

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3178-08
Bill No.: Perfected SS for SB 600
Subject: Crimes and Punishment
Type: Original
Date: February 12, 2020

Bill Summary: This proposal requires a term of imprisonment and prohibits the imposition of certain other punishments for second degree murder and certain dangerous felonies.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2038)*
General Revenue	(Could exceed \$587,273)	(Could exceed \$1,226,715)	(Could exceed \$1,785,973)	(Significant Fiscal Impact)*
Total Estimated Net Effect on General Revenue*	(Could exceed \$587,273)	(Could exceed \$1,226,715)	(Could exceed \$1,785,973)	(Significant Fiscal Impact)*

* DOC anticipated a significant fiscal impact (potential increase in prison population of over 3,200 prisoners for the changes in the several bills that make up the Senate Substitute) by FY 2038. **At today's cost, housing these additional prisoners could exceed \$20.4 million per year.** However, Oversight assumes there could be some overlap (double-counting) of additional prisoners between the several provisions in the bill.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2038)
Total Estimated Net Effect on Other State Funds	\$0	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 21 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2038)
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 2038)
General Revenue	-1 FTE	-3 FTE	-5 FTE	-5 FTE
Total Estimated Net Effect on FTE	-1 FTE	-3 FTE	-5 FTE	-5 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	Fully Implemented (FY 2038)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Due to time constraints, **Oversight** was unable to receive agency responses in a timely manner and performed limited analysis. Oversight has presented this fiscal note on the best current information that we have or on information regarding a similar bill(s). Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

§§545.140, 557.021, 562.014, 578.419, 578.421, 578.423, and 578.425 - Criminal offenses with multiple bad actors

In response to a similar proposal (SCS for SB 602), officials from the **Office of State Public Defender (SPD)** stated they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the proposed new crime of conspiracy to commit an offense, a new class C felony. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

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.

ASSUMPTION (continued)

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 (More than \$100,000) per year to the General Revenue Fund.

In response to a similar proposal (SCS for SB 602), officials from the **Office of Attorney General (AGO)** assumed any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the AGO for fiscal note purposes.

In response to a similar proposal (SCS for SB 602), **Oversight** noted the **Department of Corrections (DOC)** has stated the proposal would not have a direct fiscal impact on their organization. The changes will result in longer prison sentences; however, due to limited available data, the DOC estimates no fiscal impact. In FY 2019, no one was charged under §578.423 and §578.425 for gang-related activities.

Oversight does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC's no impact for fiscal note purposes.

In response to a similar proposal (SCS for SB 602), officials from the **Missouri Office of Prosecution Services (MOPS)** assumed the proposal will have no measurable fiscal impact on MOPS.

In response to a similar proposal (SCS for SB 602), **Oversight** noted the **Department of Public Safety - Missouri State Highway Patrol**, and the **Office of State Courts Administrator** have each stated the proposal would not have a direct fiscal impact on their respective organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, the City of St. Louis, St. Louis County, Jackson County, and county prosecutors and were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

ASSUMPTION (continued)

§§556.061 and 570.027 - Vehicle hijacking

In response to a similar proposal (HB 1873), officials from the **Department of Corrections (DOC)** stated this bill creates the offense of vehicle hijacking and makes it an offense punishable as a class B felony, or as a class A felony given certain conditions.

The DOC has no prior data relating to these charges; therefore, the department estimates an impact comparable to the creation of a new class B felony.

For each new class B felony, the DOC estimates three people will be sentenced to prison and four to probation. The average sentence for a class B felony offense is 8.7 years, of which 5.1 years will be served in prison with 3.4 years to first release. The remaining 3.6 years will be on parole. Probation sentences will be 3 years.

The cumulative impact on the department is estimated to be 15 additional offenders in prison and 12 on field supervision by FY 2025.

