

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3541-02  
Bill No.: HB 1453  
Subject: Crimes and Punishment; Criminal Procedure; Firearms  
Type: Original  
Date: March 2, 2020

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Bill Summary: This proposal modifies provisions relating to the offense of armed criminal action.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2040)
General Revenue	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)	(Significant Fiscal Impact)*
<b>Total Estimated Net Effect on General Revenue</b>	<b>(Less than \$100,000)</b>	<b>(Less than \$100,000)</b>	<b>(Less than \$100,000)</b>	<b>(Significant Fiscal Impact)*</b>

\* DOC anticipates a significant fiscal impact (potential increase in prison population of over 4,125 prisoners and 1,988 fewer offenders under parole supervision from the changes to §556.061 and §571.015) by FY 2040.

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2040)
<b>Total Estimated Net Effect on Other 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 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2040)
<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 2021	FY 2022	FY 2023	Fully Implemented (FY 2040)
<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 2021	FY 2022	FY 2023	Fully Implemented (FY 2040)
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## **FISCAL ANALYSIS**

### **ASSUMPTION**

#### **§§556.061 and 571.015 - Armed criminal action**

**Oversight** notes the **Department of Corrections (DOC)** states this legislation does not create any new criminal offenses, it creates criminal penalties for existing offenses. Because of this fact, there is no projected fiscal impact within the ten-year timeframe for fiscal note purposes. However, the department does anticipate significant fiscal impact past the ten year reporting timeframe.

**Oversight** contacted the DOC to determine if an estimate of costs could be provided beyond the ten-year reporting timeframe.

The **DOC** states this bill increases imprisonment terms for offenders committing crimes using a firearm, makes them also guilty of ACA, and eliminates the eligibility for probation, parole, CR, SIS, or SES. As this bill does not introduce new actions eligible for charges, it is not likely to have an impact on the number of offenders under the purview of the department. However, offenders convicted of ACA will have longer sentences and longer stays in prison.

In FY 2019, 497 offenders admitted to prison had at least one ACA conviction. The average length of their longest admitting sentence was 15.7 years. By adding the difference between the minimum terms under current legislation and the minimum terms under the proposed legislation to the longest sentences for the 497 offenders admitted in FY 2019, we expect the average length of the longest admitting sentence these offenders to increase to approximately 26.8 years.

In FY2019, 314 offenders with at least one ACA conviction were released from prison. Their average length of stay to first release was 9.4 years, which was approximately 61% of their longest admitting sentence. When we apply this same percent of sentence as time served to first release to the new average sentence length of 26.8, we can expect offenders with ACA sentences to serve, on average, approximately 16.3 years to first release.

Given the relatively long lengths of sentences and prison stays for these offenders, and the discretion of the courts in determining the length of these sentences, the exact impact on Department operations is difficult to determine. The estimated impact does not begin to appear until FY2032 and will not reach maximum cumulative impact on the prison population until FY2040, when there could be 4,125 more offenders in prison and 1,988 fewer offenders under parole supervision.

ASSUMPTION (continued)

**Oversight** notes DOC's estimated impact to the prison population does not begin to appear until FY 2032 and will not reach maximum impact until FY 2040 for the prison population. For fiscal note purposes, Oversight notes DOC's current cost of incarceration is \$17.496 per day or an annual cost of \$6,386 per offender. These costs do not take into account capital improvements such as a new prison or additional FTE required to oversee these operations.

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 punishment for armed criminal action in conjunction with other offenses. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

The SPD assumes no new offenses but does expect enhanced punishment for armed criminal action in conjunction with other offenses. **Oversight** assumes more resources may be expended on cases that have now increased prison time.

In Fiscal Year 2019, **SPD's** Trial Division opened 174 cases under charge code 571.015 of the 62,002 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.

**Oversight** notes over the last three fiscal years, the SPD has lapsed a total of \$153 of General Revenue appropriations (\$2 out of \$28.0 million in FY 2017; \$150 out of \$42.5 million in FY 2018; and \$1 out of \$46.0 million in FY 2019). Therefore, Oversight assumes the SPD is at maximum capacity, and the increase in workload resulting from this bill cannot be absorbed with 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.

**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 \$100,000) per year to the General Revenue Fund.

ASSUMPTION (continued)

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS.

**Oversight** notes the **Department of Public Safety - Missouri State Highway Patrol** and the **Office of State Courts Administrator** have each stated the proposal would not have a direct fiscal impact on their respective organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023	Fully Implemented (FY 2040)
<b>GENERAL REVENUE</b>				
<u>Costs - DOC</u> §§556.061 and 571.015) Increased incarceration costs	\$0	\$0	\$0	(Significant Fiscal Impact)
<u>Costs - SPD</u> §§556.061 and 571.015) Salaries, fringe benefits, and equipment and expense	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>(Less than \$100,000)</u></b>	<b><u>(Less than \$100,000)</u></b>	<b><u>(Less than \$100,000)</u></b>	<b><u>(Significant Fiscal Impact)</u></b>
<u>FISCAL IMPACT -</u> <u>Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023	Fully Implemented (FY 2040)
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

### FISCAL IMPACT - Small Business

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

### FISCAL DESCRIPTION

This bill adds armed criminal action to the definition of "dangerous felony" under Section 556.061, RSMo.

The bill also specifies that any person who commits a felony with the use of an unlawfully-possessed firearm is also guilty of armed criminal action and will be punished by imprisonment of at least eight years in addition to any punishment provided for the offense committed with the unlawfully-possessed firearm. Any person convicted of a second offense of armed criminal action under these provisions will be punished by at least 18 years' imprisonment in addition to any punishment provided for the offense committed with the unlawfully-possessed firearm. Finally, any person who is convicted of a third or subsequent offense of armed criminal action under these provisions will be sentenced to at least 28 years' imprisonment in addition to any punishment provided for the offense committed with the unlawfully-possessed firearm.

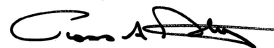
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

### 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



Julie Morff  
Director  
March 2, 2020



Ross Strope  
Assistant Director  
March 2, 2020

L.R. No. 3541-02  
Bill No. HB 1453  
Page 7 of 7  
March 2, 2020

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