

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0564-05
Bill No.: HCS for SCS for SB 1
Subject: Courts; Crimes and Punishment; Public Records; Public Meetings
Type: Original
Date: May 8, 2019

Bill Summary: This proposal modifies provisions relating to criminal offenders.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
General Revenue	Could exceed \$1,005,920	Could exceed \$1,635,249	Could exceed \$1,524,052	Could exceed \$5,868,866
Total Estimated Net Effect on General Revenue	Could exceed \$1,005,920	Could exceed \$1,635,249	Could exceed \$1,524,052	Could exceed \$5,868,866

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
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 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
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 2023)
General Revenue	0	0	0	4
Total Estimated Net Effect on FTE	0	0	0	4

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 2023)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§558.019 - Minimum Prison Terms

Officials from the **Department of Corrections (DOC)** assume the proposed legislation modifies provisions relating to victims of certain crimes including rental agreements and modifies provisions relating to minimum prison terms.

Section 558.019 modifies provisions relating to minimum prison terms. Officials at the **DOC** assume a direct impact from this legislation would result in a cost avoidance that would be fully implemented in FY2023 of \$5,868,866. The proposed legislation modifies the criminal offenses that are punished by a minimum prison term (MPT). The changes in this version makes the provisions concerning commitment count minimum prison terms retroactive to apply to offenders currently incarcerated.

The impact of the proposed changes are computed separately for the offenses that will not serve an MPT but currently do and those offenses (drug trafficking) that will serve a MPT but currently do not. The total impact to the DOC will be a decrease in the prison population of 192 in FY20 and then to 925 in FY23. There will be an offsetting increase in parole supervision.

Total Impact										
	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
Prison Population										
Removing MPT	-192	-255	-255	-967	-967	-967	-967	-967	-967	-967
Adding MPT			22	42	42	42	42	42	42	42
Total	-192	-255	-233	-925	-925	-925	-925	-925	-925	-925
Field Population	192	255	233	925	925	925	925	925	925	925
P&P Officers + or -				4	4	4	4	4	4	4

The total impact was determined by the following:

D) The number of offenders who are sentenced to a minimum prison term for an eligible offense

In FY18, there were 1,885 offenders who had a parole hearing and were sentenced to a minimum prison term with an eligible nonviolent offense. The average sentence ranged from 5.8 years by offenders who had served one prior DOC incarceration and were required to serve 40% of the sentence to 6.0 years by offenders who had served three or more DOC incarcerations and were

ASSUMPTION (continued)

required to serve 80% of the sentence before parole eligibility. In addition, there are estimated to be 45 offenders serving drug trafficking offenses who had prior DOC incarcerations and would have served an MPT. The trafficking offenses include drug trafficking 1st degree and drug trafficking 2nd degree with an enhanced sentence.

New admissions with parole hearings in FY18
Serving a minimum prison term
Defined nonviolent offenses

Minimum Prison Term	Hearings	Average Sentence (years)
Drug Trafficking	45	12.3
40%	1,133	5.8
50%	467	5.9
80%	285	6.0
Total	1,930	5.9

ii) The number of offenders who would have been required to serve a minimum prison term but who will be released by the Board of Probation and Parole after serving a shorter prison stay.

The estimate of how many offenders who will no longer be required to serve a minimum prison term and will be released earlier is based upon the Board's calculation of a guideline release date.

New admissions with a parole hearing in FY18
MPT offenders likely to be released on the guideline date

MPT	Release date is the MPT date and not ASAP	Guideline date is less than 90 days from Admission (ASAP)	Release date is after the MPT date	Releases Decisions	Percent Released on MPT date not ASAP
40%	436	93	604	1,133	38.5%
50%	227	45	195	467	48.6%
80%	146	48	91	285	51.2%
Total	809	186	890	1,885	42.9%

In FY18, there were 1,885 planned releases of offenders who had been required to serve a minimum prison term of which 809 (42.9%) are estimated to be offenders who could be released

ASSUMPTION (continued)

earlier. These are offenders who will be released on the MPT date and were not ASAP. ASAP offenders are offenders who had a guideline release date that was within the first 90 days of incarceration. This occurs when offenders are admitted with significant jail time that is credited to the time served. ASAP offenders (186) cannot be released on the guideline date because of the time required for the administrative tasks of holding a hearing and arranging for the release. The offenders who were released after the MPT date (890) are high risk offenders are also excluded from an early release if the MPT was removed.

