

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0252-01
Bill No.: SB 19
Subject: Corrections; Crimes and Punishment; Law Enforcement Officers and Agencies;
 Probation and Parole
Type: Original
Date: January 11, 2019

Bill Summary: This proposal creates penalty enhancements for certain crimes against emergency service providers.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
General Revenue	(Less than \$2,562,408)	(Less than \$5,996,885)	(Less than \$9,190,967)	(Less than \$15,554,715)
Total Estimated Net Effect on General Revenue	(Less than \$2,562,408)	(Less than \$5,996,885)	(Less than \$9,190,967)	(Less than \$15,554,715)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
General Revenue	0	-2	-9	-18
Total Estimated Net Effect on FTE	0	-2	-9	-18

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 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§544.671, 565.050, 565.052, 565.054, 565.056, and 575.150 - Crimes against emergency service providers

Officials from the **Department of Corrections (DOC)** state the bill mandates no probation or parole for assault 1st, 2nd, 3rd and 4th degree against law enforcement officers (LEO) and emergency service providers and for the offense of resisting arrest. No parole means that an offender is required to serve to the conditional release unless other sentencing restrictions make the sentence ineligible for conditional release. Law enforcement officers and emergency providers are special victims (565.002, RSMo.) with an enhanced felony class. Current statutes allow probation and 120-day court stipulated sentences for all the offenses.

Assault 1st degree and Assault 2nd degree if the victim is a special victim are dangerous felonies in which the offenders would serve 100 percent of the sentence as they are excluded from the provisions of conditional release. Offenders convicted of Assault 3rd degree will serve to conditional release. Assault 4th degree against a special victim is a class A misdemeanor and would not be supervised by the DOC but would be required to serve a county jail sentence.

The department uses new prison admissions in FY18 to estimate the number of offenders who will be impacted by the proposed sentencing changes and the time served by offenders released in FY18 to estimate the prison time served. While most prison time is served to first release, many paroles are revoked and the parolee re-incarcerated. The department has estimated, based upon an analysis of sentences discharged in FY18, 35 percent of the time after first release to the discharge of the sentence is spent in prison as a parole violator. This time is added to the time to first release.

A difficulty the DOC has in estimating the impact of changes to the sentencing of assault offenses is the criminal code revision that was enacted on January 1, 2017. This included a major revision to the assault statutes by creating four degrees of assault. The majority of offenders received in FY18 were sentenced under the old code. Therefore, the DOC is assuming an equivalency between the old offense of 1st degree assault of a LEO and the new offense of 1st degree against a special victim. The same applies for 2nd degree assault.

For 1st degree assault, six offenders were admitted to serve a term sentence and one received 120-days or probation in FY18. The term admissions now serve 85% of an 18-year sentence but will serve 100 percent of the sentence, if the bill is enacted.

ASSUMPTION (continued)

For 2nd degree assault, 41 offenders were admitted to serve a term sentence and will serve 85% of the 5.8 years as dangerous felons, and 139 were sentenced to 120-days or probation in FY18. After enactment, each offender will serve 100 percent of the sentence in prison.

For 3rd degree assault, ten offenders were admitted to serve a term sentence with an average sentence of 4.4 years, and 41 were sentenced to 120-days or probation sentence. After enactment, each offender will be sentenced to prison and will serve 2.9 years to conditional release.

For resisting arrest, there are 101 term sentences with an average sentence of 3.8 years, and 289 offenders received probation or a 120-days sentence. After enactment, each offender will be sentenced to prison and will serve 2.5 years to conditional release.

The following table illustrates the sentence distribution and expected total impact to DOC.

