

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3643-02
Bill No.: HB 1620
Subject: Crimes and Punishment; Criminal Procedure
Type: Original
Date: February 6, 2020

Bill Summary: This proposal modifies the offense of resisting or interfering with arrest.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
General Revenue	(Less than \$121,287)	(Less than \$152,110)	(Less than \$212,948)	(Less than \$398,182)
Total Estimated Net Effect on General Revenue	(Less than \$121,287)	(Less than \$152,110)	(Less than \$212,948)	(Less than \$398,182)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
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 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
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 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
Total Estimated Net Effect on FTE	0	0	0	0

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 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§575.150 - Resisting or interfering with arrest

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** state they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the enhanced penalties for the offense of resisting or interfering with an arrest - a new class E felony. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

In Fiscal Year 2019, SPD's Trial Division opened 1,454 cases under charge code 575.150 of the 62,002 total cases opened.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

Oversight notes over the last three fiscal years, the SPD has lapsed a total of \$153 of General Revenue appropriations (\$2 out of \$28.0 million in FY 2017; \$150 out of \$42.5 million in FY 2018; and \$1 out of \$46.0 million in FY 2019). Therefore, Oversight assumes the SPD is at maximum capacity, and the increase in workload resulting from this bill cannot be absorbed with SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, Oversight assumes the cost for a new APD could approach \$100,000 per year.

According to "The Missouri Project" (RubinBrown, June 2014), the number of hours that should be spent on a misdemeanor case is 13.3. This number takes into account time for travel and in-court appearances. In contrast, the number of hours that should be spent on a C/D/E felony case is 28.5. This equates to a difference of 15.2 additional hours spent on a felony case versus a misdemeanor case ($28.5 - 13.3 = 15.2$). **SPD** notes of the 1,454 cases, 510 individuals were misdemeanor cases. If just ten percent of the previously charged with a misdemeanor will now

ASSUMPTION (continued)

be charged with a felony, this equates to an additional 775 hours (15.2 hours x 51 cases) annually. With 2,080 work hours in a year, the SPD would need one attorney to meet the requirements of this legislation (775 / 2,080).

Oversight assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

Officials from the **Department of Corrections (DOC)** state HB 1620 modifies the offense of resisting or interfering with arrest. Section 575.150 creates a class E felony for resisting arrest by fleeing in a motor vehicle from law enforcement and increases to a D felony for subsequent convictions. It also increases the penalty for resisting arrest by fleeing in a motor vehicle from law enforcement in which the person demonstrates disregard for the safety of any person or property and it results in serious bodily injury or death to another person from a class E felony to a class D felony. This penalty increases to a C felony for subsequent offenses.

The potential impact of this bill is difficult to determine because department records do not differentiate between resisting arrest offenses that involve motor vehicles and those that do not. Therefore, DOC assumes that offenses under section 577.150 that were sentenced as class E felonies will continue to be sentenced as class E felonies unless the offender has a prior sentence under this section, in which case the sentence would be reclassified as a class D felony.

In FY 2019, there were 272 offenders sentenced to prison related to 575.150. Of those, 26 had prior sentences that were related to 575.150. Offenders serving these sentences served, on average, 2.2 years to first release. This is approximately 55% of their sentence, which is the average used in our standard response for a new violent class E felony.

The differences between the department's standard responses for a violent class E felony and violent class D felony are summarized in the table below.

	Class E	Class D	Diff
First release	2.2	3.0	0.8
Total prison	2.8	3.9	1.1
Total Parole	1.2	1.8	0.6
Total Sentence	4.0	5.7	1.7

As shown in the table, the reclassification will establish a sentence that is 1.7 years longer. On average, an offender serving a prison term for a violent class D felony serves 3 years to first release, or 0.8 years more than offenders with a violent class E felony. Given our assumption of

ASSUMPTION (continued)

33% of the remaining sentence due to returns from parole for violations, offenders with a violent class D felony will serve, on average, an additional 0.9 years in prison, or 0.3 years more than for a violent class E felony. This equates to a total of 1.1 more years in prison for a violent class D felony than a violent class E felony. Offenders with a violent class D felony are estimated to serve 1.8 years of their sentence under parole supervision, which is 0.6 years longer than for a violent class E felony.

From FY 2021 to FY 2024, the total population number stays the same, but offenders who would have been released to parole will remain in prison longer, lowering the parole population temporarily. In FY 2025, the total population is expected to increase. By FY 2026, there will be an additional 29 offenders in prison and 16 offenders under field supervision.

Impact of reclassifying class E felony sentences to class D felony offenses for repeat offenders

	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030
New Admissions										
Current Law	26	26	26	26	26	26	26	26	26	26
After Legislation	26	26	26	26	26	26	26	26	26	26
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			5	29	29	29	29	29	29	29
Parole			-5	-29	-3	16	16	16	16	16
Probation										
Impact										
Prison Population			5	29	29	29	29	29	29	29
Field Population			-5	-29	-3	16	16	16	16	16
Population Change					26	44	44	44	44	44

Although the bill also introduces the potential for a class C felony for repeated aggravated resisting arrest, the impact of creating the aggravated resisting arrest offense as a first offense is what is taken into account in this response. This is done by using the department's standard response to the creation of a new violent class D felony offense.