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	4	4	4	4	4	4	4	4	4	4
Change (After Legislation - Current Law)										
Admissions	3	3	3	3	3	3	3	3	3	3
Probations	4	4	4	4	4	4	4	4	4	4
Cumulative Populations										
Prison	3	6	9	12	15	15	15	15	15	15
Parole						3	6	9	11	11
Probation	4	8	12	12	12	12	12	12	12	12
Impact										
Prison Population	3	6	9	12	15	15	15	15	15	15
Field Population	4	8	12	12	12	15	18	21	23	23
Population Change	7	14	21	24	27	30	33	36	38	38

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	3	(\$6,386)	(\$15,965)	4	absorbed	\$0	(\$15,965)
Year 2	6	(\$6,386)	(\$39,082)	8	absorbed	\$0	(\$39,082)
Year 3	9	(\$6,386)	(\$59,796)	12	absorbed	\$0	(\$59,796)
Year 4	12	(\$6,386)	(\$81,322)	12	absorbed	\$0	(\$81,322)
Year 5	15	(\$6,386)	(\$103,686)	12	absorbed	\$0	(\$103,686)
Year 6	15	(\$6,386)	(\$105,760)	15	absorbed	\$0	(\$105,760)
Year 7	15	(\$6,386)	(\$107,875)	18	absorbed	\$0	(\$107,875)
Year 8	15	(\$6,386)	(\$110,033)	21	absorbed	\$0	(\$110,033)
Year 9	15	(\$6,386)	(\$112,233)	23	absorbed	\$0	(\$112,233)
Year 10	15	(\$6,386)	(\$114,478)	23	absorbed	\$0	(\$114,478)

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.

ASSUMPTION (continued)

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.

In response to a similar proposal (HB 1873), officials from the **Office of State Public Defender (SPD)** stated they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the proposed new crime of vehicle-hijacking, a new class B felony. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

As this is a newly defined crime, SPD does not have any statistics relating to the number of possible cases.

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.

ASSUMPTION (continued)

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 (More than \$100,000) per year to the General Revenue Fund. Oversight also notes since this is a new crime, the SPD may need additional staff to provide representation for indigent persons charged with this proposed new crime and assumes if additional FTE are required in the future, the SPD will request additional funding through the appropriations process.

In response to a similar proposal (HB 1873), officials from the **Missouri Office of Prosecution Services (MOPS)** assumed the proposal will have no measurable fiscal impact on MOPS and no measurable fiscal impact to prosecutors (since the proposed crimes have similar elements to the existing crimes of robbery in the first degree and robbery in the second degree).

In response to a similar proposal (HB 1873), **Oversight** noted the **Department of Public Safety - Missouri State Highway Patrol**, the **Department of Social Services**, the **Office of State Courts Administrator**, the **St. Louis County Police Department**, the **Springfield Police Department**, and the **St. Louis County Department of Justice Services** have each stated the proposal would not have a direct fiscal impact on their respective organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other police and sheriff's departments were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

§557.045 - Term of imprisonment

In response to a similar proposal (SB 600), officials from the **Department of Corrections (DOC)** stated SB 600 amends chapter 557, RSMo, by adding section 557.045 which prohibits the eligibility of probation, suspended imposition (SIS) or execution of sentence (SES), or conditional release (CR) for second-degree murder and certain dangerous felonies. Section 557.045 states that no person, found guilty of, or pleading guilty to, second degree murder, any dangerous felony where the person has been previously found guilty of a class A or B felony or a dangerous felony, or any dangerous felony where the commission of the felony involves the use of a deadly weapon shall be eligible for probation, suspended imposition or execution of sentence, or conditional release, and shall be sentenced to a term of imprisonment pursuant to subdivision (1) of subsection 2 of section 557.011.

ASSUMPTION (continued)

Murder 2nd Degree

In FY 2019, there were 110 new admissions for 2nd degree murder under class A felony, with an average sentence of 21.8 years and 17.6 years as a time for first release. There were four new probations with an average term of 4.5 years. After changes in this bill, no offenders convicted of second degree murder will be sentenced to probation or receive SIS, SES, or CR, and all offenders will serve their full sentence prior to release from prison. The cumulative impact over the 10-year scope of these changes could be 40 new admissions to prison and 18 fewer field supervision cases in FY 2030. The impact of this bill continues beyond this 10-year period, and should level off in FY 2042 with 76 new prison admissions and 7 fewer field supervision cases.

