

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0077S.03C
 Bill No.: SCS for SB Nos. 189, 36 & 37
 Subject: Crimes and Punishment; Criminal Procedure; Highway Patrol; Courts; Judges;
 Attorneys; Attorney General; Prisons and Jails; Department of Corrections;
 Animals; Law Enforcement Officers and Agencies
 Type: Original
 Date: March 24, 2023

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

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2024	FY 2025	FY 2026	Fully Implemented (FY 2027)
General Revenue	Could exceed (\$537,340)	Could exceed (\$707,915)	Could exceed (\$773,604)	Could exceed (\$817,483)
Total Estimated Net Effect on General Revenue	Could exceed (\$537,340)	Could exceed (\$707,915)	Could exceed (\$773,604)	Could exceed (\$817,483)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2024	FY 2025	FY 2026	Fully Implemented (FY 2027)
Total Estimated Net Effect on <u>Other State</u> 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 2027)
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 2027)
General Revenue	3 FTE	3 FTE	3 FTE	3 FTE
Total Estimated Net Effect on FTE	3 FTE	3 FTE	3 FTE	3 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 2027)
Local Government	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Repeals §488.650 and implements §§43.504, 43.507, and 610.140

Officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** assume the proposal will have no fiscal impact on their organization. MHP states the revised language in sections 43.504 and 43.507 of this proposal would be in violation of federal dissemination laws, if enacted. Dissemination of criminal history record information to a private entity is not authorized.

Oversight notes the provisions of this proposal repeal the \$250 surcharge the state is currently allowed to collect under §488.650 to file a petition for expungement. Oversight contacted the MHP and was provided with the following number of expungements processed through the Patrol for the previous three (3) calendar years:

2020 – 797
2021 – 957
2022 – 678

For purposes of this fiscal note, Oversight will take an average of these three years ($797 + 957 + 678 = 2,432 / 3 = 811$) and will reflect the loss to General Revenue as could exceed (\$168,958) for FY 2024 (10 months) and could exceed (\$202,750) for subsequent years. Oversight notes these proceeds are payable to the General Revenue Fund.

Officials from the **Department of Corrections (DOC)** state §610.140 may cause an increase in workload for Institutional Records Office Staff, as it requires staff to review documents within files to determine which documents need to be redacted and destroyed. Expunging these records for the specified offenses through destruction, redacting or removal (electronic) will result in an increase in workload for the Institutional Records Officers, as they are the custodian of records for the department's offender files. This could also affect records kept at Probation and Parole Offices.

While the department assumes a \$0 - Unknown impact, 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 a \$0 (can absorb) to DOC's (unknown) impact to the General Revenue Fund.

In response to similar legislation from 2022 (SB 687), officials from the **Office of the State Courts Administrator (OSCA)** stated there may be some impact but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

In response to similar legislation from 2023 (SB 36), officials from the **Branson Police Department** assumed the proposal will have no fiscal 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 this organization.

§547.500 – Conviction Integrity Unit Act

Officials from the **Missouri Office of Prosecution Services (MOPS)** state creating the conviction review unit as proposed in the bill will require hiring three additional staff; two (2) attorneys and an (1) investigator, resulting in a total cost of \$256,000. At present MOPS believes it can use the paralegal received in FY 2023 to help the unit as needed. MOPS' assumption is based on consideration of the following: (1) Since only two counties (Jackson and St. Louis) and the circuit attorney currently have conviction review units, MOPS would be responsible for reviewing actual innocence claims from 112 counties and any handled by the Attorney General as conflict prosecutor; (2) looking at what other states' statewide units have, and using Jackson County in particular, MOPS will need two experienced attorneys (with backgrounds in prosecution and defense) and an investigator. This bill, recognizing the need for adequate and meaningful staffing, also specifically provides for those three positions. The PS includes maximum salary of \$80,000 for each attorney and \$60,000 for the investigator. Total PS of \$220,000 and E&E of \$36,000. (The E&E is based on E&E of current resource prosecutors). The total cost adding PS and E&E is \$256,000.

Oversight notes that in their FY 2024 budget request, MOPS has asked for these new FTE in a New Decision Item (DI#1282002) for the same amounts described above. Oversight has added the cost of fringe benefits to MOPS' estimate.

In response to similar legislation from 2023 (SB 37), officials from the **Office of the State Courts Administrator** assumed the proposal would not fiscally impact the courts.

