

**MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (18-184)**

Subject

Initiative petition from Timothy Gilio regarding a proposed constitutional amendment to Article IV. (Received March 21, 2017)

Date

April 10, 2017

Description

This proposal would amend Article IV of the Constitution of Missouri.

The amendment is to be voted on in November 2018.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office**, the **Department of Agriculture**, the **Department of Economic Development**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education**, the **Department of Health and Senior Services**, the **Department of Insurance**, **Financial Institutions and Professional Registration**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Labor and Industrial Relations**, the **Department of Revenue**, the **Department of Public Safety**, the **Department of Social Services**, the **Governor's office**, the **Missouri House of Representatives**, the **Department of Conservation**, the **Department of Transportation**, the **Office of Administration**, the **Office of State Courts Administrator**, the **Missouri Senate**, the **Secretary of State's office**, the **Office of the State Public Defender**, the **State Treasurer's office**, **Adair County**, **Boone County**, **Callaway County**, **Cass County**, **Clay County**, **Cole County**, **Greene County**, **Jackson County**, **Jasper County**, **St. Charles County**, **St. Louis County**, **Taney County**, the **City of Cape Girardeau**, the **City of Columbia**, the **City of Jefferson**, the **City of Joplin**, the **City of Kansas City**, the **City of Kirksville**, the **City of Mexico**, the **City of Raymore**, the **City of St. Joseph**, the **City of St. Louis**, the **City of Springfield**, the **City of Union**, the **City of Wentzville**, the **City of West Plains**, **Cape Girardeau 63 School District**, **Hannibal 60 School District**, **State Technical College of Missouri**, **Metropolitan Community College**, **University of Missouri**, **St. Louis Community College**, **Missouri Veterans Commission**, **Kansas City Board of Police Commissioners**, **The Metropolitan Police Department - City of St. Louis**, **University of Central Missouri**, **Harris-Stowe State University**, **Lincoln University**, **Missouri State University**, **Missouri Southern State University**, **Missouri Western State University**, **Northwest Missouri State University**, **Southeast Missouri State University**, and **Truman State University**.

Assumptions

Officials from the **Attorney General's office** indicated among other provisions, this proposal could require their office to develop and issue an order providing for the destruction of “all cannabis related nonviolent civil and criminal records in Missouri.” Moreover, the proposal purports to supersede federal law.

They expect that the enactment of this proposal would result in increased litigation. They assume they could absorb costs associated with the increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may request additional appropriations.

Officials from the **Department of Agriculture** indicated no fiscal impact on their department.

Officials from the **Department of Economic Development** indicated no impact to their department.

Officials from the **Department of Higher Education** indicated this initiative petition would not have a fiscal impact on their department.

Officials from the **Department of Health and Senior Services** estimated increased operating costs of \$0 in fiscal year 2018, \$109,353 in fiscal year 2019, and \$169,098 in fiscal year 2020.

Section 192.945, RSMo, allows their department to issue a hemp extract registration card for persons suffering from intractable epilepsy. The hemp extract registration card allows for the legal possession and use of cannabidiol (CBD) oil. This proposal allows for the legal use of marijuana for both medical and recreational purposes. Therefore, persons with intractable epilepsy would not need to apply for a hemp extract registration card in order to legally use the CBD oil.

They expect rental space for two staff located in Jefferson City would be required: 2 staff x 230 sq.ft./FTE x \$21.00 = \$9,660.

They indicated retail marijuana, cultivation facilities, products manufacturer, and testing facilities may be established as small businesses.

A tax, not to exceed five percent without additional voter approval, will be added to all personal/recreational sales of Cannabis. The tax will be collected by the State of Missouri Sales Taxation Division. The tax collected is to be directed to Missouri Public Schools and to the Missouri Veterans Commission.

This proposal does not require them to issue any licenses or conduct inspections to ensure the safety of marijuana infused food products. However, sections 196.010 through 196.298, RSMo, gives them responsibility for the regulation of food to include such

duties as ensuring food safety, sanitation, and proper labeling, etc. Therefore, they would have responsibility to assure that facilities manufacturing foods containing marijuana and marijuana products are regulated the same as other food manufacturers.

Due to the broad parameters of this proposal, it is difficult to determine how many food manufacturing facilities would be established. States which have legalized retail marijuana have seen a significant demand for edible marijuana products. For the purposes of this fiscal note, they estimate that at least 300 food manufacturing facilities would be established as a result of this proposal. In order to properly inspect these manufacturing facilities, DCPH would require a minimum of two Environmental Public Health Specialist IV staff (A27, \$44,352, Step G). This law shall be implemented no later than January 31 following the November 2018 election. Therefore, DCPH assumes that the two Environmental Public Health Specialist IV positions would begin January 1, 2019.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** indicated this petition, if passed, will have no cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated their department would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated cost avoidance of \$7,178,073 in fiscal year 2019 (7 months), \$7,511,746 in fiscal year 2020, \$10,011,383 in fiscal year 2021, \$10,741,186 in fiscal year 2022 and thereafter.

