

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1433-04
Bill No.: SS for HCS for HB 694
Subject: Highway Patrol; Federal-State Relations; Department of Social Services; Law Enforcement Officers and Agencies; Courts; State Treasurer
Type: Original
Date: May 2, 2019

Bill Summary: This proposal modifies provisions relating to background checks, and extends the expiration date of a criminal court surcharge for the DNA Profiling Analysis Fund.

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|--|------------------------------|------------------------------|------------------------------|
| FUND AFFECTED | FY 2020 | FY 2021 | FY 2022 |
| General Revenue | (Less than \$100,000) | (Less than \$100,000) | (Less than \$100,000) |
| Total Estimated Net Effect on General Revenue | (Less than \$100,000) | (Less than \$100,000) | (Less than \$100,000) |

| ESTIMATED NET EFFECT ON OTHER STATE FUNDS | | | |
|--|--------------------|--------------------|--------------------|
| FUND AFFECTED | FY 2020 | FY 2021 | FY 2022 |
| DNA Profiling Analysis Fund (0772) | \$1,028,041 | \$1,233,649 | \$1,233,649 |
| Total Estimated Net Effect on Other State Funds | \$1,028,041 | \$1,233,649 | \$1,233,649 |

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 8 pages.

| ESTIMATED NET EFFECT ON FEDERAL FUNDS | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2020 | FY 2021 | FY 2022 |
| | | | |
| | | | |
| Total Estimated Net Effect on <u>All</u> Federal Funds | \$0 | \$0 | \$0 |

| ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE) | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2020 | FY 2021 | FY 2022 |
| | | | |
| | | | |
| 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 2020 | FY 2021 | FY 2022 |
| Local Government | \$0 | \$0 | \$0 |

FISCAL ANALYSIS

ASSUMPTION

§§43.539, 43.540, and 43.548 - Fingerprint-based criminal records checks

Officials from the **Department of Public Safety - Missouri Highway Patrol** assume this proposal would not fiscally impact their agency. This bill contains corrective language in section 43.540 to authorize federal fingerprint-based criminal record checks in order to remain compliant with federal requirements (P.L. 92-544). The Federal Bureau of Investigation (FBI) has indicated there is a possibility, if the language is not corrected, Missouri would be ineligible to submit federal fingerprint-based criminal record checks for licensing and employment purposes. If the FBI were to deny future submissions, no city, county, or state governmental agency would be eligible to submit federal fingerprint-based criminal record requests. The MHP receives a \$2 pass-thru fee for each fingerprint-based criminal record check completed. Based on 2018 submissions, this would have eliminated approximately 95,000 applicants and a \$190,000 (95,000 x \$2) loss of revenue to the Criminal Records System Fund.

Oversight assumes one purpose of this bill is to correct the language in §43.540 to authorize federal fingerprint-based criminal record checks in order to remain compliant with federal requirements. Therefore, Oversight will reflect a no impact in the fiscal note for the MHP.

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 proposed new crime of disseminating confidential fingerprint information - a new class A misdemeanor. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

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.

ASSUMPTION (continued)

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.

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

This part of the proposal has an emergency clause.

§488.5050 - Extends the expiration date of the DNA Profiling Analysis Fund

Officials from the **Department of Public Safety - Missouri State Highway Patrol (MHP)** state HB 694 extends the expiration of a criminal court surcharge for the DNA Profiling Analysis Fund from August 28, 2019, to August 28, 2029.

Pursuant to 650.052, RSMo, the MHP is designated as the central repository for the DNA profiling system known as CODIS or the Combined DNA Index System. The CODIS Unit of the MSHP Crime Laboratory manages the Offender DNA Profiling program and collaborates with the seven other Missouri CODIS laboratories, allowing for their participation in the National DNA Index System. The CODIS Unit receives an average of 21,000 offender DNA samples annually for entry into CODIS, where they are searched against DNA profiles developed from crime scene evidence, unidentified human remains, and missing persons. To date, this program has assisted over 14,300 investigations. It is an invaluable tool for law enforcement in Missouri and nationwide.

It costs \$28.93 per sample/DNA profile in raw consumables to produce a DNA profile by our CODIS unit. If labor costs, instrument, and software maintenance are included, the cost per sample/DNA profile can approach \$46.13.

Failure to address this funding source will not only result in a laboratory budgetary shortfall of approximately \$750,000 each year or the discontinuation of the program which would result in an average of 21,000 offender DNA samples annually not being registered in the CODIS DNA database but could also obviate a return on investment to the citizens of Missouri.

