

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4320-06
Bill No.: HCS for SCS for SB Nos. 588, 603 and 942
Subject: Cities, Towns, and Villages; Counties; Courts; Crimes and Punishment; Civil and Criminal Procedure; Fees; Highway Patrol; Law Enforcement Officers and Agencies; Public Records, Public Meetings
Type: Original
Date: May 10, 2016

Bill Summary: This proposal modifies provisions relating to petitions for the expungement of criminal records.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	\$0	Up to \$284,799,717	Up to \$569,599,435
Total Estimated Net Effect on General Revenue	\$0	Up to \$284,799,717	Up to \$569,599,435

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Criminal Records		(\$16,759,643)	(\$28,110,433)
Highway Funds		(\$7,172,240)	(\$11,643,369)
Total Estimated Net Effect on Other State Funds	\$0	(\$23,931,883)	(\$39,753,802)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue		273 FTE	273 FTE
Criminal Records		467 FTE	467 FTE
Highway Funds		232 FTE	232 FTE
Total Estimated Net Effect on FTE	0 FTE	972 FTE	972 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 2017	FY 2018	FY 2019
Local Government	\$0	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Public Safety's Missouri Highway Patrol (DPS/MHP) Criminal Justice Information Services Division (CJIS)** state there are currently 5.8 million arrests that could potentially qualify for expungement/sealing under this legislation. In its current form, the bill would only exclude 283 criminal charges from expungement process. While it is unrealistic to project that 100% of the persons eligible each year would file petitions for expungement, it would be a conservative estimate that ten percent would file resulting in 580,000 (5,800,000 x .10) petitions filed. Clearly, if a large number of these expungements/sealing of records were to be granted with even 467 FTE, the backlog would compound greatly to the point it may take several years to catch up.

1 FTE = 1,864 hours (average work hours per year) x 60 minutes per hour = 111,840 minutes per year.

The current average time per petition to log, process, research, review, create related correspondences, and to expunge the information when the order is received is 90 minutes. Therefore, one FTE can handle 1,243 expungements per year = 111,840 / 90. These FTE (Criminal Justice Information Services Technicians CJIS Technicians, Range 16) would be necessary to process all expungement requests, review criminal history records, contact any agency associated with the arrests or convictions, and collect the necessary data for the court orders.

$10\% = 5,800,000 \times .10 = 580,000 / 1,243 = 467 \text{ FTE}$

Based on the average yearly salary and benefit rate per FTE at \$54,266 and the ability of that employee to process 1,243 expungements per year, the cost alone per expungement is $\$54,266 / 1,243 = \43.65 . It is suggested that a \$75 fee, similar to the criminal history background check fee, be implemented for the cost of researching and reviewing the criminal histories, as well as contacting of the various agencies associated with the arrests. In researching other states with similar expungement requirements, they all charge a fee to offset the cost of the time required to process the expungements. Their fees ranged from \$50 to \$450 per petition per arrest date.

§488.650 assesses a five hundred dollar surcharge (up from \$100 in current law) on all petitions filed under 610.140; however, all funds for the surcharge are payable to the General Revenue fund. The CJIS Division does not receive operating funds from General Revenue.

ASSUMPTION (continued)

There will be recurring costs of \$650 per year per FTE for office supplies and phone charges. Standard equipment and office furniture would be required at a one-time cost of \$6,094 per FTE.

467 CJIS Technicians (\$1,208.50 x 24) (salary only)	\$13,544,868
Equipment/Office Furniture	\$6,094

RECURRING COSTS

Phone Charges per FTE	\$350
Office Supplies per FTE	\$300

The **Patrol Records Division (PRD)** calculated costs for expungement of records relating to arrests completed by the Missouri State Highway Patrol prior to 2012 for violations of misdemeanor offenses under §567.020, Chapter 195, §568.040, Chapter 301, Chapter 302, Chapter 303, Chapter 304, Chapter 307 and Chapter 390, RSMo. While there are hundreds of thousands of additional Traffic Arrests System (TAS) records that would meet the criteria for expungement under this proposed legislation, the aforementioned were used considering they were specifically noted in the bill and cover a majority of the traffic-related arrests completed by the Highway Patrol.

Currently, there are 10,432,044 arrests records in TAS that met the above noted criteria, and this number has not diminished. Additionally, there are over 299,000 Highway Patrol misdemeanor DWI-related arrest records and 780,000 local law enforcement misdemeanor/ordinance DWI-related arrest records prior to 2012 in the TAS/DWITS that would meet the criteria of House Bill 1555. (HB 1555, LR 4464-1, from the 2016 session offers similar record expungement chances.) Given this, if only five percent of the individuals who qualify to have his or her record expunged were granted an expungement order by the court, there would be approximately 575,552 $((10,432,044 + 299,000 + 780,000) \times .05)$ petitions for expungement submitted to PRD and would require 232 FTE $(575,552 / 2,485)$. There is an average of 115,178 arrests made each year by the Highway Patrol for violations of 304.010 alone, which provides the potential number of petitions each year after the initial eligible petitions were processed.