Impact of mandating no probation or parole for assault on Emergency Service Providers(ESPs) and resisting arrest

	Admissions FY18	Avg. Sentence (years)		Length of stay (yrs) to first release (FY18)		
		Before	After	Before	After	Increase
	(1)	(2)	(3)	(4)	(5)	(6)
Term Sentences(serve longer in prison)						
Assault 1st (ESP)	6	18.3	18.3	15.6	18.3	2.7
Assault 2nd (ESP)	41	5.8	7.5	4.9	7.5	2.6
Assault 3rd (ESP)	10	4.4	4.4	2.2	2.9	0.7
Resisting Arrest	101	3.8	3.8	1.5	2.5	1.0
120 day and Probation (now serve term sentence)						
Assault 1st (ESP)	1		18.3		18.3	18.3
Assault 2nd (ESP)	139		7.5		7.5	7.5
Assault 3rd (ESP)	41		4.4		2.9	2.9
Resisting Arrest	289		3.8		2.5	2.5
Total Prison	628					

The following charts show the impact to the prison and field population from FY20 to FY29 and outline the admissions and probation openings, time served, and release to parole. The total impact is an increase of 2,228 in the prison population with an offsetting decrease in the field population (probation). The increase in the prison population is very large because many offenders are currently being sentenced to probation or to a court stipulated 120-day program. The expected decrease in the number of probation and parole officers after ten years is 18. The reduction in the number of Probation and Parole officers will occur only in districts that have low officer-to-offender caseloads.

ASSUMPTION (continued)

Assault 1st degree (ESP)
 Change in prison admissions and probation openings with legislation

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
New Admissions										
Current Law	6	6	6	6	6	6	6	6	6	6
After Legislation	7	7	7	7	7	7	7	7	7	7
Probation										
Current Law	1	1	1	1	1	1	1	1	1	1
After Legislation	0	0	0	0	0	0	0	0	0	0
Change (After Legislation - Current Law)										
Admissions	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Probations	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1
Cumulative Populations										
Prison	1	2	3	4	5	6	7	8	9	10
Parole	0	0	0	0	0	0	0	0	0	0
Probation	-1	-2	-3	-4	-5	-5	-5	-5	-5	-5
Impact										
Prison Population	1	2	3	4	5	6	7	8	9	10
Field Population	-1	-2	-3	-4	-5	-5	-5	-5	-5	-5
Population Change	0	0	0	0	0	0	1	2	3	4
P&P Officers + or -		0	0	0	0	0	0	0	0	0

Assault 2nd degree (ESP)
 Change in prison admissions and probation openings with legislation

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
New Admissions										
Current Law	41	41	41	41	41	41	41	41	41	41
After Legislation	180	180	180	180	180	180	180	180	180	180
Probation										
Current Law	151	151	151	151	151	151	151	151	151	151
After Legislation	0	0	0	0	0	0	0	0	0	0
Change (After Legislation - Current Law)										
Admissions	139	139	139	139	139	139	139	139	139	139
Probations	-151	-151	-151	-151	-151	-151	-151	-151	-151	-151
Cumulative Populations										
Prison	139	278	417	556	695	867	1047	1137	1137	1137
Parole						-25	-25	-25	-25	-25
Probation	-151	-302	-453	-604	-755	-755	-755	-755	-755	-755
Impact										
Prison Population	139	278	417	556	695	867	1,047	1,137	1,137	1,137
Field Population	-151	-302	-453	-604	-755	-780	-780	-780	-780	-780
Population Change	-12	-24	-36	-48	-60	-87	-267	-357	-357	-357
P&P Officers + or -		0	0	-4.0	-6.0	-8.0	-8.0	-8.0	-8.0	-8.0

ASSUMPTION (continued)

Assault 3rd degree (ESP)

Change in prison admissions and probation openings with legislation

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
New Admissions										
Current Law	10	10	10	10	10	10	10	10	10	10
After Legislation	51	51	51	51	51	51	51	51	51	51
Probation										
Current Law	41	41	41	41	41	41	41	41	41	41
After Legislation	0	0	0	0	0	0	0	0	0	0
Change (After Legislation - Current Law)										
Admissions	41	41	41	41	41	41	41	41	41	41
Probations	-41	-41	-41	-41	-41	-41	-41	-41	-41	-41
Cumulative Populations										
Prison	41	82	123	143	143	143	143	143	143	143
Parole				21	37	37	37	37	37	37
Probation	-41	-82	-123	-164	-205	-205	-205	-205	-205	-205
Impact										
Prison Population	41	82	123	143	143	143	143	143	143	143
Field Population	-41	-82	-123	-143	-168	-168	-168	-168	-168	-168
Population Change					-25	-25	-25	-25	-25	-25
P&P Officers + or -		0	0	0	0	0	0	0	0	0

