

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1100-02
Bill No.: HCS for HB 490
Subject: Crimes and Punishment; Domestic Relations; Family Law
Type: Original
Date: April 14, 2017

Bill Summary: This proposal changes the laws regarding arrearages and the expungement of certain records related to criminal nonsupport.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2018	FY 2019	FY 2020	Fully Implemented (FY 2021)
General Revenue Fund	\$366,465	\$879,823	\$1,178,654	\$1,223,090
Total Estimated Net Effect on General Revenue	\$366,465	\$879,823	\$1,178,654	\$1,223,090

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2018	FY 2019	FY 2020	Fully Implemented (FY 2021)
Criminal Records Fund	(\$93,575)	(\$113,434)	(\$114,586)	(\$115,752)
Total Estimated Net Effect on Other State Funds	(\$93,575)	(\$113,434)	(\$114,586)	(\$115,752)

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2018	FY 2019	FY 2020	Fully Implemented (FY 2021)
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 2018	FY 2019	FY 2020	Fully Implemented (FY 2021)
Criminal Records Fund	2 FTE	2 FTE	2 FTE	2 FTE
Total Estimated Net Effect on FTE	2 FTE	2 FTE	2 FTE	2 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 2018	FY 2019	FY 2020	Fully Implemented (FY 2021)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Corrections (DOC)** assume this bill modifies the definition of criminal nonsupport so that an individual must have an arrearage of at least 24 monthly payments (instead of 12) to be guilty of a class E felony. Further, it allows for the expungement of a conviction for criminal nonsupport after a period of eight years. This bill is similar to that found in FN 5083-01 HB 2191 from 2016 and FN 0352-01 HB 178 from 2015.

The only difference between this legislation and that from FN 5083-01 is that the offense is now a class E felony; the earlier response dealt with the effects of the criminal code revision. Thus, the response provided below is the same as that for FN 5083-01, with the exception that the numbers have been updated to reflect current sentencing rates and to include the effects of recidivism.

HB 490 modifies two parts of the current statute regarding child support arrears by changing the minimum requirements for expungement under this statute and also altering the conditions under which a person in arrears is guilty of a class E Felony for nonsupport.

For a person to receive an expungement of a criminal nonsupport conviction they must meet the following criteria:

- It must be their first felony offense for criminal nonsupport under this section;
- Eight years must have elapsed after they have successfully completed probation or their sentence;
- Have not had any subsequent offense;
- Does not have any other felony pleas of guilt, findings of guilt or convictions;
- Is current on all child support obligations;
- Has paid off all arrearages; and
- Has no other criminal charges or administrative child support actions pending at the time of the hearing on the application for expungement with respect to all children subject to orders of payment of child support or that the defendant has successfully completed a criminal nonsupport courts program under section 478.1000.

If the criteria are met, the court shall enter an order of expungement. Upon granting the order of expungement, the records and files maintained in any court proceeding in an associate or circuit division of the circuit court under this section shall be confidential and only available to the parties or by order of the court for good cause shown. The effect of such order shall be to restore such person to the status he or she occupied prior to such arrest, plea or conviction. A person is entitled to one expungement under this section.

ASSUMPTION (continued)

Nothing in this section shall prevent the director of the Department of Social Services from maintaining such records as to ensure that an individual receives only one expungement under this section for the purpose of informing the proper authorities of the contents of any record maintained under this section.

Regarding the class E Felony, the time required to meet the criteria of nonsupport would increase. The offense of criminal nonsupport is a class A misdemeanor, unless the total arrearage is in excess of an aggregate of [twelve] twenty-four monthly payments due under any order of support issued by any court of competent jurisdiction or any authorized administrative agency, in which case it is a class E felony. Thus, the time one would have to be in arrears would be 24 months instead of 12 months.

There would be no effect on the DOC with regards to the expungement proposed under this bill. Records can still be accessed by agencies with "good cause," including DSS who is responsible for ensuring a defendant is only entitled to one expungement.

This bill, however, should have an impact due to the change in the current class E Felony for this offense. It is anticipated that there should be a 20% reduction in the number of offenders who are sentenced under this statute as proposed due to the extended timeline which is required to qualify for an E Felony in nonsupport. This is based on the previous reduction which occurred in 2010 when the previous statute, which sentenced all in arrears for 6 months or more to an E Felony, changed to the present statute.

In FY2016 there were a total of 221 new prison admissions with an average sentence of 3.2 years. Those released on sentences of criminal nonsupport served 26.7% of their time in prison before their first release. Additionally, there were 383 new probations with an average term of 4.9 years. The Earned Compliance Credit reduces the time served for these offenders to approximately 3.0 years. A reduction of 20% would eliminate 44 prison sentences and 77 probation sentences. The total impact of this reduction, including prison returns, is found in the table below.

