

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0061-02  
Bill No.: HCS for HB 38  
Subject: Crimes and Punishment; Criminal Procedure; Probation and Parole; Courts  
Type: Original  
Date: April 17, 2017

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Bill Summary: This proposal provides that certain mandatory minimum sentences may be discretionary and creates provisions when a person is eligible for a parole hearing.

**FISCAL SUMMARY**

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2018	FY 2019	FY 2020	Fully Implemented (FY 2027)
General Revenue	\$282,407	\$718,828	\$853,402	\$2,545,073
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$282,407</b>	<b>\$718,828</b>	<b>\$853,402</b>	<b>\$2,545,073</b>

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2018	FY 2019	FY 2020	Fully Implemented (FY 2027)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses. This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2018	FY 2019	FY 2020	Fully Implemented (FY 2027)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2018	FY 2019	FY 2020	Fully Implemented (FY 2027)
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</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.

ESTIMATED NET EFFECT ON LOCAL FUNDS				
FUND AFFECTED	FY 2018	FY 2019	FY 2020	Fully Implemented (FY 2027)
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## **FISCAL ANALYSIS**

### **ASSUMPTION**

Officials from the **Department of Corrections (DOC)** state 0061-02 is similar to version 1 with the exception that the minimum prison term of eighty percent remains mandatory. The impact calculations have been adjusted for that change but otherwise the response remains the same.

The bill proposes a minor wording change to 217.760 and two changes to 558.019.

1. 217.760 - the subsection reference to 558.019 is updated to reflect the 2014 sentencing advisory commission amendment to 558.019. The change has no impact on sentencing.
2. 558.019 - the bill proposes to make the imposition of the minimum prison term (MPT) discretionary upon the courts after a finding of guilt. The word 'shall' is replaced by 'may'. The change could affect the time served of two of the three recidivist minimum prison terms (40% and 50%) and the 85% for a dangerous felony. The change will allow the courts and the Board of Probation and Parole to exercise discretion in mandating minimum prison terms and the change will allow low risk offenders serving less severe nonviolent offenders to serve shorter prison terms before parole.

The impact of the change on the time offenders serve in prison will depend upon:

#### **i. The number of offenders who are sentenced to minimum prison terms**

In FY16 there were 2,242 offenders sentenced to a minimum prison term and the average sentence ranged from 5.5 years by offenders who had served one prior DOC incarceration and were required to serve 40% of the sentence to 15.2 years by offender convicted of a dangerous felony and were required to serve 85% of the sentence before parole eligibility. It should be noted that minimum prison terms are not imposed upon drug offenders.

#### **ii. The number of offenders who will not be required to serve minimum prison term because of the courts discretion.**

The number of offenders who the courts will decide not to mandate a minimum prison term is difficult to establish but the DOC completed a study in 2015 on the courts practice in enhancing prison sentences when offenders have prior felony

**ASSUMPTION** (continued)

convictions under 558.016. The statute states that the courts may sentence a person who has been found to be a persistent offender to an authorized term of imprisonment for the offense that is one class higher than the offense for which the person is found guilty. The DOC study found that the courts imposed the enhanced sentence in 21% of cases. The DOC is, therefore, estimating that the courts will impose a minimum prison term in 21% of cases and in 79% of cases the Board of Probation and Parole will determine the time served. In FY16 the DOC estimates that 1,522 offenders would have had their release date determined by the Board with this assumption.

**New Admissions in FY16, Excluding Drug and Sex Offenders**

	New Admission	Courts will mandate MPT 21%	Courts will not mandate MPT 79%	Average Sentence (years)
No MPT	5,226			
40%	1,142	240	902	5.5
50%	442	93	349	6.0
80%	316	316	-	6.3
85%	342	72	270	15.2
Total MPT	2,242	720	1,522	7.5
Total Admissions	7,468			5.7
Percent with MPT	30%			

**iii. The number of offenders who would have been required to serve a minimum prison term but who are released by the Board of Probation and Parole after serving a shorter prison stay.**

The estimate of how many of the offenders who will no longer be required to serve a minimum prison term will be released earlier is based upon the Board's calculation of a guideline release date. The Board has published guidelines that relate the percent of sentence to be served before parole to offender risk and to the severity of the offense. As offender risk and the severity of the offense increase so does the time served. The Board uses the guideline date to assist it in deciding the appropriate time served. Sex offenders will not be affected by the legislation because they are required to complete the Missouri Sex Offender Program (MOSOP) and are generally released on the conditional released date or on the completion of the sentence if the offender has not completed MOSOP.

