

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0585H.02C
 Bill No.: HCS for HB 290
 Subject: Crimes and Punishment; Consumer Protection
 Type: Original
 Date: March 16, 2021

Bill Summary: This proposal establishes the offense of organized retail theft and establishes provisions relating to disclosures by online marketplaces.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2022	FY 2023	FY 2024	Fully Implemented (FY 2029)
General Revenue	(\$45,243)	(\$110,756)	(\$169,456)	(\$349,541)
Total Estimated Net Effect on General Revenue	(\$45,243)	(\$110,756)	(\$169,456)	(\$349,541)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2022	FY 2023	FY 2024	Fully Implemented (FY 2029)
Total Estimated Net Effect on Other State Funds	\$0	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2022	FY 2023	FY 2024	Fully Implemented (FY 2029)
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 2022	FY 2023	FY 2024	Fully Implemented (FY 2029)
General Revenue – DOC	0 FTE	0 FTE	0 FTE	1 FTE
Total Estimated Net Effect on FTE	0 FTE	0 FTE	0 FTE	1 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 or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS				
FUND AFFECTED	FY 2022	FY 2023	FY 2024	Fully Implemented (FY 2029)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§570.035 – Organized retail theft

Officials from the **Department of Corrections (DOC)** state this bill establishes the offense of organized retail theft and makes the offense punishable as a class B felony when the value of theft is twenty-five thousand dollars or more and as a class C felony when the value of theft is more than three thousand dollars.

Section 570.035 subsection (4) creates a new class B felony offense and Section 570.035 subsection (3) creates a new class C felony offense. Therefore, the DOC will utilize a standard B and C felony response to estimate the fiscal impact.

For each new class B felony, it is estimated that three people will be sentenced to prison and four to probation. The average sentence for a class B felony offense is 8.7 years, of which 5.1 years will be served in prison with 3.4 years to first release. The remaining 3.6 years will be on parole. Probation sentences will be 3 years.

The cumulative impact on the DOC is estimated to be 15 additional offenders in prison and 23 additional offenders on field supervision by FY 2030.

Change in prison admissions and probation openings with legislation

	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031
New Admissions										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	3	3	3	3	3	3	3	3	3	3
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	4	4	4	4	4	4	4	4	4	4
Change (After Legislation - Current Law)										
Admissions	3	3	3	3	3	3	3	3	3	3
Probations	4	4	4	4	4	4	4	4	4	4
Cumulative Populations										
Prison	3	6	9	12	15	15	15	15	15	15
Parole						3	6	9	11	11
Probation	4	8	12	12	12	12	12	12	12	12
Impact										
Prison Population	3	6	9	12	15	15	15	15	15	15
Field Population	4	8	12	12	12	15	18	21	23	23
Population Change	7	14	21	24	27	30	33	36	38	38

For each new class C felony, it is estimated that four people will be sentenced to prison and six to probation. The average sentence for a class C felony offense is 6.9 years, of which 3.7 years

will be served in prison with 2.1 years to first release. The remaining 3.2 years will be on parole. Probation sentences will be 3 years.

The cumulative impact on the DOC is estimated to be 15 additional offenders in prison and 31 additional offenders on field supervision by FY 2028.

Change in prison admissions and probation openings with legislation

	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031
New Admissions										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	4	4	4	4	4	4	4	4	4	4
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	6	6	6	6	6	6	6	6	6	6
Change (After Legislation - Current Law)										
Admissions	4	4	4	4	4	4	4	4	4	4
Probations	6	6	6	6	6	6	6	6	6	6
Cumulative Populations										
Prison	4	8	12	15	15	15	15	15	15	15
Parole				1	5	9	13	13	13	13
Probation	6	12	18	18	18	18	18	18	18	18
Impact										
Prison Population	4	8	12	15	15	15	15	15	15	15
Field Population	6	12	18	19	23	27	31	31	31	31
Population Change	10	20	30	34	38	42	46	46	46	46

Thus, the combined cumulative impact is estimated to be 30 additional offenders in prison and 52 additional offenders on field supervision by FY 2029, with a net population change of 82 new offenders.

