

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0681-01
Bill No.: HB 341
Subject: Health and Senior Services Department; Crimes and Punishment
Type: Original
Date: January 30, 2019

Bill Summary: This proposal allows certain marijuana-related offenses and violations to be expunged if the offenses or violations occurred in Missouri prior to the issuance of a patient identification card.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	(Up to \$2,812,258)	(Up to \$2,936,256)	(Up to \$2,996,715)
Total Estimated Net Effect on General Revenue	(Up to \$2,812,258)	(Up to \$2,936,256)	(Up to \$2,996,715)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Federal	\$0	(Could exceed \$32,934,546)	(Could exceed \$58,934,546)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	(Could exceed \$32,934,546)	(Could exceed \$58,934,546)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	9	9	9
Total Estimated Net Effect on FTE	9	9	9

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 2020	FY 2021	FY 2022
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§610.132 and 610.140 - Expungement of certain misdemeanor or municipal violations

Officials from the **Department of Health and Senior Services (DHSS)** state §610.132.1 (1) will require the DHSS to apply on behalf of a qualifying individual who obtains a patient identification card under Article XVI, Section 1 of the Constitution of Missouri to have any marijuana-related misdemeanor offense or municipal violation expunged if the offense or violation occurred within the state of Missouri prior to the issuance of a patient identification card and was prosecuted under the jurisdiction of a Missouri associate circuit or circuit court or a municipal court, so long as all marijuana-related misdemeanor offenses or municipal violations to be expunged are listed on the petition for expungement completed by the department.

Section 610.132.1 (2) the department shall (a) file the petition for expungement in the court in which the individual was charged or found guilty of a marijuana-related offense or violation eligible for expungement under this subsection; and

Section 610.132.3 allows "a petition for expungement under this section may be made at any time, provided such offense or violation occurred within the state of Missouri prior to the issuance of a patient identification card."

Oversight notes the Revisor of Statutes states the ballot language of Constitutional Amendment 2 adopted November 6, 2018, (medical marijuana) placed this section in a new Article XVI but the Revisor renumbered it a new Article XIV, Section 1.

Office of General Counsel (OGC)

It is assumed that should this become law, potentially thousands of individuals who have a conviction, etc. for marijuana-related misdemeanor offenses or municipal violations will seek and likely obtain a certification from a physician to obtain medical marijuana. With certification, such individuals will then have the ability to request the DHSS represent them in seeking an expungement of their prior conviction.

DHSS states, since 2003, there have been 94,675 marijuana possession misdemeanor convictions. In addition, there have been an estimated 32,280 marijuana paraphernalia misdemeanor convictions which would likely be eligible for expungement under the bill. It is believed by DHSS that the number of individuals that will seek expungement will be very high due to the ease of which a person can receive a medical marijuana certificate.

ASSUMPTION (continued)

For the purposes of estimating, DHSS is assuming that 60% of the individuals with such a conviction will seek DHSS assistance with expungement should the bill become law.

Assuming no additional qualifying convictions occur, which is unlikely, DHSS believes there will be 76,173 individuals seeking an expungement.

94,675 (marijuana possession misdemeanor convictions) X 60% = 56,805
32,280 (marijuana paraphernalia misdemeanor convictions) X 60% = 19,368
Total individuals seeking an expungement (TISE) **76,173**

76,173 TISE / 3 years = 25,391 (Cases per year (CPY))

25,391 CPY * 16 hours per case = 406,256 total hours per year (THPY)

406,256 THPY / 2,080 (hours for 1 FTE) = 195 FTE needed

Support staff required ratio assumes an Administrative Office Support Assistant (AOSA) is needed to support every 5 attorneys: 195 attorneys / 5 = 39 AOSAs.

Legal Counsel (\$10,481,250) Salaries Year 1

One hundred ninety-five (195) full-time attorneys would be needed to both prepare for and present in court on the behalf of the anticipated 25,391 individuals that would be issued a patient identification card for medical marijuana with prior convictions of marijuana-related offenses (misdemeanor) or municipal violations. DHSS assumes an annual salary for each attorney to be \$64,500 plus fringe benefits, equipment and expense.