1 FTE = 1,864 hours (average work hours per year) x 60 minutes per hour = 111,840 minutes per year.

The current average time per petition to log, process, research, review, create related correspondences, and to expunge the information when the order is received is 45 minutes. Therefore, one FTE can handle 2,485 expungements per year = $111,840/45$.

ASSUMPTION (continued)

With the current conservative estimate of 11,511,044 (10,432,044+299,000+780,000) records eligible for expungement upon enactment of this legislation, the following percentages of persons actually requesting an expungement will directly relate to the number of PRD FTE required:

$$\begin{aligned} 1\% &= 11,511,044 \times .01 = 115,110 / 2,485 = 46.32 \text{ FTE} \\ 5\% &= 11,511,044 \times .05 = 575,552 / 2,485 = 231.61 \text{ FTE} \\ 10\% &= 11,511,044 \times .10 = 1,151,104 / 2,485 = 463.22 \text{ FTE} \\ 20\% &= 11,511,044 \times .20 = 2,302,209 / 2,485 = 926.44 \text{ FTE} \end{aligned}$$

Given a large segment of the population has received at least one traffic-related citation, it is realistic to assume a significant number of these individuals will file a petition to expunge these records. A conservative estimate would be five percent; however, it is impossible to estimate the number with any certainty. These FTE (Quality Control Clerks, Range 10) would be necessary to process all expungement requests, review records, contact agencies, and collect the necessary data for the court orders.

Based on the average yearly salary and benefit rate per FTE of \$44,659 and the ability of that employee to process 2,485 expungements per year, the cost per expungement is $\$44,659/2,485 = \17.97 .

The Patrol Records Division would have to initiate the use of work shifts (sharing work stations) in order to physically accommodate 46 FTE needed to process only 1% of the possible expungements. The division currently has workspace for 30 full-time employees, not including supervisors. Processing five percent of the possible expungements would require additional workspace. The physical requirements would increase with the number of FTE required to meet the demand for expungements. Employees sharing cubicles would not require additional equipment; however, there would be recurring costs of \$650 per year per FTE for office supplies and phone charges. FTE requiring new work stations and equipment would incur a one-time cost of \$6,094 per FTE.

232 Quality Control Clerks (\$995 x 24)	\$5,540,160
Equipment/Office Furniture	\$6,094
RECURRING COSTS	
Phone Charges per FTE	\$350
Office Supplies per FTE	\$300

ASSUMPTION (continued)

A significant processing backlog would occur if sufficient FTE are not assigned to accommodate the number of expungements ordered. The provisions of the bill would require approximately 699 (467 + 232) new FTE which does not include any supervisors, administrative or support personnel to process the expungement requests resulting from this legislation. The Patrol would need to rent office space for this additional staff and defers to the Office of Administration for the amount of square footage required. For purposes of this fiscal note, the above mentioned costs would be split accordingly between the two funds involved.

Using MHP's estimates, **Oversight** assumes the average number of expungements each year could be up to 1,155,552 (580,000 + 575,552). Therefore, Oversight will reflect \$577,776,000 in revenue each year based on the proposal allowing a surcharge of \$500 to the General Revenue Fund per expungement. Oversight also notes that this legislation becomes effective January 1, 2018, therefore, Oversight will show 6 months of revenue and expenditure in FY 18.

Officials at the **Office of Administration (OA)** state to accommodate the Department of Public Safety's Missouri Highway Patrol space need, there would be a need for 699 additional FTE. OA-Facilities Management, Design and Construction would have to acquire new lease space. Each FTE would require 230 square feet X 699 FTE X \$17.50 square feet(includes rent, janitorial and Fuel & Utilities) would come to

FY 2017 = \$0

FY 2018 = \$1,406,738 (\$960,239 for Criminal Records; \$446,499 for Highway fund)

FY 2019 = \$2,841,610 (\$1,939,683 for Criminal Records; \$901,927 for Highway fund)

In response to a previous version, officials at the **Office of the State Courts Administrator (OSCA)** assumed the proposed legislation modifies provisions relating to petitions for the expungement of criminal records. During the past five years there was an average of 22,299 non-violent felony offenses and 160,780 misdemeanor non-violent offenses disposed by guilty outcome.

Based upon our clerical weighted workload statistics, it would take 324 minutes or 5.4 hours to process the non-violent felony offenses, 73 court clerk FTE and 122 minutes or 2.03 hours, 200 court clerk FTE, to process the misdemeanor non-violent offenses. In FY18 we estimate the cost will be \$0 to \$4,088,283 (273 FTE) for 6 months and \$0 to \$8,176,565 (273 FTE) in FY19 at full year.

