

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5545-02
Bill No.: HCS for HB 1739
Subject: Crimes and Punishment; Criminal Procedure; Courts; Prisons and Jails
Type: Original
Date: February 28, 2018

Bill Summary: This proposal allows the court to depart from minimum sentencing provisions in certain circumstances.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2018	FY 2019	FY 2020	Fully Implemented (FY 2023)
General Revenue	\$0	\$0	\$0	\$3,191,733
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0	\$3,191,733

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2018	FY 2019	FY 2020	Fully Implemented (FY 2023)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2018	FY 2019	FY 2020	Fully Implemented (FY 2023)
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 2018	FY 2019	FY 2020	Fully Implemented (FY 2023)
Total Estimated Net Effect on FTE	0	0	0	0

☐ 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 2023)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Corrections (DOC)** assume this legislation creates a new section 558.043 that will allow courts the discretion to depart from the minimum prison term as defined in 558.019. The bill is similar to FN4753-02 and the same response is submitted.

The legislation will allow courts the discretion to depart from the minimum prison term as defined in section 558.019 RSMo when the offense did not involve serious physical injury, sexual contact against a minor, or brandishing or discharging a firearm. The minimum prison term (MPT) is the time that offenders are required to be imprisoned before eligibility for parole. Minimum prison terms of 40%, 50% and 80% are defined for prior incarcerations with the DOC and 85% for dangerous felonies. Because of the offenses that will continue to require a MPT, it is assumed that the bill will not apply to dangerous felonies, other serious violent offenses and weapon offenses. In addition, as sex offenses require the completion of the Missouri Sex Offender Program and sex offenders normally serve to at least conditional release, sex offenses are also excluded from the impact. It should be noted that drug offenses are exempt from a MPT and will not be affected by the legislation.

Admissions of offenders required to serve a MPT

In FY17, there were 1,829 new prison admissions with an MPT for an eligible offense who had a parole hearing in FY17 that set a presumptive parole date. It is not known the number of cases when the courts will exercise discretion, but the DOC is estimating that the percentage will be similar to the discretion that the courts exercise in sentencing offenders as persistent offenders for prior felony convictions under section 558.016. In a study in 2015, the DOC found that the courts sentenced defendants as persistent offenders in only 21% of cases. If the courts use discretion in not mandating the MPT in 79% of cases, then it is estimated that 1,445 offenders will not receive a MPT.

ASSUMPTION (continued)

New admissions with parole hearings in FY17
Serving a minimum prison term, excluding serious violent offense, sex offenses and weapons offenses

Minimum Prison Term	Count	Courts will mandate MPT	Courts will not mandate MPT	Average Sentence (years)
		21%	79%	
40%	1,053	221	832	5.6
50%	459	96	363	5.9
80%	317	67	250	6.2
Total	1,829	384	1,445	5.8

Time Served by the Board of Probation and Parole

The parole board has discretion to set the parole date and it uses a risk assessment and guidelines to advise on the release date when not mandated by the MPT or other no-parole restrictions. The estimate of how many of the 1,445 offenders will receive a shorter prison stay is based upon the calculation of how many had a guideline date less than the MPT date and who the parole board set a release date on the MPT date. For offenders with short sentences and who have earned time credits in jail prior to admission, many have guideline dates that are on or before 90 days after prison admission. Because of the time constraints in completing the parole hearing and the release arrangements, most of these offenders are released over guideline and it is unrealistic to expect that such offenders with a MPT could be released much earlier. These offenders are called ASAP and are excluded from the eligible population as well as those offenders who the parole board set a release date beyond the MPT date. Of the 1,829 new admissions with an eligible MPT, it is estimated that 608 could be released earlier (33.2%).

New admissions with a parole hearing in FY17
MPT offenders likely to be released on the guideline date

MPT	Courts will mandate MPT 21%	Courts will not mandate MPT (79%)			Releases Decisions	Percent Released on MPT date not ASAP
		Release date is the MPT date and not ASAP	Guideline date is less than 90 days from Admission (ASAP)	Release date is after the MPT date		
40%	221	321	67	444	1,053	30.5%
50%	96	167	21	175	459	36.5%
80%	67	119	35	96	317	37.6%
Total	384	608	122	715	1,829	33.2%

ASSUMPTION (continued)

Reduction in time served

The expected reduction in time served by the 608 offenders is the difference between the MPT stay (2.9 years) and the average guideline stay (1.7 years). The guideline stay is the board guideline for offenders, which is associated with the sentence length, the offense, and the salient factor risk assessment of the offender. In addition to the time to first release, the DOC is also including an estimate for time served as a parole violator (40% of the parole time after first release). The parole violator percentage is calculated from an examination of the incarceration rates of offenders serving prison sentences who were discharged either from prison or parole in FY17.

