedures;
- Updates to Website;
- Training of Staff; and
- Review of new charges codes to map to existing MODL codes

1 Management Analyst I - 80 hours @ \$20.94 per hour =	\$1,675
1 Revenue Band Manager I - 40 hours @\$25.93 per hour=	\$1,037

Update web pages- Administrative Analyst III - 40 hrs. @ \$22.59 per hour =	<u>\$904</u>
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Total	\$3,616
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DOR assumes it will be able to absorb the above listed costs. If multiple bills pass which require Department resources and updates, the Department could request additional FTE's and related equipment and expenses through the appropriation process.

Officials from the **Office of the Secretary of State** did not respond to our request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
#GENERAL REVENUE			
<u>#Cost</u> - DOC - additional offenders incarcerated and/or supervised from various provisions	<u>(\$36,524)</u>	<u>(\$89,411)</u>	<u>(\$135,597)</u>
#ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>(\$36,524)</u>	<u>(\$89,411)</u>	<u>(\$135,597)</u>

CRIMINAL RECORDS FUND

<u>Costs</u> - MHP			
Personal Service 2 FTE	(\$49,300)	(\$59,752)	(\$60,349)
Fringe Benefits	(\$43,192)	(\$52,349)	(\$52,872)
Expense & Equipment	<u>(\$1,083)</u>	<u>(\$1,333)</u>	<u>(\$1,365)</u>
<u>Total Costs</u> - MHP	<u>(\$93,575)</u>	<u>(\$113,434)</u>	<u>(\$114,586)</u>
Total FTE MHP	2 FTE	2 FTE	2 FTE
ESTIMATED NET EFFECT TO THE CRIMINAL RECORDS FUND	<u>(\$93,575)</u>	<u>(\$113,434)</u>	<u>(\$114,586)</u>

Estimated Net FTE Change for the Criminal Records Fund	2 FTE	2 FTE	2 FTE
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<u>FISCAL IMPACT - Local Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
	<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.

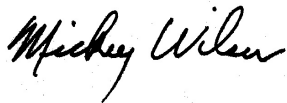
FISCAL DESCRIPTION

This act modifies and creates new provisions relating to criminal offenses.

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
Office of the State Courts Administrator
Department of Corrections
Office of Prosecution Services
Office of the State Public Defender
Department of Revenue
Department of Transportation
Missouri Department of Conservation
Department of Natural Resources
Missouri Lottery Commission
Department of Social Services
Missouri State Employees Retirement System
Joint Committee on Public Retirement



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