

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5668-01
Bill No.: SB 888
Subject: Children and Minors; Courts; Crimes and Punishment; Highway Patrol; Public Records; Public Meetings
Type: Original
Date: February 5, 2018

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

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 9 pages.

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

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on FTE	0	0	0

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 2019	FY 2020	FY 2021
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Public Safety - Office of the Director** and the **Missouri Highway Patrol (MHP)** each assume the proposal would not fiscally impact their respective agencies.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** assume 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.

Officials from the **Department of Social Services (DSS)** state that currently, DSS works with Missouri State Highway Patrol (MSHP) 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, MSHP 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 to the Rap Back programs may charge "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. MSHP 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. MSHP 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 MSHP or the individual agencies. Because the answer is not known regarding potential cost, a negative impact

ASSUMPTION (continued)

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 MSHP 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.

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.

Officials from the **Office of Administration - Budget and Planning** assume 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 legislation does not have an impact on the calculation pursuant to Article X, Section 18(e).

Officials from the **Attorney General's Office (AGO)** assume any potential cost arising from this proposal can be absorbed with existing resources. AGO may seek additional appropriations if the proposal results in a significant increase in cases.

ASSUMPTION (continued)

Officials from the **Office of the State Auditor** assume any potential cost arising from this proposal can be absorbed with existing resources.

Officials from the **Office of the Secretary of State (SOS)** assume 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 Secretary of State's Office 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, we also recognize 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 our office can sustain with our core budget. Therefore, we reserve 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.

Officials from the **Joint Committee on Administrative Rules** state this legislation is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Department of Labor and Industrial Relations, Department of Natural Resources, Department of Corrections, Office of the Governor, Department of Mental Health, Missouri Department of Conservation, Department of Transportation, Office of the State Courts Administrator, Department of Revenue, Department of Elementary and Secondary Education, Missouri House of Representatives, Department of Health and Senior Services, Office of the Lieutenant Governor, Department of Economic Development, Department of Higher Education, Office of Prosecution Services, Office of the State Treasurer, Department of Agriculture, Administrative Hearing Commission, Office of the State Public Defender, Missouri Senate, State Tax Commission, Missouri Consolidated Health Care Plan, Missouri Ethics Commission, Missouri Lottery Commission, Office of Administration (Division of Personnel) and the Department of Public Safety (Directors Office, Missouri Veterans Commission, Missouri Gaming Commission, Division of Fire Safety, State Emergency Management Agency, Missouri Division of Alcohol and Tobacco Control, Missouri Highway Patrol and Capitol Police)** each assume the proposal will have no fiscal impact on their respective organizations.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
	<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 provisions relating to criminal history records.

Currently, certain definitions relating to criminal history apply to criminal records and central repository provisions of law. This act also applies such definitions to provisions relating to the statewide law enforcement emergency hotline and the sex offender registry.

Currently, "central repository" is defined as the division within the Missouri State Highway Patrol that is responsible, in part, for compiling, maintaining, and disseminating criminal incident and arrest reports. This act repeals this responsibility of the division.

Currently, sheriffs and circuit court judges may make available criminal history information obtained from the central repository to private entities responsible for probation supervision. This act also allows such information to be made available to private entities providing services associated with drug treatment courts.

Currently, law enforcement agencies may perform a Missouri criminal record review for only open records for purposes of hiring municipal or county governmental employees. This act repeals this provision.

Currently, certain entities may request a Missouri criminal record review through the Missouri State Highway Patrol, or a Missouri and national criminal record review through an authorized state agency. This act repeals these provisions.

FISCAL DESCRIPTION (continued)

Under this act, the central repository shall have the authority to submit an applicant's fingerprints, as defined in this act, to the National Rap Back program to be retained for the purpose of being searched against future submissions. Further, this act allows certain qualified entities to conduct Missouri and national criminal record reviews on applicants, and participate in the Missouri and National Rap Back programs for the purpose of determining suitability or fitness for a permit, license, or employment. The Missouri Rap Back program shall include an automatic notification made by the Missouri State Highway Patrol to an entity indicating that the applicant has been arrested for a criminal offense in Missouri. The National Rap Back program shall include an automatic notification made by the Federal Bureau of Investigation through the Missouri State Highway Patrol to an entity that an applicant has been arrested for a criminal offense outside of Missouri. Under this act, participation in the criminal record review and Rap Back process shall be voluntary, and any Rap Back notification received by an entity shall allow them to receive an individual's updated criminal history record under certain conditions.

The entities that may request such criminal record reviews include any office or division of the state, county, or municipal government that issues or renews licenses, permits, certifications, or registrations, any such entity that makes fitness determinations on applications for employment for government employees, any entity that screens persons seeking issuance or renewal of a license or permit or to purchase a firearm, or any entity that is authorized to conduct fingerprint background checks under federal law.

In order to conduct such criminal record reviews, the entity shall abide by certain requirements, including registering with the Missouri State Highway Patrol, notifying applicants that such applicant's fingerprints will be retained by the central repository, the Federal Bureau of Investigation, and the National Rap Back program, if enrolled, and notifying any applicant of his or her right to obtain a copy of any criminal record review and his or her ability to challenge the accuracy of such information. Further, the entity shall submit a request for screening on applicant using a completed fingerprint card, along with a fee. Upon submission, the Missouri State Highway Patrol shall provide to the entity the applicant's criminal history records. An applicant's fitness based upon his or her criminal history record shall be made by the entity.

An entity shall not be liable for damages solely for failing to obtain an applicant's information authorized under this act.

Under this act, any criminal record review shall include the submission of fingerprints to the Missouri State Highway Patrol, which shall conduct a review and also forward such fingerprints to the Federal Bureau of Investigation. Further, any applicant subject to such review shall provide certain information to the entity as set forth in this act.

FISCAL DESCRIPTION (continued)

Currently, two sets of fingerprints are required for the purpose of checking a person's criminal history. This act repeals this requirement.

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
Department of Agriculture
Department of Economic Development
 Public Service Commission
 Office of the Public Council
 Division of Energy
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
 Office of the Director
 Division of Alcohol and Tobacco Control
 Capitol Police
 Fire Safety
 Missouri Gaming Commission
 Missouri Highway Patrol
 State Emergency Management Agency
 Veterans Commission
Department of Social Services
Office of the Governor
Joint Committee on Administrative Rules
Missouri Lottery Commission
Missouri Consolidated Health Care Plan
Missouri Department of Conservation

SOURCES OF INFORMATION (continued)

Missouri Ethics Commission
Missouri House of Representatives
Office of the Lieutenant Governor
Department of Transportation
Office of Prosecution Services
Office of Administration
 Administrative Hearing Commission
 Budget and Planning
Office of the State Courts Administrator
Office of the State Auditor
Missouri Senate
Office of the Secretary of State
Office of the State Public Defender
Office of the State Treasurer
State Tax Commission

Ross Strobe



Acting Director
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