	# to prison	Cost per year	Total Costs for prison	Change in & parole officers	Total cost for probation and parole	# to probation & parole	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	7	(\$7,756)	(\$45,243)	0	\$0	10	(\$45,243)
Year 2	14	(\$7,756)	(\$110,756)	0	\$0	20	(\$110,756)
Year 3	21	(\$7,756)	(\$169,456)	0	\$0	30	(\$169,456)
Year 4	27	(\$7,756)	(\$222,230)	0	\$0	31	(\$222,230)
Year 5	30	(\$7,756)	(\$251,860)	0	\$0	35	(\$251,860)
Year 6	30	(\$7,756)	(\$256,898)	0	\$0	42	(\$256,898)
Year 7	30	(\$7,756)	(\$262,035)	0	\$0	49	(\$262,035)
Year 8	30	(\$7,756)	(\$267,276)	1	(\$82,265)	52	(\$349,541)
Year 9	30	(\$7,756)	(\$272,622)	1	(\$73,284)	54	(\$345,906)
Year 10	30	(\$7,756)	(\$278,074)	1	(\$74,080)	54	(\$352,154)

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 2019, the DOC reevaluated the calculation used for computing the Probation and Parole average daily cost of supervision and revised the cost calculation to be the DOC average district caseload across the state which is 51 offender cases per officer. The new calculation assumes that an increase/decrease of 51 cases would result in a change in costs/cost avoidance equal to the cost of one FTE staff person. 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. For instances where the proposed legislation affects a less specific caseload, DOC projects the impact based on prior year(s) actual data for DOC's 48 probation and parole districts.

The DOC cost of incarceration is \$21.251 per day or an annual cost of \$7,756 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.

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

For the purpose of the proposed legislation, and as a result of excessive caseloads, the **Missouri State Public Defender (SPD)** cannot assume existing staff will be able to provide competent, effective representation for any new cases where indigent persons are charged with the proposed new crime(s) under Chapter 570 concerning organized retail theft. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards. While the number of new cases may be too few or uncertain to request additional funding for this specific bill, the Missouri State Public Defender will continue to request sufficient appropriations to provide competent and effective representation in all cases where the right to counsel attaches.

Oversight assumes the SPD will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the SPD for fiscal note purposes.

Bill as a Whole

Officials from the **Joint Committee on Administrative Rules (JCAR)** state this legislation is not anticipated to cause a fiscal impact beyond its current appropriation.

Oversight assumes JCAR will be able to administer any rules resulting from this proposal with existing resources.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could require additional resources.

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

Oversight does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the AGO for fiscal note purposes.

Officials from the **Department of Commerce and Insurance**, the **Department of Public Safety - Missouri Highway Patrol**, the **Department of Revenue**, the **Missouri Office of Prosecution Services**, the **Office of the State Courts Administrator**, the **City of Claycomo**, the **City of Corder**, the **City of Houstonia**, and the **City of Springfield** 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 cities and counties 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	Fully Implemented (FY 2029)
GENERAL REVENUE FUND				
<u>Costs – DOC (\$570.035)</u> Increase in P&P officers				
Personal service	\$0	\$0	\$0	(\$41,548)
Fringe benefit	\$0	\$0	\$0	(\$26,824)
Expense and equipment	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>(\$13,893)</u>
Total Costs – DOC	\$0	\$0	\$0	(\$82,265)
FTE Change – DOC	0 FTE	0 FTE	0 FTE	1 FTE
<u>Costs – DOC Increased incarceration costs</u>	<u>(\$45,243)</u>	<u>(\$110,756)</u>	<u>(\$169,456)</u>	<u>(\$267,276)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(\$45,243)</u>	<u>(\$110,756)</u>	<u>(\$169,456)</u>	<u>(\$349,541)</u>
Estimated Net FTE Change for the General Revenue Fund	0 FTE	0 FTE	0 FTE	1 FTE

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024	Fully Implemented (FY 2029)
	<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

This bill states that a person commits the offense of organized retail theft if the person, alone or in concert with others, commits a series of thefts of retail merchandise against a merchant with the intent to return the merchandise to the merchant for value or resell the merchandise for value.

The offense of organized retail theft is a class C felony if the aggregated value of all the thefts committed during a 120-day period is at least \$3,000 and no more than \$25,000; and a class B felony if the aggregated value is more than \$25,000 or more. The factors for determining the aggregated value is specified in the bill.

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 Commerce and Insurance
Department of Corrections
Department of Public Safety – Missouri Highway Patrol
Department of Revenue
Joint Committee on Administrative Rules
Missouri Office of Prosecution Services
Office of the State Courts Administrator
Office of the State Public Defender
Office of the Secretary of State
City of Claycomo
City of Corder
City of Houstonia
City of Springfield



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