

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0114H.01I
 Bill No.: HB 216
 Subject: Law Enforcement Officers And Agencies; Boards, Commissions, Committees,
 And Councils
 Type: Original
 Date: January 21, 2021

Bill Summary: This proposal modifies provisions relating to law enforcement officers.

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|--|-------------------------------------|----------------------------------|----------------------------------|
| FUND AFFECTED | FY 2022 | FY 2023 | FY 2024 |
| General Revenue | Could exceed (\$278,313) | Less than (\$324,878) | Less than (\$328,635) |
| Total Estimated Net Effect on General Revenue | Could exceed (\$278,313) | Less than (\$324,878) | Less than (\$328,635) |

| ESTIMATED NET EFFECT ON OTHER STATE FUNDS | | | |
|---|------------|------------|------------|
| FUND AFFECTED | FY 2022 | FY 2023 | FY 2024 |
| | | | |
| | | | |
| Total Estimated Net Effect on <u>Other</u> State Funds | \$0 | \$0 | \$0 |

Numbers within parentheses: () indicate costs or losses.

| ESTIMATED NET EFFECT ON FEDERAL FUNDS | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2022 | FY 2023 | FY 2024 |
| | | | |
| | | | |
| Total Estimated Net Effect on <u>All</u> Federal Funds | \$0 | \$0 | \$0 |

| ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE) | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2022 | FY 2023 | FY 2024 |
| General Revenue | 3 FTE | 3 FTE | 3 FTE |
| | | | |
| Total Estimated Net Effect on FTE | 3 FTE | 3 FTE | 3 FTE |

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act.

| ESTIMATED NET EFFECT ON LOCAL FUNDS | | | |
|--|----------------|----------------|----------------|
| FUND AFFECTED | FY 2022 | FY 2023 | FY 2024 |
| | | | |
| Local Government | \$0 | \$0 | \$0 |

FISCAL ANALYSIS

ASSUMPTION

§§43.540, 563.046, 590.080, 590.118, 590.120, and 590.1060 – Law enforcement

Officials from the **Department of Public Safety - Office of the Director (DPS)** state as a policy matter, the POST Commission consists of uncompensated volunteers. It is unlikely that they would have the time in order to hold full hearings on discipline from peace officers.

Based upon the language of §590.080, the DPS would need to add at least one (1) full-time attorney, one (1) full-time paralegal and one (1) full-time Program Specialist if the POST Commission were to start hearing cases regarding cause for discipline. Currently, POST Program staff members draft discipline orders in non-complicated cases, and the DPS' legal counsel reviews these orders and prepares them for the Director's review and signature. In complicated cases, the DPS' legal counsel drafts the orders from the start. In both situations, these orders are based on the orders that are issued by the Administrative Hearing Commission (AHC). If DPS has to start writing orders on behalf of the POST Commission from scratch, this workload would increase significantly.

Further, potential ethical conflicts would necessitate additional legal counsel. In the current POST discipline system, the POST Program investigates potential disciplinary matters, and the Director determines if a complaint should be pursued. If the AHC determines that there is cause for discipline, then the case returns to DPS for a hearing before the Director, who determines appropriate discipline. DPS legal counsel generally serves as counsel to the Director, the POST Program, and the POST Commission at all points in this process because there is no conflict between the interests of any of these entities. However, if the POST Commission becomes a neutral body for determining cause for discipline, another attorney would be necessary, because there may be a conflict of interest between the Director and the POST Commission.

Section 590.080.3 refers to the "POST commission sustaining the director's belief" regarding cause for discipline. This is inconsistent with the current practice, where the AHC determines whether there is cause to discipline.

The Director's Office may require some IT support to allow the POST Commission to hold fact finding hearings. The DPS will need a system to track hearings and the documents that have been filed by attorneys for both the officer concerned and the DPS. This may entail the acquisition of a subscription of a system such as OnBase and a document scanner as well as the cost of additional server space. However, the actual amount of support required and the cost to set up such a system to allow the POST Commission to hold fact finding hearings is unknown and would be difficult to calculate until DPS actually took over these functions.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the FTE costs provided by DPS for fiscal note purposes. However, because there appears to be some uncertainty surrounding the exact costs for IT support for a system to track hearings, Oversight will range the fiscal impact for these costs as \$0 to (Unknown) in the first year.

Officials from the **Office of Administration - Administrative Hearing Commission (OA/AHC)** anticipate this legislation will not significantly alter its caseload. However, if similar bills pass resulting in more cases, there could be a fiscal impact.

Oversight contacted the AHC to determine the number of cases and hearings that were conducted over the past three years under §590.080. According to the AHC, there were 205 cases opened. Of those cases, 34 received hearings.

The **AHC** states only one hearing was held in 2020 and that it is possible COVID has resulted in the postponement of several cases that may have otherwise occurred. Many cases are still marked “open” and have not been fully resolved.