Legalizing the possession and use of marijuana would remove from the criminal statutes all controlled substance offenses for marijuana, including possession, distribution and trafficking. If the legislation that removed marijuana from the list of controlled substances was retrospective then there would be two reductions in the cost of incarceration: the release of offenders serving a marijuana offense and fewer admissions to prison. The legalization of marijuana will largely impact offenders who are only serving a marijuana offense. Offenders serving multiple concurrent sentences will continue to be required to serve the other sentences after legalization and no estimate is made for offenders serving multiple sentences.

The reduction in the offender population is the total of reductions from the expungement of sentences and fewer admissions and probations. The cost avoidance is based upon a direct prison cost per year in FY17 of \$6,085 and an average cost of \$2,234 per year for offenders on field supervision. In the first year after the enactment of the legislation that legalizes marijuana there is an estimated reduction of 633 offenders in prison and 3,676 offenders on field supervision. In the next year (FY20) there will be no discharges from expungement but the reduction in the prison population will increase to 214. The field

reduction will continue into FY21 because the marijuana offenders are estimated to serve 2.5 years on supervision.

The estimate is qualified by the use of an expansion factor that assumes that the drug distribution in the sentences where the drug is not known will be similar to that where the drug is known.

The estimated cost avoidance in the first year is \$7,178,073 and will be \$10,741,186 after the 4th year.

If marijuana usage becomes legal it could impact the safety and security of our prisons as it is not believed that there is a means for testing whether an employee is under the influence of marijuana. Impaired prison employees or visitors can impact the safe and secure operation of our prisons.

Officials from the **Department of Labor and Industrial Relations** indicated no fiscal impact on their department.

Officials from the **Department of Revenue** indicated increased costs of \$150,012 in fiscal year 2018, \$30,752 in fiscal year 2019, and \$31,521 in fiscal year 2020.

This petition opens up the possibility of additional business opportunities in cannabis farming, manufacturing, and distribution of products.

| | | | | |
|---|-------------------------------------|----------------|----------------|----------------|
| Fiscal Note | IP 18-129 | ITSD - DOR | | |
| Bill Number | IP 18-129 | | | |
| Will a new system be required? | <input checked="" type="checkbox"/> | Yes | No | |
| Indicate fiscal year when fully implemented | FY 2018 | | | |
| ESTIMATED NET EFFECT ON STATE FUNDS | | | | |
| Fund Affected | | FY 2018 | FY 2019 | FY 2020 |
| General Revenue | | 150,012 | 30,752 | 31,521 |
| Other | | - | - | - |
| Federal Funds | | - | - | - |
| Total | | 150,012 | 30,752 | 31,521 |
| It is assumed that every new IT project/system will be bid out because all ITSD resources are at full capacity. | | | | |
| Bill Section(s) | amends article IV | | | |
| | | FY 2018 | FY 2019 | FY 2020 |
| New Tax System | Rate | Hours | \$ | \$ |
| IT Consultants | 75 | 2,000.16 | 150,012 | 30,752 |
| Section Total Expenditures: | | 150,012 | 30,752 | 31,521 |
| Section Funding: | General Revenue | 150,012 | 30,752 | 31,521 |
| | Federal | - | - | - |
| | Other | - | - | - |
| | Total | 150,012 | 30,752 | 31,521 |

This would create an unknown positive impact on Total State Revenue.

This petition increases state revenues by an unknown amount.

The provisions of section 7b add an additional five percent tax to all personal/recreational sales of cannabis not including hemp or hemp by-products sold in Missouri. This tax is in addition to any state, county, or city sales taxes already in place. This section also requires the division and distribution of these collections on a quarterly basis to Missouri public schools and the Missouri Veterans' Administration.

This Article states that the tax is to be collected by the State of Missouri Sales Tax Division. There is no State of Missouri Sales Tax Division and their department assumes that the taxpayer will remit the tax to their department. Because there are no enforcement provisions, it may be difficult for their department to enforce the collection of the

additional tax under current sales tax statutes. Their department will not be able to make refunds to taxpayers as the article is currently drafted.

Administrative Impact:

Business Tax Processing:

Although the legislation bases the additional five percent tax on retail sales, it is in addition to and separate from state, county, or city sales tax, and must therefore be reported and deposited separately.

