

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4320-06
Bill No.: Truly Agreed To and Finally Passed 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: June 14, 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 \$73,008,157	Up to \$146,046,611
Total Estimated Net Effect on General Revenue	\$0	Up to \$73,008,157	Up to \$146,046,611

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Criminal Records	\$0	(\$2,738,943)	(\$4,590,213)
Highway Funds	\$0	(\$6,463,836)	(\$10,486,656)
Total Estimated Net Effect on Other State Funds	\$0	(\$9,202,779)	(\$15,076,869)

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	0 FTE	274 FTE	274 FTE
Criminal Records	0 FTE	77 FTE	77 FTE
Highway Funds	0 FTE	210 FTE	210 FTE
Total Estimated Net Effect on FTE	0 FTE	561 FTE	561 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)** state SB 588 was initially filed as an expungement bill in which records would be completely removed from the state Criminal History System. Due to this fact, previous estimates were based on the premise that all 5.8 million arrests in the database could potentially be eligible for expungement. However, the Truly Agreed To and Finally Passed version of SB 588 is now a record "sealing" bill. Any petitions for sealing that are approved by the court would ultimately close the record instead of removing it completely. This greatly reduces the number of individual's that would have an incentive to apply for sealing since there are only 955,954 individuals within the state Criminal History System with open records. Those remaining individuals that already have closed records would thus have no incentive to file a petition under this bill.

With the current estimated potential of 955,954 individuals who may initially be eligible to file a petition for expungement under this bill, the following percentages of persons requesting an expungement will directly relate to the number of FTE actually required:

$$\begin{aligned} 10\% &= 955,954 \times .10 = 95,595 / 1,243 = 77 \text{ FTE} \\ 20\% &= 955,954 \times .20 = 191,191 / 1,243 = 154 \text{ FTE} \\ 30\% &= 955,954 \times .30 = 286,786 / 1,243 = 231 \text{ FTE} \end{aligned}$$

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 Division, (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.

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 \div 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.

ASSUMPTION (continued)

Section 488.650 assesses a two hundred and fifty dollar surcharge 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; therefore, it is recommended that a specific fee be dedicated to cover the operational expenses that would be incurred by the CJIS Division with the passing of this legislation.

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.

77 CJIS Technicians (\$1,208.50 x 24)	\$2,233,308
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/closing of records relating to arrests completed by the Missouri State Highway Patrol prior to 2012 for violations of misdemeanor offenses under section 567.020, Chapter 195, section 568.040, Chapter 301, Chapter 302, Chapter 303, Chapter 304, Chapter 307 and Chapter 390, RSMo. While there are thousands of additional Traffic Arrests System (TAS) records that would meet the criteria for expungement/closing pursuant to this legislation, the aforementioned were used considering they cover a majority of the arrests completed by the Highway Patrol.

Currently, there are 10,432,044 arrests records in TAS that met the above noted criteria. Given this, if only five percent of the individuals who qualify to have his or her record expunged/closed were granted an expungement order by the court, there would be approximately 521,602 (10,432,044 x .05) petitions for expungement submitted to PRD and would require 210 FTE (521,602 / 2,485). There is an average of 115,178 arrests made each year by the Highway Patrol for violations of 304.010, RSMo 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 10,432,044 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:

1% = $10,432,044 \times .01 = 104,320 / 2,485 = 42$ FTE
5% = $10,432,044 \times .05 = 521,602 / 2,485 = 210$ FTE
10% = $10,432,044 \times .10 = 1,043,204 / 2,485 = 420$ FTE
20% = $10,432,044 \times .20 = 2,086,409 / 2,485 = 840$ FTE

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 \$44,679 and the ability of that employee to process 2,485 expungements per year, the cost per expungement is $\$44,679 \div 2,485 = \17.97 . It is suggested that a fee, similar to the criminal history background check fee, be implemented for the cost of researching and reviewing the criminal histories.

