

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3230H.03I
 Bill No.: HB 2108
 Subject: Crimes and Punishment; Criminal Procedure
 Type: Original
 Date: February 1, 2022

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 2023	FY 2024	FY 2025	Fully Implemented (FY 2027)
General Revenue	(\$41,275)	(\$101,041)	(\$146,005)	(\$196,581)
Total Estimated Net Effect on General Revenue	(\$41,275)	(\$101,041)	(\$146,005)	(\$196,581)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2023	FY 2024	FY 2025	Fully Implemented (FY 2027)
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 2023	FY 2024	FY 2025	Fully Implemented (FY 2027)
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 2023	FY 2024	FY 2025	Fully Implemented (FY 2027)
Total Estimated Net Effect on FTE	0	0	0	\$0

- 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 2023	FY 2024	FY 2025	Fully Implemented (FY 2027)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§407.1700 and 570.035 – Organized retail theft

Officials from the **Department of Corrections (DOC)** state this proposal establishes the offense of organized retail theft and establishes provisions relating to disclosures by online marketplaces.

Section 407.1700.9 creates the equivalent of a new class E felony by designating violations of the provisions of 407.1700 to be treated as violations of sections 407.010 to 407.130.

For each new nonviolent class E felony, the department estimates one person will be sentenced to prison and two to probation. The average sentence for a nonviolent class E felony offense is 3.4 years, of which 2.1 years will be served in prison with 1.4 years to first release. The remaining 1.3 years will be on parole. Probation sentences will be 3 years.

The cumulative impact on the department is estimated to be 2 additional offenders in prison and 7 additional offenders on field supervision by FY 2025.

Change in prison admissions and probation openings with legislation-Class E Felony (nonviolent)

	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032
New Admissions										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	1	1	1	1	1	1	1	1	1	1
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	2	2	2	2	2	2	2	2	2	2
Change (After Legislation - Current Law)										
Admissions	1	1	1	1	1	1	1	1	1	1
Probations	2	2	2	2	2	2	2	2	2	2
Cumulative Populations										
Prison	1	2	2	2	2	2	2	2	2	2
Parole			1	1	1	1	1	1	1	1
Probation	2	4	6	6	6	6	6	6	6	6
Impact										
Prison Population	1	2	2	2	2	2	2	2	2	2
Field Population	2	4	7	7	7	7	7	7	7	7
Population Change	3	6	9	9	9	9	9	9	9	9

Section 570.035 creates a new class C felony for offenses for theft between \$1,500 and \$10,000, and a new class B felony offense for theft more than \$10,000.

For each new class C felony, the department estimates 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 department is estimated to be 15 additional offenders in prison and 19 additional offenders on field supervision by FY 2026.

Change in prison admissions and probation openings with legislation-Class C Felony

	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032
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

Given the seriousness of class B felony offenses and that the introduction of a completely new class B felony offense is a rare event, the department assumes the admission of one person per year to prison following the passage of the legislative proposal.

Offenders committed to prison with a class B felony as their most serious sentence who were first released sometime during fiscal years 2019, 2020 and 2021, had an average sentence length of 9.0 years and served, on average, 3.4 years in prison prior to first release. The department assumes one third of the remaining sentence length will be served in prison as a parole return, and the rest of the sentence will be served on supervision in the community.

The cumulative impact on the department is estimated to be 5 additional offenders in prison and 0 additional offenders on field supervision by FY 2027.

Change in prison admissions and probation openings with legislation

	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032
New Admissions										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	1	1	1	1	1	1	1	1	1	1
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	1	1	1	1	1	1	1	1	1	1
Probations										
Cumulative Populations										
Prison	1	2	3	4	5	5	5	5	5	5
Parole						1	2	3	4	4
Probation										
Impact										
Prison Population	1	2	3	4	5	5	5	5	5	5
Field Population						1	2	3	4	4
Population Change	1	2	3	4	5	6	7	8	9	9

Combined Estimated Cumulative Impact

The combined estimated cumulative impact is 22 additional offenders in prison and 30 additional offenders on field supervision by FY 2027.

Change in prison admissions and probation openings with legislation

	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032
New Admissions										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	6	6	6	6	6	6	6	6	6	6
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	8	8	8	8	8	8	8	8	8	8
Change (After Legislation - Current Law)										
Admissions	6	6	6	6	6	6	6	6	6	6
Probations	8	8	8	8	8	8	8	8	8	8
Cumulative Populations										
Prison	6	12	17	21	22	22	22	22	22	22
Parole	0	0	1	2	6	11	16	17	18	18
Probation	8	16	24	24	24	24	24	24	24	24
Impact										
Prison Population	6	12	17	21	22	22	22	22	22	22
Field Population	8	16	25	26	30	35	40	41	42	42
Population Change	14	28	42	47	52	57	62	63	64	64