ASSUMPTION (continued)

Estimated Change in the Population from Passage of HB 490

	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027
New										
Admissions	-44.0	-44.0	-44.0	-44.0	-44.0	-44.0	-44.0	-44.0	-44.0	-44.0
Probations	-77.0	-77.0	-77.0	-77.0	-77.0	-77.0	-77.0	-77.0	-77.0	-77.0
Cumulative Populations										
Prison	-44.0	-83.6	-83.6	-83.6	-83.6	-83.6	-83.6	-83.6	-83.6	-83.6
Parole		-4.4	-48.4	-57.2	-57.2	-57.2	-57.2	-57.2	-57.2	-57.2
Probation	-77.0	-154.0	-231.0	-231.0	-231.0	-231.0	-231.0	-231.0	-231.0	-231.0
Impact										
Prison Population	-44.0	-83.6	-83.6	-83.6	-83.6	-83.6	-83.6	-83.6	-83.6	-83.6
Field Population	-77.0	-158.4	-279.4	-288.2	-288.2	-288.2	-288.2	-288.2	-288.2	-288.2
Population Change	-121.0	-242.0	-363.0	-371.8	-371.8	-371.8	-371.8	-371.8	-371.8	-371.8

With passage of this legislation, the Department of Corrections would expect to see a decrease of 44 individuals in prison and 77 on probation in the first fiscal year after enactment. This would reach the full impact of 83.6 fewer offenders in prison and 288.2 fewer in the field in the fourth year after enactment.

The FY16 average cost of supervision is \$6.12 per offender per day or an annual cost of \$2,234 per offender. The DOC cost of incarceration is \$16.67 per day or an annual cost of \$6,085 per offender.

	fewer # to prison	Cost per year	Total Costs for prison (savings)	fewer # to probation	Cost per year	Total costs for probation and parole (savings)	Grand Total - Prison and Probation (includes and 2% inflation (savings)
Year 1	(44.0)	(\$6,085)	\$267,740	(77.0)	(\$2,234)	\$172,018	\$366,465
Year 2	(83.6)	(\$6,085)	\$508,706	(158.4)	(\$2,234)	\$353,866	\$879,823
Year 3	(83.6)	(\$6,085)	\$508,706	(279.4)	(\$2,234)	\$624,180	\$1,178,654
Year 4	(83.6)	(\$6,085)	\$508,706	(288.2)	(\$2,234)	\$643,839	\$1,223,090

In summary, the DOC would assume this legislation will result in long term cost avoidance as follows:

FY18 - \$366,465
 FY19 - \$879,823
 FY20 - \$1,178,654
 FY21 - \$1,223,090

ASSUMPTION (continued)

Officials at the **Department of Public Safety's Missouri Highway Patrol (DPS/MHP)** assume the Criminal Justice Information Services Division (CJIS) states that there are currently 26,626 individuals that were convicted/plead guilty to felony nonsupport in the Central Repository prior to 2009 (eight years ago). It is assumed that many of these individuals will not apply for expungement due to not meeting the clean records requirements. However, for the purpose of this estimate, the assumption is that 10% (2,663) of these individuals will qualify and apply for expungement. There are an additional 17,462 felony arrests with corresponding court actions that would become eligible over the next eight years, which averages 2,183 (17,462 / 8) per year.

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 (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 \$55,495 and the ability of that employee to process 1,243 expungements per year, the cost alone per expungement is $\$55,495 \div 1,243 = \44.64 . 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.

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 supplies and phone charges. If any FTE were placed on the 1st shift, standard equipment would be required at a one-time cost of \$6,094 per FTE.

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 **Office of the State Courts Administrator**, the **Department of Social Services** and the **Department of Mental Health** each assume no fiscal impact to their respective agencies from this proposal.

ASSUMPTION (continued)

In response to a previous version, officials at the **Office of the State Public Defender** and the **Office of Prosecution Services** each assumed no fiscal impact to their respective agencies from this proposal.

Officials at the **City of Kansas City**, the **Springfield Police Department** and the **St. Louis County Department of Justice Services** each assume no fiscal impact to their respective entities from this proposal.

In response to a previous version, officials at **St. Louis County**, the **Callaway County Commission** and the **Boone County Sheriff's Department** each assumed no fiscal impact to their respective entities from this proposal.

Officials at the following counties: Andrew, Atchison, Audrain, Barry, Benton, Bollinger, Boone, Buchanan, Camden, Cape Girardeau, Carroll, Cass, Christian, Clay, Cole, Cooper, Daviess, DeKalb, Dent, Franklin, Greene, Holt, Jackson, Jefferson, Johnson, Knox, Laclede, Lawrence, Lincoln, Maries, Marion, McDonald, Miller, Mississippi, Moniteau, Monroe, Montgomery, New Madrid, Nodaway, Ozark, Perry, Pettis, Phelps, Platte, Pulaski, Scott, St. Charles, St. Francois, Taney, Warren, Wayne, Webster and Worth did not respond to **Oversight's** request for fiscal impact.

