

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4798-01
Bill No.: HB 1344
Subject: Crimes and Punishment; Criminal Procedure; Courts
Type: Original
Date: January 30, 2012

Bill Summary: This proposal authorizes the expungement of certain criminal records.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	(Could exceed \$718,146)	(Could exceed \$851,559)	(Could exceed \$860,754)
Total Estimated Net Effect on General Revenue Fund	(Could exceed \$718,146)	(Could exceed \$851,559)	(Could exceed \$860,754)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Criminal Records	(\$230,273)	(\$279,150)	(\$282,001)
Total Estimated Net Effect on <u>Other</u> State Funds	(\$230,273)	(\$279,150)	(\$282,001)

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	20	20	20
Criminal Records	6	6	6
Total Estimated Net Effect on FTE	26	26	26

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Joint Committee on Administrative Rules, Office of the Secretary of State** and the **Office of the State Public Defender** each assume the proposal would not fiscally impact their respective agencies.

Officials from the **Department of Corrections (DOC)** state their computer system for monitoring inmate records does have the ability to mark records as confidential and to delete them; hard-copy records are the concern. If expungement of convictions includes prison records, this would create a significant workload on DOC's record offices within the institutions and at the probation and parole offices. There is also a concern for tracking previous medical, mental health, substance abuse and education records. Fiscal impact due to passage of this proposal is an unknown amount of costs per each year.

Officials from the **Office of the State Courts Administrator (CTS)** state the proposed legislation would expand the number of criminal records eligible for expungement. This would cause a significant workload and fiscal impact on the courts. As a result of this legislation, we estimate annually approximately:

42,679 misdemeanor and nonviolent felony expungement petitions (10% of the annual 426,787 guilty dispositions)

Based upon our clerical weighted workload statistics, it would take 166 minutes or 2.7 hours to process each case. In FY 2013, we estimate the cost will be \$2,585,327 and 72 court clerk FTE.

However, in response to similar proposals in previous years, including HB 178 in 2011, CTS estimated approximately 9,000 expungement petitions to be processed from this proposal and an estimated time of 3.75 hours of processing time for each. Based upon these estimations, CTS assumed the need for 20 additional court clerk FTE at a cost of \$735,000 per year. **Oversight** will utilize this lower estimate

Officials from the **Department of Transportation (MoDOT)** state it appears that this bill would take MoDOT out of compliance with federal regulations regarding CDL holder's records. 49 CFR Section 384.226 prohibits states from masking any CDL drivers' convictions for any state or local traffic control laws from appearing on the driver's record in any type of motor vehicle. 49 CFR Section 384.225 requires a minimum retention period of three years but also cites retention requirements found in the Commercial Driver's License Information System which

ASSUMPTION (continued)

discusses a ten year driver's license history.

The bill would allow any person to apply to any court to have his or her record expunged of:

1. All nonviolent felony crimes;
2. Any misdemeanor offense;
3. Any municipal offense; and
4. Any traffic offense. This would include traffic violations by CDL holders

By allowing CDL holders to have records of their traffic violations expunged, the proposal masks violations on CDL holders' driving records, thereby violating 49 CFR Section 384.226 and/or Section 384.225 record retention. MoDOT believes this language will place Missouri out of compliance with the federal regulations; therefore, Missouri could lose federal funding.

Possible impact to Federal-Aid Highway Funds: If this legislation is enacted, the United States Department of Transportation (USDOT) would sanction Missouri's Federal-aid highway funds, which would significantly and negatively affect MoDOT. MoDOT would lose 5% (\$30 million) the first year, then 10% (\$60 million) each year thereafter.

Impact to Motor Carrier Safety Assistance Program: Highway Safety is the recipient of a grant to administer the federal Motor Crime Safety Assistance Program (MCSAP). These grant funds are utilized statewide to reduce the number and severity of crashes and hazardous materials incidents involving commercial motor vehicles. In addition to having its Federal-aid highway funds withheld, Missouri could also lose its MCSAP grant monies if it were found out of compliance with 49 CFR Section 384.226. According to Highway Safety, the MCSAP grant totals approximately \$5 million per year.

In response to a similar proposal from 2011 (HB 178), officials from the **Department of Revenue (DOR)** stated if a court ordered expungement is received for a conviction involving the operation of a commercial vehicle or by a commercial driver license holder, the state of Missouri could be found to be in noncompliance based on the following federal regulations: Title 49 part 384 section 384.225, Title 49 part 384 section 384.226, Title 49 part 383 section 383.51 and Title 49 part 384, section 384.231.

If a court ordered expungement is received for an offense involving the use of a commercial or noncommercial motor vehicle by a CDL holder and a state is found to be in noncompliance, then Federal Highway funds are subject to a reduction or could be withheld. The first year of noncompliance the sanction is up to five (5) percent, the second and subsequent years of

ASSUMPTION (continued)

noncompliance the sanction is up to ten (10) percent of those funds. The potential fund loss could be \$65,000,000.

DOR also stated they were unable to determine how many court order expungements will be received to process; however, a Revenue Processing Tech I can process 104 court orders per day. If we receive 104 court orders daily we would require one FTE (Revenue Processing Tech I) to process the additional court order expungements. If the volume of court order expungements received for processing exceeds 104 per day, then additional FTE will be required and will be requested through the appropriation process.

Oversight assumes the Department of Revenue's and the Department of Transportation's assumption that the proposal would jeopardize federal funding is speculative and dependent upon other factors. Therefore, Oversight is not reflecting a fiscal impact to MoDOT in this fiscal note. If the state is found to be out of compliance with federal requirements, then the proposal could result in a loss of federal funding.