	# to prison	Cost per year	Total Costs for prison	Change in probation & parole officers	Total cost for probation and parole	# to probation & parole	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	6	(\$8,255)	(\$41,275)	0	\$0	8	(\$41,275)
Year 2	12	(\$8,255)	(\$101,041)	0	\$0	16	(\$101,041)
Year 3	17	(\$8,255)	(\$146,005)	0	\$0	25	(\$146,005)
Year 4	21	(\$8,255)	(\$183,966)	0	\$0	26	(\$183,966)
Year 5	22	(\$8,255)	(\$196,581)	0	\$0	30	(\$196,581)
Year 6	22	(\$8,255)	(\$200,512)	0	\$0	35	(\$200,512)
Year 7	22	(\$8,255)	(\$204,522)	0	\$0	40	(\$204,522)
Year 8	22	(\$8,255)	(\$208,613)	0	\$0	41	(\$208,613)
Year 9	22	(\$8,255)	(\$212,785)	0	\$0	42	(\$212,785)
Year 10	22	(\$8,255)	(\$217,041)	0	\$0	42	(\$217,041)

If this impact statement has changed from statements submitted in previous years, it could be due to an increase/decrease in the number of offenders, a change in the cost per day for institutional offenders, and/or an increase in staff salaries.

If the projected impact of legislation is less than 1,500 offenders added to or subtracted from the department's institutional caseload, the marginal cost of incarceration will be utilized. This cost of incarceration is \$22.616 per day or an annual cost of \$8,255 per offender and includes such costs as medical, food, and operational E&E. However, if the projected impact of legislation is 1,500 or more offenders added or removed to the department's institutional caseload, the full cost of incarceration will be used, which includes fixed costs. This cost is \$88.12 per day or an annual cost of \$32,162 per offender and includes personal services, all institutional E&E, medical and mental health, fringe, and miscellaneous expenses. None of these costs include construction to increase institutional capacity.

DOC's cost of probation or parole is determined by the number of P&P Officer II positions that are needed to cover its caseload. The DOC average district caseload across the state is 51 offender cases per officer. An increase/decrease of 51 cases would result in a cost/cost avoidance equal to the salary, fringe, and equipment and expenses of one P&P Officer II. Increases/decreases smaller than 51 offender cases 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.

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

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 **Office of the State Public Defender (SPD)** state the proposed legislation expands offenses under Section 570.035 and therefore, could increase the number of persons who are eligible for representation by State Public Defender (SPD). The fiscal impact of this legislation on SPD is unknown as the number of additional cases eligible for representation as the result of the legislation is unknown, but it is anticipated that any increase would be less than \$250,000.

Oversight notes in FY22 the SPD was appropriated moneys for 53 additional FTE. Oversight assumes this proposal will create a minimal number of new cases and that the SPD can absorb the additional caseload required by this proposal with current staff and resources. Therefore, Oversight will reflect no fiscal impact to the SPD for fiscal note purposes. However, if multiple bills pass which require additional staffing and duties, the SPD may request funding through the appropriation process.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS. The enactment of a new crime (570.035) creates additional responsibilities for county prosecutors which may, in turn, result in additional costs, which are difficult to determine.

Officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Office of the Secretary of State (SOS)** note 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 its 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.

Officials from the **Department of Commerce and Insurance**, the **Department of Revenue**, the **Department of Public Safety - Missouri Highway Patrol**, the **Office of the State Courts**

Administrator, the **City of Freistatt**, the **City of Kansas City**, the **City of O’Fallon**, the **City of Springfield**, the **City of St. Louis**, and the **Greene County Prosecutor’s Office** assume the proposal will have no 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.

<u>FISCAL IMPACT</u> – State Government	FY 2023 (10 Mo.)	FY 2024	FY 2025	Fully Implemented (FY 2027)
GENERAL REVENUE FUND				
Cost – DOC p. 3-6 (§§407.1700 and 570.035) Increased incarceration costs	(\$41,275)	(\$101,041)	(\$146,005)	(\$196,581)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	(\$41,275)	(\$101,041)	(\$146,005)	(\$196,581)

<u>FISCAL IMPACT</u> – Local Government	FY 2023 (10 Mo.)	FY 2024	FY 2025	Fully Implemented (FY 2027)
	\$0	\$0	\$0	\$0

FISCAL IMPACT – Small Business

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

FISCAL DESCRIPTION

This bill specifies that a high-volume third-party seller on an online marketplace must provide to the marketplace certain information, such as bank account information and contact information, within 24 hours of becoming a high-volume seller. The bill also specifies certain information the seller must disclose to consumers conspicuously, either on the product listing or through a link in the product's listing. If a third-party seller requests, an online marketplace may provide for a

partial disclosure of such information. These provisions have a delayed effective date of February 28, 2023.

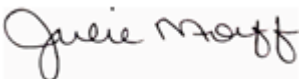
The bill also states that a person commits the offense of organized retail theft if the person, alone or in concert with others, commits a series of thefts of retail merchandise against a merchant with the intent to return the merchandise to the merchant for value or resell the merchandise for value.

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 \$1,500 and no more than \$10,000 and a class B felony if the aggregated value is more than \$10,000. The factors for determining the aggregated value are specified in the bill.

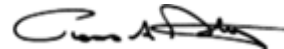
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office
Department of Commerce and Insurance
Department of Corrections
Department of Revenue
Department of Public Safety
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 Freistatt
City of Kansas City
City of O'Fallon
City of Springfield
City of St. Louis
Greene County Prosecutor's Office



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