ASSUMPTION (continued)

**First releases in FY16 serving a minimum prison term (MPT)**

MPT	Courts will mandate MPT 21%	Courts will not mandate MPT			Releases	Percent Released on MPT [Excl. ASAP]
		Released on MPT & Guideline less than MPT date		Released after the MPT date		
		Excl. ASAP	ASAP			
40%	223	292	42	506	1,062	27.4%
50%	96	137	21	203	458	30.0%
80%	281	-	-	-	281	0.0%
85%	89	158	3	173	423	37.4%
Total	689	587	66	882	2,224	26.4%

In FY16 there were 2,224 releases of offenders who had been required to serve a minimum prison term and there were 587 (26.4%) are estimated to be offenders who could have been released earlier. The offenders released after the MPT date are high risk offenders, including offenders who the Board chose to release after their guideline date. The estimate comprises those offenders who were released on the MPT date and who had an earlier guideline date. Excluded from this group are offenders whose guideline date was within the first 90 days of admission (ASAP). This is because the assessment, parole hearing and release processing cannot be completed within this short time period. Early guideline dates can occur when offenders are held in jail prior to and after sentencing and are credited with the jail time as time served. These offenders could not be released earlier even if the MPT was removed.

**Average time served serving a MPT and the guideline term**  
**First Releases in FY16 serving a minimum prison term (MPT)**  
**Released on the minimum prison term and excluding ASAP admissions**

MPT	Released on MPT Excl. ASAP	Average Sentence (years)	Average MPT (years)	Average Guideline (years)	Guideline Percent Served	Reduction in time to first release (years)	Increase in parole recidivism (years)	Net reduction in time served (years)	Total reduction in prison population	Reduction after 10 years
40%	292	4.7	1.9	1.2	25%	0.7	0.3	0.4	122	122
50%	137	5.2	2.6	1.5	29%	1.1	0.4	0.7	90	90
80%	-	0	0.0	-	-	-	-	-	-	-
85%	158	11.9	10.1	6.1	51%	4.0	1.6	2.4	380	341
Total	587	6.7	4.5	2.5	37%	2.0	0.8	1.2	592	553

ASSUMPTION (continued)

The calculation of the reduction in the time served is the difference between the MPT and the average guideline time served multiplied by the number of offenders released on the MPT date. The DOC is offsetting this reduction in time served by adding back 42% of the reduction as an estimate of increased recidivism from a longer period on parole. The estimate of 42% is the average time offenders discharged from parole in FY16 spent in prison after first release because their parole was revoked. After adding in the parole recidivism the average reduction in time served is 1.1 years, resulting in a total reduction in the prison population of 592. Because the offenders serving 85% are serving most of the sentence in prison not all of the reduction will occur within the 10 year budget horizon. After 10 years the prison population is estimated to have been reduced by 553 and the parole population will have increased by the same amount.

Impact of legislative change by year from earlier release

	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	Total 10 years
Earlier Releases											
40%	55	56	10	1	0	0	0	0	0	0	122
50%	33	39	7	10	1	0	0	0	0	0	90
80%	0	0	0	0	0	0	0	0	0	0	-
85%	0	0	13	11	61	74	63	46	61	12	341
Total	88	95	30	22	62	74	63	46	61	12	553
Cumulative Change											
Decrease in Prison population	-88	-183	-213	-235	-297	-371	-434	-480	-541	-553	
Increase in Parole population	88	183	213	235	297	371	434	480	541	553	

As can be seen from the release and cumulative population table most of the decrease will occur in the first two years but for offenders serving dangerous felonies there will be little reduction until the fifth year.

3. The second change to 558.019 is a requirement that every person, except a person serving a sentence of Murder 1st degree or any sex offense in chapter 566, shall be eligible for a parole hearing. The rules for board parole hearings and the setting of the release date are described in 217.690 and the statute explicitly prohibits the board from releasing offenders earlier than any statutory prison term. Nor will the requirement affect the board's ability to defer a conditional release date. No impact is expected.

ASSUMPTION (continued)

Summary

1 Change to 217.760, no impact

2. Change to 558.018 allowing the minimum prison term to be discretionary

The total reduction in the prison population is 592 but the reduction in the next ten years of the budget horizon is 553. There will be an equivalent increase in parole supervision.

