

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0681-03  
Bill No.: HCS for HB 341  
Subject: Health and Senior Services Department; Crimes and Punishment  
#Type: #Updated  
Date: February 20, 2019  
#Updated to include Department of Public Safety, Missouri State Highway Patrol response.

---

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**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
#General Revenue	\$0 to (\$96,442)	\$0 to (\$116,888)	\$0 to (\$118,056)
<b>#Total Estimated Net Effect on General Revenue</b>	<b>\$0 to (\$96,442)</b>	<b>\$0 to (\$116,888)</b>	<b>\$0 to (\$118,056)</b>

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

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

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

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
#General Revenue	0 to 2	0 to 2	0 to 2
<b>Total Estimated Net Effect on FTE</b>	<b>0 to 2</b>	<b>0 to 2</b>	<b>0 to 2</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### §§610.132 and 610.140 - Marijuana-related expungements

Officials from the **Department of Health and Senior Services (DHSS)** state this section directs the DHSS to notify an individual who is granted a patient ID card that he or she may be eligible for expungement of certain marijuana-related offenses and to provide all information necessary for filing a petition for expungement on applications for a patient ID card. The required notification and information can be incorporated into the application process. The DHSS anticipates being able to absorb these costs. However until the FY20 budget is final, the DHSS cannot identify specific funding sources.

**Oversight** does not have any information to the contrary. Therefore, Oversight assumes the DHSS will be able to complete the requirements of this proposal with existing staff and resources and will reflect no impact to the DHSS for fiscal note purposes.

Officials from the **Department of Revenue (DOR)** state §610.132 of the proposal requires the department 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 notifying individuals that may be eligible for an expungement and to provide information on the patient's ID card. DHSS is also responsible for ensuring that individuals only receive one expungement under this section.

§610.140 adds §610.132 as an exclusion for expungement under this section.

#### DOR 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 it determine how big that increase will be, but assumes it will be minimal enough to not cause additional FTE. If the increase is more significant than anticipated or additional laws are passed that impact the staff who process expungements, additional FTE's may be requested through the appropriations process.

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

- Update procedures; and
- Train staff.

ASSUMPTION (continued)

FY 2020 - Driver License Bureau

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

The Department anticipates that we will be able to absorb these costs and that there will be no administrative impact.

**Oversight** does not have any information to the contrary. Therefore, Oversight assumes the DOR has sufficient staff and resources to perform the additional work required by this proposal and will reflect no administrative impact for DOR for fiscal note purposes.

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 2020 (4% for the first year of non-compliance; approximately \$26 million). In addition, Missouri may lose Federal funds due to non-compliance in FY 2021 and FY 2022 of approximately \$52 million (8% for each subsequent year). Oversight will present the potential for lost Highway Funds as \$0 to (Up to \$26 million) for FY 2020 and \$0 (Up to \$52 million) for FY 2021 and FY 2022. In addition, Oversight will present a loss of potential Impaired Driving grant funding for each FY 2020, FY 2021 and FY 2022 as \$0 to (Unknown).

ASSUMPTION (continued)

In response to a similar version of this proposal, officials from the **Missouri Department of Transportation (MoDOT)** stated Missouri's Motor Carrier Safety Assistance Program (MCSAP) funding could be at risk due to prior marijuana possession convictions being expunged. The determination of variance sits with the Federal Motor Carrier Safety Administration (FMCSA).

A misdemeanor possession of a controlled substance by a commercial motor vehicle driver (CDL or non-CDL) while on duty is a disqualifying offense. FMCSA prohibits the possession and use of medical marijuana and still considers medical marijuana to be a Schedule 1 Controlled Substance.

49 CFR 391.15(c)(2)(iii): Transportation, possession, or unlawful use of a 21 CFR 1308.11 Schedule 1 Identified controlled substance, amphetamines, narcotic drugs, formulations of an amphetamine, or derivatives of narcotic drugs while driver is on duty, as the term on-duty time is defined in § 395.2 of this subchapter;

If misdemeanor possessions of marijuana convictions are wholly expunged from the criminal records, CMV drivers who would be disqualified under current law would be allowed to drive.

Commercial vehicle enforcement officers will not see drivers' disqualifying offenses that are expunged when stopped for inspection. This will allow disqualified drivers to drive.

MoDOT assumes this could have up to a \$7 million annual impact (\$6,934,546) on MCSAP funding from the federal government.

**Oversight** notes based on conversations with DOR and MoDOT officials, it is believed that reductions in federal funding could occur at any time the State of Missouri (State) is determined to be out of compliance with federal law. Generally, the federal government will provide the State with a finding of “non-compliance”, give the State time to correct the issue of non-compliance, and then if the State does not become compliant, reduce federal funding. There is no way to determine when the State would be audited, so it is impossible to know when non-compliance/reductions in federal funding could begin. Therefore, **Oversight** will range the potential reduction in federal funds from \$0 to the amounts provided by DOR and MoDOT beginning in FY 2020.