In response to a previous version, officials at the **City of Independence** assumed this proposal will potentially have a significant impact on local government. Each time a request to expunge criminal records occurs, there is a significant amount of labor costs involved. Each criminal arrest must be researched and every police report reviewed. In many cases, the case reports are housed off site. All expungement requests are handled by a Records Unit supervisor and

ASSUMPTION (continued)

typically require several days of research. Once the Records Unit completes their investigation, the information is then forwarded to the Court who then conducts a separate inquiry. A bill that increases the number of expungement requests or that decreases the ability of the Department to recoup the costs associated with the expungement can have a significant impact.

Oversight assumes the proposal allows for local ordinance violations to be expunged which will result in additional costs to locals to process. Therefore, Oversight will reflect an unknown cost to local political subdivisions for this proposal.

Officials at the **Department of Corrections** assume this legislation may cause an increase in workload for the Institutional Records Office staff as it expands the list of offenses for which an individual can request expungement. Expunging these records for the specified offenses through destruction, redacting or removal (electronic) will result in an increase in workload for our Institutional Records Officers, as they are the custodian of records for our offender files. This could also affect records kept at Probation and Parole Offices. While it represents an increase in workload, it is not anticipated that petitions for expungement will occur often enough to significantly impact the Department of Corrections.

While the Department assumes a \$0 impact, the use of expungement by offenders is unknown. Also, the exact records to be expunged are not clearly defined. There are some concern for tracking previous medical, mental health, substance abuse 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 Department.

In response to a previous version, officials at the **Office of the Attorney General** assumed that any potential costs arising from this proposal can be absorbed with existing resources.

Officials at the **Missouri Department of Transportation**, the **Office of Prosecution Services**, the **Office of the State Public Defender**, the **Department of Insurance, Financial Institutions and Professional Registration** and the **Department of Revenue** each assume no fiscal impact to their respective agencies from this proposal.

In response to a previous version, officials at the **Columbia Police Department**, the **Springfield Police Department**, the **Jefferson City Police Department**, the **St. Louis County Justice Services**, the **Boone County Sheriff's Department** and the **Cole County Sheriff's Office** each assumed no fiscal impact to their respective entities from this proposal.

ASSUMPTION (continued)

Officials from the Buchanan County Sheriff's Department, Cass County Sheriff Department, Clark County Sheriff's Department, Independence Police Department, Jackson County Sheriff Department, Platte County Sheriff's Department, St. Charles Police Department, St. Joseph Police Department, St. Louis County Police Department and the St. Louis Metropolitan Police Department did not respond to **Oversight's** request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2017 (10 Mo.)	FY 2018 (6 Mo.)	FY 2019
GENERAL REVENUE			
<u>Revenue</u> - surcharge on expungement from Section 488.650	\$0	Up to \$288,888,000	Up to \$577,776,000
<u>Costs</u> - OSCA			
Personal Service	\$0	\$0 or (Up to \$2,297,000)	\$0 or (Up to \$4,594,000)
Fringe Benefits	\$0	\$0 or (Up to \$1,720,683)	\$0 or (Up to \$3,441,365)
Equipment and Expense	\$0	\$0 or (Up to <u>\$70,600</u>)	\$0 or (Up to <u>\$141,200</u>)
<u>Total Costs</u> - OSCA	\$0	\$0 or (Up to <u>\$4,088,283</u>)	\$0 or (Up to <u>\$8,176,565</u>)
FTE Change - OSCA	0 FTE	273 FTE	273 FTE
 ESTIMATED NET EFFECT ON GENERAL REVENUE	 <u>\$0</u>	 <u>Up to \$284,799,717</u>	 <u>Up to \$569,599,435</u>
 Estimated Net FTE change for General Revenue	 0 FTE	 273 FTE	 273 FTE