ASSUMPTION (continued)

Additional internal calculations are based on the 2017 MSHP Criminal Justice Information Services (CJIS) arrest statistics and the Crime Lab 2017 arrestee offender sample intake. FTE needs and cost calculations are based on the unit's present estimated processing capacity and operational costs.

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

Oversight notes the proposal extends income to the DNA Profiling Fund (0772). The balance of the fund at March 31, 2019 was \$3,548,852 and receipts into this fund over the past five fiscal years have been:

FY2018 - \$1,170,953
FY2017 - \$1,169,311
FY2016 - \$1,224,606
FY2015 - \$1,279,702
FY2014 - \$1,323,673

(Source: Missouri State Treasurer, Fiscal Year End Fund Activity Reports).

Oversight notes over the past five years, this fund averaged \$1,233,649 in annual receipts ($\$1,170,953 + \$1,169,311 + \$1,224,606 + \$1,279,702 + 1,323,673 = \$6,168,245 / 5$). For fiscal note purposes, Oversight will use the five-year average as a basis of annual collections into this fund. Oversight assumes income to the fund will more than exceed MHP's estimated costs for the program.

Bill as a Whole

Officials from the **Office of the Secretary of State (SOS)** state 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 \$5,000. 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.

ASSUMPTION (continued)

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 require additional resources.

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

Oversight assumes JCAR will be able to administer any rules resulting from this proposal with existing resources.

Officials from the **Office of Administration - Budget & Planning (OA/BAP)** state these provisions do not impact total state revenue or the calculation under Title X, Section 18(e). Therefore, OA/BAP assumes no fiscal impact.

Oversight notes that the **Department of Elementary and Secondary Education, Department of Health and Senior Services, Department of Mental Health, Department of Social 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.

| <u>FISCAL IMPACT - State Government</u> | FY 2020 | FY 2021 | FY 2022 |
|--|-------------------------------------|-------------------------------------|-------------------------------------|
| GENERAL REVENUE FUND | | | |
| <u>Costs - SPD</u> (§§43.539, 43.540, 43.548) | | | |
| Salaries, fringe benefits, and equipment and expense | <u>(Less than \$100,000)</u> | <u>(Less than \$100,000)</u> | <u>(Less than \$100,000)</u> |
| ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND | <u>(Less than \$100,000)</u> | <u>(Less than \$100,000)</u> | <u>(Less than \$100,000)</u> |
| DNA PROFILING ANALYSIS FUND (0772) | | | |
| <u>Income - Extension of Expiration Date</u> for §488.5050 from 08/28/19 to 08/28/29 | <u>\$1,028,041</u> | <u>\$1,233,649</u> | <u>\$1,233,649</u> |
| ESTIMATED NET EFFECT ON THE DNA PROFILING ANALYSIS FUND | <u>\$1,028,041</u> | <u>\$1,233,649</u> | <u>\$1,233,649</u> |

| <u>FISCAL IMPACT - Local Government</u> | FY 2020 | FY 2021 | FY 2022 |
|---|------------|------------|------------|
| | <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

43.539, 43.540 and 43.548

This bill allows qualified entities, under certain circumstances, to receive individuals' criminal history information from the central repository as part of the "Missouri Rap Back Program" as well as the National Rap Back Program. The Missouri program includes automatic notifications made by the State Highway Patrol about whether an individual, specifically an applicant who is employed, licensed, or otherwise under the purview of the entity, has been arrested for a reported criminal offense in the state.

The bill specifies what qualified entities are required to do before having access to the national and state programs, and it specifies the limited circumstances in which individuals' criminal history information may be used. An applicant must give consent to the qualified entity before that entity may access the applicant's fingerprints and criminal history information.

Finally, Missouri circuit courts and the Department of Social Services may require fingerprinting for applicants applying to adopt or to serve as guardian, conservator, or as another type of personal representative and the fingerprint-based record check will be forwarded to the Missouri Highway Patrol to be used to search the criminal history repository. The fingerprints will be sent to the Federal Bureau of Investigation (FBI) for a national background check.

The proposal contains an emergency clause.

488.5050

This bill removes Chapter 195 and adds Chapter 579, RSMo, relating to controlled substances offenses, to the class of circuit court proceeding costs for which a surcharge of \$60 shall be assessed. Additionally, the bill extends the expiration date of the provisions of the bill to August 28, 2029.

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 Elementary and Secondary Education
Department of Health and Senior Services
Department of Mental Health
Department of Public Safety -
 Missouri State Highway Patrol
Department of Social Services
Joint Committee on Administrative Rules
Office of Administration -
 Budget & Planning
Office of Secretary of State
Office of State Courts Administrator
State Public Defender's Office



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May 2, 2019

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