

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 6072-02
Bill No.: HB 1925
Subject: State Departments
Type: Original
Date: March 5, 2014

Bill Summary: This proposal prohibits any state agency or department from engaging in biometric analysis of photographs and digital data.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	(\$77,294)	(\$70,763)	(\$72,054)
Total Estimated Net Effect on General Revenue Fund	(\$77,294)	(\$70,763)	(\$72,054)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Federal Funds	\$0 or (\$226,498,955)	\$0 or (\$259,958,748)	\$0 or (\$259,958,748)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (\$226,498,955)	\$0 or (\$259,958,748)	\$0 or (\$259,958,748)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	(119 FTE)	(119 FTE)	(119 FTE)
Total Estimated Net Effect on FTE	(119 FTE)	(119 FTE)	(119 FTE)

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Local Government	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Oversight notes this proposal prohibits a state agency, department or political subdivision from engaging in, contracting for, or cooperating with any other agency in the biometric analysis of any photographic or digital data.

Officials at the **Office of Administration's Information Technology Services Division (ITSD)** assume this proposal would no longer allow ITSD to utilize thumb readers as one form of identification for authorized ITSD employees to gain access to the state data center. It is assumed that this would no longer be allowed. To keep security at the current level, ITSD would employee security guards to provide access to the data center. A total of 3 FTE would be required to provide access on a 24 hour basis.

Officials at the **Missouri Highway Patrol (MHP)** assume DNA profiles derived from evidence at crime scenes or from suspects of crimes eventually become digital data during laboratory analysis. This data is then searched through Combined DNA Index System (CODIS) and compared electronically. Latent fingerprints that are developed from crime scenes are usually photographed and converted to digital files which are then either compared as digital images to ten print cards (also stored digitally) or searched through Automated Fingerprint Identification System (AFIS), which is also a form of biometric analysis of digital data as well as photographic data. Strict interpretation of this language would devastate law enforcement's abilities to solve crimes and severely impact public safety.

If such legislation were to eliminate the AFIS and criminal history (which is fingerprint based) systems, there would be tremendous impact on multiple operations, systems and agencies (DESE, Professional Registration, Foster Parenting, etc.) across the state.

First and possibly the most common, it would eliminate the ability to conduct effective and accurate background checks on school teachers, school support staff, bus drivers, medical professionals, nursing home staffs, law enforcement officials, government employees, positions of public trust, etc., to name a few. While this impact may appear minimal to the general public, many of these positions have routine contact with population subsets that are more susceptible to abuse such as young children, the mentally challenged and our elderly.

Secondly, this change could have significant impact on the criminal justice community's ability to properly identify suspects and prevent unnecessary delays in detention and incarceration situations. Given the increasing problems with identity theft, this could create substantially negative and frequent situations where innocent citizens are detained on "name based" hits and warrants in otherwise non-custodial arrest/detention situations (car stops, etc.). While some of

ASSUMPTION (continued)

these situations currently have the ability to be quickly corrected through the use of various fingerprint devices such as the mobile Rapid ID or agency Livescans, future situations would undoubtedly take extensive efforts to alleviate and would be largely at the inconvenience of the citizen.

Thirdly, while an official response would need to be obtained from the NICS office, concerns have surfaced questioning whether or not a change of this nature would create second amendment issues for Missouri's population. According to initial inquiries with NICS, individuals attempting to purchase firearms under this scenario would automatically be placed in a "delayed" status and, in most cases, prohibited from making the firearms purchase the same day. During this "delayed" period, NICS would be forced to seek out decentralized court and resource information they deem pertinent to the NICS check. After three days of a "delayed" status, the FFL dealer would have the option to complete the transaction or wait for NICS approval. At a minimum, Missouri's failure to provide a centralized database that contains all arrest, prosecutor and court information would delay every firearm purchase in the state of Missouri and potentially prohibit transactions for individuals who find themselves in situations where their record is in question (identity theft, similar names, DOBs, etc). It should also be noted that in those situations where NICS were to approve a transaction on the basis that no disqualifying record was identified, such approval would not eliminate an obligation by the individual to abide by other federal gun restrictions (felony conviction status, mental incapacitation, etc.). In clear terms, this "approved by NICS, but not eligible" scenario could be confusing for the public and create potentially volatile situations for law enforcement, prosecutors and the courts.

Lastly, and possibly most importantly, removing the criminal history and fingerprint capabilities would also have unparalleled impact on law enforcement's ability to process crime scenes, identify suspects and prosecute individuals at every crime level, including rape and murder. Without an established database to compare latent prints, fingerprints collected at a crime scene would provide little or no impact in successfully identifying or eliminating suspects unless the suspect was captured at the scene or otherwise identified by a witness. Given this legislation would likely result in no expert staff existing at the state level to conduct such comparisons, even the "suspect in hand" situation would be nearly impossible to prosecute through the legal system.