Resisting Arrest

Change in prison admissions and probation openings with legislation

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
New Admissions										
Current Law	101	101	101	101	101	101	101	101	101	101
After Legislation	390	390	390	390	390	390	390	390	390	390
Probation										
Current Law	289	289	289	289	289	289	289	289	289	289
After Legislation	0	0	0	0	0	0	0	0	0	0
Change (After Legislation - Current Law)										
Admissions	289	289	289	289	289	289	289	289	289	289
Probations	-289	-289	-289	-289	-289	-289	-289	-289	-289	-289
Cumulative Populations										
Prison	289	578	938	938	938	938	938	938	938	938
Parole			-71	161	161	161	161	161	161	161
Probation	-289	-578	-867	-1156	-1445	-1445	-1445	-1445	-1445	-1445
Impact										
Prison Population	289	578	938	938	938	938	938	938	938	938
Field Population	-289	-578	-938	-996	-1,285	-1,285	-1,285	-1,285	-1,285	-1,285
Population Change				-58	-347	-347	-347	-347	-347	-347
P&P Officers + or -		-2.0	-9.0	-9.0	-10.0	-10.0	-10.0	-10.0	-10.0	-10.0

ASSUMPTION (continued)

Total Impact (change in population)

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
Prison	470	940	1,481	1,641	1,781	1,954	2,135	2,226	2,227	2,228
Field	-482	-964	-1,517	-1,747	-2,213	-2,237	-2,237	-2,237	-2,237	-2,237
Net population change	-12	-24	-36	-106	-431	-283	-102	-11	-10	-9
P&P Officers	0.0	-2.0	-9.0	-13.0	-16.0	-18.0	-18.0	-18.0	-18.0	-18.0

If this impact statement has changed from statements submitted in previous years, it is because the DOC has changed the way probation and parole daily costs are calculated to more accurately reflect the way the Division of Probation and Parole is staffed across the entire state.

In December 2017, the DOC reevaluated the calculation used for computing the Probation and Parole average daily cost of supervision and revised the cost calculation to be used for 2019 fiscal notes. The new calculation estimates the increase/decrease in caseloads at each Probation and Parole district due to the proposed legislative change. For the purposes of fiscal note calculations, the DOC averaged district caseloads across the state and came up with an average caseload of 51 offender cases per officer. The new calculation assumes that an increase/decrease of 51 cases in a district would result in a change in costs/cost avoidance equal to the cost of one FTE in the district. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

In instances where the proposed legislation would only affect a specific caseload such as sex offenders, the DOC will use the average caseload figure for that specific type of offender to calculate cost increases/decreases.

The DOC cost of incarceration is \$17.224 per day or an annual cost of \$6,287 per offender. The DOC cost of probation or parole is determined by the number of Probation and Parole Officer II positions that would be needed to cover the new caseload.

The DOC would assume this legislation will result in long-term costs as indicated in the following chart.

ASSUMPTION (continued)

	# to/from prison	Cost per year	Total Costs for prison (includes 2% inflation)	Change in # of Probation & Parole Officers	Probation and Parole officers savings per year	Grand Total - Prison and Probation (includes and 2% inflation)	# of offenders to/from Probation and Parole
Year 1	470	(\$6,287)	(\$2,462,408)	0	\$0	(\$2,462,408)	(482)
Year 2	940	(\$6,287)	(\$6,027,976)	(2)	\$131,091	(\$5,896,885)	(964)
Year 3	1,481	(\$6,287)	(\$9,687,213)	(9)	\$596,247	(\$9,090,967)	(1,517)
Year 4	1,641	(\$6,287)	(\$10,948,448)	(13)	\$870,506	(\$10,077,942)	(1,747)
Year 5	1,781	(\$6,287)	(\$12,120,152)	(16)	\$1,082,927	(\$11,037,225)	(2,213)
Year 6	1,954	(\$6,287)	(\$13,563,410)	(18)	\$1,231,404	(\$12,332,006)	(2,237)
Year 7	2,135	(\$6,287)	(\$15,116,191)	(18)	\$1,244,693	(\$13,871,498)	(2,237)
Year 8	2,226	(\$6,287)	(\$16,075,697)	(18)	\$1,258,118	(\$14,817,580)	(2,237)
Year 9	2,227	(\$6,287)	(\$16,404,578)	(18)	\$1,271,701	(\$15,132,877)	(2,237)
Year 10	2,228	(\$6,287)	(\$16,740,183)	(18)	\$1,285,468	(\$15,454,715)	(2,237)

Oversight does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC's impact for fiscal note purposes.

