

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3891-04  
Bill No.: SCS for SB Nos. 538, 562, & 601  
Subject: Firearms; Weapons; Crimes and Punishment  
Type: Original  
Date: February 4, 2020

Bill Summary: This proposal modifies provisions relating to criminal offenses involving deadly weapons.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2038)
General Revenue*	(\$5,322)	(\$13,027)	(\$13,288)	(Significant Fiscal Impact)
<b>Total Estimated Net Effect on General Revenue*</b>	<b>(\$5,322)</b>	<b>(\$13,027)</b>	<b>(\$13,288)</b>	<b>(Significant Fiscal Impact)</b>

\* DOC anticipates a significant fiscal impact (potential increase in prison population of over 2,500 prisoners for the changes to §571.015) by FY 2038.

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2038)
<b>Total Estimated Net Effect on Other State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses. This fiscal note contains 9 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>				
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>Fully Implemented (FY 2038)</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>				
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>Fully Implemented (FY 2038)</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>				
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>Fully Implemented (FY 2038)</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### §571.015 - Increase in penalty for armed criminal action offense

Officials from the **Department of Corrections (DOC)** state this legislation does not create any new criminal offenses, it increases criminal penalties for existing offenses. Because of this fact there is no projected fiscal impact within the ten-year timeframe for fiscal note responses. However, the department does anticipate significant fiscal impact past the ten-year reporting timeframe.

In response to a similar proposal (SB 601), DOC stated the bill increases imprisonment terms for offenders with Armed Criminal Action (ACA) crimes and eliminates the eligibility for probation, parole, CR, SIS, or SES and requires sentences for ACA to be served consecutively. As this bill does not introduce new actions eligible for charges, it is not likely to have an impact on the number of offenders under the purview of the Department. However, offenders convicted of ACA will have longer sentences and longer stays in prison.

In FY 2019, 497 offenders were admitted to prison on at least one ACA sentence. Of these prison admissions, 197 were new court commitments, 227 were court commitments on an additional sentence an offender received while under supervision in the field, and 72 were parole returns to prison.

For further estimating the potential impact of the proposed legislation, this analysis focuses on the 424 offenders admitted to prison for new sentences in FY 2019. The average length of their longest admitting sentence was 15.6 years. By adding the sentence lengths for ACA sentences consecutive to the offenders longest sentence, we estimate the proposed legislation would increase the average sentence length for these offenders to 23.8 years.

In FY 2019, 446 offenders who were admitted to prison on at least one ACA sentence were first released from prison. Their average length of stay to first release was 9.6 years, which was approximately 61.5% of their longest admitting sentence. When we apply this same percent of sentence as time served to first release to the new average sentence length of 23.8 years, we expect offenders with ACA sentences to serve, on average, approximately 14.6 years to first release.

Given the relatively long lengths of sentences and prison stays for these offenders, and the discretion of the courts in determining the length of these sentences, the exact impact on department operations is difficult to determine. The analysis takes into account all sentences of

ASSUMPTION (continued)

offenders admitted to and released from prison during FY2019, applies the condition that all ACA sentences be served consecutively, and uses the new minimum years for first time and prior ACA offenses to estimate the operational impact of serving ACA sentences that were being served concurrently as consecutive sentences. The estimated impact does not begin to appear until FY 2032 and is not expected to reach maximum cumulative impact until FY 2044, when there could be 2544 more offenders in prison and 933 more offenders under parole supervision.