For each new violent class D felony, the department estimates four people will be sentenced to prison and four to probation. The average sentence for a violent class D felony offense is 5.7 years, of which 4 years will be served in prison with 3 years to first release. The remaining 1.7 years will be on parole. Probation sentences will be 4 years.

ASSUMPTION (continued)

Change in prison admissions and probation openings with legislation

	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030
New Admissions										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	4	4	4	4	4	4	4	4	4	4
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	4	4	4	4	4	4	4	4	4	4
Change (After Legislation - Current Law)										
Admissions	4	4	4	4	4	4	4	4	4	4
Probations	4	4	4	4	4	4	4	4	4	4
Cumulative Populations										
Prison	4	8	12	16	16	16	16	16	16	16
Parole				0	4	7	7	7	7	7
Probation	4	8	12	16	16	16	16	16	16	16
Impact										
Prison Population	4	8	12	16	16	16	16	16	16	16
Field Population	4	8	12	16	20	23	23	23	23	23
Population Change	8	16	24	32	36	39	39	39	39	39

The estimated combined cumulative impact of this bill is an additional 44 offenders in prison and (12) offenders under field supervision by FY 2024.

Change in prison admissions and probation openings with legislation

	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030
New Admissions										
Current Law	26	26	26	26	26	26	26	26	26	26
After Legislation	30	30	30	30	30	30	30	30	30	30
Probation	0	0	0	0	0	0	0	0	0	0
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	4	4	4	4	4	4	4	4	4	4
Change (After Legislation - Current Law)										
Admissions	4	4	4	4	4	4	4	4	4	4
Probations	4	4	4	4	4	4	4	4	4	4
Cumulative Populations										
Prison	4	8	17	44	44	44	44	44	44	44
Parole	0	0	-5	-28	2	23	23	23	23	23
Probation	4	8	12	16	16	16	16	16	16	16
Impact										
Prison Population	4	8	17	44	44	44	44	44	44	44
Field Population	4	8	7	-12	18	39	39	39	39	39
Population Change	8	16	24	32	62	83	83	83	83	83

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 a 2% inflation)
Year 1	4	(\$6,386)	(\$21,287)	4	absorbed	\$0	(\$21,287)
Year 2	8	(\$6,386)	(\$52,110)	8	absorbed	\$0	(\$52,110)
Year 3	17	(\$6,386)	(\$112,948)	7	absorbed	\$0	(\$112,948)
Year 4	44	(\$6,386)	(\$298,182)	(12)	absorbed	\$0	(\$298,182)
Year 5	44	(\$6,386)	(\$304,146)	18	absorbed	\$0	(\$304,146)
Year 6	44	(\$6,386)	(\$310,229)	39	absorbed	\$0	(\$310,229)
Year 7	44	(\$6,386)	(\$316,434)	39	absorbed	\$0	(\$316,434)
Year 8	44	(\$6,386)	(\$322,762)	39	absorbed	\$0	(\$322,762)
Year 9	44	(\$6,386)	(\$329,218)	39	absorbed	\$0	(\$329,218)
Year 10	44	(\$6,386)	(\$335,802)	39	absorbed	\$0	(\$335,802)

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 2019, 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 2020 fiscal notes. 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 would result in a change in costs/cost avoidance equal to the cost of one FTE staff person. 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. For instances where the proposed legislation affects a less specific caseload, DOC projects the impact based on prior year(s) actual data for DOC's 44 probation and parole districts.

The DOC cost of incarceration is \$17.496 per day or an annual cost of \$6,386 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)

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

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS.

Oversight notes the **Department of Revenue**, the **Department of Public Safety - Missouri State Highway Patrol**, the **Office of State Courts Administrator** have each 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.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023	Fully Implemented (FY 2024)
GENERAL REVENUE FUND				
<u>Costs - SPD</u> (§575.150) Salaries, fringe benefits, and equipment and expense				
	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<u>Costs - DOC</u> (§575.150) Increased incarceration costs				
	<u>(\$21,287)</u>	<u>(\$52,110)</u>	<u>(\$112,948)</u>	<u>(\$298,182)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND				
	<u>(Less than \$121,287)</u>	<u>(Less than \$152,110)</u>	<u>(Less than \$212,948)</u>	<u>(Less than \$398,182)</u>
 <u>FISCAL IMPACT -</u> <u>Local Government</u>				
	FY 2021 (10 Mo.)	FY 2022	FY 2023	Fully Implemented (FY 2024)
	<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

This bill specifies that a person commits the offense of resisting arrest by fleeing in a motor vehicle if he or she resists an arrest, stop or detention by fleeing from law enforcement in a motor vehicle and, during the course of fleeing, drives at a speed in a manner that demonstrates a disregard for the safety of a person or property, including that of the pursuing officer or other occupants of the fleeing vehicle. The offense of resisting arrest by fleeing in a motor vehicle is a class E felony. For a second or subsequent conviction, it is a class D felony.

If, during the commission of resisting arrest by fleeing in a motor vehicle, serious bodily injury or death to another person, including any officer, results, the person is guilty of the offense of aggravated resisting arrest by fleeing in a motor vehicle, which is a class D felony. For a second or subsequent conviction, it is a class C felony.

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 Revenue
Department of Public Safety - Missouri State Highway Patrol
Missouri Office of Prosecution Services
Office of State Courts Administrator
State Public Defender's Office



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February 6, 2020



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