

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0076S.01I
 Bill No.: SB 250
 Subject: Consumer Protection; Crimes and Punishment; Internet and E-Mail
 Type: Original
 Date: January 23, 2023

Bill Summary: This proposal creates provisions relating to organized retail theft.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2024	FY 2025	FY 2026	Fully Implemented (FY 2028)
General Revenue*	(\$58,577)	(\$155,024)	(\$217,421)	(\$345,738)
Total Estimated Net Effect on General Revenue	(\$58,577)	(\$155,024)	(\$217,421)	(\$345,738)

*Officials from the Department of Corrections assume the combined cumulative impact is estimated to be 25 additional offenders in prison and 52 additional offenders on field supervision by FY 2028, with a net population change of 77 new offenders.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2024	FY 2025	FY 2026	Fully Implemented (FY 2028)
Total Estimated Net Effect on Other State Funds	\$0	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2024	FY 2025	FY 2026	Fully Implemented (FY 2028)
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 2024	FY 2025	FY 2026	Fully Implemented (FY 2028)
General Revenue	0 FTE	0 FTE	0 FTE	1 FTE
Total Estimated Net Effect on FTE	0 FTE	0 FTE	0 FTE	1 FTE

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS				
FUND AFFECTED	FY 2024	FY 2025	FY 2026	Fully Implemented (FY 2028)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§407.1700 and 570.036 – Organized retail theft

Officials from the **Department of Corrections (DOC)** state section 407.1700.7(1) creates an E felony as violations of this section shall be treated as a violation of sections 407.010 to 407.130 and shall be enforced solely by the Attorney General. It is unknown if the Attorney General will enforce violations of this provision. Therefore, the DOC will utilize a standard E felony to estimate what impact could occur should the Attorney General act on those violations.

Section 570.036 creates provisions relating to organized retail theft. A class C felony was created for all thefts during a period of 120 days greater than \$10,000. A class D felony was created for all thefts during a period of 120 days between \$500 and less than \$10,000.

It is believed that this bill intends to create a class C, D, and E felony.

For each new class C felony, the department estimates four people will be sentenced to prison and six to probation. The average sentence for a class C felony offense 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 on the department is estimated to be 15 additional offenders in prison and 19 additional offenders on field supervision by FY 2027.

Change in prison admissions and probation openings with legislation-Class C Felony

	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032	FY2033
New Admissions										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	4	4	4	4	4	4	4	4	4	4
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	6	6	6	6	6	6	6	6	6	6
Change (After Legislation - Current Law)										
Admissions	4	4	4	4	4	4	4	4	4	4
Probations	6	6	6	6	6	6	6	6	6	6
Cumulative Populations										
Prison	4	8	12	15	15	15	15	15	15	15
Parole				1	5	9	13	13	13	13
Probation	6	12	18	18	18	18	18	18	18	18
Impact										
Prison Population	4	8	12	15	15	15	15	15	15	15
Field Population	6	12	18	19	23	27	31	31	31	31
Population Change	10	20	30	34	38	42	46	46	46	46

For each new nonviolent class D felony, the department estimates three people will be sentenced to prison and five to probation. The average sentence for a nonviolent class D felony offense is 5

years of which, 2.8 years will be served in prison with 1.7 years to first release. The remaining 2.2 years will be on parole. Probation sentences will be 3 years.

The cumulative impact on the department is estimated to be 8 additional offenders in prison and 16 additional offenders on field supervision by FY 2026.

Change in prison admissions and probation openings with legislation-Class D Felony (nonviolent)

	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032	FY2033
New Admissions										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	3	3	3	3	3	3	3	3	3	3
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	5	5	5	5	5	5	5	5	5	5
Change (After Legislation - Current Law)										
Admissions	3	3	3	3	3	3	3	3	3	3
Probations	5	5	5	5	5	5	5	5	5	5
Cumulative Populations										
Prison	3	6	8	8	8	8	8	8	8	8
Parole			1	4	7	7	7	7	7	7
Probation	5	10	15	15	15	15	15	15	15	15
Impact										
Prison Population	3	6	8	8	8	8	8	8	8	8
Field Population	5	10	16	19	22	22	22	22	22	22
Population Change	8	16	24	27	30	30	30	30	30	30

For each new nonviolent class E felony, the department estimates one person could be sentenced to prison and two to probation. The average sentence for a nonviolent 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 cumulative impact on the department is estimated to be 2 additional offenders in prison and 7 additional offenders on field supervision by FY 2026.