	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027
Decrease in Prison population	-88	-183	-213	-235	-297	-371	-434	-480	-541	-553
Increase in Parole population	88	183	213	235	297	371	434	480	541	553

3. Change to 558.018 entitling eligible offenders to a parole hearing, no impact

If this impact statement has changed from statements submitted in previous years, it is because the department's Budget and Research Section reviewed the way responses had been submitted and has developed a more precise way to calculate the impact. In previous year's responses, the full impact of recidivism for parole releases was not adequately calculated. Now we have been able to quantify the fact that some parolees are returned to prison after release and that has been added into the calculation of the impact. The total number of offenders has not changed but there is an assumption that they will spend more time back in prison rather than being on community supervision, which will increase the amount of the impacts.

The FY16 average cost of supervision is \$6.12 per offender per day or an annual cost of \$2,234 per offender. The DOC cost of incarceration is \$16.67 per day or an annual cost of \$6,085 per offender.

ASSUMPTION (continued)

	fewer # to prison	Cost per year	Total Savings in <b>prison costs</b>	additional # to probation and parole	Cost per year	Total additional cost for <b>probation and parole</b>	<b>Net Savings</b> Prison and Probation (includes and 2% inflation)
Year 1	(88)	(\$6,085)	\$535,480	88	(\$2,234)	(\$196,592)	\$282,407
Year 2	(183)	(\$6,085)	\$1,113,555	183	(\$2,234)	(\$408,822)	\$718,828
Year 3	(213)	(\$6,085)	\$1,296,105	213	(\$2,234)	(\$475,842)	\$853,402
Year 4	(235)	(\$6,085)	\$1,429,975	235	(\$2,234)	(\$524,990)	\$960,377
Year 5	(297)	(\$6,085)	\$1,807,245	297	(\$2,234)	(\$663,498)	\$1,238,029
Year 6	(371)	(\$6,085)	\$2,257,535	371	(\$2,234)	(\$828,814)	\$1,577,423
Year 7	(434)	(\$6,085)	\$2,640,890	434	(\$2,234)	(\$969,556)	\$1,882,194
Year 8	(480)	(\$6,085)	\$2,920,800	480	(\$2,234)	(\$1,072,320)	\$2,123,322
Year 9	(541)	(\$6,085)	\$3,291,985	541	(\$2,234)	(\$1,208,594)	\$2,441,025
Year 10	(553)	(\$6,085)	\$3,365,005	553	(\$2,234)	(\$1,235,402)	\$2,545,073

Officials from the **Office of the State Courts Administrator**, and the **Office of Prosecution Services** each assume the proposal would not fiscally impact their respective agencies.

In response to a previous version, officials from the **Office of the State Public Defender** assumed the proposal would not fiscally impact their agency



<u>FISCAL IMPACT -</u>				Fully
<u>State Government</u>	FY 2018	FY 2019	FY 2020	Implemented
	(10 Mo.)			(FY 2027)

**GENERAL  
REVENUE FUND**

Savings - DOC -  
 certain mandatory  
 minimum sentences  
 are now  
 discretionary

<u>\$282,407</u>	<u>\$718,828</u>	<u>\$853,402</u>	<u>\$2,545,073</u>
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**ESTIMATED NET  
EFFECT TO THE  
GENERAL  
REVENUE FUND**

<u><b>\$282,407</b></u>	<u><b>\$718,828</b></u>	<u><b>\$853,402</b></u>	<u><b>\$2,545,073</b></u>
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<u>FISCAL IMPACT -</u>				Fully
<u>Local Government</u>	FY 2018	FY 2019	FY 2020	Implemented
	(10 Mo.)			(FY 2027)
	<u><b>\$0</b></u>	<u><b>\$0</b></u>	<u><b>\$0</b></u>	<u><b>\$0</b></u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

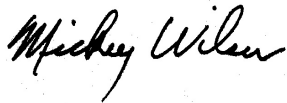
FISCAL DESCRIPTION

This bill provides that certain mandatory minimum sentences may be discretionary and creates provisions when a person is eligible for a parole hearing.

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

SOURCES OF INFORMATION

Department of Corrections  
Office of the State Courts Administrator  
Office of Prosecution Services  
Office of the State Public Defender

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA  
Director  
April 17, 2017

Ross Strobe  
Assistant Director  
April 17, 2017