Change in prison admissions and probation openings with legislation

	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030
New Admissions										
Current Law	110	110	110	110	110	110	110	110	110	110
After Legislation	114	114	114	114	114	114	114	114	114	114
Probation										
Current Law	4	4	4	4	4	4	4	4	4	4
After Legislation	0	0	0	0	0	0	0	0	0	0
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	20	24	28	32	36	40
Parole										
Probation	-4	-8	-12	-16	-18	-18	-18	-18	-18	-18
Impact										
Prison Population	4	8	12	16	20	24	28	32	36	40
Field Population	-4	-8	-12	-16	-18	-18	-18	-18	-18	-18
Population Change					2	6	10	14	18	22

Dangerous Felony and Armed Criminal Action (ACA)

In FY 2019, there were 478 new admissions to prison associated with a dangerous felony sentence, with an average sentence of 14.0 years. Offenders with dangerous felony sentences who were released from prison for the first time in FY 2019 served, on average, 82% of their sentence prior to first release. As per this legislation, the prison term will be 100% of the length of the sentence for those offenders who have prior dangerous felony convictions.

Out of the 478 new prison admissions in FY2019:

- 50 had both an armed criminal action charge associated with their FY 2019 admission to prison and a prior conviction for either a dangerous felony or a class A or class B felony,

ASSUMPTION (continued)

- 46 had a prior conviction for either a dangerous felony or a class A or class B felony and did not have an armed criminal action charge associated with their FY 2019 admission to prison, and
- 292 had an armed criminal action charge associated with their FY 2019 admission to prison and no prior conviction for either a dangerous felony or a class A or class B felony.

This legislation proposes that these 388 offenders will serve their entire sentence in prison. Therefore, DOC estimates that they will serve 14.0 years in prison instead of the 82% average to first release. Because of long-term sentence, the impact will not be observable within the 10-year scope of this note; however, DOC estimates that by the year 2034, there will be an addition of 660 new offenders in prison with an equivalent number of reductions in field population.

In FY 2019, there were 191 new court probations for dangerous felonies and ACA convictions, with an average sentence of 8.1 years. As per the proposed legislation, offenders with a prior conviction for either a dangerous felony or a class A or class B felony, or offenders with an armed criminal action charge associated with their FY 2019 probation case, will no longer be eligible for probation and their prison term will be 100% of the length of their sentence.

Out of the 191 new probation cases in FY 2019:

- 8 had both an armed criminal action charge associated with their FY 2019 probation sentences, and a prior conviction for either a dangerous felony or a class A or class B felony,
- 85 had a prior conviction for either a dangerous felony or a class A or class B felony and did not have an armed criminal action charge associated with their FY 2019 probation sentences.
- 1 had an armed criminal action charge associated with their FY 2019 probation sentence, and no prior conviction for either a dangerous felony or a class A or class B felony.

As per the proposed changes, these 94 offenders will be sentenced to prison rather than probation and serve sentences of 8.1 years. The cumulative impact of these changes could be 761 new admissions to prison and 282 fewer field supervisions cases in FY 2029.

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	94	94	94	94	94	94	94	94	94	94
Probation										
Current Law	191	191	191	191	191	191	191	191	191	191
After Legislation	97	97	97	97	97	97	97	97	97	97
Change (After Legislation - Current Law)										
Admissions	94	94	94	94	94	94	94	94	94	94
Probations	-94	-94	-94	-94	-94	-94	-94	-94	-94	-94
Cumulative Populations										
Prison	94	188	282	376	470	564	658	752	761	761
Parole										
Probation	-94	-188	-282	-282	-282	-282	-282	-282	-282	-282
Impact										
Prison Population	94	188	282	376	470	564	658	752	761	761
Field Population	-94	-188	-282	-282	-282	-282	-282	-282	-282	-282
Population Change				94	188	282	376	470	479	479

Combined Impact

The combined impact of proposed changes could be an additional 801 offenders in prison and 300 fewer offenders under supervision in the field by FY 2030. It should be noted that the estimated impact of this bill is nearly double what is presented here when projected over a period of more than ten years.

