

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4189-01  
Bill No.: HB 1512  
Subject: Employees - Employers; Public Assistance; Crimes and Punishment  
Type: Original  
Date: January 6, 2016

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Bill Summary: This proposal specifies that a person applying for state employment, public assistance, or state housing assistance cannot be required to disclose any prior nonviolent felony plea or conviction with certain exceptions.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	(\$656,905)	(\$742,944)	(\$744,359)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(\$656,905)</b>	<b>(\$742,944)</b>	<b>(\$744,359)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 11 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Federal*	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\* Savings and losses \$0 to more than \$249 million net to \$0.

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	3	3	3
<b>Total Estimated Net Effect on FTE</b>	<b>3</b>	<b>3</b>	<b>3</b>

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### §105.053 - No Requirement to Disclose Nonviolent Felony Convictions on Applications for State Employment

Officials from the **Department of Mental Health (DMH)** state the proposed language in this bill prohibits the state as an employer from requiring applicants to disclose on any employment application form any prior nonviolent felony pleas or convictions, except for felony pleas or convictions for sexual offenses (Section 105.053). It also prohibits the state from requiring such disclosure by people applying for public assistance or state housing assistance (Sections 208.008 and 215.044). The provisions shall not be construed as prohibiting the state from conducting criminal background checks in these situations (Sections 105.053(2), 208.008(2) and 215.044(2)). This proposal would result in a significant fiscal impact to the DMH and raises concerns about future quality of care in DMH facilities.

By way of background, section 630.170 provides, in part, that individuals who have committed certain felony offenses are disqualified from holding direct-care positions in any public or private facility, day program, residential facility or specialized service operated, funded or licensed by DMH, or any mental health facility or mental health program in which people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632 (Section 630.170.2).

Due to the time and costs involved, most state-operated facilities do not immediately run background checks through the highway patrol on all applicants; instead, background checks are ordered when offers are made. State-operated facilities from both of DMH's divisions (Developmental Disabilities and Behavioral Health) employ large numbers of direct-care staff at various levels. This proposal would result in those facilities having to dismiss more people while they are in training.

In February 2015, DMH calculated the fiscal impact based on the wasted resources involved in hiring applicants who will ultimately be disqualified while in training. Based on national human resources benchmarks, losing an employee during training costs an employer, on average, 10 percent of that employee's annual salary. Utilizing the salary of a Security Aide (\$31,152 annually) as the average for the affected positions, the loss of each employee would cost the department \$3,115 ( $\$31,152 \times 10\%$ ). The calculations below will be made using this per-employee loss amount.

For Behavioral Health facilities, the department projected that the proposal will result in the loss of 2 new employees per month at each of the 7 facilities (Center for Behavioral Medicine, Fulton State Hospital, Hawthorn Children's Psychiatric Hospital, Metropolitan St. Louis Psychiatric

ASSUMPTION (continued)

Center, Northwest Missouri Psychiatric Rehabilitation Center, Southeast Missouri Mental Health Center, and St. Louis Psychiatric Rehabilitation Center). Combined, the facilities would lose approximately 168 employees per year. Thus, the annual cost to Behavioral Health facilities is estimated to be \$523,320 ( $\$3,115 \times 168$ ) per year.

With regard to the Developmental Disabilities facilities, DMH projected in February 2015 that the proposal would result in the loss of 1.5 new employees per month at each of the 3 facilities making employment offers prior to background checks (Higginsville Habilitation Center, Marshall Habilitation Center, and Southwest Community Services). Although still operational as of the date of this response, Marshall Habilitation Center is set to close in early 2016 and, therefore, will not be considered in determining DMH's estimated cost for this proposal. Based on the February 2015 loss projection of 1.5 new employees per month at each facility, the two remaining facilities would lose approximately 36 employees per year. Thus, the annual cost to Developmental Disabilities facilities is estimated to be \$112,140 ( $1.5 \text{ FTE} \times 12 \text{ months} \times 2 \text{ facilities}$ ) per year.