If this money needs to remain in a non-state account, either it would need to stay in the sales suspense holding account until distribution, or new bank accounts would need to be established for each.

ITSD-DOR:

| ITSD - DOR | | TOTAL HOURS: 2,000 | | | | | |
|-------------------------------|-------------------|--------------------|-----------|----------|---------|---------|---------|
| Bill Number | IP 18-129 | FN # | IP 18-129 | | | | |
| Bill Section(s) | amends article IV | | | | | | |
| Application Name: | New Tax System | | | | FY 2018 | FY 2019 | FY 2020 |
| IT Consultants | | On-going Yes/No | Rate | Hours | \$ | \$ | \$ |
| Requirements Gathering | | | 75 | 192 | 14,400 | - | - |
| Analysis | | | 75 | 96 | 7,200 | - | - |
| Design | | | 75 | 96 | 7,200 | - | - |
| Development | | | 75 | 1,236 | 92,700 | - | - |
| Test | | | 75 | 192 | 14,400 | - | - |
| Implementation | | | 75 | 40 | 3,000 | - | - |
| Project Management | | | 75 | 148.16 | 11,112 | - | - |
| On-going support | | Yes | 75 | | - | 30,752 | 31,521 |
| Section Total IT Consultants: | | | 75 | 2,000.16 | 150,012 | 30,752 | 31,521 |
| Section Total Expenditures: | | | | | 150,012 | 30,752 | 31,521 |
| General Revenue | | | | | 150,012 | 30,752 | 31,521 |
| Federal | | | | | - | - | - |
| Other | | | | | | | |
| Section Funding: | | | | | 150,012 | 30,752 | 31,521 |

Officials from the **Department of Public Safety - Office of the Director** indicated they see no fiscal impact due to this initiative petition.

Officials from the **Department of Public Safety, Division of Missouri State Highway Patrol** indicated they expect increased operating costs of \$474,311 for the first year implemented, \$538,337 for the second year implemented, and \$544,128 for the third year implemented.

The provisions of this petition would require their agency to rent office space for 5 FTE's to process the expungement requests.

The proposed legislation would order the immediate destruction of all cannabis-related non-violent civil and criminal records in Missouri.

Two different divisions within their agency will be impacted by this legislation. Here is a breakdown for each division:

Criminal Justice Information Services Division

The Criminal Justice Information Services Division (CJIS) states that there are currently 95,550 arrest charges in the Central Repository. The current expungement process, pursuant to Chapter 610, takes approximately 90 minutes to process. One FTE can handle 1,243 expungements per year. Conservatively, at least five FTE's would be required to initially handle the expungements created by this legislation. A significant processing backlog would occur if sufficient FTE's are not assigned to accommodate the number of expungements ordered.

1 FTE = 1,864 hours (average work hours per year) x 60 minutes per hour = 111,840 minutes per year.

The current average time per petition to log, process, research, review, create related correspondences, and to expunge the information when the order is received is 90 minutes. Therefore, one FTE can handle 1,243 expungements per year = 111,840 / 90.

These FTE's (CJIS Technicians, Range 16) would be necessary to process all expungement requests, review criminal history records, contact any agency associated with the arrests or convictions, and collect the necessary data for the court orders.

Based on the average yearly salary and benefit rate per FTE at \$55,495 and the ability of that employee to process 1,243 expungements per year, the cost alone per expungement is $\$55,495 \div 1,243 = \44.64 . It is suggested that a fee, similar to the criminal history background check fee, be implemented for the cost of researching and reviewing the criminal histories, as well as contacting of the various agencies associated with the arrests. In researching other states with similar expungement requirements, they all charge a fee to offset the cost of the time required to process the expungements. Their fees ranged from \$50 to \$450 per petition per arrest date.

These FTE will most likely be 2nd and 3rd shift employees so they would not require any equipment. However, there would be recurring costs of \$650 per year per FTE for office supplies and phone charges. If any FTE were placed on the 1st shift, standard equipment would be required at a one-time cost of \$6,094 per FTE.

| | |
|--------------------------------------|-----------|
| 5 CJIS Technicians (\$1,232.50 x 24) | \$147,900 |
| Office Equipment/HW/SW | \$6,094 |

| RECURRING COSTS | |
|-------------------------|-------|
| Phone Charges per FTE | \$350 |
| Office Supplies per FTE | \$300 |

Patrol Records Division

Currently, there are 111,977 records in the Patrol's Traffic Arrest System (TAS) pertaining to arrests completed by the Missouri Highway Patrol that could possibly meet the requirements of this proposed constitutional amendment. These are arrest and arrest/disposition records pertaining to individuals the age of 17 years and older with an NCIC modifier of 60-64 that relate to marijuana offenses. Given this, if only ten percent of the individuals who qualify to have his or her record expunged sought to do so, the Patrol Records Division (PRD) would require 5 FTE's. However, if a large number of these expungements were to be granted with even five FTE's, the backlog would compound greatly to the point it may take several years to catch up. If 100 percent of the individuals who qualify to have their record expunged sought to do so, the Patrol Records Division would require 45 FTE's to complete this task in approximately one year.

