

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0728-01
Bill No.: HB 113
Subject: Crimes and Punishment; Criminal Procedure; Courts; Prisons and Jails
Type: Original
Date: January 30, 2019

Bill Summary: This proposal allows the court to depart from minimum sentencing provisions in certain circumstances.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
General Revenue	\$0	\$0	\$359,755	\$3,033,333
Total Estimated Net Effect on General Revenue	\$0	\$0	\$359,755	\$3,033,333

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0	\$0

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
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 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
General Revenue	0 FTE	0 FTE	0 FTE	1 FTE
Total Estimated Net Effect on FTE	0 FTE	0 FTE	0 FTE	1 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	Fully Implemented (FY 2023)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Corrections (DOC)** assume the bill will affect the imposition of a minimum prison term as defined in 558.019 RSMo. Because of the exclusions outlined in a new section 558.043, the minimum prison term will remain mandatory for most dangerous felonies (excluding DWI 6th offense), sexual offenses against children (statutory rape 1st and 2nd degree, statutory sodomy 1st and 2nd degree and child molestation), and offenses where the offender was also found guilty of armed criminal action or any weapons offense in chapter 571. The impact of the bill is estimated to be the shorter time served by offenders when the mandatory prison term is not imposed, but who are now required to serve a minimum prison term of 40%, 50% or 80%. It should be noted that the minimum prison term is not imposed on drug offenses, and all sex offenses are excluded from the impact because of the requirement to complete the Missouri Sex Offender Program (MOSOP). If sex offenders complete MOSOP, they are released on or near their conditional release date, otherwise they are released on the completion of the sentence.

1. The impact of the change on the time offenders serve in prison will depend upon:

i) **The number of offenders who are sentenced to a minimum prison term for an eligible offense.**

In FY18, there were 1,773 offenders who had a parole hearing and were sentenced to a minimum prison term. The average sentence ranged from 5.5 years by offenders who had served one prior DOC incarceration and were required to serve 40% of the sentence to 6.4 years by offenders who had served three or more DOC incarcerations and were required to serve 80% of the sentence before parole eligibility.

ii) **The number of offenders who will not be required to serve the minimum prison term because of the courts' discretion.**

The number of offenders who the courts will decide not to mandate a minimum prison term is difficult to establish, but the DOC completed a study in 2015 on the courts practice in enhancing prison sentences when offenders have prior felony convictions under 558.016. The statute states that the courts may sentence a person who has been found to be a persistent offender to an authorized term of imprisonment for the offense that is one class higher than the offense for which the person is found guilty. The DOC study found that the courts imposed the enhanced sentence in 21% of cases. The DOC is, therefore, estimating that the courts will impose a minimum prison term in 21% of cases, and in 79% of cases the Board of Probation and Parole will determine the time served. In FY18, the DOC estimates that 1,401 offenders would have had their release date determined by the Board with this assumption.

ASSUMPTION (continued)

**New admissions with parole hearings in FY18
 Serving a minimum prison term, excluding dangerous felonies, sex offenses and weapon offenses**

Minimum Prison Term	Count	Courts will mandate	Courts will not mandate	Average Sentence (years)
		MPT 21%	MPT 79%	
40%	1,000	210	790	5.5
50%	462	97	365	5.9
80%	311	65	246	6.4
Total	1,773	372	1,401	2.7

- iii) **The number of offenders who would have been required to serve a minimum prison term, but who are released by the Board of Probation and Parole after serving a shorter prison stay.**

The estimate of how many of the offenders who will no longer be required to serve a minimum prison term and will be released earlier is based upon the Board's calculation of a guideline release date. The Board has published guidelines that relate the percent of sentence to be served before parole to offender risk and to the severity of the offense. As offender risk and the severity of the offense increase, so does the time served. The Board uses the guideline date to assist it in deciding the appropriate time served.