The biometric analysis of fingerprints is the sole function of the state Automated Fingerprint Identification System. This system provides positive identification to the records in the state criminal history system, the Central Repository. Without the ability to have this in place, it eliminates both systems as well as the ability to perform complete background checks on persons in positions of trust. The Criminal Justice Information Services (CJIS) Division is funded mainly

ASSUMPTION (continued)

by the Criminal Records System Fund. Without background checks, the funding for the division, as well as the need for the majority of the personnel, will cease. The Criminal Records System Fund currently provides funding for 122 FTE through the collection of fees associated with background checks in the average yearly amount of approximately \$11,000,000. This legislation would eliminate all 122 FTE which includes a variety of job titles from Fingerprint Technicians to Criminal History Specialists.

While it may not exactly net out to zero in each and every year, because expenses and revenue fluctuate from year to year, the Patrol assumes, for purposes of this fiscal note, that overall the financial impact will average out to zero.

Oversight will reflect the savings to the state of the 122 FTE.

Officials at the **Department of Social Services's Children's Division** assume this proposal has a significant fiscal impact to the Children's Division. The Children's Division utilizes, contracts for, and cooperates with other state agencies in the collection of biometric data in the form of DNA or paternity testing to establish permanency for children and as physical evidence in the investigation of child abuse/neglect cases. In addition, the Children's Division, in conjunction with the Missouri State Highway Patrol and contract agencies, utilizes live scan fingerprint imaging for the purposes of conducting criminal background checks on potential employees, registered child care providers, foster parents, kinship providers, relative providers, and adoptive parents. Analysis of this biometric data collected has to be conducted for the purposes described above. To successfully adjudicate both civil and criminal cases, the Children's Division must share DNA findings and fingerprint results with the courts, involved agencies, and others determined to be a party to the case.

State statutes requiring criminal background checks are supported by Federal legislation in title IV-E of the Social Security Act. The Adoption and Safe Families Act (ASFA) of 1997 amended title IV-E (42 U.S.C. 671(a)(20)) to require criminal record checks of any prospective foster or adoptive parent to whom foster care maintenance payments or adoption assistance payments are to be made under title IV-E. The Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) further amended title IV-E to require a fingerprint-based check of a national crime information database before any prospective foster or adoptive parent may be approved for placement of a child, whether or not foster care maintenance payments or adoption assistance payments are to be made on behalf of the child. Thus, if fingerprinting of potential placement providers is prohibited, CD could potentially lose all Federal Title IV-E dollars (\$32,595,496 for adoption and \$65,363,252 for foster care annually based upon the December 31, 2013 claim).

ASSUMPTION (continued)

In addition, federal Child Care Development Funding regulations which are effective October 1, 2015 will require all entities who are recipients of these funds to undergo fingerprinting in order to receive the federal dollars. If fingerprinting cannot be done as a result of the proposed state legislation, \$102.8 million dollars of CCDF would be at risk. General Revenue funds would need to be requested to replace the lost federal funding. The annual GR pickup needed would be \$200,758,748.

While the Children's Division no longer receives the actual fingerprint images resulting from a live scan, the Children's Division does retain a copy of the face sheet and results of the fingerprint submission. The Children's Division also receives and retains the results of DNA testing. Therefore, the Children's Division maintains the "biometric data" submitted with the results, which often includes, but is not limited to, a photograph of the individual and other identifiers including eye color, height, weight, race, etc.

If this proposal would become law, it appears the Children's Division would have to find other means to obtain physical evidence in the investigation of cases of child physical and sexual abuse and to establish paternity in cases requiring a need for out of home placements of children.

Oversight will reflect in the fiscal note the potential loss of federal funding to the Children's Division.

Officials at the **Department of Social Services's Division of Legal Services** assume that it will defer to the Children's Division and the Division of Family Support for fiscal impact. Legal Services anticipates that it will be able to represent the Children's Division with current staff.

Officials at the **Department of Social Services's Division of Family Support Services (FSD)** assume the Federal and state laws and the Title IV–D State Plan require FSD's child support program to take action to establish paternity for children born out of wedlock. Inability to conduct genetic tests for paternity determination purposes will result in a noncompliant IV–D State Plan. Title IV–D State Plan noncompliance results in a loss of federal funding for the child support program (\$59.2 million for FY 2013). In order to keep the Child Support Program running at its current level, General Revenue funding would be needed to replace the loss of federal funding. Having an approved Title IV–D State Plan is a condition of eligibility for a TANF block grant under Title IV–A of the Social Security Act, so IV–D noncompliance also affects Missouri's TANF funding (\$217 million).

