

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4530-06  
Bill No.: CCS for SS for SCS for HB 1350  
Subject: Crimes and Punishment; Highway Patrol; Children and Minors; Health Care; Children’s Division; Public Records, Public Meetings  
Type: Original  
Date: May 15, 2018

Bill Summary: This proposal modifies provisions relating to criminal history records.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
General Revenue	(Up to \$683,392)	(Up to \$517,109)	(Up to \$522,379)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(Up to \$683,392)</b>	<b>(Up to \$517,109)</b>	<b>(Up to \$522,379)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Criminal Records System	Up to \$562,724	Up to \$675,268	Up to \$675,268
<b>Total Estimated Net Effect on Other State Funds</b>	<b>Up to \$562,724</b>	<b>Up to \$675,268</b>	<b>Up to \$675,268</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 13 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
General Revenue	Up to 8 FTE	Up to 8 FTE	Up to 8 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>Up to 8 FTE</b>	<b>Up to 8 FTE</b>	<b>Up to 8 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 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## 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.

#### §192.2495 - Background checks on in-home service/home health care providers

In response to the previous version of this proposal, officials from the **Department of Public Safety (DPS), Missouri State Highway Patrol (MHP)** stated the Highway Patrol's Criminal Justice Information Services (CJIS) Division anticipates the overall fiscal impact to be positive. The cost for these background checks is as follows:

State fee: \$20.00  
FBI fee: \$12  
Applicant fingerprinting vendor fee: \$8.30  
Total fee per applicant: \$40.30

Of these amounts, the state retains the \$20 state fee and \$2 of the federal charge of \$12 for a pass thru fee. The \$8.30 charge is paid directly to the vendor at the time of application.

According to the Missouri Department of Health and Senior Services, there are approximately 1,910 in-home service providers, and 171 home health providers.

$1,910 + 171 = 2,081$  providers

$2,081 \times \$22 = \$45,782$  annually deposited into the Criminal History Record Fund

#### §§210.025, 210.254, 210.258 and 210.1080 -Background checks on childcare providers

In response to the previous version of this proposal, officials from the **Department of Health and Senior Services (DHSS)** stated the Child Care Development Block Grant (CCDBG) Reauthorization Act of 2014 Section 658H set out requirements for comprehensive criminal background checks. States are required to have policies and procedures in place by September 30, 2017. Missouri has been approved for a one year waiver, which expires September 30, 2018. After the one year waiver ends noncompliant states are subject to losing 5% of their total Child Care Development Fund (CCDF) monies. Missouri may be at risk of losing \$5.4 million in federal funding for child care.

ASSUMPTION (continued)

The proposed legislation requires child care staff members, which includes all regulated (licensed and license-exempt) child care providers, persons employed by the child care provider for compensation, including contract employees or self-employed individuals; individuals or volunteers whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or individuals residing in a family child care home who are age seventeen (17) and older to undergo criminal background checks and every five (5) years thereafter and an annual check of the central registry for child abuse in order to qualify for receipt of state or federal funds for providing child-care services. DHSS estimates an additional 28,613 child care staff member will need a background check based on the capacities of regulated facilities and the staff/child ratio needed to maintain supervision. DHSS assumes a high turnover rate in the industry, therefore, the annual amount of background checks will remain constant.

**Health Program Representative II (6)** (\$35,640 annually, each): DHSS estimates that one Health Program Representative II (HPR II) is needed to process 4,000 background screenings and complete other additional responsibilities related to the direct processing of background screenings for regulated providers. Given the expectation,  $(28,613/4,000 = 7 \text{ FTE})$ , DHSS assumes 6 HPRs II will be needed.

**Health Program Representative III (1)** (\$39,704 annually): The Health Program Representative III will directly supervise the HPRs II. This position will provide direct daily oversight to HPRs II, ensure timely completion of background screenings, develop and maintain policy and procedural manuals, review and process submitted appeals, approve security access, coordinate with child care supervisors, and conduct quality assurance reviews for accuracy and timely completion of background screenings.