Administrative Office Support Assistant (\$973,180) Salaries Year 1

Assuming a five to one ratio of Attorney to AOSA, DHSS would need an additional thirty-nine (39) AOSAs to assist in the preparation of documentation for the attorney to use in each court case; such as copying, research, typing/completion of memos, forms, etc. DHSS assumes an annual salary for each AOSA to be \$29,944 plus fringe benefits, equipment and expense.

Summary:

Overall initial costs are estimated to be \$73,612,606 to \$90,990,487 (includes personal service, fringe, and expense and equipment, including court costs and attorney fees)
(Court costs and attorney fees for these cases would vary, but based on previous experience, could average \$2,500 per case resulting in \$52,897,917 to \$66,691,048 per year in fees. These costs are included in the overall amount provided.)

ASSUMPTION (continued)

Oversight assumes the number of expungements that may be required for misdemeanor possession convictions occurring after the passage of Constitutional Amendment XIV (as renumbered by the Revisor of Statutes) and prior to the receipt of a medical marijuana card will drop significantly since possession of marijuana by a medical marijuana card holder will no longer be a crime. Therefore, Oversight assumes the DHSS would not need additional attorney FTE and AOSA FTE after FY 2022, when they anticipate completing the estimated expungements for convictions that have already occurred.

Oversight notes that for Perfected HCS for HB 1554 in 2018, DHSS estimated that the number of qualified patient cards would be issued at a rate of approximately 19.2 per 1,000 patient populations, based on information from Oregon. Oversight will use this same ratio (instead of DHSS' assumed rate of 60%) for the number of medical cannabis convictions that will be applicable to persons who will qualify for a new patient identification card under Article XVI, Section 1 of the Missouri Constitution. Oversight is unsure how similar the programs are (HB 341 in 2018 vs the Constitutional Amendment approved by voters in November 2018); however, Oversight will assume:

94,675 marijuana possession misdemeanor convictions (from DHSS)
32,280 marijuana paraphernalia misdemeanor convictions (from DHSS)
126,955 Total

Assuming on 19.2/1,000 of these persons will qualify for a medical marijuana card and request an expungement equals 2,437.536 total cases

2,437.536 cases / 3 years = 812.5 cases per year

812.5 cases x 16 hours per case for DHSS legal counsel = 13,000 hours
13,000 hours / 2,080 hours per work year = 6.25 legal counsel FTE needed (rounded up to 7)

Oversight will also assume the need for 2 AOSAs.

Oversight notes the Legislature Truly Agreed To and Finally Passed SB Nos. 588, 603 and 942 (2016) relating to petitions for the expungement of criminal records. In that fiscal note, the Department of Public Safety, Missouri State Highway Patrol (MHP) estimated more than 10.4 million records would be eligible for expungement. Oversight assumes this would include marijuana-related convictions. Based on discussions with MHP officials, it is believed that approximately 1,000 records may have been "hidden", but not truly expunged, since the provisions of this bill went into effect January 1, 2017 but there is no way to determine to which "crime" the expunged/hidden records pertain.

ASSUMPTION (continued)

Oversight reviewed Missouri Judiciary Criminal System annual reports for FY 2003 - 2015 for Selected Drug Charges File and Disposed by both Circuit and Associate Courts. Based on our review, Oversight determined the potential misdemeanor marijuana possession convictions and convictions for misdemeanor drug paraphernalia as reported by the DHSS and used in their assumptions to be reasonable.

Officials from the **Department of Revenue (DOR)** state §610.132 requires the DOR to honor a court-ordered expungement of any marijuana-related misdemeanor driving offenses or municipal violations currently reflected on the driving record of qualifying individuals. This would include convictions for driving under the influence of drugs (DUID), driving while intoxicated (DWI), Minor in Possession and Abuse and Lose suspensions and revocations. The Department of Health and Senior Services (DHSS) is responsible for filing the petitions in the court where the qualifying individual was charged or found guilty. DHSS is also responsible for ensuring that individuals only receive one expungement under this section.

The provisions of this proposal adds §610.132 as an exclusion for expungement under §610.140.