Oversight will reflect the potential loss of \$59.2 million for the Child Support Program. It is unclear if the state TANF program would be affected. Oversight will not reflect an impact for the TANF program in the fiscal note.

ASSUMPTION (continued)

Officials at the **Department of Social Services's Human Resource Division** assume over the last two fiscal years, DSS has expended an average of \$46,845.96 annually (a total of \$40,307.10 for 2011 and \$53,384.85 for 2012 averaging to \$3,903.83 a month) for fingerprints of prospective DSS employees. The Human Resource Center completed this fiscal note for all divisions relating to employment fingerprinting. The noted costs are a total of those incurred by all divisions in the department.

The probability of hiring individuals with a criminal background (e.g., sexual offenses, child abuse, fraud, forgery, etc.) that would be reason for disqualification for employment would be increased. If the criminal background was discovered post-employment, there would be increased costs associated with that (e.g., time spent pursuing termination, lost staff time spent training the employee, potential litigation, etc.); however, it is not possible to project these costs.

Oversight will reflect in the fiscal note the savings to the Department of Social Services from not having to do background checks anymore.

Officials at the **FSD** assume this proposal would not impact the drug testing of TANF recipients and therefore, this program would not be fiscally impacted.

Officials at the **Department of Social Services's MoHealthNet Division** and **State Technical Assistance Team** each assume this proposal would not fiscally impact them.

Officials at the **Department of Revenue (DOR)** assume this proposal will have a minimal fiscal impact DOR. However, it could be interpreted to prevent state agencies from conducting background checks on potential employees via the use of fingerprint checks with the Missouri State Highway Patrol. The Department does not fingerprint employees unless the name-based criminal history checks are inconclusive and fingerprints are needed to determine the identity and criminal history of an applicant. This same case goes for those seeking employment in the local license offices and applicants applying for a dealer license with the Department. However, other state departments may require finger-print based background checks. This proposal would prohibit these checks.

Officials at the **University of Missouri** assume it would not operational impact the University. However, this proposal could impact current grant awards and future grant opportunities.

ASSUMPTION (continued)

Officials at the **Cole County Sheriff Department** assume the cost would be significant but it is unknown. If this eliminates fingerprints, photograph, or iris scans, the County is unsure how to comply with federal law. The County would need to trash hundreds of thousands of dollars of equipment. The County cannot submit fingerprints as this is now done, and analyzed, digitally, much less iris or facial recognition.

Officials at the **Northwest Missouri State University** assume this could have a chilling effect in some academic disciplines and could have significant negative impacts on teaching and research. This act could also impede the sharing of information that could significantly inhibit our implementation of proper security protocols with respect to on campus and electronic activities.

Officials at the **Fulton School District** assume this proposal will invalidate our food service lunch line recording equipment and procedures. This will make \$25,000 of equipment illegal and cost an additional \$35,000 in payroll costs.

Officials at the **Springfield Police Department** assume no impact to the Department. They collect evidence and forward it to the Highway Patrol for analysis. They assume this will impact the Highway Patrol.

Officials at the **St. Louis County Police Department** assume an unknown negative impact.

Oversight assumes this proposal may require additional administrative costs for local political subdivisions. Oversight will reflect the impact as \$0 to Unknown.

Oversight assumes this proposal may result in local political subdivisions no longer receiving federal funds. Oversight will reflect the impact as \$0 to Unknown.

Officials at the **City of Columbia**, the **City of Jefferson City**, the **City of Kansas City**, the **Department of Agriculture**, the **Department of Conservation**, the **Department of Corrections**, the **Department of Economic Development**, the **Department of Elementary and Secondary Education**, the **Department of Health and Senior Services**, the **Department of Insurance**, **Financial Institutions and Professional Registration**, the **Department of Labor and Industrial Relations**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Public Safety's Division of Alcohol and Tobacco Control**, the **Department of Public Safety's Capitol Police**, the **Department of Public Safety's Fire Safety**, the **Linn State Technical College**, the **Missouri Department of Transportation**, the **Missouri Gaming Commission**, the **Missouri National Guard**, the **Missouri State University**, the

ASSUMPTION (continued)