**Senior Office Support Assistant (1)** (\$26,340 annually): A Senior Office Support Assistant will need to be hired whose primary duties will be to support the staff within the unit.

DHSS officials provided the response for the **Office of Administration (OA), Information Technology Services Division (ITSD)/DHSS**. ITSD states, for fiscal note purposes, it is assumed a project team consisting of a project manager, business analyst, senior developer and developer for a project duration of six (6) months will be needed. Modifications will need to be made to an existing system that is currently being maintained by ITSD and hosted in the State Data Center (SDC). It has been assumed for this project that a system to system interface will not be established with Missouri State Highway Patrol (MSHP) for communication of fingerprint criminal background check data.

ASSUMPTION (continued)

ITSD assumes that every new IT project/system will be bid out because all ITSD resources are at full capacity. The current contract rate for IT consultants is \$75 per hour. It is estimated that contract consultants will need 2,536.92 hours to complete the project. One-time costs to the General Revenue (GR) Fund are estimated to be \$190,269 (2,536.92 \* \$75).

DHSS estimates FY19 costs to the GR Fund, including ITSD costs, to be \$694,126; FY 20 costs to be \$530,311; and FY 21 costs to be \$535,911.

**Oversight** notes that in response to proposals from the current session in which agencies have indicated the need for additional space, officials from the Office of Administration (OA), Division of Facilities Management, Design and Construction (FMDC) state additional space in leased facilities for additional staff in the Cole County area is estimated at 230 sq. ft. per FTE times \$17.50 per sq. ft., or \$4,025 annually per FTE. These costs are building lease cost, fuel and utilities, and janitorial services. The assumption for the need for larger space and/or in other regions of the state, or possible new construction space, would be a higher cost per sq. ft. (estimated at \$24.50 per sq. ft.).

**Oversight** notes the DHSS used a lease cost for the additional rental space needed for eight (8) new FTE of \$21 per square foot. This is an average of the lease rates for the various regions in the state. Oversight reduced the average cost to \$17.50 per square foot (which includes utilities and janitorial services), the amount provided by OA, Facilities Management, Design and Construction.

In response to the previous version of this proposal, officials from the **Department of Public Safety (DPS), Missouri State Highway Patrol (MHP)** stated section 210.025 requires that all child care providers be fingerprinted to receive state and/or federal funds. Currently, the Missouri State Highway Patrol Criminal Justice Information Services (CJIS) Division processes all state and federal fingerprint background checks. Based on Department of Health and Senior Services estimates, the MHP would be required to process 28,613 state and federal fingerprint-based criminal record checks for child care providers annually. The fees assessed for these background checks are as follows:

State fee:	\$20.00
FBI fee:	\$12.00
Applicant fingerprinting vendor fee:	<u>\$8.30</u>
Total fee per applicant:	\$40.30

Of these amounts, the state retains the \$20 state fee and \$2 of the federal charge of \$12 for a pass thru fee (\$22 total retained by the state). The \$8.30 charge is paid directly to the vendor at the time of application. All fees collected will be deposited in the Highway Patrol's Criminal Records System Fund.

ASSUMPTION (continued)

Total fees added to the Highway Patrol's Criminal Records System Fund is estimated to be \$629,486 annually (\$22 \* 28,613).

In response to the previous version of this proposal, officials from the **Office of Administration (OA), Division of Budget & Planning (B&P)** stated sections 210.025 - 210.258 do not create a new fee but will expand who is required to obtain the federal background check to child care workers in the state. This will increase total state revenue and impact the calculation pursuant to Article X, Section 18(e). B&P defers to the Department of Social Services and Department of Health and Senior Services for an estimated impact.