**Change in prison admissions and probation openings with legislation**

	FY2036	FY2037	FY2038	FY2039	FY2040	FY2041	FY2042	FY2043	FY2044	FY2045
<b>New Admissions</b>										
Current Law	424	424	424	424	424	424	424	424	424	424
After Legislation	424	424	424	424	424	424	424	424	424	424
<b>Probation</b>										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	0	0	0	0	0	0	0	0	0	0
<b>Change (After Legislation - Current Law)</b>										
Admissions	0	0	0	0	0	0	0	0	0	0
Probations	0	0	0	0	0	0	0	0	0	0
<b>Cumulative Populations</b>										
Prison	1866	2290	2544	2544	2544	2544	2544	2544	2544	2544
Parole	-1696	-1696	-1526	-1102	-678	-254	170	594	933	933
Probation	0	0	0	0	0	0	0	0	0	0
<b>Impact</b>										
Prison Population	1866	2290	2544	2544	2544	2544	2544	2544	2544	2544
Field Population	-1696	-1696	-1526	-1102	-678	-254	170	594	933	933
<b>Population Change</b>	<b>170</b>	<b>594</b>	<b>1018</b>	<b>1442</b>	<b>1866</b>	<b>2290</b>	<b>2714</b>	<b>3138</b>	<b>3477</b>	<b>3477</b>

**Oversight** notes the estimated increase in prison population (an additional 2,544 prisoners) resulting from changes to §571.015 would not be fully realized until FY 2038 (18 years in the future).

**DOC** was reluctant to provide fiscal estimates for these potential additional prisoners since it is so distant in the future. Therefore, Oversight will note the impact as “significant”.

ASSUMPTION (continued)

§571.060 - Providing firearms to persons less than eighteen years of age

DOC states this section adds subdivision (2) unlawful transfer of weapons, which creates a new non-violent class E felony. For each new non-violent class E felony, the department estimates one person will be sentenced to prison and two to probation. The average sentence for a non-violent class E felony offense is 3.4 years, of which 2.1 years will be served in prison with 1.4 years to first release. The remaining 1.3 years will be on parole. Probation sentences will be 3 years.

The impact on the DOC is estimated to be two additional offenders in prison and seven on field supervision by FY 2024.

§571.063 - Enhances penalty for fraudulent firearm purchases

This section enhances the penalty of fraudulent purchase of a firearm from a class E felony to a class D felony.

In FY 2019, there was no new admissions and only one to probation for the current class E felony offense of fraudulent purchase of a firearm. Thus, enhancing the penalty of fraudulent purchase of a firearm from a class E felony to a class D felony should not have much impact because of very low occurrence of such offenses. Therefore, the DOC estimates no impact.

§571.070 - Enhances penalty for unlawful possession of a firearm

The DOC states this bill enhances the felony class of unlawful possession of a firearm from a class D felony to a class C felony when an offender has been convicted of a dangerous felony.

In FY 2019, there were 85 new admissions under section 571.070 for a class D felony, with an average sentence of 5.0 years, and 2.1 years until the first release. There were 246 sentences to either probation or 120 days, with an average term of 4.4 years.

Out of these offenders, nine were also convicted of dangerous felony or armed criminal action, and zero convicted of drug trafficking. All of these offenses are either a class A, B or U felony charges, higher than a class C felony. Thus, these offenders are already serving longer sentences than that for a class C felony. Changing a class D to a class C felony will result in a longer stay, only if these sentences are consecutive instead of concurrent, which is not the case and is not addressed in this bill.

Nevertheless, assuming a consecutive sentence of class C felony for unlawful firearm possession, these nine offenders will now be charged under class C felony. The average sentence for a new

ASSUMPTION (continued)

class C felony is 6.9 years, of which 3.7 years will be served in prison with 2.1 years to first release. The remaining 3.2 years will be on parole. Probation sentences will be 3 years.

The cumulative impact, assuming nine new admissions and no new probations, will be five new prison admissions and a loss of five field supervisions by FY 2024.