Change in prison admissions and probation openings with legislation

	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030
New Admissions										
Current Law	498	498	498	498	498	498	498	498	498	498
After Legislation	596	596	596	596	596	596	596	596	596	596
Probation	0	0	0	0	0	0	0	0	0	0
Current Law	195	195	195	195	195	195	195	195	195	195
After Legislation	97	97	97	97	97	97	97	97	97	97
Change (After Legislation - Current Law)										
Admissions	98	98	98	98	98	98	98	98	98	98
Probations	-98	-98	-98	-98	-98	-98	-98	-98	-98	-98
Cumulative Populations										
Prison	98	196	294	392	490	588	686	784	797	801
Parole	0	0	0	0	0	0	0	0	0	0
Probation	-98	-196	-294	-298	-300	-300	-300	-300	-300	-300
Impact										
Prison Population	98	196	294	392	490	588	686	784	797	801
Field Population	-98	-196	-294	-298	-300	-300	-300	-300	-300	-300
Population Change	0	0	0	94	190	288	386	484	497	501

ASSUMPTION (continued)

	# to prison	Cost per year	Total Costs for prison	Change in probation & parole officers	Total savings for probation and parole	# to Probation and Parole	Grand Total - Prison and Probation (includes a 2% inflation)
Year 1	98	(\$6,386)	(\$521,523)	(1)	\$55,537	(98)	(\$465,986)
Year 2	196	(\$6,386)	(\$1,276,689)	(3)	\$202,083	(196)	(\$1,074,606)
Year 3	294	(\$6,386)	(\$1,953,334)	(5)	\$340,445	(294)	(\$1,612,890)
Year 4	392	(\$6,386)	(\$2,656,535)	(5)	\$344,120	(298)	(\$2,312,414)
Year 5	490	(\$6,386)	(\$3,387,082)	(5)	\$347,839	(300)	(\$3,039,242)
Year 6	588	(\$6,386)	(\$4,145,788)	(5)	\$351,603	(300)	(\$3,794,185)
Year 7	686	(\$6,386)	(\$4,933,488)	(5)	\$355,419	(300)	(\$4,578,069)
Year 8	784	(\$6,386)	(\$5,751,037)	(5)	\$359,272	(300)	(\$5,391,765)
Year 9	797	(\$6,386)	(\$5,963,327)	(5)	\$363,178	(300)	(\$5,600,149)
Year 10	801	(\$6,386)	(\$6,113,121)	(5)	\$367,122	(300)	(\$5,745,998)

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

In response to a previous version, officials from the **Missouri Office of Prosecution Services (MOPS)** assumed the proposal will have no measurable fiscal impact on MOPS.

In response to a previous version, Oversight noted the **Attorney General's Office**, the **Department of Public Safety - Missouri State Highway Patrol**, the **Office of State Courts Administrator**, and the **State Public Defender's Office** have each stated the proposal would not have a direct fiscal impact on their respective organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

§571.015 - Increase in penalty for armed criminal action offense

In response to a similar proposal (SCS for SB Nos. 538, 562, & 601), officials from the **Department of Corrections (DOC)** stated this legislation does not create any new criminal offenses, it increases criminal penalties for existing offenses. Because of this fact there is no projected fiscal impact within the ten-year timeframe for fiscal note responses.

ASSUMPTION (continued)

However, the department does anticipate significant fiscal impact past the ten-year reporting timeframe.

In response to a similar proposal (SB 601), DOC stated the bill increases imprisonment terms for offenders with Armed Criminal Action (ACA) crimes and eliminates the eligibility for probation, parole, CR, SIS, or SES and requires sentences for ACA to be served consecutively. As this bill does not introduce new actions eligible for charges, it is not likely to have an impact on the number of offenders under the purview of the Department. However, offenders convicted of ACA will have longer sentences and longer stays in prison.

In FY 2019, 497 offenders were admitted to prison on at least one ACA sentence. Of these prison admissions, 197 were new court commitments, 227 were court commitments on an additional sentence an offender received while under supervision in the field, and 72 were parole returns to prison.

For further estimating the potential impact of the proposed legislation, this analysis focuses on the 424 offenders admitted to prison for new sentences in FY 2019. The average length of their longest admitting sentence was 15.6 years. By adding the sentence lengths for ACA sentences consecutive to the offenders longest sentence, we estimate the proposed legislation would increase the average sentence length for these offenders to 23.8 years.