As a result, it is estimated that DMH would lose approximately \$635,460 ( $\$523,320 + \$112,140$ ) per year based on this proposal.

In addition to the fiscal impact, losing people in the training process also results in facilities not being able to hire enough people each month to meet their coverage needs and potentially compromising care.

**Oversight** has, for fiscal note purposes only, changed the salary for the Security Aide used by DMH to calculate potential costs for this proposal to correspond to the second step above minimum (\$30,144 annually) for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees for a six month period and the policy of the Oversight Subcommittee of the Joint Committee on Legislative Research. Oversight, therefore, assumes DMH's potential annual costs for this proposal to be as follows:

Behavioral Health facilities	$168 \text{ FTE} \times \$3,014 \text{ (10\% of annual salary)}$	$= \$506,352$
Developmental Disabilities facilities	$36 \text{ FTE} \times \$3,014$	<u>\$108,504</u>
Total annual costs		<u>\$614,856</u>

Officials from the **Department of Corrections (DOC)** state section 105.053 prohibits a person applying for state employment from being required to disclose any prior nonviolent felony pleas or convictions, except for felony pleas or convictions for sexual offenses, on any employment form.

ASSUMPTION (continued)

The DOC has a consolidated Corrections Officer I (CO I) hiring process in the department's personnel section that handles CO I hiring for the entire department. It consists of an online application, a 3-hour video test, a physical agility test, an in-person interview, and the provision of a writing sample. All of the processes must be scored or witnessed in order for an applicant to be hired. Once these processes are complete, an extensive background check is conducted on each applicant.

The current online CO I application rejects applicants who indicate that they have a felony conviction and prevents them from going further in the CO I hiring process. These individuals are not added or recorded in the system, so the DOC does not know the number of applicants that are rejected at the onset of the application process. Removing the felony conviction question from the online application would allow these individuals to continue to go through the CO I pre-employment process. At the present time, DOC receives between 5,400 and 6,000 applications each year for CO I positions and anticipates a significant increase in the number of applicants if the felony question is removed from the qualifying questions applicants must answer. Because of the increase in the number of applications which would have to be processed and the increase in background checks that would have to be performed, the DOC estimates it would need an additional 3.0 Senior Office Support Assistant (SOSA) FTE (\$25,828 annually each) to handle the workload. These SOSAs will assist with the video testing, regional one-stop hiring, processing background checks, etc.

The DOC estimates the fiscal impact of this legislation on the General Revenue Fund to be a cost of \$144,524 in FY 2017; \$128,088 in FY 2018; and \$129,503 in FY 2019.

Officials from the **Department of Social Services (DSS), Human Resource Center (HRC)** state the DSS Application for Employment and applicable policies would need to be revised for this language; existing staff would make those changes.

This language limits information applicants would be required to disclose on their application for employment, which may result in the agency conducting interviews on applicants that do not meet our criteria for employment. This may result in offering employment to such individuals and then having to withdraw offers once we receive results of criminal background checks. This may lead to an increase in time needed to fill a position, as well as time expended by staff in the interview process. However, it is not possible to include a projected fiscal impact as we do not track applicants who are not interviewed at the local level based on their disclosure of criminal histories on their application for employment.

ASSUMPTION (continued)

§208.008 -No Requirement to Disclose Nonviolent Felony Convictions on Applications for Public Assistance

Officials from the **Department of Social Services (DSS), Family Support Division (FSD)** state this bill is in conflict with federal law for the Food Stamp and Temporary Assistance programs administered by FSD. Federal law prohibits individuals with certain drug-related felony convictions from receiving Food Stamp (FS) and/or Temporary Assistance for Needy Families (TANF) benefits (21 U.S.C 862a). 13 CSR 40-2.305 states that individuals with a felony drug conviction as defined in 21 U.S.C. 802(6) are permanently disqualified from Temporary Assistance for Needy Families. FSD would be prohibited from establishing eligibility on this factor.

