

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4885-05
Bill No.: HCS for HB 2374
Subject: Crimes and Punishment; General Assembly
Type: Original
Date: February 26, 2020

Bill Summary: This proposal creates criminal penalties for certain offenses committed against a body of the General Assembly.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	\$0 or up to (\$47,895)	\$0 or up to (\$117,247)	\$0 or up to (\$229,327)
Total Estimated Net Effect on General Revenue	\$0 or up to (\$47,895)	\$0 or up to (\$117,247)	\$0 or up to (\$229,327)

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

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	0 FTE	0 FTE	0 or 1 FTE
Total Estimated Net Effect on FTE	0 FTE	0 FTE	0 or 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 2021	FY 2022	FY 2023
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§21.403, 21.405, 575.040, 575.050, 575.160, 575.270, 575.280, 575.330, and 576.030 -
 Offenses committed against a body of the General Assembly

Officials from the **Department of Corrections (DOC)** state this proposal creates two D felonies and three E felonies for certain offenses committed against a body of the General Assembly.

For the new nonviolent class D felonies created in sections 575.040 and 575.280, the department estimates 6 people will be sentenced to prison and 10 to probation. The average sentence for a nonviolent class D felony offense is 5 years, of which 2.8 years will be served in prison with 1.7 years to first release. The remaining 2.2 years will be on parole. Probation sentences will be 3 years.

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	6	6	6	6	6	6	6	6	6	6
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	10	10	10	10	10	10	10	10	10	10
Change (After Legislation - Current Law)										
Admissions	6	6	6	6	6	6	6	6	6	6
Probations	10	10	10	10	10	10	10	10	10	10
Cumulative Populations										
Prison	6	12	17	17	17	17	17	17	17	17
Parole			1	7	13	13	13	13	13	13
Probation	10	20	30	30	30	30	30	30	30	30
Impact										
Prison Population	6	12	17	17	17	17	17	17	17	17
Field Population	10	20	31	37	43	43	43	43	43	43
Population Change	16	32	48	54	60	60	60	60	60	60

For the new nonviolent class E felonies created in sections 575.050, 575.330, and 576.030, the Department estimates three people will be sentenced to prison and six to probation. The average sentence for a nonviolent class E felony offense is 3.4 years of which, 2.1 years will be served in prison with 1.4 years to first release. The remaining 1.3 years will be on parole. Probation sentences will be 3 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	3	3	3	3	3	3	3	3	3	3
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	6	6	6	6	6	6	6	6	6	6
Change (After Legislation - Current Law)										
Admissions	3	3	3	3	3	3	3	3	3	3
Probations	6	6	6	6	6	6	6	6	6	6
Cumulative Populations										
Prison	3	6	6	6	6	6	6	6	6	6
Parole			3	4	4	4	4	4	4	4
Probation	6	12	18	18	18	18	18	18	18	18
Impact										
Prison Population	3	6	6	6	6	6	6	6	6	6
Field Population	6	12	21	22	22	22	22	22	22	22
Population Change	9	18	27	28	28	28	28	28	28	28

The combined cumulative impact on the department is estimated to be 23 additional offenders in prison and 52 on field supervision by FY23; however, due to the narrow scope of the new crimes, the department believes the impact may not be that high, and could be as low as zero.

	# to prison	Cost per year	Total Costs for prison	Change in probation & parole officers	Total cost for probation and parole	# to Probation and Parole	Grand Total - Prison and Probation (includes a 2% inflation)
Year 1	9	(\$6,386)	(\$47,895)	0	\$0	16	(\$47,895)
Year 2	18	(\$6,386)	(\$117,247)	0	\$0	32	(\$117,247)
Year 3	23	(\$6,386)	(\$152,812)	1	(\$76,515)	52	(\$229,327)
Year 4	23	(\$6,386)	(\$155,868)	1	(\$68,824)	59	(\$224,692)
Year 5	23	(\$6,386)	(\$158,985)	1	(\$69,567)	65	(\$228,553)
Year 6	23	(\$6,386)	(\$162,165)	1	(\$70,320)	65	(\$232,485)
Year 7	23	(\$6,386)	(\$165,408)	1	(\$71,083)	65	(\$236,492)
Year 8	23	(\$6,386)	(\$168,717)	1	(\$71,854)	65	(\$240,571)
Year 9	23	(\$6,386)	(\$172,091)	1	(\$72,635)	65	(\$244,726)
Year 10	23	(\$6,386)	(\$175,533)	1	(\$73,425)	65	(\$248,958)

ASSUMPTION (continued)

If this impact statement has changed from statements submitted in previous years, it is because the 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.