The addition of 45 FTE's would require additional supervisory personnel. However, due to the vague and uncertain nature of this proposed amendment, the Patrol Records Division has no true way to determine the actual effect or costs.

1 FTE = 1,864 hours (average work hours per year) x 60 minutes per hour = 111,840 minutes per year.

The current average time per petition to log, process, research, review, create related correspondences, and to expunge the information when the order is received is 45 minutes. Therefore, one FTE can handle 2,485 expungements per year = 111,840 / 45.

With the current estimate of 111,977 records that potentially meet the requirements of this proposed amendment and would potentially be eligible for expungement, the following percentages of persons actually requesting an expungement will directly relate to the number of PRD FTE's required:

$$10\% = 111,977 \times .10 = 11,198 / 2,485 = 5 \text{ FTE's}$$

$$50\% = 111,977 \times .50 = 55,989 / 2,485 = 23 \text{ FTE's}$$

$$100\% = 111,977 / 2,485 = 45 \text{ FTE's}$$

These FTE's (Quality Control Clerks, Range 10) would be necessary to process all expungement requests, review records, contact agencies, and collect the necessary data for the court orders.

Based on the average yearly salary and benefit rate per FTE of \$45,702 and the ability of that employee to process 2,485 expungements per year, the cost per expungement is $\$45,702 / 2,485 = \18.39 . It is suggested that a fee, similar to the criminal history background check fee, be implemented for the cost of researching and reviewing the criminal histories.

Processing ten percent of the possible expungements would require additional workspace. The physical requirements would increase with the number of FTE's required to meet the demand for expungements. There will be recurring costs of \$650 per year per FTE for office supplies and phone charges. Standard equipment and office furniture would be required at a one-time cost of \$6,094 per FTE.

| | |
|---|-----------|
| 5 Quality Control Clerks (\$1,015 x 24) | \$121,800 |
| Equipment/Office Furniture | \$6,094 |

RECURRING COSTS

| | |
|-------------------------|-------|
| Phone Charges per FTE | \$350 |
| Office Supplies per FTE | \$300 |

The provisions of this petition would require the Highway Patrol to rent office space for 5 FTE's to process the expungement requests. The Office of Administration states that 1,500 square feet of office space would be required. The following costs apply per square foot:

| | |
|------------------------|--------------|
| Office Space | \$14/Sq Ft |
| Janitorial/Trash Costs | \$1.50/Sq Ft |
| Utility Costs | \$2/Sq Ft |

The agency provided the following additional comments:

It is suggested to add this additional language to provide for the collection of a fee to offset the costs of the expungements:

43.530. 1. For each request requiring the payment of a fee received by the central repository, the requesting entity shall pay a fee of not more than nine dollars per request for criminal history record information not based on a fingerprint search. In each year beginning on or after January 1, 2010, the superintendent may increase the fee paid by requesting entities by an amount not to exceed one dollar per year, however, under no circumstance shall the fee paid by requesting entities exceed fifteen dollars per request.

2. For each request requiring the payment of a fee received by the central repository, the requesting entity shall pay a fee of not more than twenty dollars per request for criminal history record information based on a fingerprint search, unless the request is required under the provisions of subdivision (6) of section 210.481, section 210.487, or section 571.101, in which case the fee shall be fourteen dollars.

3. A request made under subsections 1 and 2 of this section shall be limited to check and search on one individual. Each request shall be accompanied by a check, warrant, voucher, money order, or electronic payment payable to the state of Missouri-criminal record system or payment shall be made in a manner approved by the highway patrol. The highway patrol may establish procedures for receiving requests for criminal history record information for classification and search for fingerprints, from courts and other

entities, and for the payment of such requests. There is hereby established by the treasurer of the state of Missouri a fund to be entitled as the "Criminal Record System Fund". Notwithstanding the provisions of section 33.080 to the contrary, if the moneys collected and deposited into this fund are not totally expended annually for the purposes set forth in sections 43.500 to 43.543, the unexpended moneys in such fund shall remain in the fund and the balance shall be kept in the fund to accumulate from year to year.