<u>FISCAL IMPACT - State Government -</u> (continued)	FY 2017 (10 Mo.)	FY 2018 (6 Mo.)	FY 2019
CRIMINAL RECORDS FUND			
Personal Service	\$0	(\$6,840,158)	(\$13,817,120)
Fringe Benefits	\$0	(\$5,957,778)	(\$12,034,712)
Equipment and Expense	\$0	(\$3,001,468)	(\$318,918)
Office Space/Janitorial/Utilities (OA)	<u>\$0</u>	<u>(\$960,239)</u>	<u>(\$1,939,683)</u>
Total Costs - DPS/MHP	<u>\$0</u>	<u>(\$16,759,643)</u>	<u>(\$28,110,433)</u>
FTE Change - DPS/MHP	0 FTE	467 FTE	467 FTE
ESTIMATED NET EFFECT ON CRIMINAL RECORDS FUND			
	<u>\$0</u>	<u>(\$16,759,643)</u>	<u>(\$28,110,433)</u>
Estimated Net FTE Change for Criminal Records Fund	0 FTE	467 FTE	467 FTE
HIGHWAY FUNDS			
Personal Service	\$0	(\$2,797,781)	(\$5,651,517)
Fringe Benefits	\$0	(\$2,436,867)	(\$4,922,471)
Equipment and Expense	\$0	(\$1,491,093)	(\$158,435)
Office Space/Janitorial/Utilities (OA)	<u>\$0</u>	<u>(\$446,499)</u>	<u>(\$901,927)</u>
Total Costs - DPS/MHP	<u>\$0</u>	<u>(\$7,172,240)</u>	<u>(\$11,634,350)</u>
FTE Change - DPS/MHP	0 FTE	232 FTE	232 FTE
ESTIMATED NET EFFECT ON HIGHWAY FUNDS			
	<u>\$0</u>	<u>(\$7,172,240)</u>	<u>(\$11,643,369)</u>
Estimated Net FTE Change for Highway Funds	0 FTE	232 FTE	232 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2017 (10 Mo.)	FY 2018 (6 Mo.)	FY 2019
LOCAL POLITICAL SUBDIVISIONS			
<u>Costs</u> - Local Political Subdivisions - allows expungement of ordinance violations	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

Current law requires a \$100 surcharge to be paid for petitions for expungement of criminal records. This act raises the amount of the surcharge to \$500 and provides that the judge may waive the surcharge if the petitioner is indigent.

Under current law, a person may petition the court in which the person was found guilty for the expungement of records relating to a list of specified offenses. A person may file multiple petitions throughout the state and have multiple offenses expunged, but may only file one petition per circuit court. This act repeals the limitation on the number of petitions per circuit court, allows a person who was arrested but not sentenced to apply for expungement, and allows a person to petition, over the course of a lifetime, for the expungement of records for any number of infractions, no more than two misdemeanor offenses or ordinance violations that carry jail time, and no more than one felony offense. If the violations or offenses were charged at the same time or involve the same course of conduct, the person may include all the related offenses or violations in the same petition and it only counts as a petition for one offense or violation. This act lists certain crimes and ordinance violations that may not be expunged.

Current law requires a person to wait 20 years for a felony and 10 years for a misdemeanor before being eligible to file an expungement petition. This act allows a person to file a petition after three years for the expungement of records relating to a finding of guilt for a misdemeanor, ordinance violation, or infraction, or an arrest for any type of offense or violation. A petition to expunge a finding of guilt for a felony may be filed five years after completion of the sentence.

FISCAL DESCRIPTION (continued)

Currently, a person may be eligible for an expungement petition even if he or she was subsequently found guilty of a misdemeanor or felony offense of the state vehicle laws. This act prohibits a person from being eligible if he or she has been subsequently found guilty of any misdemeanor or felony offense. This act modifies the information that must be on the petition and repeals a provision of current law requiring the court to dismiss a petition if all the required information is not included.

Current law allows a judge to grant a petition for expungement if the circumstances and behavior of the petitioner warrant the expungement and the expungement is consistent with the public welfare. This act repeals those provisions and requires the judge to grant an expungement if the prosecutor does not object within 30 days and the petitioner has an eligible offense, has not been found guilty of another offense, has no pending charges, and has met all the conditions of his or her sentence. If the prosecutor does object, the court must hold a hearing within 60 days to determine whether the interests of justice warrant the expungement. There is a presumption that the expungement is warranted if the petitioner meets the criteria.

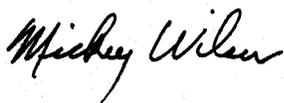
This act requires the Office of State Courts Administrator to create a form for pro se petitioners seeking expungement. Current law requires the petitioner to name as defendants any entity that has records related to the offense the petitioner is seeking to have expunged. This act repeals that requirement and requires the court to provide notice to the office that prosecuted the violations or offenses. Under current law, entities possessing records relating to an expunged offense must destroy the records. This act provides that the entities must seal, not destroy, the records.

This act repeals a provision prohibiting a person whose petition was dismissed from refileing another petition for a year after the date of filing the initial petition

This legislation is not federally mandated, it would expand existing programs and would require additional capital improvements and rental space.

SOURCES OF INFORMATION

Department of Public Safety
 Missouri Highway Patrol
Department of Insurance, Financial Institutions and Professional Registration
Department of Revenue
Office of the State Courts Administrator
Missouri Department of Transportation
Department of Corrections
Office of the Attorney General
Office of the State Public Defender
Office of Prosecution Services
Office of Administration
Boone County Sheriff's Department
Cole County Sheriff's Office
City of Independence
Columbia Police Department
Springfield Police Department
Jefferson City Police Department
St. Louis County Justice Services



Mickey Wilson, CPA
Director
May 10, 2016

Ross Strobe
Assistant Director
May 10, 2016