Change in prison admissions and probation openings with legislation-Class E Felony (nonviolent)

	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032	FY2033
New Admissions										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	1	1	1	1	1	1	1	1	1	1
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	2	2	2	2	2	2	2	2	2	2
Change (After Legislation - Current Law)										
Admissions	1	1	1	1	1	1	1	1	1	1
Probations	2	2	2	2	2	2	2	2	2	2
Cumulative Populations										
Prison	1	2	2	2	2	2	2	2	2	2
Parole			1	1	1	1	1	1	1	1
Probation	2	4	6	6	6	6	6	6	6	6
Impact										
Prison Population	1	2	2	2	2	2	2	2	2	2
Field Population	2	4	7	7	7	7	7	7	7	7
Population Change	3	6	9	9	9	9	9	9	9	9

The combined cumulative impact is estimated to be 25 additional offenders in prison and 52 additional offenders on field supervision by FY 2028, with a net population change of 77 new offenders.

Change in prison admissions and probation openings with legislation

	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032	FY2033
New Admissions										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	8	8	8	8	8	8	8	8	8	8
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	13	13	13	13	13	13	13	13	13	13
Change (After Legislation - Current Law)										
Admissions	8	8	8	8	8	8	8	8	8	8
Probations	13	13	13	13	13	13	13	13	13	13
Cumulative Populations										
Prison	8	16	22	25	25	25	25	25	25	25
Parole	0	0	2	6	13	17	21	21	21	21
Probation	13	26	39	39	39	39	39	39	39	39
Impact										
Prison Population	8	16	22	25	25	25	25	25	25	25
Field Population	13	26	41	45	52	56	60	60	60	60
Population Change	21	42	63	70	77	81	85	85	85	85

	# to prison	Cost per year	Total Costs for prison	Change in probation & parole officers	Total cost for probation and parole	# to probation & parole	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	8	(\$9,499)	(\$58,577)	0	\$0	13	(\$58,577)
Year 2	16	(\$9,499)	(\$155,024)	0	\$0	26	(\$155,024)
Year 3	22	(\$9,499)	(\$217,421)	0	\$0	41	(\$217,421)
Year 4	25	(\$9,499)	(\$252,010)	0	\$0	45	(\$252,010)
Year 5	25	(\$9,499)	(\$257,051)	1	(\$88,687)	52	(\$345,738)
Year 6	25	(\$9,499)	(\$262,192)	1	(\$80,603)	56	(\$342,795)
Year 7	25	(\$9,499)	(\$267,435)	1	(\$81,467)	60	(\$348,902)
Year 8	25	(\$9,499)	(\$272,784)	1	(\$82,344)	60	(\$355,128)
Year 9	25	(\$9,499)	(\$278,240)	1	(\$83,228)	60	(\$361,468)
Year 10	25	(\$9,499)	(\$283,805)	1	(\$84,124)	60	(\$367,929)

If this impact statement has changed from statements submitted in previous years, it could be due to an increase/decrease in the number of offenders, a change in the cost per day for institutional offenders, and/or an increase in staff salaries.

If the projected impact of legislation is less than 1,500 offenders added to or subtracted from the department's institutional caseload, the marginal cost of incarceration will be utilized. This cost of incarceration is \$26.024 per day or an annual cost of \$9,499 per offender and includes such costs as medical, food, and operational E&E. However, if the projected impact of legislation is 1,500 or more offenders added or removed to the department's institutional caseload, the full cost of incarceration will be used, which includes fixed costs. This cost is \$87.46 per day or an annual cost of \$31,921 per offender and includes personal services, all institutional E&E, medical and mental health, fringe, and miscellaneous expenses. None of these costs include construction to increase institutional capacity.

DOC's cost of probation or parole is determined by the number of P&P Officer II positions that are needed to cover its caseload. The DOC average district caseload across the state is 51 offender cases per officer. An increase/decrease of 51 cases would result in a cost/cost avoidance equal to the salary, fringe, and equipment and expenses of one P&P Officer II. Increases/decreases smaller than 51 offender cases 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.

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

Oversight notes the provisions of this proposal state the court shall order a person who violates §570.036 to pay restitution. Oversight assumes restitution will be paid to the merchant and there will be no impact to the State.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS. The creation of a new crime (570.036) creates additional responsibilities for county prosecutors and the circuit attorney which may, in turn, result in additional costs, which are difficult to determine.