Average time served serving a MPT and the guideline term
MPT offenders likely to be released on the guideline date

	Released on MPT (not 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 pris on population
MPT									
40%	321	5.8	2.2	1.5	28%	0.7	0.3	0.4	159
50%	167	5.9	2.9	1.8	31%	1.1	0.4	0.7	121
80%	119	6.2	4.6	1.9	31%	2.7	1.1	1.6	207
Total	608	5.8	2.9	1.7	29%	1.2	0.5	0.7	486

The impact is estimated to be a reduction in the prison population of 486 and this will be offset by an equal increase in the parole population. The legislation is not expected to affect the probation population.

ASSUMPTION (continued)

Impact in the ten years of the budget horizon

The reduction in the prison population is estimated to occur after FY21 when the offenders will be released after the shorter time served.

Change in prison admissions and probation openings with legislation

	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028
New Admissions										
Current Law	608	608	608	608	608	608	608	608	608	608
After Legislation	608	608	608	608	608	608	608	608	608	608
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				426	486	486	486	486	486	486
Parole				426	486	486	486	486	486	486
Probation										
Impact										
Prison Population				426	486	486	486	486	486	486
Field Population				426	486	486	486	486	486	486
Population Change										
P&P Officers + or -		0	0	0	1.0	1.0	1.0	1.0	1.0	1.0

If this impact statement has changed from statements submitted in previous years, it is because the Department of Corrections (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 2017, 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 2018 fiscal notes. The new calculation estimates the increase/decrease in caseloads at each Probation and Parole district due to the proposed legislative change. 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 in a district would result in a change in costs/cost avoidance equal to the cost of one FTE staff person in the district. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

ASSUMPTION (continued)

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.

The DOC cost of incarceration is \$17.003 per day or an annual cost of \$6,206 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. The DOC would assume this legislation will result in a long term cost avoidance starting in FY 22 with full implementation by FY 23 of \$3,191,733. The ten year impact in FY 28 would be a cost avoidance of \$3,536,921 to DOC.

	fewer # in prison	Cost per year	Total Savings for prison	increased # on probation & parole	Add'l P&P Officers needed	Total cost for probation and parole	Grand Total - Prison and Probation (includes and 2% inflation
Year 1	0	(\$6,206)	\$0	0	0	\$0	\$0
Year 2	0	(\$6,206)	\$0	0	0	\$0	\$0
Year 3	0	(\$6,206)	\$0	0	0	\$0	\$0
Year 4	(426)	(\$6,206)	\$2,805,575	426	1	\$0	\$2,805,575
Year 5	(486)	(\$6,206)	\$3,264,741	486	1	(\$73,008)	\$3,191,733
Year 6	(486)	(\$6,206)	\$3,330,036	486	1	(\$64,762)	\$3,265,274
Year 7	(486)	(\$6,206)	\$3,396,636	486	1	(\$65,464)	\$3,331,172
Year 8	(486)	(\$6,206)	\$3,464,569	486	1	(\$66,174)	\$3,398,396
Year 9	(486)	(\$6,206)	\$3,533,861	486	1	(\$66,890)	\$3,466,970
Year 10	(486)	(\$6,206)	\$3,604,538	486	1	(\$67,617)	\$3,536,921

Officials at the **Office of the State Courts Administrator** assume there may be some impact but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

Officials at the **Office of the Attorney General (AGO)** assume that any potential costs arising from this proposal can be absorbed with existing resources. The AGO may seek additional appropriations if there is a significant increase in litigation.

ASSUMPTION (continued)

In response to a previous version, officials at the **Department of Social Services**, the **Office of the State Public Defender** and the **Office of Prosecution Services** each assumed no fiscal impact to their respective agencies from this proposal.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020	Fully Implemented (FY 2023)
GENERAL REVENUE FUND				
<u>Cost Avoidance -</u> DOC - net reduction in prison population vs. increase in probation population	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$3,191,733</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$3,191,733</u>

<u>FISCAL IMPACT -</u> <u>Local Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020	Fully Implemented (FY 2023)
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

The bill specifies conditions under which a court may depart from the applicable minimum term of imprisonment.

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 the Attorney General
Department of Social Services
Office of the State Public Defender
Office of Prosecution Services

Ross Strobe



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