4. For all petitions for expungement under the provisions of Chapter 610, Section 577.054, or any other created expungement requirement under statute, excluding Section 610.122, the applicant shall pay a fee of seventy-five dollars per arrest date listed on the petition. Each petition shall be accompanied by a check, warrant, voucher, money order, or electronic payment payable to the state of Missouri-criminal record system or payment shall be made in a manner approved by the highway patrol. For expungements that require removal from the Traffic Arrest System twenty dollars of the seventy-five dollar fee will be deposited in the Highway Patrol Traffic Records Fund.

There are numerous uncertainties associated with this proposed constitutional amendment. The definition of a "non-violent cannabis-only offense" needs to be added. It is unclear if individuals with the aforementioned conviction records are required to abide by the expungement process mandated by various other state statutes. Does the individual just complete and file a document with a circuit clerk and the record is expunged or does the "court," whomever that is, order the immediate expungement of all civil and criminal records pertaining to non-violent cannabis only offenses?

Officials from the **Department of Social Services** indicated no fiscal impact on their department.

Officials from the **Governor's Office** indicated there should be no added costs or savings to their office.

Officials from the **House of Representatives** indicated no fiscal impact to their office.

Officials from the **Department of Conservation** indicated that no adverse fiscal impact to their department would be expected as a result of this proposal.

Officials from the **Department of Transportation** indicated unknown fiscal impact.

Changes to Missouri's state driving laws could impact some federal commercial drivers' license laws.

Failure to comply with 49 C.F.R. 384.225 & 384.226 could result in a withholding of Missouri's federal-aid highway funds apportioned to it under each of Title 23, United States Code (U.S.C.), sections 104(b)(1), (b)(3), and (b)(4). The federal funds impacted consist of national highway performance program funds, highway safety improvement program funds and congestion mitigation and air quality improvement funds. The

withholding amount would be 4 percent for the first year of non-compliance and 8 percent for the second and subsequent years.

Officials from the **Office of Administration** (OA) indicated:

Section 54 of Article IV would allow the medical and recreational use of marijuana and hemp, as well as the cultivation, production, transportation and retail sale of marijuana and hemp and their related products. Subsection 3 allows the sale of marijuana to individuals under the age of 21 only with physician or parental permission. Subsection 6 requires that all prisoners that have been convicted in Missouri of a nonviolent cannabis related crime shall be immediately released and all related charges shall be expunged from their records. Subsection 7 states that no Missouri law enforcement personnel, state, county, or city employees, state or federal funds shall be used to assist or aid in the enforcement of federal or preexisting MO laws that are no longer illegal under this initiative petition. The section also include language that creates an excise tax of five percent on all retail sales of marijuana, in addition to any established state or local sales taxes. The 2.5 percent of the revenue shall be distributed to PreK-12 public schools and 2.5 percent be distributed to the Missouri Veterans Commission. Subsection 5, however, allows all medical marijuana users, with recommendation by a physician, to purchase cannabis without taxation. Subsection 10 provides that the provisions in the amendment take effect no later than January 31st, following the election that placed the initiative before the people of Missouri.

B&P estimates that subsection 7 of this initiative petition could increase Total State Revenue by as much as \$17.2M and GR by as much as \$16.5M once fully implemented in FY 2021. The Substance Abuse and Mental Health Services Administration (SAMHSA) reports that 9.95% of Missouri population age 18 and older use marijuana. For the purposes of this analysis, B&P assumes the same percentage for marijuana users over the age of 21. The U.S. Census (2010) reports the population of Missouri residents over the age of 21 as 4,300,988 people. Multiplying the percentage of Missouri residents who use marijuana by the population of Missouri residents over the age of 21 gives an estimate of the number of Missouri residents who use marijuana:

$$\begin{array}{rcl} 4,300,988 & & (\text{MO residents over the age of 21}) \\ \times \quad 9.95\% & & (\% \text{ of MO residents who use marijuana}) \\ \hline 427,948 & & (\text{MO residents who use marijuana}) \end{array}$$

However, B&P estimates that of those who use marijuana, roughly 65,000 would be medical users. SAMHSA reports that the total number of U.S. population age 18 and older use marijuana is 27,169,000 people. B&P assumes dividing the number of MO residents who use marijuana by the U.S. population that uses marijuana will provide an estimate of the percentage of the U.S. market that is attributable to Missouri.

$$\begin{array}{rcl} 427,948 & & (\text{MO residents who use marijuana}) \\ \div \quad 27,169,000 & & (\text{Number of U.S. marijuana users}) \\ \hline 1.58\% & & (\% \text{ U.S. market that is attributable to MO}) \end{array}$$