In FY 2019, 446 offenders who were admitted to prison on at least one ACA sentence were first released from prison. Their average length of stay to first release was 9.6 years, which was approximately 61.5% of their longest admitting sentence. When we apply this same percent of sentence as time served to first release to the new average sentence length of 23.8 years, we expect offenders with ACA sentences to serve, on average, approximately 14.6 years to first release.

Given the relatively long lengths of sentences and prison stays for these offenders, and the discretion of the courts in determining the length of these sentences, the exact impact on department operations is difficult to determine. The analysis takes into account all sentences of offenders admitted to and released from prison during FY2019, applies the condition that all ACA sentences be served consecutively, and uses the new minimum years for first time and prior ACA offenses to estimate the operational impact of serving ACA sentences that were being served concurrently as consecutive sentences. The estimated impact does not begin to appear until FY 2032 and is not expected to reach maximum cumulative impact until FY 2044, when there could be 2544 more offenders in prison and 933 more offenders under parole supervision.

ASSUMPTION (continued)

Change in prison admissions and probation openings with legislation

	FY2036	FY2037	FY2038	FY2039	FY2040	FY2041	FY2042	FY2043	FY2044	FY 2045
New Admissions										
Current Law	424	424	424	424	424	424	424	424	424	424
After Legislation	424	424	424	424	424	424	424	424	424	424
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	1866	2290	2544	2544	2544	2544	2544	2544	2544	2544
Parole	-1696	-1696	-1526	-1102	-678	-254	170	594	933	933
Probation	0	0	0	0	0	0	0	0	0	0
Impact										
Prison Population	1866	2290	2544	2544	2544	2544	2544	2544	2544	2544
Field Population	-1696	-1696	-1526	-1102	-678	-254	170	594	933	933
Population Change	170	594	1018	1442	1866	2290	2714	3138	3477	3477

Oversight notes the estimated increase in prison population (an additional 2,544 prisoners) resulting from changes to §571.015 would not be fully realized until FY 2038 (18 years in the future).

DOC was reluctant to provide fiscal estimates for these potential additional prisoners since it is so distant in the future. Therefore, Oversight will note the impact as “significant”.

§571.070 - Enhances penalty for unlawful possession of a firearm

In response to a similar proposal (SCS for SB Nos. 538, 562, & 601), officials from the DOC stated this bill enhances the felony class of unlawful possession of a firearm from a class D felony to a class C felony when an offender has been convicted of a dangerous felony.

In FY 2019, there were 85 new admissions under section 571.070 for a class D felony, with an average sentence of 5.0 years, and 2.1 years until the first release. There were 246 sentences to either probation or 120 days, with an average term of 4.4 years.

Out of these offenders, nine were also convicted of dangerous felony or armed criminal action, and zero convicted of drug trafficking. All of these offenses are either a class A, B or U felony

ASSUMPTION (continued)

charges, higher than a class C felony. Thus, these offenders are already serving longer sentences than that for a class C felony. Changing a class D to a class C felony will result in a longer stay, only if these sentences are consecutive instead of concurrent, which is not the case and is not addressed in this bill.

Nevertheless, assuming a consecutive sentence of class C felony for unlawful firearm possession, these nine offenders will now be charged under class C felony. The average sentence for a new class C felony is 6.9 years, of which 3.7 years will be served in prison with 2.1 years to first release. The remaining 3.2 years will be on parole. Probation sentences will be 3 years.

The cumulative impact, assuming nine new admissions and no new probations, will be five new prison admissions and a loss of five field supervisions by FY 2024.

	# 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	1	(\$6,386)	(\$5,322)	2	absorbed	\$0	(\$5,322)
Year 2	2	(\$6,386)	(\$13,027)	4	absorbed	\$0	(\$13,027)
Year 3	2	(\$6,386)	(\$13,288)	7	absorbed	\$0	(\$13,288)
Year 4	7	(\$6,386)	(\$47,438)	2	absorbed	\$0	(\$47,438)
Year 5	7	(\$6,386)	(\$48,387)	2	absorbed	\$0	(\$48,387)
Year 6	7	(\$6,386)	(\$49,355)	12	absorbed	\$0	(\$49,355)
Year 7	7	(\$6,386)	(\$50,342)	15	absorbed	\$0	(\$50,342)
Year 8	7	(\$6,386)	(\$51,349)	15	absorbed	\$0	(\$51,349)
Year 9	7	(\$6,386)	(\$52,376)	15	absorbed	\$0	(\$52,376)
Year 10	7	(\$6,386)	(\$53,423)	15	absorbed	\$0	(\$53,423)

Oversight contacted the DOC regarding the meaning of a U felony. According to the DOC, under a U felony, the convicted person will be punished according to the specific statute which makes the crime against the law. Those unclassified felonies can receive a penalty outside the definition of a class A, B, C, D, or E felony.