Officials at the following cities: Ashland, Belton, Bernie, Bonne Terre, Boonville, California, Cape Girardeau, Clayton, Columbia, Dardenne Prairie, Excelsior Springs, Florissant, Frontenac, Fulton, Grandview, Harrisonville, Independence, Jefferson City, Joplin, Kearney, Knob Noster, Ladue, Lake Ozark, Lee Summit, Liberty, Louisiana, Maryland Heights, Maryville, Mexico, Monett, Neosho, O'Fallon, Peculiar, Pineville, Popular Bluff, Raytown, Republic, Richmond, Rolla, Sedalia, Springfield, St. Charles, St. Joseph, St. Louis, St. Robert, Sugar Creek, Sullivan, Warrensburg, Warrenton, Webb City, Weldon Spring and West Plains did not respond to **Oversight's** request for fiscal impact.

Officials from the Ashland Police Chief, Buchanan County Sheriff's Department, Cass County Sheriff Department, Clark County Sheriff's Department, Cole County Sheriff Department, Columbia Police Department, Independence Police Department, Jackson County Sheriff Department, Jefferson City Police 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 -</u> <u>State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020	Fully Implemented (FY 2021)
GENERAL REVENUE FUND				
<u>Savings/Cost</u> <u>Avoidance</u> - DOC - decrease in offender population	<u>\$366,465</u>	<u>\$879,823</u>	<u>\$1,178,654</u>	<u>\$1,223,090</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>\$366,465</u>	<u>\$879,823</u>	<u>\$1,178,654</u>	<u>\$1,223,090</u>
CRIMINAL RECORDS FUND				
<u>Costs</u> - DPS/MHP				
Personal Service	(\$49,300)	(\$59,752)	(\$60,349)	(\$60,952)
Fringe Benefits	(\$43,192)	(\$52,349)	(\$52,872)	(\$53,401)
Equipment & Expense	<u>(\$1,083)</u>	<u>(\$1,333)</u>	<u>(\$1,365)</u>	<u>(\$1,399)</u>
<u>Total Costs</u> - DPS/MHP	<u>(\$93,575)</u>	<u>(\$113,434)</u>	<u>(\$114,586)</u>	<u>(\$115,752)</u>
FTE Change - DPS/MHP	2 FTE	2 FTE	2 FTE	2 FTE
ESTIMATED NET EFFECT ON CRIMINAL RECORDS FUND	<u>(\$93,575)</u>	<u>(\$113,434)</u>	<u>(\$114,586)</u>	<u>(\$115,752)</u>
Estimated Net FTE Change for Criminal Records Fund	2 FTE	2 FTE	2 FTE	2 FTE

FISCAL IMPACT -
Local Government

FY 2018
(10 Mo.)

FY 2019

FY 2020

Fully
Implemented
(FY 2021)

\$0

\$0

\$0

\$0

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This bill defines the term “arrearage” and specifies that the arrearage must reflect any retroactive support ordered under a modification, any judgments entered by a court or any authorized agency, and any satisfactions of judgment filed by the custodial parent. Currently, criminal nonsupport is a class E felony if the total arrearage is in excess of 12 monthly payments. The bill changes it to if the total arrearage is in excess of 24 monthly payments.

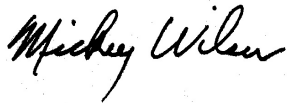
A person may petition the court for the expungement of the criminal records of a first felony offense of criminal nonsupport after at least eight years have elapsed since the person requesting expungement has completed his or her imprisonment or period of probation. The bill lays out the specific elements a court must find the petitioner has met before ordering expungement. An individual may request an expungement of his or her DNA records pursuant to these provisions.

If a court grants the order of expungement, the records and files maintained in any court proceeding in an associate circuit or circuit court for the offense ordered expunged will be confidential and only available to the parties or by the order of the court for good cause shown. An individual is only entitled to have one petition for expungement granted under these provisions. The bill also changes these provisions in the newly revised criminal code that took effect January 1, 2017.

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

Department of Corrections
Department of Public Safety
Missouri Highway Patrol
Office of the Attorney General
Office of the State Courts Administrator
Department of Social Services
Department of Mental Health
Office of the State Public Defender
Office of Prosecution Services
St. Louis County
Callaway County Commission
City of Kansas City
Boone County Sheriff's Department
Springfield Police Department
St. Louis County Department of Justice Services



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