Administrative Impact

A Revenue Processing Tech I can process 50 court-ordered expungements per day. The proposed legislation will increase the number of expungements received by the DOR. The DOR has no data that would help determine how big that increase will be, but assumes it will be minimal enough to not require the hiring of additional FTE. However, if the increase is more significant than anticipated or additional laws are passed that impact the staff who process expungements, additional FTE may be requested through the appropriations process.

To implement the proposed legislation, the Department will be required to:

- Update procedures; and
- Train staff.

FY 2020 - Driver License Bureau

Management Analysis Spec II	10 hrs. @ \$20.57 per hr.	= \$206
Revenue Manager	10 hrs. @ \$20.59 per hr.	= <u>\$206</u>
Total		= \$412

The DOR anticipates it will be able to absorb these costs and that there will be no fiscal impact to the department.

Oversight will assume, based on our estimate of 812 cases per year, that DOR will be able to expunge those relating to motor vehicles with existing resources.

ASSUMPTION (continued)

Revenue Impact

DOR notes the proposal will likely violate 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 Section 384, specifically, the provision of §384.225(d), as adopted in Missouri under §302.347, RSMo, for offenses committed by those required to possess a CDL.

Failure to comply with federal regulations under 49 CFR Section 384 may result in the loss of Federal-aid highway funds apportioned to the State, as defined in 49 CFR 384.401, with the first year of non-compliance resulting in a 4% reduction (\$26 million), and each subsequent year subject to a 8% reduction (\$52 million). This proposal could result in the decertification under 49 CFR 384.405, resulting in Missouri not being able to issue CDL credentials.

This proposal could also prevent the State of Missouri from obtaining Impaired Driving federal grant funding.

Oversight assumes if this proposal results in a violation of 49 CFR Section 384, the state of Missouri may lose a portion of Federal highway funding beginning in FY 2021 (4% for the first year of non-compliance; approximately \$26 million). In addition, Missouri may lose Federal funds due to non-compliance in FY 2022 of approximately \$52 million (8% for each subsequent year). Oversight will present the potential for lost Highway Funds as (Up to \$26 million) for FY 2021 and (Up to \$52 million) for FY 2022. In addition, Oversight will present a loss of potential Impaired Driving grant funding for each FY 2021 and FY 2022 as \$0 to (Unknown).

Officials from the **Missouri Department of Transportation (MoDOT)** state per 49 CFR §384.225(d), the state must retain on the Commercial Driver's License (CDL) Information System (CDLIS) driver record all convictions, disqualifications and other licensing actions for violations for at least 3 years or longer as required under § 384.231(d). The penalty imposed upon states found to be in noncompliance, per 49 CFR §384.2401, is up to four percent (4%) withholding of Federal-aid highway funds in the fiscal year following the state's first year of noncompliance and up to eight percent (8%) withholding of Federal-aid highway funds during the second and any subsequent fiscal years of noncompliance. Based on the fiscal year 2018 apportionment, the federal fund withholdings would be \$26 million in the first fiscal year of noncompliance and \$52 million for the second and any subsequent fiscal years of noncompliance.

The proposed bill passed as-is will have variances with Part 383, 391 and 392. The following funding is at risk:

ASSUMPTION (continued)

Part 383 - Federal aid highway funding, 4% first year and 8% each subsequent year.

Missouri :

4 percent of U.S.C. Title 23, Section 104 (b)(1), (b)(3) and (b)(4) = \$26 million

8 percent of U.S.C. Title 23, Section 104 (b)(1), (b)(3) and (b)(4) = \$52 million

Parts 391 and 392 - MCSAP (Motor Carrier Safety Assistance Program) funding: Using Missouri's MCSAP apportionment for Fiscal Year 2018 as a base, a full withholding places \$6,934,546 (rounded up) at risk.

If the less stringent withholding took effect, the results would be as follows:

5 percent - \$346,727 (rounded down) - during the fiscal year that the FMCSA (Federal Motor Carrier Safety Administration) notifies the State of noncompliance;

10 percent - \$693,455 (rounded up) - during the first full fiscal year of not compliance;

25 percent - \$1,733,636 (rounded down) - during the second full fiscal year of non-compliance; and,

Not more than 50 percent, or \$3,467,272 (rounded down) for the third and any subsequent full fiscal year of noncompliance.