**Average time served serving a MPT and the guideline term
 MPT offenders likely to be released on the guideline date**

	Released on MPT (not ASAP)	Average Sentence (years)	Average MPT (years)	Average Guideline/ (years)	Guideline Percent Served	Reduction in time to first release (years)	Increase in parole recidivism (years)	Net reduction in time served (years)	Total reduction in prison population
MPT									
40%	436	5.4	2.2	1.4	26%	0.8	0.3	0.5	229
50%	227	5.7	2.9	1.6	29%	1.2	0.4	0.8	189
80%	146	6.2	5.0	2.0	32%	3.0	1.0	1.9	297
Total	809	5.7	2.9	1.6	28%	1.3	0.5	0.8	712

The calculation of the reduction in the time served is the difference between the MPT time (2.9 years) and the average guideline time served (1.6 years) multiplied by the number of offenders to be released on the MPT date (809). The DOC is offsetting this reduction in time served by adding back 35% of the reduction as an estimate of increased recidivism from a longer period on parole. The estimate of 35% is the average time offenders discharged from parole in FY18 spent in prison after first release because their parole was revoked. After adding in the parole recidivism, the average reduction in time served is 0.8 years, resulting in a total reduction in the prison population of 712 which will be achieved by FY23. The reduction in the prison population will be offset by an increase in parole population. The increase in the parole population is estimated to need an increase of three P&P officers.

ASSUMPTION (continued)

Change in prison admissions and probation openings with legislation

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
New Admissions										
Current Law	809	809	809	809	809	809	809	809	809	809
After Legislation	809	809	809	809	809	809	809	809	809	809
Probation										
Current Law	-	-	-	-	-	-	-	-	-	-
After Legislation	-	-	-	-	-	-	-	-	-	-
Change (After Legislation - Current Law)										
Admissions	0	0	0	0	0	0	0	0	0	0
Probations	0	0	0	0	0	0	0	0	0	0
Cumulative Populations										
Prison	-	-	-	-712	-712	-712	-712	-712	-712	-712
Parole	-	-	-	712	712	712	712	712	712	712
Probation	-	-	-	0	0	0	0	0	0	0
Impact										
Prison Population	-	-	-	-712	-712	-712	-712	-712	-712	-712
Field Population	-	-	-	712	712	712	712	712	712	712
Population Change	-	-	-	-	-	-	-	-	-	-
P&P Officers + or -	0	0	0	3	3	3	3	3	3	3

iii) Increase in time served by offenders required to serve a minimum prison term for drug trafficking

Using a similar methodology for calculating the impact of adding a MPT, it is estimated that of the 45 drug trafficking offenders with a MPT, 22 would be released on the MPT date. They will serve an average of 6.1 years before parole instead of the 3.1 years that the parole board would have required. This is an increase of 3.0 years, but there will be a decrease in parole recidivism of 1.1 years because the offenders are serving longer to first release. The total increase in the population is 42.

Adding drug trafficking to the MPT offenses

	Release Decisions	Released on MPT date	Average MPT (years)	Average Guideline/ (years)	Guideline Percent Served	Increase in time to first release (years)	decrease in parole recidivism (years)	Net increase in time served (years)	Total increase in prison population	Increase after 10 years
40%	27	13	4.9	3.0	24%	2.0	0.7	1.3	16	16
50%	11	6	6.2	3.1	25%	3.1	1.1	2.0	11	11
80%	7	4	9.8	3.4	28%	6.4	2.2	4.2	15	15
Total	45	22	6.1	3.1	28%	3.0	1.1	2.0	42	42

The combined impact is a decrease in the prison population of 670 and an increase in the parole population of 670.