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** state they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the enhanced penalties for the assault on a law enforcement officer, firefighter, or an emergency medical responder. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

In FY 2018, SPD's Trial Division opened the following number of felony cases:

565.021	Murder, 2 nd	131 Cases
565.021	Murder, 2 nd FA	16 Cases
565.050	Assault, 1 st FA/B	16 Cases
565.052	Assault, 2 nd	344 Cases
	Total	507 Cases

ASSUMPTION (continued)

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 notes over the last three fiscal years, the SPD has lapsed a total of \$152 of General Revenue appropriations (\$0 out of \$36.4 million in FY 2016; \$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018). Therefore, Oversight assumes the SPD is at maximum capacity, and the increase in workload resulting from this bill cannot be absorbed within SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, Oversight assumes the cost for a new APD could approach \$100,000 per year.

According to "The Missouri Project" (RubinBrown, June 2014), the number of hours that should be spent on a class B felony is 54.3, and the number of hours that should be spent on a class C/D/E felony is 28.5. These numbers take into account time for travel and in-court appearances. For purposes of this fiscal note, the SPD states if just five percent or 25 cases ($507 \times 0.05 = 25$, rounded down) were against a law enforcement officer, firefighter, or emergency medical service provider as proposed in this bill, the SPD could spend an additional 971 hours on these cases annually.

Oversight assumes the SPD cannot absorb the additional caseload that may result from this proposal with their existing resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

Oversight notes that the **Department of Public Safety (Fire Safety and Missouri State Highway Patrol)**, **Office of Prosecution Services** and **Office of State Courts Administrator** have stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

FISCAL IMPACT -
 State Government

FY 2020
 (10 Mo.)

FY 2021

FY 2022

Fully
 Implemented
 (FY 2029)

**GENERAL
 REVENUE FUND**

Costs - DOC
 (§§544.671, 565.050,
 565.054, 565.056,
 575.150)

Net increase in
 prisoners and
 decrease in
 probationers/parolees
 expenditures

(\$2,462,408) (\$5,896,885) (\$9,090,967) (\$15,454,715)

Reduction in
 Probation and Parole
 FTE

0 FTE -2 FTE -9 FTE -18 FTE

Costs - SPD
 (§§544.671, 565.050,
 565.054, 565.056,
 575.150)

Salaries, fringe
 benefits, and
 equipment and
 expense

(Less than
\$100,000) (Less than
\$100,000) (Less than
\$100,000) (Less than
\$100,000)

**ESTIMATED NET
 EFFECT ON THE
 GENERAL
 REVENUE FUND**

(Less than
\$2,562,408) (Less than
\$5,996,885) (Less than
\$9,190,967) (Less than
\$15,554,715)

Estimated Net
 Reduction in General
 Revenue FTE

0 FTE -2 FTE -9 FTE -18 FTE

<u>FISCAL IMPACT -</u> <u>Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2023)
	<u>\$0</u>	<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 provides that anyone convicted of second, third, or fourth degree assault where the victim was a law enforcement officer, firefighter, or emergency medical provider who was assaulted during the performance of or as a direct result of their official duties are ineligible for bail or continuation of bail.

Pursuant to this act anyone found guilty of first, second, third, or fourth degree assault and the offense of resisting or interfering with arrest, detention, or stop is ineligible for probation or parole if the victim was a law enforcement officer, firefighter, or emergency medical provider who was assaulted during the performance of or as a direct result of performing their official duties.

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 Corrections
Department of Public Safety -
 Fire Safety
 Missouri State Highway Patrol
Office of Prosecution Services
Office of State Courts Administrator
State Public Defender's Office



Kyle Rieman
Director
January 11, 2019

Ross Strobe
Assistant Director
January 11, 2019