

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4672-02
Bill No.: HB 2224
Subject: Crimes and Punishment; Criminal Procedure
Type: Original
Date: February 23, 2016

Bill Summary: This proposal changes laws relating to the expungement of records.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	Unknown	Unknown	Unknown
Total Estimated Net Effect on General Revenue	Unknown	Unknown	Unknown

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Criminal Records Fund	(Unknown)	(Unknown)	(Unknown)
Highway Funds	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on Other State Funds	(Unknown)	(Unknown)	(Unknown)

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
Federal Funds	\$0 or (\$31,000,000)	\$0 or (\$62,000,000)	\$0 or (\$62,000,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (\$31,000,000)	\$0 or (\$62,000,000)	\$0 or (\$62,000,000)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	Unknown FTE	Unknown FTE	Unknown FTE
Criminal Records	Unknown FTE	Unknown FTE	Unknown FTE
Highway Fund	Unknown FTE	Unknown FTE	Unknown FTE
Total Estimated Net Effect on FTE	Unknown FTE	Unknown FTE	Unknown 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	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Oversight was unable to receive some of the agency responses in a timely manner due to the short fiscal note request time. Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

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 FY17 we estimate the cost will be \$0 to \$8,176,565 (273 FTE).

Oversight inquired of the OSCA and assumes the 273 FTE are additional FTE, but not cumulative each year.

Oversight assumes the following changes to this proposal could have a fiscal impact:

- Except for class A felony offenses, class B felony offenses that are not drug offenses, offenses that are considered a dangerous felonyand all offenses listed in chapters 566 and 568, all felony, misdemeanor, or municipal offenses and infractions are eligible to be expunged.
- Offenses that are at least ten years old if the offense is a felony or violent misdemeanor, or at least five years old if the offense is a nonviolent misdemeanor, municipal offense, or infraction that are listed in the petition for expungement.
- A person shall only be granted one expungement during his or her lifetime.

ASSUMPTION (continued)

In response to a similar proposal from 2015 (SB 451), officials at the **Department of Public Safety's Missouri Highway Patrol (DPS/MHP) Criminal Justice Information Services Division (CJIS)** stated under §610.140 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 469 FTE, the backlog would compound greatly to the point it may take several years to catch up.

$$10\% = 5,800,000 \times .10 = 580,000 / 1,237 = 468.87 \text{ FTE}$$

1 FTE = 1,856 hours (average work hours per year) x 60 minutes per hour = 111,360 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 1,237 expungements per year = 111,360 / 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.

Based on the average yearly salary and benefit rate per FTE at \$54,240 and the ability of that employee to process 1,237 expungements per year, the cost alone per expungement is $\$54,240 / 1,237 = \43.85 . 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, 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 five hundred 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.

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.

469 CJIS Technicians (\$1,208.50 x 24) (salary only)	\$13,602,876
Equipment/Office Furniture	\$6,094

RECURRING COSTS

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

In response to a similar proposal from 2015 (SB 451), officials from the **Patrol Records Division (PRD)** calculated costs for expungement of records relating to arrests completed by the Missouri State Highway Patrol prior to 2009 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.

At that time, there were over 9.7 million 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 Senate Bill 451. 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 538,950 (10,779,000 x .05) petitions for expungement submitted to PRD and would require 218 FTE (538,950 / 2,475). There is an average of 117,281 arrests made each year for violations of 304.010 alone, which provides the potential number of petitions each year after the initial eligible petitions were processed.

1 FTE = 1,856 hours (average work hours per year) x 60 minutes per hour = 111,360 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 2,475 expungements per year = 111,360/45.

ASSUMPTION (continued)

With the current conservative estimate of 10,779,000 (9,700,000+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:

1% = $10,779,000 \times .01 = 107,790 / 2,475 = 43.48$ FTE
5% = $10,779,000 \times .05 = 538,950 / 2,475 = 217.75$ FTE
10% = $10,779,000 \times .10 = 1,077,900 / 2,475 = 435.51$ FTE
20% = $10,779,000 \times .20 = 2,155,800 / 2,475 = 871.93$ 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 \$44,658 and the ability of that employee to process 2,475 expungements per year, the cost per expungement is $\$44,658 / 2,475 = \18.04 . 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 43 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.

218 Quality Control Clerks (\$995 x 24)	\$5,205,840
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 687 (469 + 218) 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.

Oversight inquired with the Office of Administration (OA) regarding the additional space needed by the Department of Public Safety for this proposal. Per the Office of Administration's Facilities Management, Design and Constructions, the total square foot cost based on Cole County needed would be 158,010 sq. ft. for this proposal. Therefore, 687 FTE x 230 sq. ft. per FTE = 158,010 sq. ft. x \$17.50 sq. ft. = \$2,765,175 annual rent and services (\$1,887,725 for the Criminal Records fund and \$877,450 for the Highway fund).

In response to a similar proposal from 2015 (SB 451), officials at the **Department of Revenue (DOR)** assumed §610.140 would require the Department, if named as a party defendant, to honor a court order for expungement of certain felony offenses and any infraction, municipal ordinance violations, and misdemeanor offenses. Under these provisions, if the felony offense is at least five years old or a misdemeanor, municipal offense or infraction is at least three years old, a person may apply to the court where he or she was found guilty to expunge all criminal records of the offense. Class A Felony offenses and any felony offense involving a death or physical injury are not eligible for expungement under these provisions. A person is only allowed one expungement under these provisions.

Administratively, the Department is unable to determine how many court-order expungements will be received. A Revenue Processing Tech I can process 50 court-ordered expungements per day. If we receive 50 per day, the Department will require one FTE to process the additional court-ordered expungements. If the volume exceeds 50 per day, additional FTE will be required and requested through the appropriations process.