The U.S. Department of Transportation's stance is that marijuana is a Schedule I drug. Commercial Motor Vehicle (CMV) drivers cannot possess it while on duty and cannot use it at any time even if it is prescribed for medical reasons.

Title 49 CFR Part 383 - CDL requirement regulations do not address possession of controlled substances unless it is using a vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance. Given that this bill is only proposing to expunge misdemeanor offenses, this is irrelevant.

The CDL regulations do consider being under the influence of a controlled substance a disqualifying offense whether it be in a CMV or non-CMV. RSMo 577.010 classifies Driving While Intoxicated as a misdemeanor or felony depending on the circumstances. RSMo 577.001 defines intoxicated as "when a person is under the influence of alcohol, a controlled substance, or drug, or any combination thereof".

ASSUMPTION (continued)

Taking this information into consideration, a Missouri CDL holder can be convicted of a marijuana-related misdemeanor offense DWI-under the influence of a controlled substance and have his/her CDL disqualified as a result. If this bill becomes law, months later, the offense could be expunged. At that point, the driver will contest he/she should no longer be disqualified due to no record of the conviction.

Assuming DOR would be required to remove the moving violation from the driver's moving violation history if it is expunged, motor carriers employing the driver will not get a true picture of the driver's driving history if the conviction is removed.

Title 49 CFR Part 391.15 addresses disqualification of drivers (CDL and non-CDL CMV drivers). A driver who is convicted of a disqualifying offense is disqualified for one year from the date of conviction for first offenders and 3 years after the date of conviction if during the previous 3 years preceding the conviction date the driver was convicted of a disqualifying offense.

One of the disqualifying offenses is found in 49 CFR 391.15(c)(2)(iii)-Transportation, possession, or unlawful use of a 21 CFR 1308.11 Schedule I identified controlled substance...while the driver is on-duty...

A CMV driver convicted of possession of marijuana while on duty is a disqualified driver. This is true whether it is illegal possession or legally prescribed medication. FMCSA prohibits the possession and use of medical marijuana and has made this clear in guidance released in October 2017.

If misdemeanor possessions of marijuana convictions are expunged from the criminal records, there is a chance disqualified CMV drivers will be allowed to drive. There's another concern that the driver is not physically qualified due to the necessity to be prescribed medicinal marijuana

Finally, 49 CFR 392.4 prohibits drivers from possessing and/or being under the influence of a Schedule 1 Substance. As mentioned previously, this does not exempt medical marijuana. Erasing prior marijuana-related misdemeanor convictions from CMV drivers could allow disqualified drivers to drive.

FMCSA Guidance - October 2017 - Marijuana possession and use

<https://www.fmcsa.dot.gov/faq/does-legalization-use-and-possession-marijuana-state-or-other-country-has-d>

ASSUMPTION (continued)

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the potential loss of federal Highway funds for MoDOT as up to \$6,934,546 for fiscal note purposes.

Officials from the **Department of Public Safety (DPS), Missouri State Highway Patrol (MHP)** state there are approximately 18,637 conviction records in the Traffic Arrest System to which this legislation applies. Assuming the proposed expungement process only applies to individuals that qualify for a patient identification card under Article XVI, Section 1, of the Missouri Constitution, and there are no qualifiers that the Patrol Records Division (PRD) personnel would have to make certain are met before an expungement is granted, the MHP can absorb any cost associated with the proposal.

Oversight obtained information from the DPS, MHP indicating that it is estimated to take a Patrol Records Technician I 30 minutes to expunge one record and 1 FTE can process 3,728 expungements per year (1,864 average work hours/year * 60 minutes/hour = 111,840 minutes/30 minutes/expungement = 3,728 records). The beginning salary for a PRD Technician I is \$58,206 (\$30,756/year + fringe benefits of \$27,450 (\$30,756 * 89.25%)). Therefore, the estimated cost to expunge one marijuana possession record is \$15.61 (\$58,206/3,728). Assuming the DHSS receives 813 expungement requests annually, this proposal would required 0.22 FTE PRD Technician I at a cost of \$12,805 annually.