Using the estimate above for medical users, of that 1.58 percent approximately 0.24% could be considered medical. Therefore, B&P estimates that the size of the U.S. market that is attributable to Missouri, less medical marijuana users, is 1.33 percent. Using an established estimate¹ for the U.S. market of \$14.0B and multiplying by the percentage of the U.S. market that is attributable to Missouri, B&P estimates that Missouri's marijuana market, less medical marijuana use, could be worth \$186.7M. Assuming Missouri's marijuana market is worth \$186.7M, an excise tax of five percent could increase TSR and GR by as much as \$9.3M once fully implemented. Table 1 shows a breakdown of revenue increases by tax type.

| Table 1: Revenue Generated by Marijuana Taxes | | |
|---|-----------------------|--------------------------------|
| Tax | FY 2020 (5 months) | Fully Implemented (FY 2021) |
| <u>Sales Tax</u> | | |
| General Revenue | 3,002,000 | 7,206,000 |
| Education | 233,000 | 559,000 |
| Conservation | 29,000 | 70,000 |
| Parks, Soil, Water | 23,000 | 56,000 |
| Local | 120,000 | 287,000 |
| <u>Marijuana Excise Tax</u> | | |
| General Revenue | 3,890,000 | 9,337,000 |
| <u>Total</u> | | |
| General Revenue | 6,893,000 | 16,543,000 |
| Education | 233,000 | 559,000 |
| Conservation | 29,000 | 70,000 |
| Parks, Soil, Water | 23,000 | 56,000 |
| Local | 120,000 | 287,000 |
| TSR | 7,178,000 | 17,228,000 |

¹ http://scholar.harvard.edu/files/miron/files/budget_2010_final_0.pdf

Officials from the **Office of State Courts Administrator** indicated:

The proposed initiative petition would create a new section of the Missouri Constitution to be known as Article IV, section 54. This section would allow citizens over the age of eighteen to have the right to engage in the production, sale, distribution and consumption of marijuana and the manufacture of goods from hemp, subject to reasonable regulations adopted by the state pursuant to this section.

The average of all marijuana related charge codes from 2011 to 2015 for Circuit case types is 14,122 per year. The average of all marijuana related charge codes from 2011 to 2015 for Associate case types is 10,982. We are unable to determine what number of these charges were for someone over the age of twenty-one.

The following Criminal Court Costs would be affected by this petition:

| Criminal Court Costs | | |
|---|-----------------------|--|
| Felony Case Costs | Amount of Cost | Disburse to State/County |
| Basic Civil Legal Services Fund surcharge | \$10.00 | State of Missouri - Basic Civil Legal Services Fund |
| Clerk Fee | \$45.00 | State of Missouri - General Revenue \$36, County \$9 |
| County Fee | \$75.00 | County |
| Court Automation Fund Fee | \$7.00 | State of Missouri -Statewide Court Automation Fund |
| Court Reporter fee (All Circuit Division Cases) | \$15.00 | State of Missouri - General Revenue |
| Crime Victims' Compensation Fund surcharge | \$7.50 | State of Missouri - Crime Victims' Compensation Fund |
| DNA Profiling Analysis Fund surcharge | \$30.00 | State of Missouri - DNA Profiling Analysis Fund |
| Brain Injury Fund surcharge | \$2.00 | State of Missouri - Head Injury Fund |
| Independent Living Center Fund surcharge | \$1.00 | State of Missouri - Independent Living Center Fund |
| Motorcycle Safety Trust Fund surcharge | \$1.00 | State of Missouri - Motorcycle Safety Trust Fund |

| | | |
|--|-----------------|---|
| Peace Officer Standards & Training (POST) Commission surcharge | \$1.00 | State of Missouri - Peace Officer Standards & Training Fund |
| Prosecuting Attorney and Circuit Attorneys' Retirement Fund | \$4.00 | Pros. Attorney Retirement Fund |
| Prosecuting Attorney Training Fund surcharge | \$1.00 | State of Missouri - Prosecuting Attorney Training Fund |
| Sheriffs' Fee | \$75.00 | County |
| Sheriffs' Retirement Fund surcharge (except 21st Circuit) | \$3.00 | Sheriffs' Retirement Fund |
| Spinal Cord Injury Fund surcharge | \$2.00 | State of Missouri - Spinal Cord Injury Fund |
| Total | \$279.50 | |
| Misdemeanor Case Costs | | |
| Basic Civil Legal Services Fund surcharge | \$8.00 | State of Missouri - Basic Civil Legal Services Fund |
| Clerk Fee | \$15.00 | \$12 State of Missouri / \$3 County |
| County Fee | \$25.00 | County |
| Court Automation Fund Fee | \$7.00 | State of Missouri - Court Automation Fund |
| Crime Victims' Compensation Fund surcharge | \$7.50 | State of Missouri - Crime Victims' Compensation Fund |
| DNA Profiling Analysis Fund surcharge | \$15.00 | State of Missouri - DNA Profiling Analysis Fund |
| Brain Injury Fund surcharge | \$2.00 | State of Missouri - Brain Injury Fund |
| Independent Living Center Fund surcharge | \$1.00 | State of Missouri - Independent Living Center Fund |
| Motorcycle Safety Trust Fund surcharge | \$1.00 | State of Missouri - Motorcycle Safety Trust Fund |

