

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3317-01
Bill No.: SB 537
Subject: Corrections; Crimes and Punishment; Law Enforcement Officers and Agencies;
 Probation and Parole
Type: Original
Date: January 14, 2020

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 2021	FY 2022	FY 2023	Fully Implemented (FY 2030)
General Revenue	(Less than \$760,568)	(Less than \$1,652,174)	(Less than \$2,505,224)	(Less than \$5,297,811)
Total Estimated Net Effect on General Revenue	(Less than \$760,568)	(Less than \$1,652,174)	(Less than \$2,505,224)	(Less than \$5,297,811)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2030)
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 2021	FY 2022	FY 2023	Fully Implemented (FY 2030)
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 2021	FY 2022	FY 2023	Fully Implemented (FY 2030)
General Revenue	<2 FTE>	<5 FTE>	<8 FTE>	<16 FTE>
Total Estimated Net Effect on FTE	<2 FTE>	<5 FTE>	<8 FTE>	<16 FTE>

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 2021	FY 2022	FY 2023	Fully Implemented (FY 2030)
Local Government	(Unknown)	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

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

Officials from the **Department of Corrections (DOC)** state SB 537 prohibits eligibility for probation or parole in case of assaults, if the victim was a law enforcement officer, firefighter, or emergency medical service provider assaulted in the performance of his or her official duties or as a direct result of such official duties. The bill deals with assaults 1st, 2nd, and 3rd degree and prohibits probation and parole for an offender if the victim is a law enforcement officer, firefighter, or emergency medical service provider. These assaults fall under class A, B, and D felonies depending upon whether it is 1st, 2nd, or 3rd degree assault and who the victim of assault was. 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. Current statutes allow probation and 120-day court stipulated sentences for all the offenses. The bill mandates no probation or parole for 1st, 2nd, and 3rd degree assault against law enforcement officers, fire fighters, and emergency service providers. Law enforcement officers and emergency providers are special victims (565.002 RSMo) with an enhanced felony class. Assault 1st degree and Assault 2nd degree, if the victim is a special victim, are dangerous felonies in which the offenders would serve 100% of the sentence because they are excluded from the provisions of conditional release. Offenders convicted of Assault 3rd degree will serve to conditional release (two-thirds of sentence).

To assess the potential impact of changes proposed in this bill, we will analyze FY 2019 new prison admissions, new probation cases, and time served to first release for offenders with sentences for assaults on special victims (i.e., law enforcement officers, emergency personnel, highway workers etc.). In FY 2019, there were 63 new court commitments to prison with an average sentence of 18.3 years for first degree assault on a special victim. There were 15 new court commitments to prison with an average sentence of 9.9 years for second degree assault on a special victim. There were 22 new court commitments to prison with an average sentence of 5.4 years for third degree assault on a special victim.

FY 2019 New court commitments to prison based on assaults on special victims

MISSOURI STATUTE	DESCRIPTION	OFFENSE CLASS	OFFENDERS	AVERAGE SENTENCE
565.050	Assault 1 st Degree	A	63	18.3
565.052	Assault 2 nd Degree	B	15	9.9
565.054	Assault 3 rd Degree	D	22	5.4

ASSUMPTION (continued)

In FY 2019, there were 31 new probation cases with an average sentence of 10.2 years for first degree assault on a special victim. There were 31 new probation cases with an average sentence of 7.0 years for second degree assault on a special victim. There were 83 new probation cases with an average sentence of 3.6 years for third degree assault on a special victim. Under the proposed legislation, all of these offenders would be sentenced to prison instead of probation.

FY 2019 New probation cases based on assaults on special victims

MISSOURI STATUTE	DESCRIPTION	OFFENSE CLASS	OFFENDERS	AVERAGE SENTENCE
565.050	Assault 1 st Degree	A	31	10.2
565.052	Assault 2 nd Degree	B	31	7.0
565.054	Assault 3 rd Degree	D	83	3.6

In FY 2019, 71 offenders serving time for a first degree assault on a special victim were released from prison after serving, on average, 14.2 years, or 90% of the length of the sentence. There were 18 offenders serving time for a second degree assault on a special victim released from prison after serving, on average, 4.9 years, or 50% of the length of the sentence. There were 8 offenders serving time for a third degree assault on a special victim released from prison after serving, on average, 0.9 years, or 20% of the length of the sentence.

FY 2019 Offenders released from prison after serving time for convictions of assaults on special victims

MISSOURI STATUTE	DESCRIPTION	OFFENSE CLASS	OFFENDERS	AVERAGE SENTENCE	TIME SERVED TO FIRST RELEASE	PERCENT SENTENCE SERVED TO FIRST RELEASE
565.050, 565.081	Assault 1 st Degree	A	71	16.2	14.2	90%
565.082	Assault 2 nd Degree	B	18	9.8	4.9	50%
565.054	Assault 3 rd Degree	D	8	4.6	0.9	20%

To estimate the potential impact of this bill, this analysis assumes all offenders with class A and class B felony offenses will serve 100% of their sentence before first release and all offenders with class D felony offenses will serve 66% of their sentence before first release.