Based on DPS, MHP's response, **Oversight** assumes the MHP has sufficient current resources and staff to accomplish the additional duties required under this proposal.

Officials from the **Office of State Courts Administrator** state the proposed legislation may result in some fiscal impact but there is no way to quantify the amount at the current time. Any significant changes will be reflected in future budget requests.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the no impact provided by OSCA for fiscal note purposes.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, the **St. Louis City Circuit Court** and the **Phelps County Circuit Court** were requested to respond to this proposed legislation but did not. For a general listing of political subdivisions included in our database, please refer to www.legislativeoversight.mo.gov.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
GENERAL REVENUE FUND			
<u>Costs - DHSS (§610.132)</u>			
Personal service (9 FTE)	(\$426,157)	(\$516,502)	(\$521,667)
Fringe benefits	(\$224,440)	(\$270,886)	(\$272,460)
Equipment and expense	(\$129,161)	(\$65,555)	(\$67,193)
Court fees	<u>(Up to</u>	<u>(Up to</u>	<u>(Up to</u>
	\$2,032,500)	\$2,083,313)	\$2,135,395)
Total <u>Costs</u> - DHSS	<u>(Up to</u>	<u>(Up to</u>	<u>(Up to</u>
	\$2,812,258)	\$2,936,256)	\$2,996,715)
FTE Change - DHSS	9 FTE	9 FTE	9 FTE
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Up to</u>	<u>(Up to</u>	<u>(Up to</u>
	<u>\$2,812,258)</u>	<u>\$2,936,256)</u>	<u>\$2,996,715)</u>
Estimated Net FTE Change on the General Revenue Fund	9 FTE	9 FTE	9 FTE
FEDERAL FUNDS			
<u>Loss - DOR (§610.132)</u>			
Reduction in federal highway funds for being out of compliance with 49 CFR Section 384	\$0	(Up to \$26,000,000)	(Up to \$52,000,000)
Reduction in Impaired Driving Grant	<u>\$0</u>	<u>\$0 to</u>	<u>\$0 to</u>
		<u>(Unknown)</u>	<u>(Unknown)</u>
Total <u>Loss</u> - DOR	<u>\$0</u>	<u>(Could exceed</u>	<u>(Could exceed</u>
		<u>\$26,000,000)</u>	<u>\$52,000,000)</u>
<u>Loss - MoDOT (§610.132)</u>			
Reduction in MCSAP funds	<u>\$0</u>	<u>(Up to</u>	<u>(Up to</u>
		<u>\$6,934,546)</u>	<u>\$6,934,546)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0</u>	<u>(Could exceed</u>	<u>(Could exceed</u>
		<u>\$32,934,546)</u>	<u>\$58,934,546)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
	<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

The bill specifies that the Department of Health and Senior Services shall apply on behalf of a person who obtains a patient ID card under Article 16, Section 1 of the Missouri Constitution to have any marijuana-related misdemeanor offenses or municipal violations expunged if such offense or violation occurred in Missouri prior to the issuance of the patient ID card and was prosecuted under the jurisdiction of a Missouri Associate Circuit or Circuit Court or a municipal court, so long as all marijuana related misdemeanor offenses or municipal violations to be expunged are listed on the petition for expungement completed by the department. The bill specifies terms for how the department shall petition on behalf of the individual. The court shall enter an order of expungement of records related to the marijuana-related misdemeanor offenses or municipal violations if, after the hearing, the court determines that the above requirements are satisfied. 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 or in municipal court 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 individual to the status he or she occupied prior to such arrest, plea, or conviction and as if such event had never taken place. An individual shall be entitled to only one expungement under this section. Nothing in the bill prevents the department from maintaining such records as to ensure that an individual receives only one expungement for the purpose of informing the proper authorities of the contents of any record maintained under the section.

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

SOURCES OF INFORMATION

Department of Health and Senior Services
Department of Revenue -
 Driver's License Division
Department of Public Safety -
 Missouri State Highway Patrol
Missouri Department of Transportation
Office of State Courts Administrator



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