ASSUMPTION (continued)

In response to a similar proposal (SB 601), officials from the **State Public Defender's Office (SPD)** stated this proposed legislation escalates the penalties for Unlawful Possession of a Firearm to a C felony if the charged has been convicted of a dangerous felony, armed criminal action, or trafficking drugs. However, in regard to representation by the State Public Defender's Office, the attorney hours required for a C felony and a D felony are the same.

In Fiscal Year 2019, SPD's Trial Division opened 185 new cases with the following charges:

571.015 - Armed Criminal Action	174
571.060 - Unlawful Transfer of Weapons	1
571.070 - Possess/Conc. Firearm FC	<u>10</u>
Total	185

Oversight notes due to the numerous provisions in the bill that could impact the Office of the State Public Defender, Oversight will reflect a potential cost of (More than \$100,000).

In response to a previous version, officials from the **Missouri Office of Prosecution Services (MOPS)** assumed the proposal will have no measurable fiscal impact on MOPS.

In response to a similar proposal (SB 601), **Oversight** noted the **Department of Natural Resources**, the **Department of Public Safety - Missouri State Highway Patrol** and **Missouri National Guard**, the **Department of Social Services**, the **Missouri Department of Conservation** and the **Office of State Courts Administrator** have each stated the proposal would not have a direct fiscal impact on their respective 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 2038)
GENERAL REVENUE FUND				
<u>Cost - DOC p. 5</u> (§§556.061 and 570.027)	(\$15,965 to Unknown)	(\$39,082 to Unknown)	(\$59,796 to Unknown)	(Could exceed \$59,796 to Unknown)
<u>Cost - SPD p. 3 & 7</u> (§§556.061, 562.014, and 570.027) Salaries, fringe benefits, and equipment and expense	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)
<u>Savings - DOC - p. 8</u> fewer P&P Officers (§557.045)				Could exceed...
Personal Service	\$32,294	\$117,420	\$197,660	\$197,660
Fringe Benefits	\$20,350	\$73,992	\$124,555	\$124,555
Expense and Equipment	<u>\$2,893</u>	<u>\$10,671</u>	<u>\$18,230</u>	<u>\$18,230</u>
<u>Total Savings - DOC</u>	<u>\$55,537</u>	<u>\$202,083</u>	<u>\$340,445</u>	<u>\$340,445</u>
FTE Change - DOC	-1 FTE	-3 FTE	-5 FTE	-5 FTE
<u>Costs - DOC p. 8</u> (§557.045) Increased incarceration costs	(\$521,523)	(\$1,276,689)	(\$1,953,334)	(Could exceed \$1,953,334)
<u>Costs - DOC p. 14</u> (§571.070) Increased incarceration costs	<u>(\$5,322)</u>	<u>(\$13,027)</u>	<u>(\$13,288)</u>	<u>(Significant Fiscal Impact)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Could exceed \$587,273)</u>	<u>(Could exceed \$1,226,715)</u>	<u>(Could exceed \$1,785,973)</u>	<u>(Significant Fiscal Impact)</u>

FISCAL DESCRIPTION (continued)

This act modifies provisions regarding conspiracy to create the offense of conspiracy if a person agrees, with one or more persons, to commit any Class A, B, or C felonies, or any unclassified felonies that exceed 10 years of imprisonment, and one or more persons do any act in furtherance of the agreement. The offense of conspiracy to commit an offense is a Class C felony.

Additionally, this act repeals the provisions barring a person from being charged, convicted, or sentenced for both the conspiracy to commit the offense and the actual offense.

DEFINITION OF DANGEROUS FELONY (Section 556.061)

This act adds to the definition of "dangerous felony" the offense of armed criminal action, the offense of conspiracy to commit an offense when the offense is a dangerous felony, and the offense of vehicle hijacking when punished as a Class A felony.