Officials from the **Office of the State Public Defender (SPD)** state sections 407.1700 and 570.036 will have an unknown fiscal impact on SPD because of the addition of new charges and penalties. It is impossible to predict the number of additional charges as a result of the amendments to these sections.

Oversight notes in FY22 the SPD was appropriated moneys for 53 additional FTE. Oversight assumes this proposal will create a minimal number of new cases and that the SPD can absorb the additional caseload required by this proposal with current staff and resources. Therefore, Oversight will reflect no fiscal impact to the SPD for fiscal note purposes. However, if multiple bills pass which require additional staffing and duties, the SPD may request funding through the appropriation process.

In response to similar legislation from 2022 (HCS HB 2108), officials from the **Office of Attorney General (AGO)** assumed any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the AGO for fiscal note purposes.

Officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Office of the Secretary of State (SOS)** note 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 its 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.

Officials from the **Department of Commerce and Insurance**, the **Department of Revenue**, the **Department of Public Safety - Missouri Highway Patrol**, the **Office of the State Courts Administrator**, the cities of **Kansas City**, **O’Fallon**, and **Springfield** assume the proposal will have no 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 only reflects the responses received from state agencies and political subdivisions; however, other cities and counties were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the MOLIS database is available upon request.

Oversight notes section 407.1700 of the proposal has a delayed implementation date of February 28, 2024.

<u>FISCAL IMPACT</u> – State Government	FY 2024 (10 Mo.)	FY 2025	FY 2026	Fully Implemented (FY 2028)
GENERAL REVENUE				
<u>Cost – DOC p. 3-6</u> (§§407.1700 and 570.036) Increase in P&P officers				
Personal service	\$0	\$0	\$0	(\$43,445)
Fringe benefits	\$0	\$0	\$0	(\$32,472)
Equipment and expense	\$0	\$0	\$0	(\$12,770)
Increased incarceration costs	(\$58,577)	(\$155,024)	(\$217,421)	(\$257,051)
Total cost - DOC	(\$58,577)	(\$155,024)	(\$217,421)	(\$345,738)
FTE Change - DOC	0 FTE	0 FTE	0 FTE	1 FTE
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	(\$58,577)	(\$155,024)	(\$217,421)	(\$345,738)

<u>FISCAL IMPACT</u> <u>– State</u> <u>Government</u> (continued)	FY 2024 (10 Mo.)	FY 2025	FY 2026	Fully Implemented (FY 2028)
Estimated Net FTE Change for the General Revenue Fund	0 FTE	0 FTE	0 FTE	1 FTE

<u>FISCAL IMPACT</u> <u>– Local</u> <u>Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026	Fully Implemented (FY 2028)
	<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 creates provisions relating to organized retail theft.

ONLINE MARKETPLACES (Section 407.1700)

This act provides that an online marketplace shall require any high-volume 3rd party seller on the online marketplace to provide, no later than 10 days after qualifying as a high-volume 3rd party seller, certain information such as bank account information, contact information for the seller, an email address for the seller, and a business tax identification number or taxpayer identification number.

If the seller does not provide such information, the online marketplace shall, after providing the seller with written or electronic notice, suspend any future sales activity of such seller until the seller provides the information.

The provisions of this act shall be enforced solely by the Attorney General and he or she may bring a civil action to enforce compliance and obtain other damages or compensation on behalf of the residents of this state.

These provisions shall become effective on February 28, 2024.

OFFENSE OF ORGANIZED RETAIL THEFT (Section 570.036)

This act creates the offense of organized retail theft if he or she, while alone or with any other person, commits a series of thefts of retail merchandise against one or more persons either on the premises of a merchant or through the use of an internet site with the intent to return the merchandise for value or resell the merchandise for value.

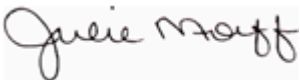
The offense of organized retail theft is a class D felony if the value stolen over 120 days is between \$1,500 and \$10,000 and a class C felony if the value is over \$10,000.

Finally, a person may be prosecuted in any jurisdiction in this state regardless of whether the defendant was ever physically present in such jurisdiction.

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 Commerce and Insurance
Department of Corrections
Department of Revenue
Department of Public Safety - Missouri Highway Patrol
Joint Committee on Administrative Rules
Missouri Office of Prosecution Services
Office of the State Courts Administrator
Office of the Secretary of State
Office of the State Public Defender
City of Kansas City
City of O'Fallon
City of Springfield



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