Oversight notes in HB 3012 (2022), the Missouri Office of Prosecution Services (not to exceed 12 FTE) budget included four funds:

General Revenue (0101)	\$ 346,750
MOPS – Federal (0107)	\$1,165,341
MOPS Legal (0680)	\$2,197,380
MOPS Revolving (0844).	<u>\$ 161,673</u>
TOTAL	\$3,871,144

For simplicity, Oversight will assume the new conviction review unit will be paid for with General Revenue funds (as requested in their NDI). Oversight notes the proposal requires MOPS to develop an application process, including fees (which shall be waived for indigence).

§575.353 – Offenses against police dogs

DOC states this proposal modifies provisions relating to law enforcement animals. The bill intends to create a class A misdemeanor for any injury to a law enforcement animal that does not result in veterinary care; a class E felony for any injury to a law enforcement animal that results in veterinary care; and a class D felony for any injury resulting in death of a law enforcement animal.

The offense of assault on a law enforcement animal that does not result in veterinary care is a class A misdemeanor, since misdemeanors fall outside the purview of DOC, there is no impact to DOC on this part of the bill.

For each new violent class D felony, the department estimates four people will be sentenced to prison and four to probation. The average sentence for a violent class D felony offense is 5.7 years, of which 4 years will be served in prison with 3 years to first release. The remaining 1.7 years will be on parole. Probation sentences will be 4 years.

The cumulative impact on the department is estimated to be 16 additional offenders in prison and 16 additional offenders on field supervision by FY 2027.

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	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	4	4	4	4	4	4	4	4	4	4
Change (After Legislation - Current Law)										
Admissions	4	4	4	4	4	4	4	4	4	4
Probations	4	4	4	4	4	4	4	4	4	4
Cumulative Populations										
Prison	4	8	12	16	16	16	16	16	16	16
Parole					4	7	7	7	7	7
Probation	4	8	12	16	16	16	16	16	16	16
Impact										
Prison Population	4	8	12	16	16	16	16	16	16	16
Field Population	4	8	12	16	20	23	23	23	23	23
Population Change	8	16	24	32	36	39	39	39	39	39

For each new violent class E felony, the department estimates two people will be sentenced to prison and one to probation. The average sentence for a violent class E felony offense is 4 years,

of which 3 years will be served in prison with 2.2 years to first release. The remaining 1.0 year will be on parole. Probation sentences will be 4 years.

The cumulative impact on the department is estimated to be 6 additional offenders in prison and 3 additional offenders on field supervision by FY 2026.

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	2	2	2	2	2	2	2	2	2	2
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	1	1	1	1	1	1	1	1	1	1
Change (After Legislation - Current Law)										
Admissions	2	2	2	2	2	2	2	2	2	2
Probations	1	1	1	1	1	1	1	1	1	1
Cumulative Populations										
Prison	2	4	6	6	6	6	6	6	6	6
Parole				2	2	2	2	2	2	2
Probation	1	2	3	4	4	4	4	4	4	4
Impact										
Prison Population	2	4	6	6	6	6	6	6	6	6
Field Population	1	2	3	6	6	6	6	6	6	6
Population Change	3	6	9	12	12	12	12	12	12	12

Combined Estimated Impact

The combined estimated cumulative impact of a new class D felony and a new class E felony on the department is estimated to be 22 additional offenders in prison and 22 additional offenders on field supervision by FY 2027.

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	6	6	6	6	6	6	6	6	6	6
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	6	6	6	6	6	6	6	6	6	6
Probations	5	5	5	5	5	5	5	5	5	5
Cumulative Populations										
Prison	6	12	18	22	22	22	22	22	22	22
Parole	0	0	0	2	6	9	9	9	9	9
Probation	5	10	15	20	20	20	20	20	20	20
Impact										
Prison Population	6	12	18	22	22	22	22	22	22	22
Field Population	5	10	15	22	26	29	29	29	29	29
Population Change	11	22	33	44	48	51	51	51	51	51

