

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1466-01  
Bill No.: HB 619  
Subject: Crimes and Punishment; Criminal Procedure  
Type: Original  
Date: April 19, 2019

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Bill Summary: This proposal modifies the penalties for the offense of resisting arrest.

**FISCAL SUMMARY**

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
General Revenue	(Less than \$3,559,218)	(Less than \$10,275,053)	(Less than \$13,467,318)	(Less than \$13,549,752)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(Less than \$3,559,218)</b>	<b>(Less than \$10,275,053)</b>	<b>(Less than \$13,467,318)</b>	<b>(Less than \$13,549,752)</b>

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
<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 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
<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 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
General Revenue	4	32	66	68
<b>Total Estimated Net Effect on FTE</b>	<b>4</b>	<b>32</b>	<b>66</b>	<b>68</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 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### §575.150 - Resisting arrest

Officials from the **Department of Corrections (DOC)** state the proposed legislation would increase the range of punishment for the offense of resisting arrest from that of an A misdemeanor to an E felony and from a class E felony to a D felony when a person fleeing from arrest creates a substantial risk of serious physical injury or death to any person.

In FY18, 1,808 people were convicted of a class A misdemeanor for resisting arrest (575.150-003) according to data provided by the Office of State Courts Administrator (OSCA). With the enactment of this bill, these become class E felonies. The standard response for nonviolent class E felony offenses is one-third will be given prison sentences, and two-thirds will receive probation. The average sentence is 3.4 years and 1.4 years to first release. The probationary term is three years. With the enactment of this bill, 603 more persons are admitted to prison and 1,205 more persons are given probation. See Table 1 for full impact.

In FY18, 85 persons were incarcerated and 144 persons received probation for fleeing while resisting arrest in such a manner as to create the risk of injury or death (class E felony, 575.150-002, Mocodes 27025 and 48AAF). Of the 85 persons incarcerated, 25 received 120-day shock incarceration while 60 had longer incarcerations. If this legislation passes, these 229 offenders would be charged with a class D felony. Analysis of FY18 data shows the rate of incarceration for class E felonies and class D felonies is very similar; therefore, in estimating the impact of the legislation, 60 offenders will be incarcerated under the new legislation as now under current law. Per research by the department, the 25 offenders receiving a 120-day sentence will be calculated with the probationers for a total of 169 probationers. The average probationary term for nonviolent class D and E felonies is three years. The offenders serving 120-day and receiving probation will be unaffected by the increase in the felony class. Using FY18 data, a class D felony carries an average sentence of 5.0 years with 1.6 years to first release. Violation of 575.15-002 (class E felony) in FY18 had an average sentence of 3.3 years with 1.0 years to first release (Table 2).

With the passage of HB 619, the initial impact to the DOC is 603 more persons incarcerated and 1,205 more persons under field supervision. The full impact occurs in FY24 with 1,326 more persons incarcerated and 4,441 more persons under supervision which would require an additional 64 Probation and Parole Officers.

ASSUMPTION (continued)

Table 1. Impact of class A misdemeanor changing to a class E felony for 575.150-003.  
 (Numbers are rounded.)

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
<b>New Admissions</b>										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	603	603	603	603	603	603	603	603	603	603
<b>Probation</b>										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	1,205	1,205	1,205	1,205	1,205	1,205	1,205	1,205	1,205	1,205
<b>Change (After Legislation - Current Law)</b>										
Admissions	603	603	603	603	603	603	603	603	603	603
Probations	1,205	1,205	1,205	1,205	1,205	1,205	1,205	1,205	1,205	1,205
<b>Cumulative Populations</b>										
Prison	603	1,206	1,266	1,266	1,266	1,266	1,266	1,266	1,266	1,266
Parole			543	784	784	784	784	784	784	784
Probation	1,205	2,410	3,615	3,615	3,615	3,615	3,615	3,615	3,615	3,615
<b>Impact</b>										
Prison Population	603	1,206	1,266	1,266	1,266	1,266	1,266	1,266	1,266	1,266
Field Population	1,205	2,410	4,158	4,399	4,399	4,399	4,399	4,399	4,399	4,399
<b>Population Change</b>	<b>1,808</b>	<b>3,616</b>	<b>5,424</b>	<b>5,665</b>	<b>5,665</b>	<b>5,665</b>	<b>5,665</b>	<b>5,665</b>	<b>5,665</b>	<b>5,665</b>
<b>P&amp;P Officers + or -</b>		<b>28.0</b>	<b>62.0</b>	<b>64.0</b>	<b>64.0</b>	<b>64.0</b>	<b>64.0</b>	<b>64.0</b>	<b>64.0</b>	<b>64.0</b>

Table 2. Impact of class E felony changing to a class D felony for 575.150-002.  
 (Numbers are rounded.)