The Patrol Records Division would have to initiate the use of work shifts (sharing work stations) in order to physically accommodate 42 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.

210 Quality Control Clerks (\$995 x 24)	\$5,014,800
Equipment/Office Furniture	\$6,094
RECURRING COSTS	
Phone Charges per FTE	\$350
Office Supplies per FTE	\$300

ASSUMPTION (continued)

The provisions of the bill would require approximately 287 (77 + 210) 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. However, for every square foot needed to house these FTE, the following costs apply:

Office Space	\$14/Sq Ft
Janitorial/Trash Costs	\$1.50/Sq Ft
Utility Costs	\$2/Sq Ft

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 617,197 (95,595 + 521,602). Therefore, Oversight will reflect \$154,299,250 in revenue each year based on the proposal allowing a surcharge of \$250 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 287 additional FTE. OA-Facilities Management, Design and Construction would have to acquire new lease space. Each FTE would require 230 square feet X 287 FTE X \$17.50 square feet(includes rent, janitorial and Fuel & Utilities) would come to:

FY 2017 = \$0
FY 2018 = \$577,588 (\$154,794 for Criminal Records; \$422,794 for Highway fund)
FY 2019 = \$1,184,054 (\$317,326 for Criminal Records; \$866,728 for Highway fund)

Officials at the **Office of the State Courts Administrator (OSCA)** assume 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.

ASSUMPTION (continued)

Officials at the **Office of the Attorney General (AGO)** assume this proposal will increase the number of expungement actions under Section 610.140. It expands section 610.140 to cover charges. This would create a significant increase in cases referred by the Missouri State Highway Patrol to the AGO. The AGO will require an additional FTE. Salary, fringe and E&E will cost \$70,362 in FY 2017, \$76,074 in FY 2018 and \$76,866 in FY 2019.

Oversight assumes this proposal will not be effective until January 1, 2018. Therefore, the AGO can defer the cost of the additional FTE. Oversight assumes the cost of this proposal for the AGO would then be \$0 in FY 2017, \$53,185 in FY 2018 and \$76,074 in FY 2019.

Officials at the **Independence Police Department** will have an average cost of \$80 per expungement. There will be an increase in the Records Division workload due to researching the records, locating them from archived storage areas, removing them from the system and contacting all the entities that possess copies of the record.

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 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 requires 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 **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**, the **Department of Corrections** and the **Department of Revenue** each assume no fiscal impact to their respective agencies from this proposal.

Officials at the **Cole County Sheriff's Department** and the **St. Louis County Justice Services** each assume no fiscal impact to their respective entities from this proposal.

In response to a previous version, officials at the **Columbia Police Department**, the **Springfield Police Department**, the **Jefferson City Police Department** and the **Boone County Sheriff's Department** 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, 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 \$77,149,625	Up to \$154,299,250
<u>Costs</u> - AGO §610.140			
Personal Service	\$0	(\$22,220)	(\$44,884)
Fringe Benefits	\$0	(\$16,163)	(\$22,354)
Equipment and Expense	<u>\$0</u>	<u>(\$14,802)</u>	<u>(\$8,836)</u>
<u>Total Costs</u> - AGO	<u>\$0</u>	<u>(\$53,185)</u>	<u>(\$76,074)</u>
FTE Change - AGO	0 FTE	1 FTE	1 FTE
<u>Costs</u> - OSCA §610.140			
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 \$73,008,157</u>	<u>Up to \$146,046,611</u>
Estimated Net FTE change for General Revenue	0 FTE	274 FTE	274 FTE

<u>FISCAL IMPACT - State Government -</u> (continued)	FY 2017 (10 Mo.)	FY 2018 (6 Mo.)	FY 2019
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CRIMINAL RECORDS FUNDCosts - DPS./MHP §610.140