	# to prison	Cost per year	Total Costs for <b>prison</b>	# to probation & parole	Cost per year	Total cost for <b>probation and parole</b>	Grand Total - Prison and Probation (includes a 2% inflation)
Year 1	1	(\$6,386)	(\$5,322)	2	absorbed	\$0	(\$5,322)
Year 2	2	(\$6,386)	(\$13,027)	4	absorbed	\$0	(\$13,027)
Year 3	2	(\$6,386)	(\$13,288)	7	absorbed	\$0	(\$13,288)
Year 4	7	(\$6,386)	(\$47,438)	2	absorbed	\$0	(\$47,438)
Year 5	7	(\$6,386)	(\$48,387)	2	absorbed	\$0	(\$48,387)
Year 6	7	(\$6,386)	(\$49,355)	12	absorbed	\$0	(\$49,355)
Year 7	7	(\$6,386)	(\$50,342)	15	absorbed	\$0	(\$50,342)
Year 8	7	(\$6,386)	(\$51,349)	15	absorbed	\$0	(\$51,349)
Year 9	7	(\$6,386)	(\$52,376)	15	absorbed	\$0	(\$52,376)
Year 10	7	(\$6,386)	(\$53,423)	15	absorbed	\$0	(\$53,423)

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

ASSUMPTION (continued)

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.

**Oversight** contacted the DOC regarding the meaning of a U felony. According to the DOC, under a U felony, the convicted person will be punished according to the specific statute which makes the crime against the law. Those unclassified felonies can receive a penalty outside the definition of a class A, B, C, D, or E felony.

Officials from the **State Public Defender's Office (SPD)** state this proposed legislation escalates the penalties for Unlawful Possession of a Firearm to a C felony if the charged has been convicted of a dangerous felony, armed criminal action, or trafficking drugs. However, in regard to representation by the State Public Defender's Office, the attorney hours required for a C felony and a D felony are the same.

In Fiscal Year 2019, SPD's Trial Division opened 185 new cases with the following charges:

571.015 - Armed Criminal Action	174
571.060 - Unlawful Transfer of Weapons	1
571.070 - Possess/Conc. Firearm FC	<u>10</u>
Total	185

**Oversight** does not have any information to the contrary. Therefore, Oversight will reflect the no fiscal impact provided by the SPD for fiscal note purposes.

In response to a previous version, officials from the **Missouri Office of Prosecution Services (MOPS)** assumed the proposal will have no measurable fiscal impact on MOPS.

**Oversight** notes the **Department of Natural Resources**, the **Department of Public Safety - Missouri State Highway Patrol** and **Missouri National Guard**, the **Department of Social Services**, the **Missouri Department of Conservation** 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.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023	Fully Implemented (FY 2038)
<b>GENERAL REVENUE FUND</b>				
<u>Costs - DOC</u> (\$571.070) Increased incarceration costs	<u>(\$5,322)</u>	<u>(\$13,027)</u>	<u>(\$13,288)</u>	<u>(Significant Fiscal Impact)</u>
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>(\$5,322)</u></b>	<b><u>(\$13,027)</u></b>	<b><u>(\$13,288)</u></b>	<b><u>(Significant Fiscal Impact)</u></b>
<u>FISCAL IMPACT -</u> <u>Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023	Fully Implemented (FY 2038)
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

OFFENSE OF ARMED CRIMINAL ACTION (Section 571.015)

Under current law, a person who commits the offense of armed criminal action is subject to a term of imprisonment of not less than 3 years for the first offense, 5 years for the second offense, and 10 years for any subsequent offense, in addition to any punishment for the crime committed by, with, or through the use of a deadly weapon.

This act changes the prison term for this offense to 5 to 15 years for the first offense, 10 to 30 years for the second offense, and at least 15 years for any subsequent offense. These prison terms shall be served in addition to and consecutive with any punishment for the crime committed with the use of a deadly weapon.



FISCAL DESCRIPTION (continued)

No person convicted for the offense of armed criminal action shall be eligible for parole, probation, conditional release or suspended imposition or execution of sentence for the minimum period of imprisonment.

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 Natural Resources  
Department of Corrections  
Department of Public Safety -  
    Missouri State Highway Patrol  
    Missouri National Guard  
Department of Social Services  
Missouri Department of Conservation  
Missouri Office of Prosecution Services  
Office of State Courts Administrator  
State Public Defender's Office



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