	# 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	6	(\$9,499)	(\$47,495)	0	\$0	5	(\$47,495)
Year 2	12	(\$9,499)	(\$116,268)	0	\$0	10	(\$116,268)
Year 3	18	(\$9,499)	(\$177,890)	0	\$0	15	(\$177,890)
Year 4	22	(\$9,499)	(\$221,769)	0	\$0	22	(\$221,769)
Year 5	22	(\$9,499)	(\$226,205)	0	\$0	26	(\$226,205)
Year 6	22	(\$9,499)	(\$230,729)	0	\$0	29	(\$230,729)
Year 7	22	(\$9,499)	(\$235,343)	0	\$0	29	(\$235,343)
Year 8	22	(\$9,499)	(\$240,050)	0	\$0	29	(\$240,050)
Year 9	22	(\$9,499)	(\$244,851)	0	\$0	29	(\$244,851)
Year 10	22	(\$9,499)	(\$249,748)	0	\$0	29	(\$249,748)

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 estimated impact for fiscal note purposes.

In response to a previous version, officials from the **Office of the State Courts Administrator** and the **Hannibal Rural Fire Protection District** assumed the proposal will have no fiscal 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.

Bill as a Whole

Officials from the **Attorney General's Office**, the **Department of Natural Resources**, the **Department of Revenue**, the **Department of Public Safety – (Capitol Police and Fire Safety)**, the **Missouri Department of Conservation**, the **Missouri Department of Transportation**, the **Office of the State Public Defender**, the **City of Kansas City**, the **City of Springfield**, the **Kansas City Police Department**, the **St. Joseph Police Department**, the **St. Louis County Police Department**, the **Phelps County Sheriff's Department** 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, county prosecutors, local law enforcement and fire protection districts 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.

<u>FISCAL IMPACT</u> <u>– State</u> <u>Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026	Fully Implemented (FY 2027)
GENERAL REVENUE				
<u>Income</u> – (\$547.500) Application fees for review of a claim of actual innocence p. 4-5	Unknown	Unknown	Unknown	Unknown
<u>Costs</u> – MOPS (\$547.500) New Conviction Review Unit p. 4-5	\$0 or....	\$0 or...	\$0 or....	\$0 or....
Personal Service	(\$183,333)	(\$222,200)	(\$224,422)	(\$224,422)
Fringe Benefits	(\$107,554)	(\$129,887)	(\$130,719)	(\$130,719)
Expense & Equipment	(\$30,000)	(\$36,900)	(\$37,823)	(\$37,823)
<u>Total Costs</u> - MOPS	(\$320,887)	(\$388,897)	(\$392,964)	(\$392,964)
FTE Change – MOPS	3 FTE	3 FTE	3 FTE	3 FTE
<u>Cost</u> – DOC (\$575.353) p. 5-7 Increased incarceration costs	(\$47,495)	(\$116,268)	(\$177,890)	(\$221,769)
<u>Costs</u> – DOC & OSCA (\$610.140) To expunge records p. 3-4	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Loss</u> – (\$488.650) Repeal of \$250 expungement surcharge p. 3	<u>Could exceed</u> (\$168,958)	<u>Could exceed</u> (\$202,750)	<u>Could exceed</u> (\$202,750)	<u>Could exceed</u> (\$202,750)

ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>Could exceed (\$537,340)</u>	<u>Could exceed (\$707,915)</u>	<u>Could exceed (\$773,604)</u>	<u>Could exceed (\$817,483)</u>
Estimated Net FTE Change on the General Revenue Fund	3 FTE	3 FTE	3 FTE	3 FTE

<u>FISCAL IMPACT – Local Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026	Fully Implemented (FY 2027)
LOCAL POLITICAL SUBDIVISIONS				
<u>Costs – Local political subdivisions – To expunge records p. 4</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>
ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</u>	<u>\$0 or (Unknown)</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 modifies provisions regarding criminal laws.

INFORMATION FROM THE MISSOURI CENTRAL REPOSITORY (Sections 43.504 and 43.507)

Under current law, the sheriff of any county or the City of St. Louis and judges of the circuit courts may make available to private entities responsible for probation supervision information obtained from the Missouri Central Repository. When the term of probation is completed or the information is no longer needed related to the probation, the records shall be returned to the court or destroyed.

Under this act, the sheriff of any county or the City of St. Louis and judges of the circuit courts may also make available to expungement clinics or legal aid organizations, as defined in the act, information obtained from the Missouri Central Repository.

Additionally, under current law, all criminal history information in the possession or control of the Missouri Central Repository, except criminal intelligence and investigative information, may be made available to qualified persons and organizations for research, evaluative, and statistical purposes under certain written agreements for use of the information.