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.

ASSUMPTION (continued)

#Officials from the **Department of Public Safety (DPS), Missouri State Highway Patrol (MHP)** state currently, there are 18,465 conviction records in the Traffic Arrest System (TAS) for marijuana-related misdemeanor offenses that could be eligible for expungement via this legislative bill.

# 1 full-time employee (FTE) = 1,864 hours (average work hours per year) x 60 minutes per hour = 111,840 minutes per year.

# 30 minutes = estimate of the amount of time per petition to log, process, research, review, and expunge the information/record when the order is received.

# 1 FTE can process 3,728 expungements per year = 111,840 / 30.

# 20% =  $18,465 \times .20 = 3,693 / 3,728 = 1$  FTE

# 40% =  $18,465 \times .40 = 7,386 / 3,728 = 2$  FTEs

# 60% =  $18,465 \times .60 = 11,079 / 3,728 = 3$  FTEs

# 80% =  $18,465 \times .80 = 14,772 / 3,728 = 4$  FTEs

#The Patrol can not predict the number of people that will apply for an expungement, but assumes it will be approximately 40%, which will require two FTEs.

#**Oversight** does not have any information to the contrary. However, Oversight assumes the number of individuals granted medical marijuana identification cards and seeking expungement of marijuana-related offenses will not be 40% of the total conviction records in the MHP's Traffic Arrest System. Therefore, Oversight will range the fiscal impact from \$0 to the costs provided by the DPS, MHP for fiscal note purposes.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
<b>#GENERAL REVENUE FUND</b>			
<u>#Costs</u> - DPS, MHP (§§610.132 and 610.140)	\$0 to...	\$0 to...	\$0 to...
Personal service	(\$50,960)	(\$61,764)	(\$62,381)
Fringe benefits	(\$45,482)	(\$55,124)	(\$55,675)
Total <u>Costs</u> - DPS, MHP	<u>(\$96,442)</u>	<u>(\$116,888)</u>	<u>(\$118,056)</u>
FTE Change - DPS, MHP	0 to 2 FTE	0 to 2 FTE	0 to 2 FTE
<b>#ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>\$0 to (\$96,442)</u></b>	<b><u>\$0 to (\$116,888)</u></b>	<b><u>\$0 to (\$118,056)</u></b>
#Estimated Net FTE Effect on the General Revenue Fund	0 to 2 FTE	0 to 2 FTE	0 to 2 FTE
<b>FEDERAL FUNDS</b>			
<u>Loss</u> - DOR (§610.132)	\$0 to...	\$0 to...	\$0 to...
Reduction in federal highway funds for being out of compliance with 49 CFR Section 384	(Up to \$26,000,000)	(Up to \$52,000,000)	(Up to \$52,000,000)
Reduction in Impaired Driving Grant	(Unknown)	(Unknown)	(Unknown)
Total <u>Loss</u> - DOR	<u>\$0 to (Could exceed \$26,000,000)</u>	<u>\$0 to (Could exceed \$52,000,000)</u>	<u>\$0 to (Could exceed \$52,000,000)</u>
<u>Loss</u> - MoDOT (§610.132)	\$0 to...	\$0 to...	\$0 to...
Reduction in MCSAP funds	(Up to \$6,934,546)	(Up to \$6,934,546)	(Up to \$6,934,546)
<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>\$0 to (Could exceed \$32,934,546)</u></b>	<b><u>\$0 to (Could exceed \$58,934,546)</u></b>	<b><u>\$0 to (Could exceed \$58,934,546)</u></b>
 <u>FISCAL IMPACT - Local Government</u>			
	FY 2020 (10 Mo.)	FY 2021	FY 2022
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

### 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 notify an individual who obtains a patient identification card under Article 16, Section 1 of the Missouri Constitution that he/she may be eligible 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. The department shall, on the application for a patient identification card, provide all information necessary to file any necessary petition for expungement.

If the court determines, after hearing, that an individual has been issued a patient identification card, the misdemeanor offense or municipal violation seeking to be expunged is marijuana-related, and such offense occurred within the state of Missouri prior to the issuance of the patient identification card, the court shall enter an order for expungement. A petition for expungement may be made at any time, provided the offense or violation occurred within the state of Missouri prior to the issuance of a patient identification card.

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. Expungements for marijuana-related misdemeanor offenses or ordinance violations shall not be limited

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 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



Kyle Rieman  
Director  
February 20, 2019

Ross Strope  
Assistant Director  
February 20, 2019