Oversight notes the responsibility for investigating the initial complaint will transfer from the AHC to the POST Commission who will conduct a hearing and issue a finding. However, the AHC will still have appellate responsibility. In addition, if the AHC determines that any disciplinary action taken by the director against the licensee is not supported by the evidence, the commission shall modify or reverse the department’s action. Oversight will reflect a possible savings to the AHC for these cases now being handled by POST.

Officials from the **Attorney General’s Office**, the **Department of Labor and Industrial Relations**, the **Department of Natural Resources**, the **Department of Public Safety – (Capitol Police and Missouri Highway Patrol)**, the **Department of Social Services**, the **Missouri Department of Conservation**, the **Missouri Office of Prosecution Services**, the **Office of the State Courts Administrator**, the **Office of the State Public Defender**, the **Crestwood Police Department**, the **El Dorado Springs Police Department**, the **Ellisville Police Department**, the **Kansas City Police Department**, the **Kimberling City Police Department**, the **Springfield Police Department**, the **St. John Police Department**, and the **St. Joseph Police Department** each assume the proposal will have no 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.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other police and sheriff’s departments were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

| <u>FISCAL IMPACT – State Government</u> | FY 2022 (10 Mo.) | FY 2023 | FY 2024 |
|---|--|---|---|
| GENERAL REVENUE FUND | | | |
| <u>Savings</u> – AHC – potential savings of cases now handled by POST | \$0 or Unknown | \$0 or Unknown | \$0 or Unknown |
| <u>Costs</u> – DPS (\$590.080) | | | |
| Personal services | (\$142,643) | (\$172,883) | (\$174,612) |
| Fringe benefits | (\$77,992) | (\$94,168) | (\$94,752) |
| Equipment and expense | (\$57,678) | (\$57,827) | (\$59,271) |
| ITSD system requirements | \$0 to <u>(Unknown)</u> | <u>\$0</u> | <u>\$0</u> |
| <u>Total Costs</u> – DPS | <u>(\$278,313 to Unknown)</u> | <u>(\$324,878)</u> | <u>(\$328,635)</u> |
| FTE Change – DPS | 3 FTE | 3 FTE | 3 FTE |
| ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND | <u>Could exceed (\$278,313)</u> | <u>Less than (\$324,878)</u> | <u>Less than (\$328,635)</u> |
| Estimated Net FTE Change for the General Revenue Fund | 3 FTE | 3 FTE | 3 FTE |

| <u>FISCAL IMPACT – Local Government</u> | FY 2022 (10 Mo.) | FY 2023 | FY 2024 |
|---|---------------------|-------------------|-------------------|
| | | | |
| | <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

This bill adds law enforcement agencies that are participating for the purpose of screening employees or applicants for employment to the list of qualified entities that may participate in the National Rap Back Program. Prior to offering employment to any law enforcement officer, all law enforcement agencies must perform a pre-employment screening with the applicant's previous employers for all jobs related to law enforcement in order to determine whether the applicant has any history of employment-related disciplinary action.

The bill also specifies that a law enforcement officer is justified in using a chokehold when attempting to effect an arrest or prevent an escape from custody if the officer reasonably believes that it is necessary in order to defend himself or herself or a third person from what the officer believes to be the use or imminent use of deadly physical force or infliction of serious physical injury.

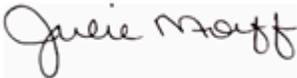
Under current law, when the Director of Public Safety has knowledge of cause to discipline a law enforcement officer, the Director files a complaint with the Administrative Hearing Commission, and the Commission conducts a hearing to determine whether there is in fact cause to discipline the law enforcement officer. Under this bill, the Director will file a complaint with the law enforcement Officer Standards and Training (POST) Commission, and the Commission will conduct the hearing. A law enforcement officer may appeal any order of probation, suspension, or license revocation issued under Section 590.080, RSMo, by filing a notice of appeal with the Administrative Hearing Commission as specified in the bill.

The bill specifies that a law enforcement officer must intervene to attempt to prevent or stop another officer from using physical force that the intervening officer reasonably believes, based on his or her law enforcement expertise and experience, exceeds the degree of force permitted. The intervening officer must report the intervention to his or her immediate supervisor or to the person next in the chain of command. The intervening officer must not be retaliated against or disciplined in any way for intervening, reporting unconstitutional conduct, or failing to follow a directive the officer believes is unauthorized and illegal. When an internal investigation finds that the officer failed to intervene to prevent the use of unlawful physical force and the incident resulted in serious bodily injury or death to any person, the officer shall be subject to discipline, up to and including termination.

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

Attorney General's Office
Department of Labor and Industrial Relations
Department of Natural Resources
Department of Public Safety
Department of Social Services
Missouri Department of Conservation
Office of Administration – Administrative Hearing Commission
Missouri Office of Prosecution Services
Office of the State Courts Administrator
Office of the State Public Defender
Crestwood Police Department
El Dorado Springs Police Department
Ellisville Police Department
Kansas City Police Department
Kimberling City Police Department
Springfield Police Department
St. John Police Department
St. Joseph Police Department



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January 21, 2021



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