This act adds that pro-bono clinics and legal aid organizations seeking to expunge criminal records of petitioners at no-charge, shall also have access to all criminal history information in the possession or control of the Missouri Central Repository, except for criminal intelligence and investigation. Pro-bono clinics and legal aid organizations shall not be subject to provisions provided in the act regarding the deletion of uniquely identifiable criminal history information of individuals.

CONVICTION REVIEW UNIT (Section 547.500)

Under this act, the Missouri Office of Prosecution Services may establish a conviction review unit to investigate claims of actual innocence of any defendant, including those who plead guilty.

The Missouri Office of Prosecution Services shall create an application process for defendants as provided in the act. The conviction review unit shall consist of two attorneys hired by the executive director of the Missouri Office of Prosecution Services, an investigator, paralegal, and other administrative staff. The Director shall be an ex officio member of the unit.

Once the review is complete, the conviction review unit shall present its findings either to the prosecuting attorney who prosecuted the case or, if the review was requested by the Attorney General, special prosecutor, or other prosecuting attorney's office, to the office who requested the review. Such prosecuting attorney's office is not required to accept or follow the findings and recommendations of the conviction review unit.

Any document produced by the conviction review unit shall be a closed record until after the finality of all proceedings.

MAX'S LAW (Sections 575.010, 575.353, 578.007, & 578.022)
This act creates "Max's Law."

Under current law, the offense of assault on a law enforcement animal is a Class C misdemeanor.

This act provides that the offense of assault on a law enforcement animal is a Class A misdemeanor, if the law enforcement animal is not injured to the point of requiring veterinary care or treatment; a Class E felony if the law enforcement animal is seriously injured to the point of requiring veterinary care or treatment; and a Class D felony if the assault results in the death of such animal.

Additionally, exemptions to the offenses of agroterrorism, animal neglect, and animal abuse shall not apply to the killing or injuring of a law enforcement animal while working.

Finally, this act adds that any dog that is owned by or in the service of a law enforcement agency and that bites or injures another animal or human is exempt from the penalties of the offense of animal abuse.

EXPUNGEMENT OF CRIMINAL RECORDS (SECTIONS 610.140 & 488.650)

This act modifies provisions relating to the number of crimes a person may apply to have expunged from his or her record. A person may seek to expunge all crimes as part of the same course of criminal conduct or as part of an extended course of criminal conduct, subject to limitations as provided in the act.

Under current law, certain offenses, violations, and infractions are not eligible for expungement. This act adds that any offense that at the time of conviction requires registration as a sex offender is not eligible for expungement. Additionally, this act adds that the offenses, or successor offenses, of sexual conduct with a nursing facility resident in the second degree, use of a child in sexual performance, promoting a sexual performance of a child, or cross burning shall not be eligible for expungement.

This act changes provisions regarding any offense of unlawful use of weapons as not eligible for expungement to any "felony" offense of unlawful use of weapons is not eligible.

This act provides that a person may petition for expungement of crimes committed as part of an extended course of criminal conduct at least 10 years from the date of any sentence imposed under law.

This act repeals the provision that a court can make a determination at the hearing based solely on a victim's testimony and adds that a court may find that the continuing impact of the offense upon the victim rebuts the presumption that expungement is warranted.

This act also changes the time a person can petition to expunge arrest record for an eligible crime from three years after the date of the arrest to 18 months from the date of the arrest.

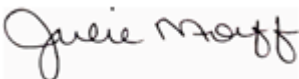
This act provides that a person shall be fully restored to the status he or she occupied prior to the arrests, pleas, trials, or convictions expunged. Additionally, this act modifies provisions allowing a person to answer "no" to an employer's inquiry about any arrests, charges, or convictions of a crime.

Finally, this act repeals provisions relating to the \$250 surcharge to file a petition for expungement.


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 Natural Resources
Department of Corrections
Department of Revenue
Department of Public Safety
Missouri Department of Conservation
Missouri Department of Transportation
Missouri Office of Prosecution Services
Office of the State Courts Administrator
Office of the State Public Defender
City of Kansas City
City of Springfield
Branson Police Department
Kansas City Police Department
St. Joseph Police Department
St. Louis County Police Department
Phelps County Sheriff's Department
Hannibal Rural Fire Protection District



Julie Morff
Director
March 24, 2023



Ross Strobe
Assistant Director
March 24, 2023