**Oversight** notes that provisions in sections 210.025.8 and 210.1080.9 exclude a child care facility defined in 210.201, maintained or operated under the exclusive control of a religious organization, unless a facility is the recipient of federal funds for those programs that meet the requirements for participation in the Child and Adult Care Food Program under 42 U.S.C. Section 1766. In addition, the provisions of subsection 1 as enacted by the general assembly and any rules or regulations promulgated under the section, shall expire if 42 U.S.C. Section 9858f, as enacted by the Child Care Development Block Grant (CCDBG) Act of 2014, and 45CFR 98.43 are repealed or if Missouri no longer received federal funds from the CCDBG.

As a result of these provisions, **Oversight** will indicate for fiscal note purposes, that revenues and expenses incurred by the DHSS and the DPS, MHP will be up to the amounts provided in their previous responses since some child care facilities may be exempted from the provisions of this proposal. In addition, if provisions of the CCDBG expire or Missouri no longer receives federal funds under the CCDBG, revenues/ expenses will no longer be received/incurred.

§§43.500- 43.547, 210.482, 210.487, 302.060, 313.810, and 610.120 - Criminal history and screening of employees

In response to the previous version of this proposal, officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** assumed the fiscal impact to their organization is unknown.

Upon implementation of this bill, programming updates to the Division of Professional Registration's system would need to be completed to capture rap back expiration dates and allow new applicant data to be entered for six years.

Additional investigators may be needed to vet criminal history reports and it is expected that additional legal services would also be required. Additional staffing would be requested through the budget process.

After conversation with the MHP, **Oversight** assumes DIFP would not incur material programming expense to participate in the program.

ASSUMPTION (continued)

In response to the previous version of this proposal, officials from the **Department of Social Services (DSS)** stated that currently, DSS works with Missouri State Highway Patrol (MHP) once a year to upload a file of current employees and determine if they have additional open criminal record results acquired since the prior annual review of the information. Rap Back programs would allow DSS to receive this information at the time it is uploaded to the central repository as opposed to one time a year, allowing DSS to address criminal record issues more proactively.

Currently, MHP provides updated open criminal history information regarding current DSS employees once a year at no charge. Section 43.540.2(6) states each request submitted shall be submitted with "... a reasonable fee,... plus the amount required, if any, by the FBI for the national criminal record review and enrollment in the National Rap Back program."

In 2017, DSS submitted 7,174 requests to determine if new open criminal history information had been acquired on current employees. DSS received new results on 24 employees. MHP stated the FBI charged \$12.00 in 2017 for a national criminal record review. This would have incurred either \$86,088, if "each request" meant each current employee in 2017, or \$288, if only requests that returned new information in 2017 were considered. MHP stated it is unknown at this time if there will be a fee for enrollment in the National Rap Back program and if that fee will be paid by MHP or the individual agencies. Because the answer is not known regarding potential cost, a negative impact is noted.

The DSS application for employment and the Fingerprint Referral Form for Contractors would need to be updated to include the language that not only will applicants be fingerprinted prior to beginning employment, but their fingerprints will continue to be compared to the central repository and any new criminal history information will be shared with DSS.

Section 43.540.6(2) states upon receiving the Rap Back notification, if DSS deems that the applicant is still serving in an active capacity, DSS may request and receive the individual's updated criminal history record. This process shall only occur if the individual upon which the Rap Back notification is being made has previously had a Missouri and national criminal record review completed for DSS within the previous six years. Currently DSS checks all employees and receives information regarding all open criminal records from the MHP annually. However, this does not include closed records obtained through a national criminal record review. DSS would only receive Rap Back notifications for employees who had been fingerprinted in the previous six years. However, DSS would also receive closed criminal records on these employees which DSS does not currently receive on the annual check.

ASSUMPTION (continued)

**Oversight** notes that the program is voluntary. Also, after conversation with the MHP, Oversight assumes DSS would not incur additional expense from this proposal. MHP notes that currently, agencies such as DSS can request background check on various people (such as foster parents), and this is done either every year or every other year, and a fee is paid to the MHP. With this program, the fee for the background check is paid every six years, so actually, this would save state agencies money, with an offsetting loss to the MHP's Criminal Background Fund. For fiscal note purposes, Oversight will assume no impact from this voluntary program.