Missouri Veterans Commission, the Missouri Western State University, the Office of the State Auditor, the Office of the Secretary of State, the Office of State Courts Administrator, the Office of the State Public Defender, the Office of State Treasurer, the State Emergency Management Agency and the University of Central Missouri each assume there is no fiscal impact to their respective organizations from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
GENERAL REVENUE			
<u>Savings</u> - Dept Social Services Human Resource Division - not doing background checks	\$39,038	\$46,846	\$46,846
<u>Savings</u> - Missouri Highway Patrol - elimination of AFIS staff			
Personnel Savings	\$3,600,000	\$3,600,000	\$3,600,000
Expense and Equipment Savings	<u>\$7,400,000</u>	<u>\$7,400,000</u>	<u>\$7,400,000</u>
<u>Total Savings</u> - MHP	\$11,000,000	\$11,000,000	\$11,000,000
FTE Change - MHP	(122 FTE)	(122 FTE)	(122 FTE)
<u>Loss</u> - Missouri Highway Patrol - collection of background check fee	(\$11,000,000)	(\$11,000,000)	(\$11,000,000)
<u>Cost</u> - Office of Administration - ITSD			
Personal Service	(\$72,072)	(\$72,793)	(\$73,521)
Fringe Benefits	(\$36,760)	(\$37,128)	(\$37,499)
Equipment and Expenses	<u>(\$7,500)</u>	<u>(\$7,688)</u>	<u>(\$7,880)</u>
<u>Total Costs</u> - OA-ITSD	<u>(\$116,332)</u>	<u>(\$117,609)</u>	<u>(\$118,900)</u>
FTE Change - OA- ITSD	3 FTE	3 FTE	3 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(\$77,294)</u>	<u>(\$70,763)</u>	<u>(\$72,054)</u>
Estimated Net FTE Change on General Revenue	(119 FTE)	(119 FTE)	(119 FTE)

FISCAL IMPACT - State Government
 (continued)

FY 2015
 (10 Mo.)

FY 2016

FY 2017

FEDERAL FUNDS

Loss - Dept Social Services Children's Division

Adoption & Safe Families

\$0 or	\$0 or	\$0 or
(\$27,162,913)	(\$32,595,496)	(\$32,595,496)

Foster Care

\$0 or	\$0 or	\$0 or
(\$54,469,376)	(\$65,363,252)	(\$65,363,252)

Child Care Development

\$0 or	\$0 or	\$0 or
(\$85,666,666)	(\$102,800,000)	(\$102,800,000)

Total Loss - Children's Division

\$0 or	\$0 or	\$0 or
(\$167,298,955)	(\$200,758,748)	(\$200,758,748)

Loss - Dept Social Services Family Support Division

\$0 or	\$0 or	\$0 or
(\$59,200,000)	(\$59,200,000)	(\$59,200,000)

**ESTIMATED NET EFFECT ON
 FEDERAL FUNDS**

\$0 or	\$0 or	\$0 or
<u>(\$226,498,955)</u>	<u>(\$259,958,748)</u>	<u>(\$259,958,748)</u>

FISCAL IMPACT - Local Government

FY 2015
 (10 Mo.)

FY 2016

FY 2017

LOCAL POLITICAL SUBDIVISIONS

Cost - additional administrative costs

\$0 to	\$0 to	\$0 to
(Unknown)	(Unknown)	(Unknown)

Loss - potential loss of federal funding

\$0 to	\$0 to	\$0 to
(Unknown)	(Unknown)	(Unknown)

**ESTIMATED NET EFFECT ON
 LOCAL POLITICAL SUBDIVISIONS**

\$0 to	\$0 to	\$0 to
<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

FISCAL IMPACT - Small Business

Small business that collect this data would be impacted.

JH:LR:OD

FISCAL DESCRIPTION

This bill prohibits any state or local agency or department from engaging in, contracting for, or cooperating with any agency in the biometric analysis of photographs and digital data. Biometric analysis includes facial characteristics, voice data comparisons, iris recognition data, retinal scans, fingerprints, palm prints, hand geometry, eye spacing, characteristic gait, DNA, and keystroke dynamics.

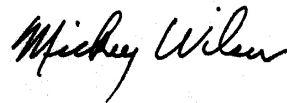
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

City of Columbia
City of Jefferson City
City of Kansas City
Cole County Sheriff Department
Department of Agriculture
Department of Conservation
Department of Corrections
Department of Economic Development
Department of Elementary and Secondary Education
Department of Health and Senior Services
Department of Insurance, Financial Institutions and Professional Registration
Department of Labor and Industrial Relations
Department of Mental Health
Department of Natural Resources
Department of Public Safety
 Division of Alcohol and Tobacco Control
 Capitol Police
 Fire Safety
Department of Revenue
Department of Social Services
 Children's Division
 Division of Legal Services
 Family Support Division
 Human Resources Division
 MoHealthNet Division
 State Technical Assistance Team
Fulton School District

SOURCES OF INFORMATION (continued)

Linn State Technical College
Missouri Department of Transportation
Missouri Gaming Commission
Missouri National Guard
Missouri State University
Missouri Veterans Commission
Missouri Western State University
Northwest Missouri State University
Office of the Secretary of State
Office of the State Auditor
Office of State Courts Administrator
Office of the State Public Defender
Office of State Treasurer
Springfield Police Department
State Emergency Management Agency
St. Louis County Police Department
University of Central Missouri
University of Missouri



Mickey Wilson, CPA
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March 5, 2014

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