

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0681-03
Bill No.: Perfected HCS for HB 341
Subject: Health and Senior Services Department; Crimes and Punishment
Type: Original
Date: March 14, 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	Could exceed (\$457,636 to \$559,317)	Could exceed (\$425,561 to \$542,449)	Could exceed (\$430,005 to \$548,061)
Total Estimated Net Effect on General Revenue	Could exceed (\$457,636 to \$559,317)	Could exceed (\$425,561 to \$542,449)	Could exceed (\$430,005 to \$548,061)

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 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>All</u> Federal Funds			

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	6 to 8 FTE	6 to 8 FTE	6 to 8 FTE
Total Estimated Net Effect on FTE	6 to 8 FTE	6 to 8 FTE	6 to 8 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 2020	FY 2021	FY 2022
Local Government	\$0	\$0	\$0

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 offenses or municipal violations related to the possession of marijuana 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 department 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 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 notifying individuals that may be eligible for an expungement and to provide information on the patient's ID card. The provisions excludes convictions or pleas of guilt for any offenses committed by a CDL holder that is in violation of 49 CFR 384.226 or CFR 391.15 from the expungement provisions.

§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 may be requested through the appropriations process.

ASSUMPTION (continued)

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.	= \$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.

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 a \$0 to (Unknown) fiscal impact to the General Revenue Fund for OSCA for fiscal note purposes.

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.

ASSUMPTION (continued)

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.

Oversight notes that HA1, as amended, does not limit expungements to misdemeanor offenses and will list the above mentioned impacts as "could exceed."

HA 1 and HA 1 to HA 1:

Officials from the **Missouri Department of Transportation (MoDOT)** state this amendment corrects a potential variance with federal law in §610.132 by adding subsection .5 which provides "The provisions of this section shall not be construed to authorize expungement of an conviction or plea of guilty for an offense committed by a commercial driver's license holder that shall result in a violation of 49 CFR 384.226, as amended, or an offense committed by a person while operating a commercial motor vehicle in violation of 49 CFR 391.15". As a result the proposal will have no fiscal impact on the MoDOT for federal funds.

Officials from the **Department of Corrections (DOC)** state these amendments address what violations are expungable. While expungement requires some expense, it will have no measurable impact on the DOC.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect no fiscal impact to the DOC for these amendments for fiscal note purposes.

§§43.508, 610.078, 610.080, 610.082, 610.084, 610.086, 610.088, and 610.090 - Limited access to criminal records (HA 2 to HA 1)

Officials from the **Department of Public Safety - Missouri State Highway Patrol (MHP)** state to build a base validation process between Office of State Courts Administrator (OSCA) and the MHP, the Criminal Justice Information Services Division (CJISD) estimates a \$100,000 vendor cost. It would be extremely difficult for the MHP to programmatically complete the validation

ASSUMPTION (continued)

process; therefore, additional manpower would be required. To provide system logic for the validation process would exponentially increase the cost to account for the various criteria as outlined in the bill. The MHP estimates that 442,162 individuals could qualify for limited dissemination per this bill's criteria. The MHP anticipates limited access relief to be similar to the workload required to process expungements and, therefore, would require 6 CJIS Technicians III each with an annual salary of \$35,640. These employees would verify and process the records.

Oversight does not have any information contrary to that provided by MHP. Therefore, Oversight will reflect MHP's impact for fiscal note purposes.

Officials from the **Office of State Courts Administrator (OSCA)** state there may be some impact but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a \$0 to (Unknown) fiscal impact to the General Revenue Fund for OSCA for fiscal note purposes.

Oversight notes that the **Department of Labor and Industrial Relations**, the **Missouri Office of Prosecution Services**, and the **Office of Administration** have stated the proposal would not have a direct fiscal impact on their organizations.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

In response to similar legislation (HB 591), officials from the **Department of Social Services**, the **Missouri Department of Conservation**, and the **Office of State Public Defender** assumed the proposal would have no fiscal impact on their organizations.

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

§610.100 - Police report requests (HA2 to HA 1)

Oversight notes that the **Department of Public Safety, Missouri State Highway Patrol** has stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this provision for this organization.

ASSUMPTION (continued)

In response to similar legislation (HB 902), officials from the **Office of Secretary of State**, the **Joplin Police Department**, the **Springfield Police Department** and the **St. Louis County Department of Justice Services** stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, officials from the **Office of Attorney General**, other Police Department and Sheriffs' Offices 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.

§191.255 - Prohibition on sharing medical marijuana user or registry information (HA 2)

Officials from the **Department of Corrections (DOC)** state this legislation creates a class E felony offense when a state agency discloses to the federal government the statewide list of persons who obtained a medical marijuana card.

In order to provide information on the impact of this legislation, a standard impact for a new, nonviolent offense of a class E felony is used. In FY 2018, the average class E nonviolent sentence is 3.4 years. Incarcerated offenders serve 2.1 years in prison and 1.3 years on parole. Average term for probation is 3.0 years. An estimate, for each year, is one offender sentenced to incarceration while two offenders are given probation.

This proposal is expected to annually increase one person to institutionalization and two persons under supervision in the DOC. The full impact occurs in FY2022 with 2 more persons incarcerated and seven more persons in field supervision.