**New admissions with a parole hearing in FY18
 MPT offenders likely to be released on the guideline date**

MPT	Courts will mandate MPT 21%	Courts will not mandate MPT (79%)			Releases Decisions	Percent Released on MPT date not ASAP
		Release date is the MPT date and not ASAP	Guideline date is less than 90 days from Admission (ASAP)	Release date is after the MPT date		
40%	210	276	59	455	1,000	27.6%
50%	97	158	32	175	462	34.2%
80%	65	119	36	92	311	38.1%
Total	372	552	126	722	1,773	31.1%

ASSUMPTION (continued)

In FY18, there were 1,773 planned releases of offenders who had been required to serve a minimum prison term, of which 552 (31.1%) are estimated to be offenders who could be released earlier. These are offenders who will be released on the MPT date and were not ASAP. ASAP offenders are offenders who had a guideline release date that was within the first 90 days of incarceration. This occurs when offenders are admitted with significant jail time that is credited to the time served. ASAP offenders (126) cannot be released on the guideline date because of the time required for the administrative tasks of holding a hearing and arranging for the release. The offenders who will be released after the MPT date (722) are high risk offenders and are also excluded from an early release if the MPT was removed.

**Average time served serving a MPT and the guideline term
 MPT offenders likely to be released on the guideline date**

MPT	Released on MPT (not ASAP)	Average Sentence (years)	Average MPT (years)	Average Guideline/ Conditional Release (years)	Guideline Percent Served	Reduction in time to first release (years)	Increase in parole recidivism (years)	Net reduction in time served (years)	Total reduction in prison population
40%	276	5.5	2.1	1.5	27%	0.6	0.2	0.4	125
50%	158	5.9	2.7	1.8	30%	0.9	0.3	0.6	102
80%	119	6.4	5.1	2.2	35%	2.9	1.0	1.9	239
Total	552	5.8	2.9	1.7	30%	1.2	0.4	0.8	466

The calculation of the reduction in the time served is the difference between the MPT and the average guideline time served multiplied by the number of offenders to be released on the MPT date. The DOC is offsetting this reduction in time served by adding back 35% of the reduction as an estimate of increased recidivism from a longer period on parole. The estimate of 35% is the average time offenders discharged from parole in FY18 spent in prison after first release because their parole was revoked. After adding in the parole recidivism, the average reduction in time served is 0.8 years, resulting in a total reduction in the prison population of 466, which will be achieved by FY2023. The increase in the parole population is estimated to need an increase of one P&P officer.

ASSUMPTION (continued)

Change in prison admissions with the proposed legislation

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
New Admissions										
Current Law	552	552	552	552	552	552	552	552	552	552
After Legislation	552	552	552	552	552	552	552	552	552	552
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	0	0	0	0	0	0	0	0	0	0
Change (After Legislation - Current Law)										
Admissions	0	0	0	0	0	0	0	0	0	0
Probations	0	0	0	0	0	0	0	0	0	0
Cumulative Populations										
Prison			-55	-466	-466	-466	-466	-466	-466	-466
Parole			55	466	466	466	466	466	466	466
Probation										
Impact										
Prison Population			-55	-466	-466	-466	-466	-466	-466	-466
Field Population			55	466	466	466	466	466	466	466
Population Change										
P&P Officers + or -		0	0	1.0	1.0	1.0	1.0	1.0	1.0	1.0

If this impact statement has changed from statements submitted in previous years, it is because the Department of Corrections (DOC) has changed the way probation and parole daily costs are calculated to more accurately reflect the way the Division of Probation and Parole is staffed across the entire state

In December 2017, the DOC reevaluated the calculation used for computing the Probation and Parole average daily cost of supervision and revised the cost calculation to be used for 2019 fiscal notes. The new calculation estimates the increase/decrease in caseloads at each Probation and Parole district due to the proposed legislative change. For the purposes of fiscal note calculations, the DOC averaged district caseloads across the state and came up with an average caseload of 51 offender cases per officer. The new calculation assumes that an increase/decrease of 51 cases in a district would result in a change in costs/cost avoidance equal to the cost of one FTE staff person in the district. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

In instances where the proposed legislation would only affect a specific caseload, such as sex offenders, the DOC will use the average caseload figure for that specific type of offender to calculate cost increases/decreases.