Personal Service	\$0	(\$1,116,654)	(\$2,255,641)
Fringe Benefits	\$0	(\$972,606)	(\$1,964,663)
Equipment and Expense	\$0	(\$494,889)	(\$52,583)
Office Space/Janitorial/Utilities (OA)	<u>\$0</u>	<u>(\$154,794)</u>	<u>(\$317,326)</u>
<u>Total Costs - DPS/MHP</u>	<u>\$0</u>	<u>(\$2,738,943)</u>	<u>(\$4,590,213)</u>
FTE Change - DPS/MHP	0 FTE	77 FTE	77 FTE

**ESTIMATED NET EFFECT ON
CRIMINAL RECORDS FUND**

<u>\$0</u>	<u>(\$2,738,943)</u>	<u>(\$4,590,213)</u>
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Estimated Net FTE Change for Criminal Records Fund	0 FTE	77 FTE	77 FTE
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HIGHWAY FUNDSCosts - DPS/MHP §610.140

Personal Service	\$0	(\$2,507,400)	(\$5,064,948)
Fringe Benefits	\$0	(\$2,183,945)	(\$4,411,570)
Equipment and Expense	\$0	(\$1,349,697)	(\$143,410)
Office Space/Janitorial/Utilities (OA)	<u>\$0</u>	<u>(\$422,794)</u>	<u>(\$866,728)</u>
<u>Total Costs - DPS/MHP</u>	<u>\$0</u>	<u>(\$6,463,836)</u>	<u>(\$10,486,656)</u>
FTE Change - DPS/MHP	0 FTE	210 FTE	210 FTE

**ESTIMATED NET EFFECT ON
HIGHWAY FUNDS**

<u>\$0</u>	<u>(\$6,463,836)</u>	<u>(\$10,486,656)</u>
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Estimated Net FTE Change for Highway Funds	0 FTE	210 FTE	210 FTE
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<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 §610.140	<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 \$250 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 the petitioner to name as defendants any entity that has records related to the offense the petitioner is seeking to have expunged. This act adds municipal prosecuting attorneys to the list of entities.

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 seven years after completion of the sentence.

FISCAL DESCRIPTION (continued)

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. This act allows the prosecutor to object within 30 days of receipt of the petition, and if the prosecutor does object, the court must hold a hearing within 60 days. If no objection is filed, the court may hold a hearing. This act modifies the list of things the court may consider at the expungement hearing. In addition, this act provides that a refutable presumption is created that the expungement is warranted if the petitioner meets the criteria. A victim of the offense, violation, or infraction must have an opportunity to be heard at any expungement hearing under this act and the court may make a determination based solely on the victim's testimony.

Current law allows the court to order expungement if the petitioner meets the listed criteria. This act requires the judge to enter the order if the petitioner meets the criteria. The court must issue an order within six months of the filing of the petition. Under current law, entities possessing

records relating to an expunged offense must destroy the records. This act provides that the entities must close, not destroy, the records and repeals provisions allowing for the blacking out of certain records. Also, repealed is a provision requiring expunged records to be removed from electronic files maintained by the state.

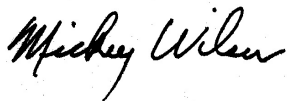
This act expands a provision of current law that requires a person granted an expungement to disclose an expunged offense when completing an application for certain types of licenses, permits and employment. Employers are required to notify applicants of specific disclosure requirements under this act. This act provides that a person who has been granted an expungement to answer "no" to an employer's inquiry into whether the person has ever been convicted of a crime if the person has no public record after the granting of the expungement. The person must disclose expunged criminal convictions if the employer is required to exclude applicants with certain criminal convictions due to federal or state law.

The court must dismiss a petition for expungement under current law if the petitioner has not met the statutory criteria. This act provides that the petition must also be dismissed if the petitioner has knowingly provided false information in the petition. This act requires the court to make a form available for pro se petitioners seeking expungement. The act has an effective date of January 1, 2018.

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
Independence Police Department



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