In response to the previous version of this proposal, officials from the **DPS, MHP** assumed the proposal would not fiscally impact their agency.

In response to the previous version of this proposal, officials from the **OA, B&P** stated section 43.504 may increase the number of individuals receiving criminal history background checks. However, this additional amount in fees generated could be offset by the decrease in fees collected under the RAP Back program, since RAP Back covers multiple years and decreases the need for repeated fingerprint scans. This section does not have an impact on the calculation pursuant to Article X, Section 18(e).

Bill as a whole

In response to the previous version of this proposal, officials from the **Office of State Public Defender (SPD)** stated, for the purpose of this proposed legislation, the SPD cannot assume that existing staff will provide competent, effective representation for any new cases where indigent persons are charged with the proposed new crime of intentionally hampering, obstructing, tampering with, or destroying a monitoring device or a recording made by a monitoring device installed in a facility, a new Class B misdemeanor.

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.

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

In response to the previous version of this proposal, officials from the **Office of Attorney General (AGO)** assumed any potential costs arising from this proposal can be absorbed with existing resources. The AGO may seek additional appropriations if the proposal results in a significant increase in litigation.



ASSUMPTION (continued)

In response to the previous version of this proposal, officials from the **Department of Agriculture**, the **Department of Economic Development, Business Community Services**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education**, the **Department of Labor and Industrial Relations**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Revenue**, the **DPS, Director's Office**, the **Office of the Governor**, the **Joint Committee on Administrative Rules**, the **Missouri Lottery**, the **Missouri Consolidated Health Care Plan**, the **Missouri Department of Conservation**, the **Missouri Ethics Commission**, the **Missouri Department of Transportation**, the **Missouri Office of Prosecution Services**, the **Missouri State Employees' Retirement System**, the **Office of Administration, Administrative Hearing Commission and Division of Personnel**, the **Office of State Courts Administrator**, the **Missouri Senate**, the **Office of State Auditor**, the **Office of State Treasurer**, the **City of Kansas City** and the **Summersville R2 School District** each assumed the proposal would not fiscally impact their respective agencies.

In response to similar rules provisions in other bills from the current session, officials from the **Office of the Secretary of State (SOS)** have states many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. In response to similar legislation from the current session (SB 888/FN 5668.01), officials from the **Missouri House of Representatives** and the **Office of Lieutenant Governor** each assumed the proposal would not fiscally impact their respective agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
<b>GENERAL REVENUE FUND</b>			
<u>Costs - DHSS</u> (§210.1080)	Up to...	Up to...	Up to...
Personal service	(\$233,237)	(\$282,683)	(\$285,510)
Fringe benefits	(\$141,191)	(\$170,261)	(\$171,100)
Equipment and expense	(\$118,695)	(\$64,165)	(\$65,769)
Computer system updates	(\$190,269)	\$0	\$0
Total <u>Costs</u> - DHSS	(Up to \$683,392)	(Up to \$517,109)	(Up to \$522,379)
FTE Change - DHSS	Up to 8 FTE	Up to 8 FTE	Up to 8 FTE

<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>(Up to \$683,392)</u></b>	<b><u>(Up to \$517,109)</u></b>	<b><u>(Up to \$522,379)</u></b>
Estimated Net FTE Change on the General Revenue Fund	Up to 8 FTE	Up to 8 FTE	Up to 8 FTE

**CRIMINAL RECORDS SYSTEM  
FUND (#0671)**

<u>Income - DPS</u> (§192.2495)			
Increase in background check fees	\$38,152	\$45,782	\$45,782
<u>Income - DPS</u> (§210.025)	Up to...	Up to...	Up to...
Increase in background check fees	\$524,572	\$629,486	\$629,486