| | | |
|--|-----------------|---|
| Peace Officer Standards and Training (POST) Commission surcharge | \$1.00 | State of Missouri - Peace Officer Standards & Training Fund |
| Prosecuting Attorney and Circuit Attorneys' Retirement Fund | \$4.00 | Pros. Attorney Retirement Fund |
| Prosecuting Attorney Training Fund surcharge | \$1.00 | \$0.50 State of Missouri / \$0.50 County |
| Sheriffs' fee | \$10.00 | County |
| Sheriffs' Retirement Fund surcharge (except 21st Circuit) | \$3.00 | Sheriffs' Retirement fund |
| Spinal Cord Injury Fund Surcharge | \$2.00 | State of Missouri - Spinal Cord Injury Fund |
| Total | \$102.50 | |
| Municipal Case (Filed in Associate Division) Costs | | |
| Clerk Fee | \$15.00 | \$12 State of Missouri / \$3 County |
| Court Automation Fund Fee | \$7.00 | State of Missouri - Court Automation Fund |
| Crime Victims' Compensation Fund surcharge | \$7.50 | State of Missouri - Crime Victims' Compensation Fund |
| Peace Officer Standards and Training (POST) Commission surcharge | \$1.00 | State of Missouri - Peace Officer Standards & Training Fund |
| Sheriffs' Retirement Fund surcharge | \$3.00 | Sheriffs' Retirement Fund |
| Total | \$33.50 | |
| Criminal Costs Not Included Above | | |
| Drug Testing by a State Lab | \$150.00 | State of Missouri |

| Drug Testing by a Private Lab | Actual Costs | County Reimbursement |
|-------------------------------|--------------|----------------------------|
| Law Enforcement Arrest Costs: | | |
| Highway Patrol | | Amt. Approved by the Court |
| Local (County) | | Amt. Approved by the Court |
| Municipal | | Amt. Approved by the Court |

The decrease in the court fees, depending on the number of cases, will result in an unknown loss to the courts.

They also assume there will be an unknown decrease in caseload for the courts because the courts will no longer process these cases; however, at this time they are unable to calculate the decrease.

Any significant increase or decrease will be reflected in future budget requests.

Officials from the **Missouri Senate** indicated no fiscal impact on their office.

Officials from the **Secretary of State's office** indicated their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Their office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. Funding for this item is adjusted each year depending upon the election cycle with \$1.3 million historically appropriated in odd numbered fiscal years and \$100,000 appropriated in even numbered fiscal years to meet these requirements. Through FY (fiscal year) 2013, the appropriation had historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2015, the General Assembly changed the appropriation so that it was no longer an estimated appropriation. In FY 2017 their office was appropriated \$2.6 million to publish the full text of the measures. In FY 2017, at the August and November elections, there were 6 statewide Constitutional Amendments or ballot propositions that cost \$2.4 million to publish (an average of \$400,000 per issue). Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated if passed, this constitutional amendment would have a positive impact on the workload of the Missouri State Public Defender, since possession, manufacture, distribution, etc. of cannabis would no longer be unlawful, offenses that the Public Defender currently uses resources to defend and no longer would need to.

The exact positive impact is difficult to predict because they track their cases by statutory offense and most drug offenses are not limited to marijuana.

However, their best estimate, using FY2014 MSPD data, is that this would reduce their caseload by 3,523 cases (685 A/B felonies, 1,797 C/D felonies, 1,041 misdemeanors, and 1,140 probation violations).

In *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards*, prepared by RubinBrown on behalf of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants, the relevant workload standards are: A/B felonies, 47.6 hours per case; C/D felonies, 25.0 hours per case; misdemeanors, 11.7 hours per case; and probation violations, 9.8 hours per case. (The workload standards include only case related tasks over which an attorney has some control (they exclude, for example, in court and travel time) and thereby reflect a conservative estimate.)

Applying those workload standards to the 2,858 cases, those cases require 100,882.7 attorney hours. With 2,080 hours per attorney available each year, that represents the work of 48.5 attorneys.

While in theory they might also handle fewer appeals of guilty verdicts after trial, the fact is that only a very small percentage of their cases proceed to trial and it's likely that only a small percentage of those cases are appeals from marijuana convictions. Therefore this minimal positive impact is not being taken into account in this estimate.