ASSUMPTION (continued)

	# to prison	Cost per year	Total Costs for prison	# to probation & parole	Cost per year	Total cost for probation and parole	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	1.0	(\$6,287)	(\$5,239)	2	absorbed	\$0	(\$5,239)
Year 2	2.0	(\$6,287)	(\$12,825)	4	absorbed	\$0	(\$12,825)
Year 3	2.0	(\$6,287)	(\$13,082)	7	absorbed	\$0	(\$13,082)
Year 4	2.0	(\$6,287)	(\$13,344)	7	absorbed	\$0	(\$13,344)
Year 5	2.0	(\$6,287)	(\$13,611)	7	absorbed	\$0	(\$13,611)
Year 6	2.0	(\$6,287)	(\$13,883)	7	absorbed	\$0	(\$13,883)
Year 7	2.0	(\$6,287)	(\$14,160)	7	absorbed	\$0	(\$14,160)
Year 8	2.0	(\$6,287)	(\$14,444)	7	absorbed	\$0	(\$14,444)
Year 9	2.0	(\$6,287)	(\$17,732)	7	absorbed	\$0	(\$17,732)
Year 10	2.0	(\$6,287)	(\$15,027)	7	absorbed	\$0	(\$15,027)

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the impact provided by DOC in the fiscal note.

Oversight notes that the **Missouri Office of Prosecution Services** have stated the proposal would not have a measurable fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** state the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

In response to a similar proposal (HB 238), **Oversight** notes the **Office of Attorney General** stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for the AGO.

In response to a similar proposal (HB 238), **Oversight** notes the **Office of State Public Defender (SPD)** stated the proposal would not have a direct fiscal impact on their organization.

Oversight contacted SPD officials inquiring about their no fiscal impact to HB 238 because of the Class E felony provisions. SPD stated it is their assumption that state departments and/or their employees would not be considered indigent and therefore, the SPD would not be representing them in cases for violations of the provisions of §191.255. As a result, Oversight will reflect a zero fiscal impact for this provision in the fiscal note for the SPD.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
GENERAL REVENUE FUND			
<u>Costs - DOC (§195.255)</u>			
Increase in incarceration costs	(\$5,239)	(\$12,825)	(\$13,082)
<u>Costs - DPS, MHP (§§43.508, 610.078, 610.080, 610.082, 610.084, 610.086, 610.088 and 610.090)</u>			
Personal services	(\$178,200)	(\$215,978)	(\$218,138)
Fringe benefits	(\$159,044)	(\$192,760)	(\$194,688)
Equipment and expense	(\$20,392)	(\$3,998)	(\$4,097)
Consultant fees	<u>(\$100,000)</u>	<u>\$0</u>	<u>\$0</u>
Total Costs - MHP	<u>(\$457,636)</u>	<u>(\$412,736)</u>	<u>(\$416,923)</u>
FTE Change - MHP	6 FTE	6 FTE	6 FTE
<u>Costs - OSCA (§§43.508, 610.078 - 610.090; 610.132 and 610.140)</u>			
Increase in court operation expenses	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Costs - DPS, MHP (§§610.132 and 610.140)</u>			
	\$0 to Could exceed..	\$0 to Could exceed...	\$0 to Could exceed...
Personal service	(\$50,960)	(\$61,764)	(\$62,381)
Fringe benefits	<u>(\$45,482)</u>	<u>(\$55,124)</u>	<u>(\$55,675)</u>
Total Costs - 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
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>Could exceed</u> <u>(\$457,636 to</u> <u>\$559,317)</u>	<u>Could exceed</u> <u>(\$425,561 to</u> <u>\$542,449)</u>	<u>Could exceed</u> <u>(\$430,005 to</u> <u>\$548,061)</u>
Estimated Net FTE Effect on the General Revenue Fund	6 to 8 FTE	6 to 8 FTE	6 to 8 FTE
<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 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 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 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 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 offenses or ordinance violations shall not be limited. (§§610.132 and 610.140)

This bill specifies that, prior to releasing criminal history information to a noncriminal justice agency, certain information must be redacted, as specified in the bill.

The bill provides that an individual who has been free from a felony conviction for more than 10 years may petition the court where the conviction occurred, for access to his or her criminal record be limited as specified in the bill. The offense must have a maximum penalty of no more than five years.

FISCAL DESCRIPTION (continued)

There are specific convictions and certain individuals for which limited access to criminal records will not be granted. The bill establishes which types of records will be subject to limited access, and provides that, upon petition of a prosecuting attorney to the court where a conviction occurred, a court will vacate an order for limited access granted under these provisions if the court determines that the order was erroneously entered. An individual will not be required or requested to disclose information about his or her criminal history record that has been provided limited access, subject to exceptions in the bill. This shall not apply if federal law requires the consideration of an applicant's criminal history for purposes of employment. A record subject to limited access under this bill will not be considered a conviction that would prohibit the employment of a person under any law that prohibits employment based on state convictions. (HA 2 to HA 1, §§43.508, 610.078, 610.080, 610.082, 610.084, 610.086, 610.088 and 610.090)

This bill creates a class E felony when a state agency discloses the statewide list of persons who have obtained a medical marijuana card to the federal government (HA 2, §191.255)

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 Insurance, Financial Institutions and Professional Registration
Department of Corrections
Department of Labor and Industrial Relations
Department of Revenue - Driver's License Division
Department of Public Safety - Missouri State Highway Patrol
Department of Social Services
Missouri Department of Conservation
Missouri Department of Transportation
Missouri Office of Prosecution Services
Office of State Courts Administrator
Office of Secretary of State
Office of State Public Defender



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