Federal law also prohibits individuals with convictions relating to trafficking Food Stamp benefits of \$500 or more from receiving Food Stamp benefits (7 U.S.C. 2015). In addition, federal law found at 7 U.S.C 2015 (Food Stamps) and 42 U.S.C. 608 (Temporary Assistance for Needy Families) prohibits individuals who meet the following conditions from receiving benefits:

- a. Those who have convictions relating to fraudulent statements or misrepresentation of identity or residence for the purpose of receiving FS/TANF in two or more places at the same time;
- b. Those who are fleeing to avoid prosecution, or custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual is fleeing; and,
- c. Those who are violating a condition of probation or parole.

Since federal law prohibits the above individuals from receiving assistance, FSD is required to ask applicants to disclose these convictions at every application for Food Stamps and/or Temporary Assistance.

If FSD is allowed to continue to ask applicants to disclose convictions as required under federal law, there would be no fiscal impact to the FSD as a result of this bill. However, since this bill prohibits FSD from asking applicants to disclose convictions as required under federal law, FSD would be out of compliance with federal law, which would result in monetary penalties. Although the bill would allow FSD to conduct criminal background checks on applicants, federal regulation found at 7 C.F.R. 273.2 does not allow the FSD to impose additional application processing requirements, such as criminal background checks for the Food Stamp program.

ASSUMPTION (continued)

FSD reasonably anticipates that there could be sanctions imposed by the United States government for not complying with federal law. These sanctions could include a disallowance of some or all of the federal Food Stamp and Temporary Assistance program funding. The Federal Fiscal Year (FFY) 2015 SNAP Administrative federal funds were \$32.03 million and the Temporary Assistance block grant was \$217 million. In order to continue these services in Missouri, any loss in federal funding would have to be replaced with general revenue. Since it is unknown what monetary sanctions the federal government would impose, FSD estimates the loss of federal funds that would have to be replaced with general revenue to be \$0 to \$249.03 million.

**Oversight** assumes the General Assembly can appropriate General Revenue funds to cover the loss of federal funding for the FS/TANF programs if it wishes for the programs to continue as state-funded programs. However, for fiscal note purposes, **Oversight** is showing a \$0 net fiscal impact to Federal Funds due to the savings resulting from discontinuing the FS/TANF programs and the loss of Federal funding.

Officials from the **Department of Social Services (DSS), Division of Legal Services (DLS)** state DLS would have to provide legal advice regarding the implementation of the legislation on income maintenance programs such as SNAP (Food Stamps), TANF and Medicaid. DLS anticipates that this can be done using existing resources. DLS/Investigations would not have to change its existing procedures.

Bill as a Whole

Officials from the **Office of Administration (OA), Division of Personnel Services and Information Technology Services Division (ITSD)** state that currently criminal record information is captured in both the Electronic Application System (EASe) application pages and the Management Application Information Resource System (MAIRS) application screens for all applicants who apply through EASe. Some employment positions require disclosure of criminal records by law; therefore, in order to comply with current federal and state law, ITSD would have to convert and store existing data by job classification rather than by application. The cost to convert the system by job classification rather than by application would cost \$10,935 and take approximately 146 IT consultant hours to complete at \$75 per hour ( $145.8 \times \$75 = \$10,935$ ).

**Oversight** assumes OA will be able to absorb the minimal costs associated with making the necessary computer system changes within its current funding levels.

Officials from the **Office of Attorney General (AGO)** assume any potential costs arising from this proposal can be absorbed with existing resources.

ASSUMPTION (continued)

Officials from the **Department of Higher Education (DHE)** state revising the DHE's employment application to comply with the provisions of this proposal can be done with existing resources.