ASSUMPTION (continued)

Combined Impact

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
Prison Population										
Removing MPT				-712	-712	-712	-712	-712	-712	-712
Adding MPT			22	42	42	42	42	42	42	42
Total			22	-670	-670	-670	-670	-670	-670	-670
Field Population			-22	670	670	670	670	670	670	670
P&P Officers + or -				2	2	2	2	2	2	2

iv) The release of currently incarcerated offenders serving a nonviolent MPT sentence.

The legislation makes the change in the MPT retroactive and will remove the MPT from offenders serving eligible nonviolent offenses. The estimate of the offenders affected by the removal is the number of eligible MPT offenders who have a release date set on the MPT date but who have a guideline release that has already passed. The reduction in the time served is the time from today to the minimum prison term date. The reduction is offset by 35% to account for an increase in parole returns because of an increase in the time on supervision. An estimate is made for FY20 and FY21. The estimate for FY21 is one third of the FY20 estimate.

Offenders incarcerated serving an MPT who could be released without the MPT

Minimum Prison Term	FY2020 Count	FY2021 Count	Average Sentence (years)	Reduction in time served (years)	Increase in parole violators	Population reduction FY2020	Population reduction in FY2021
40	171	56	5.6	0.4	0.3	43	14
50	144	48	5.9	0.7	0.4	64	21
80	147	49	6.4	0.9	0.6	85	28
Total	462	152	6.0	0.6	0.4	192	63

Applying the change in the MPT retroactively will effect 462 offenders in FY20 and 152 offenders in FY21 and the average reduction in the time served will be 0.4 years, resulting in a one-time reduction of 192 in the prison population in FY20 and a reduction of 63 in FY21.

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 staff person in the district. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

ASSUMPTION (continued)

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. For instances where the proposed legislation affects a less specific caseload, DOC projects the impact based on prior year(s) actual data for DOC's 57 probation and parole districts. When projecting the impact for each probation and parole district, DOC uses actual caseload dispersion data to determine the caseload impact per district, and therefore project the number of officers needed when adding at least 51 offender cases in a district.

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 P&P Officer II positions that would be needed to cover the new caseload.

DOC assumes the total impact for this version below:

	fewer # in prison	Cost per year	Total Savings for prison	increased # on probation & parole	Add'l P&P Officers needed FTE	Total cost for probation and parole	Grand Total - Prison and Probation (includes and 2% inflation)
Year 1	(192)	(\$6,287)	\$1,005,920	192	0	\$0	\$1,005,920
Year 2	(255)	(\$6,287)	\$1,635,249	255	0	\$0	\$1,635,249
Year 3	(233)	(\$6,287)	\$1,524,052	233	0	\$0	\$1,524,052
Year 4	(925)	(\$6,287)	\$6,171,429	925	4	(\$302,563)	\$5,868,866
Year 5	(925)	(\$6,287)	\$6,294,857	925	4	(\$270,732)	\$6,024,125
Year 6	(925)	(\$6,287)	\$6,420,754	925	4	(\$273,645)	\$6,147,109
Year 7	(925)	(\$6,287)	\$6,549,169	925	4	(\$276,598)	\$6,272,571
Year 8	(925)	(\$6,287)	\$6,680,153	925	4	(\$279,582)	\$6,400,571
Year 9	(925)	(\$6,287)	\$6,813,756	925	4	(\$282,600)	\$6,531,156
Year 10	(925)	(\$6,287)	\$6,950,031	925	4	(\$285,660)	\$6,664,371

DOC notes the proposed language in §558.019.6 appears to attempt to make the proposed language in section 558.019.2 applicable to commitments prior to the effective date of the proposed legislation. There may be some ambiguity in this proposed language. It could be read that only the offenses listed in the new subsection 2 would be considered prior commitments under the revision or it could be read that all offenses (including those excluded from the new subsection 2) would count toward the calculation of prior commitments. DOC is unsure what interpretation would be applied.

ASSUMPTION (continued)

Oversight has no information which contradicts DOC's response and will reflect a net cost avoidance that is fully implemented in FY23 of \$5,868,866.