Combined Operational Impact

The first three tables that follow outline the cumulative impact of eliminating the probation sentencing option for assaults on special victims for each degree of assault. The final table provides a combined assessment of the potential impact of the proposed legislation.

ASSUMPTION (continued)

Class A Felony Assaults in 1st Degree on Special Victims (Law Enforcement, emergency workers etc.)

	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030
New Admissions										
Current Law	63	63	63	63	63	63	63	63	63	63
After Legislation	94	94	94	94	94	94	94	94	94	94
Probation										
Current Law	31	31	31	31	31	31	31	31	31	31
After Legislation	0	0	0	0	0	0	0	0	0	0
Change (After Legislation - Current Law)										
Admissions	31	31	31	31	31	31	31	31	31	31
Probations	-31	-31	-31	-31	-31	-31	-31	-31	-31	-31
Cumulative Populations										
Prison	31	62	93	124	155	186	217	248	279	310
Parole										
Probation	-31	-62	-93	-124	-155	-186	-217	-248	-279	-310
Impact										
Prison Population	31	62	93	124	155	186	217	248	279	310
Field Population	-31	-62	-93	-124	-155	-186	-217	-248	-279	-310
Population Change										

Class B Felony Assaults in 2nd Degree on Special Victims (Law Enforcement, emergency workers etc.)

	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030
New Admissions										
Current Law	15	15	15	15	15	15	15	15	15	15
After Legislation	46	46	46	46	46	46	46	46	46	46
Probation										
Current Law	31	31	31	31	31	31	31	31	31	31
After Legislation	0	0	0	0	0	0	0	0	0	0
Change (After Legislation - Current Law)										
Admissions	31	31	31	31	31	31	31	31	31	31
Probations	-31	-31	-31	-31	-31	-31	-31	-31	-31	-31
Cumulative Populations										
Prison	31	62	93	124	155	186	222	268	268	268
Parole							-5	-20	-35	-48
Probation	-31	-62	-93	-124	-155	-186	-217	-217	-217	-217
Impact										
Prison Population	31	62	93	124	155	186	222	268	268	268
Field Population	-31	-62	-93	-124	-155	-186	-222	-237	-252	-265
Population Change										
P&P Officers + or -		0	0	0	0	0	0	0	0	0

ASSUMPTION (continued)

Class D Felony Assaults in 3rd Degree on Special Victims (Law enforcement, emergency workers etc.)

	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030
New Admissions										
Current Law	22	22	22	22	22	22	22	22	22	22
After Legislation	105	105	105	105	105	105	105	105	105	105
Probation										
Current Law	83	83	83	83	83	83	83	83	83	83
After Legislation	0	0	0	0	0	0	0	0	0	0
Change (After Legislation - Current Law)										
Admissions	83	83	83	83	83	83	83	83	83	83
Probations	-83	-83	-83	-83	-83	-83	-83	-83	-83	-83
Cumulative Populations										
Prison	83	166	258	258	258	258	258	258	258	258
Parole			-9	64	42	33	33	33	33	33
Probation	-83	-166	-249	-299	-299	-299	-299	-299	-299	-299
Impact										
Prison Population	83	166	258	258	258	258	258	258	258	258
Field Population	-83	-166	-258	-235	-257	-266	-266	-266	-266	-266
Population Change				23	1	-8	-8	-8	-8	-8

The total cumulative impact of changes in this bill continues beyond the 10-year scope of this note due to the length of sentences associated with first degree assaults on special victims; however, the estimated potential impact by FY 2030 is 835 additional offenders in prison and 841 fewer people under field supervision.

Change in prison admissions and probation openings with legislation

	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030
New Admissions										
Current Law	100	100	100	100	100	100	100	100	100	100
After Legislation	245	245	245	245	245	245	245	245	245	245
Probation	0	0	0	0	0	0	0	0	0	0
Current Law	145	145	145	145	145	145	145	145	145	145
After Legislation	0	0	0	0	0	0	0	0	0	0
Change (After Legislation - Current Law)										
Admissions	145	145	145	145	145	145	145	145	145	145
Probations	-145	-145	-145	-145	-145	-145	-145	-145	-145	-145
Cumulative Populations										
Prison	145	290	444	506	568	630	696	773	804	835
Parole	0	0	-9	64	42	33	28	13	-2	-15
Probation	-145	-290	-435	-547	-609	-671	-733	-764	-795	-826
Impact										
Prison Population	145	290	444	506	568	630	696	773	804	835
Field Population	-145	-290	-444	-483	-567	-638	-704	-750	-796	-841
Population Change	0	0	0	23	1	-8	-8	23	8	-6

ASSUMPTION (continued)