<b>ESTIMATED NET EFFECT ON THE CRIMINAL RECORDS SYSTEM FUND</b>	<b><u>Up to \$562,724</u></b>	<b><u>Up to \$675,268</u></b>	<b><u>Up to \$675,268</u></b>
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<u>FISCAL IMPACT - Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

### FISCAL IMPACT - Small Business

This proposal may impact small business in-home health care providers as background checks will be required on employees. (§192.2495)

This proposal would have a direct fiscal impact on small business child care providers. Applicant child care staff members, individuals or volunteers whose activities involve the care or supervision of children and individuals in a family child care home age 17 or older will be required to undergo a criminal background check. Costs are to be paid for by the applicant but child care providers may pay the background check fee. In addition, prospective staff members may begin work for a provider, pending completion of the background check, but must be supervised at all times by another child care staff member who has received a qualifying background check. This may increase child care provider costs. (§210.025)

### FISCAL DESCRIPTION

This bill states that in order to qualify for the receipt of state or federal funds for providing child-care services, the following persons must submit to a criminal background check before being granted a registration and every five years thereafter and to an annual check of the central registry for child abuse: (1) An applicant child care provider; (2) Persons employed by the applicant child care provider for compensation; (3) Individuals or volunteers whose activities involve the care or supervision of children for the applicant child care provider or unsupervised access to children who are cared for by the applicant child care provider; or (4) Individuals residing in the applicant's family child care home who are 17 years or older. Subsection 1 of this section does not apply to any child care facility maintained or operated under the exclusive control of a religious organization unless the facility is the recipient of federal funds meeting certain requirements. (§210.025).

Prior to the employment or presence of a child care staff member in a family child care home, group child care home, child care center, or license-exempt child care facility, the child care provider must request the results of a criminal background check for such child care staff members. The cost of the background check will be the responsibility of the staff member, but may be paid by the child care provider. These provisions do not apply to any child care facility maintained or operated under the exclusive control of a religious organization unless the facility is the recipient of federal funds meeting certain requirements. (§210.1080).

Prior to the employment or presence of a child care staff member in a family child care home, group child care home, child care center, or license-exempt child care facility, the child care provider must request the results of a criminal background check for such child care staff members. The cost of the background check will be the responsibility of the staff member, but may be paid by the child care provider (§210.1080).

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

## SOURCES OF INFORMATION

Office of Attorney General  
Department of Agriculture  
Department of Economic Development -  
    Business Community Services  
Department of Elementary and Secondary Education  
Department of Higher Education  
Department of Health and Senior Services  
Department of Insurance, Financial Institutions and Professional Registration  
Department of Mental Health  
Department of Natural Resources  
Department of Corrections  
Department of Labor and Industrial Relations  
Department of Revenue  
Department of Public Safety -  
    Director's Office  
    Missouri State Highway Patrol  
Department of Social Services  
Office of the Governor  
Joint Committee on Administrative Rules  
Missouri Lottery  
Missouri Consolidated Health Care Plan  
Missouri Department of Conservation  
Missouri Ethics Commission  
Missouri House of Representatives  
Office of Lieutenant Governor  
Missouri Department of Transportation  
Missouri Office of Prosecution Services  
Missouri State Employees' Retirement System  
Office of Administration -  
    Administrative Hearing Commission  
    Division of Personnel  
    Division of Budget & Planning  
    Information Technology Services Division/DHSS  
Office of State Courts Administrator  
Office of State Auditor  
Missouri Senate  
Office of Secretary of State

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SOURCES OF INFORMATION (continued)

Office of State Public Defender  
Office of State Treasurer  
City of Kansas City  
Summersville R2 School District

Ross Strope

A handwritten signature in black ink, appearing to read "Ross Strope". The signature is stylized with a large initial "R" and a long horizontal stroke at the end.

Acting Director  
May 15, 2018