In response to a similar proposal (HCS for SCS for SB 60), officials at the **Office of the State Courts Administrator, Office of the State Public Defender and Office of the Attorney General** assumed no fiscal impact to their respective agencies from this proposal.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact for this section on the fiscal note for these agencies.

§610.140 - Expungement of criminal records

Officials from the **Department of Corrections (DOC)** state 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. There is some concern for tracking previous medical, mental health, substance use 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.

Oversight does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC's no impact for fiscal note purposes.

In response to a previous version, officials from the **Office of State Courts Administrator** stated the provisions of this bill may result in some fiscal impact but there is currently no way to quantify that amount. Any significant changes as a result of this proposal will be reflected in future budget requests.

ASSUMPTION (continued)

In response to a previous version, **Oversight** notes that the **Attorney General's Office, Springfield Police Department, St. Louis County Police Department** and the **Boone County Sheriff's Department** stated the proposal would not have a direct fiscal impact on their organizations.

In response to a previous version, **Oversight** notes the **City of Keytesville** stated this proposal may have a minimal impact on their organization.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Oversight notes current law (§488.650) requires a \$250 surcharge to be paid for petitions for expungement of criminal records filed under §610.140 and provides that the judge may waive the surcharge if the petitioner is indigent. The funds for this surcharge go to the General Revenue Fund. As the exact number of expungement requests is unknown, Oversight will reflect a \$0 to Unknown impact to the General Revenue Fund.

Bill as a Whole

Oversight notes that the **Department of Health and Senior Services, Department of Revenue, Department of Public Safety - Missouri State Highway Patrol, Department of Social Services, Missouri Office of Prosecution Services, St. Louis County Department of Justice Services** and the **City of Kansas City** have stated the proposal would not have a direct fiscal impact on their organizations.

Officials from the **City of Columbia** state they are unable to determine if this proposal will have a fiscal impact on their organization.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other cities and police and sheriff's departments were requested to respond to this proposed legislation but did not. For a general listing of political subdivisions included in our database, please refer to www.legislativeoversight.mo.gov.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2023)
GENERAL REVENUE				
<u>Cost Avoidance -</u> DOC (§558.019) Reduction of prisoner population p. 3-8				
	\$1,005,920	\$1,635,249	\$1,524,052	\$6,171,429
<u>Cost - DOC</u> (§558.019) Additional Probation and Parole Officers for decreased number of offenders in prisons p. 3-8				
	\$0	\$0	\$0	(\$302,563)
FTE Change - DOC - P&P officers				
	0 FTE	0 FTE	0 FTE	4 FTE
<u>Revenue -</u> (§610.140) Surcharge on petition for expungement p. 10				
	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND				
	<u>Could exceed</u> <u>\$1,005,920</u>	<u>Could exceed</u> <u>\$1,635,249</u>	<u>Could exceed</u> <u>\$1,524,052</u>	<u>Could exceed</u> <u>\$5,868,866</u>
Estimated Net FTE Change for General Revenue				
	0 FTE	0 FTE	0 FTE	4 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

558.019

Under current law, all classes of felonies, except those with specific minimum sentences and those involving controlled substances, are subject to statutorily required minimum prison terms. This act provides that such minimum prison terms shall only apply to certain named offenses as listed in the act.

610.140

This act removes the following crimes from the list of crimes where expungement is not currently available: property damage in the first degree, stealing, possession of a forging instrumentality, and fraudulent use of a credit device or debit device.

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 Health and Senior Services
Department of Corrections
Department of Revenue
Department of Public Safety -
 Missouri State Highway Patrol
Department of Social Services
Missouri Office of Prosecution Services
Office of State Courts Administrator
State Public Defender's Office
City of Columbia
City of Kansas City
City of Keytesville
Springfield Police Department
St. Louis County Department of Justice Services
St. Louis County Police Department
Boone County Sheriff's Department



Kyle Rieman
Director
May 8, 2019

Ross Strope
Assistant Director
May 8, 2019