	# to prison	Cost per year	Total Costs for prison	Change in probation & parole officers	Total savings for probation and parole	# to Probation and Parole	Grand Total - Prison and Probation (includes a 2% inflation)
Year 1	145	(\$6,386)	(\$771,642)	(2)	\$111,074	(145)	(\$660,568)
Year 2	290	(\$6,386)	(\$1,888,979)	(5)	\$336,805	(290)	(\$1,552,174)
Year 3	444	(\$6,386)	(\$2,949,934)	(8)	\$544,710	(444)	(\$2,405,223)
Year 4	506	(\$6,386)	(\$3,429,098)	(9)	\$619,416	(483)	(\$2,809,683)
Year 5	568	(\$6,386)	(\$3,926,250)	(11)	\$765,247	(567)	(\$3,161,002)
Year 6	630	(\$6,386)	(\$4,441,916)	(12)	\$843,849	(638)	(\$3,598,067)
Year 7	696	(\$6,386)	(\$5,005,405)	(13)	\$924,088	(704)	(\$4,081,316)
Year 8	773	(\$6,386)	(\$5,670,347)	(14)	\$1,005,962	(750)	(\$4,664,384)
Year 9	804	(\$6,386)	(\$6,015,702)	(15)	\$1,089,533	(796)	(\$4,926,169)
Year 10	835	(\$6,386)	(\$6,372,604)	(16)	\$1,174,793	(841)	(\$5,197,811)

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 2019, 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 2020 fiscal notes. 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 would result in a change in costs/cost avoidance equal to the cost of one FTE staff person. 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. 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 44 probation and parole districts.

The DOC cost of incarceration is \$17.496 per day or an annual cost of \$6,386 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.

ASSUMPTION (continued)

Oversight does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC's estimated 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 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 Fiscal Year 2019, SPD's Trial Division opened 1,673 cases under charge codes 565.021, 565.050, 565.052, and 565.054 of the 62,002 total cases opened.

Charge Code	Description	Cases
565.021	Murder 2 nd	166
565.021	Murder 2 nd FA	1
565.050	Assault 1 st Degree	524
565.050	Assault 1 st FA/B	6
565.052	Assault 2 nd Degree	355
565.054	Assault 3 rd Degree	621
	Total Cases	1,673

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 \$153 of General Revenue appropriations (\$2 out of \$28.0 million in FY 2017; \$150 out of \$42.5 million in FY 2018; and \$1 out of \$46.0 million in FY 2019). Therefore, Oversight assumes the SPD is at maximum capacity, and the increase in workload resulting from this bill cannot be absorbed with 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.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS.

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

Oversight assumes adding these special victims to §544.671 would increase the number of offenders not entitled to bail out of local jails, which would increase local law enforcement costs.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023	Fully Implemented (FY 2030)
GENERAL REVENUE				
<u>Savings - DOC -</u> fewer P&P Officers				
Personal Services	\$64,588	\$195,700	\$316,256	\$678,128
Fringe Benefits	\$40,700	\$123,320	\$199,287	\$427,323
Expense and Equipment	<u>\$5,786</u>	<u>\$17,785</u>	<u>\$29,167</u>	<u>\$69,342</u>
Total Savings - DOC	<u>\$111,074</u>	<u>\$336,805</u>	<u>\$544,710</u>	<u>\$1,174,793</u>
FTE Change - DOC	-2 FTE	-5 FTE	-8 FTE	-16 FTE
<u>Costs - DOC</u> (\$557.045) Increased incarceration costs	(\$771,642)	(\$1,888,979)	(\$2,949,934)	(\$6,372,604)
<u>Costs - SPD</u> (\$565.021, 565.050, 565.052, and 565.054) 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>	<u>(Less than \$100,000)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Less than \$760,568)</u>	<u>(Less than \$1,652,174)</u>	<u>(Less than \$2,505,224)</u>	<u>(Less than \$5,297,811)</u>
Estimated Net FTE Change for the General Revenue Fund	-2 FTE	-5 FTE	-8 FTE	-16 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023	Fully Implemented (FY 2030)
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**LOCAL LAW
ENFORCEMENT**

<u>Costs - increased jail days due to 'no bail' provisions in §544.671</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT TO LOCAL LAW ENFORCEMENT	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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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 or third degree assault where the victim was a law enforcement officer, firefighter, or emergency medical provider who was assaulted during the performance of his or her official duties or as a direct result of such official duties shall be ineligible for bail or continuation of bail.

Additionally, anyone found guilty of first, second, or third degree assault 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 his or her official duties or as a direct result of such official duties.

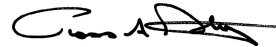
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Corrections
Department of Public Safety
Missouri Office of Prosecution Services
Office of State Courts Administrator
State Public Defender's Office



Julie Morff
Director
January 14, 2020



Ross Strobe
Assistant Director
January 14, 2020