OFFENSES NOT ELIGIBLE FOR PROBATION (Section 557.045)

This act provides that any person found guilty of, or pleading guilty to: the offense of second degree murder when the person knowingly causes the death of another person or, with the purpose of causing serious physical injury to another person, causes the death of another person; any dangerous felony involving a deadly weapon; or any dangerous felony where the person has been previously found guilty of a Class A or B felony or a dangerous felony shall not be eligible for probation, suspended imposition or execution of sentence, or a conditional release term, and shall be sentenced to a term of imprisonment.

OFFENSE OF VEHICLE HIJACKING (Section 570.027)

This act creates the offense of vehicle hijacking, which is committed when an individual knowingly uses or threatens the use of physical force upon another individual to seize or attempt to seize possession or control of a vehicle. This offense is punished as a Class B felony unless one of the aggravating circumstances listed in the act was present during the commission of the offense, in which case it is punished as a Class A felony.

These provisions are similar to SB 561 (2020), SB 433 (2019), and SB 459 (2019).

OFFENSE OF ARMED CRIMINAL ACTION (Section 571.015)

Under current law, a person who commits the offense of armed criminal action is subject to a term of imprisonment of not less than 3 years for the first offense, 5 years for the second offense,

FISCAL DESCRIPTION (continued)

and 10 years for any subsequent offense, in addition to any punishment for the crime committed by, with, or through the use of a deadly weapon.

This act changes the prison term for this offense to 3 to 15 years for the first offense, 5 to 30 years for the second offense, and at least 10 years for any subsequent offense. These prison terms shall be served in addition to and consecutive to any punishment for the crime committed with the use of a deadly weapon. Additionally, this act provides that if the person convicted of armed criminal action is unlawfully possessing a firearm, the minimum prison term for the first offense is 5 years, the second offense is 10 years, and the third offense is 15 years.

No person convicted for the offense of armed criminal action shall be eligible for parole, probation, conditional release or suspended imposition or execution of sentence for the minimum period of imprisonment.

These provisions are similar to SB 601 (2020) and HB 1453 (2020).

UNLAWFUL POSSESSION OF A FIREARM (Section 571.070)

Under current law, the offense of unlawful possession of a firearm is a Class D felony. This act increases the penalty for unlawful possession of a firearm by a person convicted of a dangerous felony to a Class C felony.

These provisions are similar to SB 538 (2020).

CRIMINAL STREET GANGS (SECTIONS 578.419 TO 578.439)

This act establishes the "Missouri Criminal Street Gangs Prevention Act". The act modifies the definition of a "criminal street gang" by defining such an organization to have as one of its motivating, rather than primary, activities the commission of one or more criminal acts. The definition of "pattern of criminal street gang activity" is modified to include "dangerous felony" as one of the offenses that would constitute a pattern.

Currently, any person who actively participates in any criminal street gang with knowledge that its members engage in a pattern of criminal street gang activity and who willfully promotes such criminal conduct shall be punished by one year in the county jail or one to three years of imprisonment in a state correctional facility. This act provides that such a person who actively participates in any criminal street gang that engages in a pattern of criminal conduct shall be guilty of a Class B felony.

FISCAL DESCRIPTION (continued)

Further, this act changes the mental state and penalty for any person who is convicted of a felony or misdemeanor which is committed for the benefit of, at the direction of, or in association with, a criminal street gang. This act provides that such action must be with the purpose, rather than specific intent, to promote, further, or assist in any criminal conduct by gang members. The act repeals the applicability of this provision to a misdemeanor.

A person convicted under this act shall serve a term in addition and consecutive to the punishment for the felony conviction a term of two years, unless the felony is committed within one thousand feet of a school then the term shall be three years. Finally, if a person is convicted of a dangerous felony under this act, he or she shall be punished by an additional 5 years.

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 Conservation
Department of Corrections
Department of Public Safety
Department of Social Services
Missouri Office of Prosecution Services
Office of State Courts Administrator
State Public Defender's Office
Springfield Police Department
St. Louis County Police Department
St. Louis County Department of Justice Services



Julie Morff
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February 12, 2020



Ross Strobe
Assistant Director
February 12, 2020