Oversight does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC's 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. The creation of a new crime creates additional responsibilities for county prosecutors which may, in turn, result in additional costs, which are difficult to determine.

Oversight notes the **Attorney General's Office**, the **Department of Public Safety - Missouri State Highway Patrol**, the **Missouri House of Representatives**, the **Department of Transportation**, the **Office of State Courts Administrator**, and the **Missouri Senate** have each stated the proposal would not have a direct fiscal impact on their respective organizations.

In response to a previous version, officials from the **State Public Defender's Office** stated the proposal would not have a direct fiscal impact on their organization.

ASSUMPTION (continued)

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 - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
GENERAL REVENUE			
<u>Cost - DOC - Change in P&P Officers</u>			\$0 or up to...
Personal Services	\$0	\$0	(\$39,532)
Fringe Benefits	\$0	\$0	(\$24,911)
Expense and Equipment	\$0	\$0	(\$12,072)
<u>Total Cost - DOC</u>	<u>\$0</u>	<u>\$0</u>	<u>(\$76,515)</u>
FTE Change - DOC	0 FTE	0 FTE	1 FTE
 <u>Cost - DOC (§§575.040, 575.270 and 575.280) Increased incarceration costs</u>	 <u>\$0 or up to (\$47,895)</u>	 <u>\$0 or up to (\$117,247)</u>	 <u>\$0 or up to (\$152,812)</u>
 ESTIMATED NET EFFECT ON GENERAL REVENUE	 <u>\$0 or up to (\$47,895)</u>	 <u>\$0 or up to (\$117,247)</u>	 <u>\$0 or up to (\$229,327)</u>
 Estimated Net FTE Change for the General Revenue Fund	 0 FTE	 0 FTE	 0 or 1 FTE
 <u>FISCAL IMPACT - Local Government</u>	 FY 2021 (10 Mo.)	 FY 2022	 FY 2023
	 <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, when a person is subpoenaed to testify or provide information at a proceeding before a body of the General Assembly, the president pro tempore or speaker of the originating body may request the court to issue an order requiring the person to testify or provide information, and if the court finds that such request has been approved by an affirmative vote of a three-fifths majority of the members of such body of the general assembly, the court shall issue an order requiring such individual to give such testimony or provide other information requested or subpoenaed by such body of the general assembly. If after being provided written notice that an order has been issued, the witness shall not refuse to comply with the order on the basis of his or her privilege against self-incrimination. However, no testimony or information compelled under the order may be used against the witness in any criminal proceeding other than perjury, giving a false statement, or otherwise failing to comply with the order.

If a witness summoned by a body of the General Assembly willfully fails to appear, refuses to answer any pertinent questions, or fails to produce required documents, a statement of facts regarding such failure may be reported to and filed with the President Pro Tem of the Senate or the Speaker of the House. Either the President Pro Tem or the Speaker may certify the statement of facts to the prosecuting or circuit attorney having jurisdiction. The Attorney General will have concurrent original jurisdiction to commence a criminal action throughout the state. If the Attorney General and the prosecuting or circuit attorney refuse to prosecute, the court must appoint independent counsel upon the request of the President Pro Tem or the Speaker.

The bill also specifies that:

- (1) The offense of perjury is a class D felony if it is committed in any proceeding before a body of the General Assembly;
- (2) The offense of making a false affidavit is a class A misdemeanor when it is done in any proceeding before a body of the General Assembly;
- (3) The offense of tampering with a witness or victim is a class A misdemeanor, unless the original charge is a felony in which case tampering with a witness or victim is a class D felony;
- (4) The offense of tampering with a witness subpoenaed in a proceeding before a body of the General Assembly is a class E felony;
- (5) The offense of contempt of a body of the of the General Assembly after an order has been issued under section 21.403 is a class E felony;

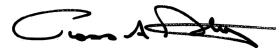
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office
Department of Corrections
Department of Public Safety - Missouri State Highway Patrol
Missouri House of Representatives
Department of Transportation
Missouri Office of Prosecution Services
Office of State Courts Administrator
Missouri Senate
State Public Defender's Office



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February 26, 2020



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