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
<b>New Admissions</b>										
Current Law	60	60	60	60	60	60	60	60	60	60
After Legislation	60	60	60	60	60	60	60	60	60	60
<b>Probation</b>										
Current Law	169	169	169	169	169	169	169	169	169	169
After Legislation	169	169	169	169	169	169	169	169	169	169
<b>Change (After Legislation - Current Law)</b>										
Admissions	0	0	0	0	0	0	0	0	0	0
Probations	0	0	0	0	0	0	0	0	0	0
<b>Cumulative Populations</b>										
Prison		12	60	60	60	60	60	60	60	60
Parole		-12	-60	-18	42	42	42	42	42	42
Probation										
<b>Impact</b>										
Prison Population		12	60	60	60	60	60	60	60	60
Field Population		-12	-60	-18	42	42	42	42	42	42
<b>Population Change</b>				<b>42</b>	<b>102</b>	<b>102</b>	<b>102</b>	<b>102</b>	<b>102</b>	<b>102</b>
<b>P&amp;P Officers + or -</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

ASSUMPTION (continued)

Table 3: Total estimated impact with the enactment of FN 1446-01.  
 (Numbers are rounded.)

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
<b>New Admissions</b>										
Current Law	60	60	60	60	60	60	60	60	60	60
After Legislation	663	663	663	663	663	663	663	663	663	663
<b>Probation</b>										
Current Law	169	169	169	169	169	169	169	169	169	169
After Legislation	1374	1374	1374	1374	1374	1374	1374	1374	1374	1374
<b>Change (After Legislation - Current Law)</b>										
Admissions	603	603	603	603	603	603	603	603	603	603
Probations	1205	2410	3615	3615	3615	3615	3615	3615	3615	3615
<b>Cumulative Populations</b>										
Prison	603	1218	1326	1326	1326	1326	1326	1326	1326	1326
Parole	0	-12	483	766	826	826	826	826	826	826
Probation	1205	2410	3615	3615	3615	3615	3615	3615	3615	3615
<b>Impact</b>										
Prison Population	603	1218	1326	1326	1326	1326	1326	1326	1326	1326
Field Population	1205	2398	4098	4381	4441	4441	4441	4441	4441	4441
<b>Population Change</b>	<b>1808</b>	<b>3616</b>	<b>5424</b>	<b>5707</b>	<b>5767</b>	<b>5767</b>	<b>5767</b>	<b>5767</b>	<b>5767</b>	<b>5767</b>
<b>P&amp;P Officers + or -</b>		28	62	64	64	64	64	64	64	64

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 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 2019 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 in the district. 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.

ASSUMPTION (continued)

The DOC cost of incarceration is \$17.224 per day or an annual cost of \$6,287 per offender. The DOC cost of probation or parole is determined by the number of Probation and Parole Officer II positions that would be needed to cover the new caseload.

	# to/ from prison	Cost per year	Total Costs for <b>prison</b>	Change in P/P Officers	Number to/from probation & parole	Total cost for <b>probation and parole</b>	Grand Total - Prison and Probation (includes a 2% inflation)
Year 1	603	(\$6,287)	(\$3,159,218)	0	1,205	\$0	(\$3,159,218)
Year 2	1,218	(\$6,287)	(\$7,810,717)	28	2,398	(\$2,064,336)	(\$9,875,053)
Year 3	1,326	(\$6,287)	(\$8,673,359)	62	4,098	(\$4,393,959)	(\$13,067,318)
Year 4	1,326	(\$6,287)	(\$8,846,826)	64	4,381	(\$4,302,926)	(\$13,149,753)
Year 5	1,326	(\$6,287)	(\$9,023,763)	64	4,441	(\$4,331,712)	(\$13,355,475)
Year 6	1,326	(\$6,287)	(\$9,204,238)	64	4,441	(\$4,378,324)	(\$13,582,562)
Year 7	1,326	(\$6,287)	(\$9,388,323)	64	4,441	(\$4,425,576)	(\$13,813,899)
Year 8	1,326	(\$6,287)	(\$9,576,089)	64	4,441	(\$4,473,307)	(\$14,049,396)
Year 9	1,326	(\$6,287)	(\$9,767,611)	64	4,441	(\$4,521,602)	(\$14,289,213)
Year 10	1,326	(\$6,287)	(\$9,962,963)	64	4,441	(\$4,570,552)	(\$14,533,516)

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

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** state they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the enhanced penalties for offense of resisting or interfering with an arrest - a new class E felony. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

In Fiscal Year 2018, SPD's Trial Division opened 1,328 cases under charge code 575.150 of the 63,395 total cases opened.