Officials from the **Missouri Department of Agriculture**, 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 Natural Resources**, the **Department of Labor and Industrial Relations**, the **Department of Revenue**, the **Department of Public Safety**, **Missouri State Highway Patrol** and the **Missouri Veterans' Commission**, the **Office of the Governor**, the **Missouri Lottery**, the **Missouri Consolidated Health Care Plan**, the **Missouri Department of Conservation**, the **Missouri Ethics Commission**, the **Office of Lieutenant Governor**, the **Missouri Department of Transportation**, the **Missouri Office of Prosecution Services**, the **Missouri State Employees Retirement System**, the **Office of State Courts Administrator**, the **Office of State Auditor**, the **Office of Secretary of State**, the **Office of State Public Defender**, and the **Office of State Treasurer** each assume the proposal would not fiscally impact their respective agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
<b>GENERAL REVENUE FUND</b>			
<u>Costs - DMH (§105.053)</u>			
Personnel/training costs	(\$512,380)	(\$614,856)	(\$614,856)
<u>Costs - DOC (§105.053)</u>			
Personal service (3 FTE)	(\$64,570)	(\$78,259)	(\$79,041)
Fringe benefits	(\$47,917)	(\$40,699)	(\$41,105)
Equipment and expense	<u>(\$32,038)</u>	<u>(\$9,130)</u>	<u>(\$9,357)</u>
Total <u>Costs</u> - DOC	<u>(\$144,525)</u>	<u>(\$128,088)</u>	<u>(\$129,503)</u>
FTE Change - DOC	3.0 FTE	3.0 FTE	3.0 FTE
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>(\$656,905)</u></b>	<b><u>(\$742,944)</u></b>	<b><u>(\$744,359)</u></b>
Estimated Net FTE Change on the General Revenue Fund	3.0 FTE	3.0 FTE	3.0 FTE



<u>FISCAL IMPACT - State Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
<b>FEDERAL FUNDS</b>			
<u>Savings - DSS (\$208.008)</u>			
Reduction in SNAP/TANF expenditures	\$0 to \$249,030,000	\$0 to \$249,030,000	\$0 to \$249,030,000
<u>Loss - DSS (\$208.008)</u>			
Reduction in SNAP/TANF funding	\$0 to (\$249,030,000)	\$0 to (\$249,030,000)	\$0 to (\$249,030,000)
<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

<u>FISCAL IMPACT - Local Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

#### FISCAL IMPACT - Small Business

As written, the proposal would have no fiscal impact on small businesses. However, if Missouri loses and then does not fund the Food Stamp/Temporary Assistance for Needy Families programs, then small businesses will experience a significant, negative fiscal impact as current recipients of funds from these programs will have to reduce their purchases.

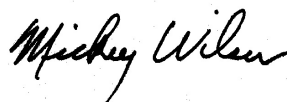
#### FISCAL DESCRIPTION

This bill specifies that a person applying for state employment, public assistance, or state housing assistance cannot be required to disclose any prior nonviolent felony pleas or convictions, except for felony pleas or convictions for sexual offenses. These provisions cannot be construed as creating any liability for an applicant who does not disclose any prior nonviolent felony pleas or convictions under these provisions or prohibiting any employer, public assistance agency, or state housing assistance agency from conducting a criminal background check on an applicant.

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

Office of Attorney General  
Missouri Department of Agriculture  
Department of Economic Development  
Department of Elementary and Secondary Education  
Department of Higher Education  
Department of Health and Senior Services  
Department of Insurance, Financial Institutions and  
Professional Registration  
Department of Mental Health  
Department of Natural Resources  
Department of Corrections  
Department of Labor and Industrial Relations  
Department of Revenue  
Department of Public Safety  
Department of Social Services  
Office of the Governor  
Missouri Lottery  
Missouri Consolidated Health Care Plan  
Missouri Department of Conservation  
Missouri Ethics Commission  
Missouri Lieutenant Governor's Office  
Missouri Department of Transportation  
Missouri Office of Prosecution Services  
Office of Administration  
Office of State Courts Administrator  
Office of State Auditor  
Office of Secretary of State  
Office of State Public Defender  
Office of State Treasurer



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