However, the Missouri State Public Defender already is significantly understaffed by 333 attorneys under the workload standards developed in *The Missouri Project*. (The 333 attorneys is a conservative estimate of the under-staffing in that it assumes they contract all conflicts to private attorneys, which they are not able to do for budgetary reasons).

Therefore, despite the positive impact on the workload of the Missouri State Public Defender, because they are already understaffed that savings in attorney time would not allow the Public Defender to reduce its workforce and therefore would not translate into an actual cost savings. However it does reduce by the cost of 48.5 attorneys how much money needs to be added to their budget in order to meet *The Missouri Project's* workload standards.

Officials from the **State Treasurer's office** indicated this proposal would have no impact on their office.

Officials from **Greene County** indicated there is anticipated costs for this initiative petition. Unfortunately there is not enough time given in the response to provide an actual estimated costs.

County Prosecutor, Dan Patterson provided the following information:



DenverDA

Mitchell R. Morrissey, District Attorney - Second Judicial District

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October 12, 2016

No on 64 Campaign and SAM Action

California voters are being told that they will see the crime rate go down if they vote to legalize marijuana commercially; this has not been the case in the state of Colorado or the city of Denver. Since the legalization of recreational marijuana in Colorado in 2013 traffic related marijuana deaths have increased 48%, marijuana related emergency room visits have increased 49%, and marijuana related calls to the poison center have increased 100%. According to the Colorado Bureau of Investigations in 2015 statewide homicides in Colorado rose 14.7 % over the previous year. Pueblo, Colorado had the highest homicide rate in the state with 11.1 killings per 100,000 residents. Aurora, Colorado's homicide rate more than doubled from 2014. Additionally more places in Colorado were robbed and more thefts occurred, especially cars, as 193,115 motor vehicles were reported stolen, up 27.7 % in 2015 from the previous year. In 2015, sexual assaults rose 10% in Colorado with Denver, Aurora, Lakewood, Westminster and Pueblo all reporting higher numbers as well.

In the city of Denver since the legalization of recreational marijuana the number of crimes in Denver has grown by about 44 %, according to annual figures the city reported to the National Incident Based Reporting System. In 2015 in Denver alone crime rose in every neighborhood in the city. The murder rate hit a decade high, 1059 more cars were broken into, there were 903 more auto thefts, 321 more aggravated assaults and 231 more homes were broken into compared to 2014.

California voters are also being told that legalizing recreational marijuana will free up law enforcement to work on other criminal activities. Again that has not been the case in Denver. Besides the overall increases in crime we have experience, the Denver police department is dealing with a 900% increase in the unlawful cultivation and manufacture of marihuana concentrate, and a 99% increase in the unlawful distribution of marijuana and marijuana concentrate. The quantity of illegal marijuana seized by the Denver police has increased 3,424% on average per case. The volume of marijuana seized per case has increased from an average of 162 pounds to 5724 pounds. In Denver unlawful public consumption of marijuana citations has increased over 300% per year since the legalization of recreational marijuana. The Denver police department is busier enforcing marijuana laws and investigating crimes directly related to marijuana, including murderers, robberies, and home invasions, than any other time in the history of the city.

Sincerely,

Mitchell R. Morrissey
Denver District Attorney

Officials from the **City of Kansas City** indicated this constitutional amendment would have no fiscal impact on their city.

Officials from the **City of St. Joseph** indicated this initiative petition would not have a fiscal impact on their local government.

Officials from the **Missouri Veterans Commission** indicated they defer fiscal impact to the Department of Revenue/Tax. They are pleased to receive any funding which appropriately comes to them to support the Veterans Programs currently administered by the Commission.

Officials from the **University of Central Missouri** indicated they estimate no fiscal impact from this initiative petition.

Officials from the **Missouri State University** indicated in response to this initiative petition, no fiscal impact to their university.

Officials from **Missouri Western State University** indicated this fiscal note will not have a fiscal impact on their university.

The State Auditor's office did not receive a response from the **Department of Elementary and Secondary Education, Adair County, Boone County, Callaway County, Cass County, Clay County, Cole County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, State Technical College of Missouri, Metropolitan Community College, University of Missouri, St. Louis Community College, Kansas City Board of Police Commissioners, The Metropolitan Police Department - City of St. Louis, Harris-Stowe State University, Lincoln University, Missouri Southern State University, Northwest Missouri State University, Southeast Missouri State University, and Truman State University.**

Fiscal Note Summary

State revenues could increase by \$17 million annually and the state could avoid costs of \$11 million annually when the proposal is fully implemented, but an annual unknown loss of federal funding could occur. Additional state costs are estimated at \$750,000 annually with one-time costs of \$150,000. Local law enforcement costs could increase.