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.

ASSUMPTION (continued)

**Oversight** notes over the last three fiscal years, the SPD has lapsed a total of \$152 of General Revenue appropriations (\$0 out of \$36.4 million in FY 2016; \$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018). Therefore, Oversight assumes the SPD is at maximum capacity, and the increase in workload resulting from this bill cannot be absorbed within 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.

According to "The Missouri Project" (RubinBrown, June 2014), the number of hours that should be spent on a misdemeanor case is 13.3. This number takes into account time for travel and in-court appearances. In contrast, the number of hours that should be spent on a C/D/E felony case is 28.5. This equates to a difference of 15.2 additional hours spent on a felony case versus a misdemeanor case ( $28.5 - 13.3 = 15.2$ ). For purposes of this fiscal note, the **SPD** assumes 475 individuals previously charged with a misdemeanor will now be charged with a felony. This equates to an additional 7,220 hours ( $15.2 \text{ hours} \times 475 \text{ cases}$ ) annually. With 2,080 work hours in a year, the SPD would need four attorneys to meet the requirements of this legislation ( $7,220/2,080$ ).

**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 (Less than \$400,000) per year to the General Revenue Fund.

**Oversight** notes that the **Department of Public Safety - Missouri State Highway Patrol, Missouri Office of Prosecution Services, Office of State Courts Administrator, Springfield Police Department, St. Louis County Department of Justice Services and Boone County Sheriff's Department** have stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

ASSUMPTION (continued)

**Oversight** only reflects the responses that we have received from state agencies and political subdivisions; however, other police and sheriffs' departments were requested to respond to this proposed legislation but did not. For a general listing of political subdivisions included in our database, please refer to [www.legislativeoversight.mo.gov](http://www.legislativeoversight.mo.gov).

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2023)
<b>GENERAL REVENUE FUND</b>				
<u>Costs - DOC</u> (§575.150)				
Increased				
incarceration costs	(\$3,159,218)	(\$7,810,717)	(\$8,673,359)	(\$8,846,826)
Personal services	\$0	(\$1,064,000)	(\$2,379,560)	(\$2,480,896)
Fringe Benefits	\$0	(\$680,868)	(\$1,522,713)	(\$1,587,555)
Expense and				
Equipment	\$0	(\$319,468)	(\$491,686)	(\$234,475)
<u>Total Costs - DOC</u>	<u>(\$3,159,218)</u>	<u>(\$9,875,053)</u>	<u>(\$13,067,318)</u>	<u>(\$13,149,752)</u>
FTE Change - DOC	0 FTE	28 FTE	62 FTE	64 FTE
<u>Costs - SPD</u> (§575.150)				
Salaries, fringe				
benefits, and				
equipment and	(Less than	(Less than	(Less than	(Less than
expense	<u>\$400,000)</u>	<u>\$400,000)</u>	<u>\$400,000)</u>	<u>\$400,000)</u>
FTE Change - SPD	4 FTE	4 FTE	4 FTE	4 FTE
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>(Less than</u> <u>\$3,559,218)</u></b>	<b><u>(Less than</u> <u>\$10,275,053)</u></b>	<b><u>(Less than</u> <u>\$13,467,318)</u></b>	<b><u>(Less than</u> <u>\$13,549,752)</u></b>
Estimated Net FTE Change on the General Revenue Fund	4 FTE	32 FTE	66 FTE	68 FTE



FISCAL IMPACT -

<u>Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	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

Currently, the offense of resisting arrest is a class A misdemeanor unless the person fleeing creates a substantial risk of serious physical injury or death to any person, in which case it is a class E felony. This bill increases the penalty to a class E felony unless the person fleeing creates a substantial risk of serious physical injury or death to any person, in which case it is a class D felony.

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  
Department of Public Safety -  
Missouri State Highway Patrol  
Missouri Office of Prosecution Services  
Office of State Courts Administrator  
State Public Defender's Office  
Springfield Police Department  
St. Louis County Department of Justice Services  
Boone County Sheriff's Department



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