The DOC cost of incarceration is \$17.224 per day or an annual cost of \$6,287 per offender. The DOC cost of probation or parole is determined by the number of P&P Officer II positions that would be needed to cover the new caseload.

ASSUMPTION (continued)

	# to/from prison	Cost per year	Total Costs of prison (includes 2% inflation per year starting in year 2)	Change in number of Probation & Parole Officers	Probation & Parole Officer Cost per Year	Grand Total Prison & Probation	# of Offenders to/from Probation & Parole
Year 1 (10 mo)	0	(\$6,287)	\$0	0	\$0	\$0	0
Year 2	0	(\$6,287)	\$0	0	\$0	\$0	0
Year 3	-55	(\$6,287)	\$359,755	0	\$0	\$359,755	55
Year 4	-466	(\$6,287)	\$3,109,066	1	(\$75,732)	\$3,033,333	466
Year 5	-466	(\$6,287)	\$3,171,247	1	(\$76,716)	\$3,094,531	466
Year 6	-466	(\$6,287)	\$3,234,672	1	(\$77,715)	\$3,156,957	466
Year 7	-466	(\$6,287)	\$3,299,365	1	(\$78,733)	\$3,220,633	466
Year 8	-466	(\$6,287)	\$3,365,353	1	(\$79,766)	\$3,285,586	466
Year 9	-466	(\$6,287)	\$3,432,660	1	(\$80,817)	\$3,351,843	466
Year 10	-466	(\$6,287)	\$3,501,313	1	(\$81,887)	\$3,419,426	466

Oversight assumes this legislation will result in a long term cost avoidance starting in FY 22 with full implementation by FY 23 of \$3,109,066, partially offset by the need for an additional Probation and Parole Officer. The ten year impact in FY 29 would be a net cost avoidance of \$3,419,426 to DOC. DOC assumed, depending on the distribution of the 466 fewer prisoners among the adult institutions, there would not be a resulting reduction in Corrections Officers FTE.

Officials at the **Office of the State Courts Administrator**, the **Office of the Attorney General**, the **Department of Social Services**, 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.

Oversight notes that the Office of the State Courts Administrator, the Office of the Attorney General, the Department of Social Services, the Office of the State Public Defender and the Office of Prosecution Services have 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 on the fiscal note.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2023)
GENERAL REVENUE FUND				
<u>Cost - DOC</u>				
Personal Service	\$0	\$0	\$0	(\$38,764)
Fringe Benefits	\$0	\$0	\$0	(\$24,806)
Expense & Equip.	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>(\$12,162)</u>
<u>Total Cost - DOC</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>(\$75,732)</u>
FTE Change - DOC	0 FTE	0 FTE	0 FTE	1 FTE
 <u>Cost Avoidance - DOC - net reduction in prison population vs. increase in probation population</u>				
	<u>\$0</u>	<u>\$0</u>	<u>\$359,755</u>	<u>\$3,109,066</u>
 ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND				
	<u>\$0</u>	<u>\$0</u>	<u>\$359,755</u>	<u>\$3,033,333</u>
 Estimated Net FTE Change for General Revenue				
	0 FTE	0 FTE	0 FTE	1 FTE
 <u>FISCAL IMPACT - Local Government</u>				
	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2023)
	<u>\$0</u>	<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 conditions under which a court may depart from the applicable minimum term of imprisonment.

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
Office of the State Courts Administrator
Office of the Attorney General
Department of Social Services
Office of the State Public Defender
Office of Prosecution Services



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January 30, 2019

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