Oversight assumes the level of expungement will not rise to a level that would require the Department of Revenue to require an additional FTE.

Officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** state their Criminal Justice Information Services Division assumes that if every person who is qualified to have his or her record expunged would submit a petition, there would be approximately 15,000 petitions for expungement and this would require 12 additional FTE.

1 FTE = 1,856 hours (average work hours per year) x 60 minutes per hour = 111,360 minutes per year.

Estimated 15,000 petitions for expungement per year x 90 minutes per petition to process = 1,350,000 minutes per year. 1,350,000 minutes per year to process expungements divided by 111,360 minutes per year per FTE = 12 FTE.

It is estimated only 40% to 50% of expungement requests would be submitted. Therefore, this proposed legislation would require five to seven FTE. For purposes of this fiscal note, the Patrol will request six which is in the middle of that range. These FTE (Criminal History Technicians) 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. These FTE will most likely be 2nd and 3rd shift employees so they would not require any equipment. However, there would be recurring costs of \$650 per year per FTE for office

RS:LR:OD

ASSUMPTION (continued)

supplies and phone charges. If any FTE were placed on the 1st shift, standard equipment would be required at a one-time cost of \$3,566 per FTE.

6 Criminal History Technicians (\$1,081 x 24)	\$155,664
Office Equipment/HW/SW	\$3,566

RECURRING COSTS

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

The Highway Patrol assumes a total cost of the additional FTE of approximately \$280,000 per year to the Criminal Records Fund.

If this bill passes, the Highway Patrol will pursue a fee, similar to the criminal history background check fee, to help offset the costs of researching and reviewing the criminal histories, as well as contacting the various agencies associated with the arrests. For example, a \$20 fee x 7,500 applicants would result in \$150,000 (\$20 x 7,500).

Oversight assumes the proposal does not specifically allow for a fee to reimburse the Highway Patrol; therefore, Oversight will reflect only the costs assumed by the agency.

Officials from the **Office of the Attorney General** and the **Office of Prosecution Services** did not respond to our request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
GENERAL REVENUE			
<u>Costs - Department of Corrections</u>			
Potential costs to expunge records	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<u>Costs - Office of State Courts</u>			
Administrator (CTS)			
Personal Service	(\$459,400)	(\$556,793)	(\$562,361)
Fringe Benefits	(\$243,206)	(\$294,766)	(\$297,714)
Expense and Equipment	<u>(\$15,540)</u>	<u>\$0</u>	<u>\$0</u>
<u>Total Costs - CTS</u>	<u>(\$718,146)</u>	<u>(\$851,559)</u>	<u>(\$860,075)</u>
FTE Change - CTS	20 FTE	20 FTE	20 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Could exceed \$718,146)</u>	<u>(Could exceed \$851,559)</u>	<u>(Could exceed \$860,754)</u>
Estimated Net FTE Change for the General Revenue Fund	20 FTE	20 FTE	20 FTE
CRIMINAL RECORDS FUND			
<u>Costs - Missouri Highway Patrol (MHP)</u>			
Personal Service	(\$129,720)	(\$157,221)	(\$158,793)
Fringe Benefits	(\$97,303)	(\$117,931)	(\$119,111)
Expense and Equipment	<u>(\$3,250)</u>	<u>(\$3,998)</u>	<u>(\$4,097)</u>
<u>Total Costs - MHP</u>	<u>(\$230,273)</u>	<u>(\$279,150)</u>	<u>(\$282,001)</u>
FTE Change - MHP	6 FTE	6 FTE	6 FTE
ESTIMATED NET EFFECT TO THE CRIMINAL RECORDS FUND	<u>(\$230,273)</u>	<u>(\$279,150)</u>	<u>(\$282,001)</u>
Estimated Net FTE Change for the Criminal Records Fund	6 FTE	6 FTE	6 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2013 (10 Mo.)	FY 2014	FY 2015
	<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 proposal authorizes a person to apply to any court in which he or she pled guilty or was found guilty for the expungement of the criminal records for certain offenses. The expungement of a record is allowed only when at least five years have elapsed since the person requesting expungement has completed his or her imprisonment, period of probation, or period of parole; the person has not been convicted of or been placed on probation for a misdemeanor or felony during the same period; and the person has not had any other petition for expungement granted. The expungement of records will not be allowed for driving while intoxicated, driving with excessive blood-alcohol content, any misdemeanor violation of Section 568.050 or 568.052, any municipal ordinance violation or misdemeanor offense committed by a holder of a commercial driver's license, any misdemeanor offense requiring registration as a sexual offender or any other misdemeanor sexual offense, or any violation of an order of protection issued under Chapter 455

Any individual wanting to expunge a criminal record may file a verified petition for expungement in the civil division of the circuit court where at least one of the violations occurred naming as defendants all agencies and entities whom the petitioner has reason to believe may possess the record. The court must schedule a hearing on the expungement petition no sooner than 30 days from the filing of the petition and must give reasonable notice of the hearing to each official agency or other entity named in the petition. If a court grants the order of expungement, the records and files maintained in any administrative or court proceeding in an associate circuit or circuit court for any offense ordered expunged will be confidential and only available to the parties or by order of the court for good cause shown. An individual is only allowed to have one petition for expungement granted under these provisions.

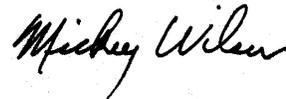
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the State Courts Administrator
Department of Corrections
Department of Public Safety
Department of Transportation
Office of the State Public Defender
Office of the Secretary of State
Joint Committee on Legislative Rules
Department of Revenue

NOT RESPONDING:

Attorney General's Office
Office of Prosecution Services



Mickey Wilson, CPA
Director
January 30, 2012