One Revenue Processing Tech (A10) \$23,880 (10 months)
FY2016 Total = \$19,900
FY2017 Total = \$24,119
FY2018 Total = \$24,360

ASSUMPTION (continued)

Because a person is allowed only one expungement, programming and user acceptance testing of the Missouri Driver License (MODL) system will be required to allow the Driver License Bureau to maintain records of an expungement under these provisions. This cost is estimated to be \$77,760 through OA-ITSD in FY 2016. Under the programming requirements and user acceptance testing for expungement, the Driver License Bureau estimates 320 hours of user acceptance system testing and training for both an Administrative Analyst I and a Management Analysis Specialist II. A review of administrative rules and internal procedures will also be required for possible revisions.

Additional staffing costs for FY 2016 also include the following:

Administrative Analyst I -	320 hrs @ \$25 (1 ½) per hr = \$8,000
Management Analyst Specialist II -	320 hrs @ \$23 per hr = \$7,360
Revenue Band Manager I -	160 hrs @ \$25 per hr = <u>\$4,000</u>
	\$19,360

DOR officials noted that the proposal would, in their opinion, cause Missouri to be out of compliance with federal Commercial Driver License (CDL) provisions prohibiting masking of traffic violations and record keeping requirements for convictions and license actions committed in any type of vehicle under 49 CFR §384, specifically, the provisions of §384.225(d), as adopted in Missouri under §302,347, for offenses committed by those required to possess a CDL

If the Department is found noncompliant and federal highway funds are withheld, the first year of non-compliance could result in a 4% reduction (approximately \$31 million), and each subsequent year is subject to an 8% reduction (approximately \$62 million). Missouri may lose the ability to issue CDL's if not compliant with federal regulations. This proposal could potentially result in the Department violating Section 302.347, RSMo, which contains Missouri provisions adopting federal record keeping requirements (49 CFR § Part 384) to report to the CDLIS (Commercial Driver's License Information System) all convictions and license actions committed in any type of vehicle for a CDL holder or those required to hold a CDL.

Due to the uncertainty if this proposal would put Missouri out of compliance, **Oversight** will reflect the possibility as \$0 or (\$62,000,000) impact to federal highway funding.

Oversight is unclear on the number of expungements that could occur from this proposal. Therefore, Oversight will reflect an unknown amount of FTE that OSCA, MHP, and DOR would need to implement these additional expungements.

ASSUMPTION (continued)

The state is allowed to charge \$100 on expungements based on Section 488.650, RSMo. Oversight will reflect an unknown amount of revenue from this charge being collected into the General Revenue Fund. Oversight will assume the \$100 fee will cover the General Revenue related costs to the state (OSCA and DOR).

Oversight also assumes there will be additional FTE needed to process these expungements through the Department of Public Safety (DPS) which would affect both their Criminal Records Fund and their Highway Fund. However, again, Oversight is unclear how many FTE would be needed to process these expungements. Therefore, Oversight will assume an unknown cost to these funds for this proposal.

Oversight also 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.

Officials at the **Office of the Attorney General** assume that any potential costs arising from this proposal can be absorbed with existing resources.

Officials at the **Office of the State Public Defender** and the **Office of Prosecution Services** each assume no fiscal impact to their respective agencies from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
GENERAL REVENUE			
<u>Revenue</u> - \$100 surcharge on expungements (allowed in §488.650)	Unknown	Unknown	Unknown
<u>Costs</u> - OSCA - additional FTE needed to process expungements	(Unknown)	(Unknown)	(Unknown)
Costs - DOR - additional FTE to process expungements on DOR systems	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
Estimated Net FTE change for General Revenue	Unknown FTE	Unknown FTE	Unknown FTE
CRIMINAL RECORDS FUND			
<u>Cost</u> - DPS - additional FTE needed to process expungement	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON CRIMINAL RECORDS FUND	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
Estimated Net FTE Change for Criminal Records Fund	Unknown FTE	Unknown FTE	Unknown FTE

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2017 (10 Mo.)	FY 2018	FY 2019
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HIGHWAY FUNDS

<u>Cost - DPS - additional FTE needed to process expungement</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT ON HIGHWAY FUNDS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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Estimated Net FTE Change for Highway Funds	Unknown FTE	Unknown FTE	Unknown FTE
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FEDERAL FUNDS

<u>Loss - DOR - potential loss of federal highway funding if proposal puts Missouri out of compliance</u>	<u>\$0 or (\$31,000,000)</u>	<u>\$0 or (\$62,000,000)</u>	<u>\$0 or (\$62,000,000)</u>
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ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0 or (\$31,000,000)</u>	<u>\$0 or (\$62,000,000)</u>	<u>\$0 or (\$62,000,000)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
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LOCAL POLITICAL SUBDIVISIONS

<u>Costs - Local Political Subdivisions - allows expungement of ordinance violations</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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FISCAL IMPACT - Small Business

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

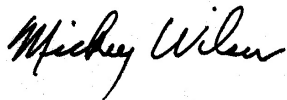
FISCAL DESCRIPTION

This bill specifies that except for class A felony offenses, class B felony offenses that are not drug offenses, offenses that are considered a dangerous felony, and all offenses listed in Chapters 566 and 568, RSMo, all felony, misdemeanor, or municipal offenses and infractions are eligible to be expunged if the offense occurred and was prosecuted in this state. The bill specifies that a person may only receive one expungement during his or her lifetime.

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
Office of the State Public Defender
Office of Prosecution Services
Office of the Attorney General
Department of Corrections
Department of Revenue
Department of Public Safety



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February 23, 2016

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February 23, 2016