

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3916S.01I  
Bill No.: SB 859  
Subject: Crimes and Punishment; Mental Health; Attorneys; Judges; Courts; Criminal Procedure  
Type: Original  
Date: January 15, 2024

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Bill Summary: This proposal modifies provisions relating to the offense of murder in the first degree.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: () indicate costs or losses.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

- 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.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>
<b>Local Government*</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

\***Oversight** assumes the fiscal impact to counties to retain expert(s) to examine and testify as to the validity of the defense of serious mental illness would not exceed the \$250,000 threshold.

## FISCAL ANALYSIS

### ASSUMPTION

#### §§565.020, 565.028, and 565.030 – Murder in the first degree

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS. The creation of this new defense of serious mental illness which a prosecutor has to rebut will have a negative fiscal impact on local prosecutors' offices although the cost is difficult to determine. The increased costs will arise from prosecutors having to retain expert(s) to examine and testify as to the validity of the defense of serious mental illness.

**Oversight** does not have any information contrary to that provided by MOPS. Therefore, Oversight will reflect MOPS's (Unknown) impact to counties for fiscal note purposes.

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

**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 State Courts Administrator (OSCA)** state there may be some impact but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

Officials from the **Department of Corrections, the Department of Mental Health, the Department of Public Safety - Missouri Highway Patrol, the Office of Administration, the Office of the Governor, the Office of the State Public Defender, and the Phelps County Sheriff's 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** notes according to an article from the Missouri Independent dated January 10, 2024, <https://missouriindependent.com/2024/01/10/group-of-republican-lawmakers-raise-concerns-about-missouri-death-penalty/> only in Indiana and Missouri is a judge allowed to impose a death sentence when a jury cannot decide between a punishment of life imprisonment with the eligibility for parole or a sentence of death. This bill repeals the provision that a judge may decide.

**Oversight** only reflects the responses received from state agencies and political subdivisions; however, other circuit clerks, county prosecutors, and sheriff’s departments were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System (MOLIS) database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
<b>LOCAL POLITICAL SUBDIVISIONS</b>			
<u>Cost – Counties (§565.028) Experts’ cost to examine and testify against the defense of a serious mental illness</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS</b>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

FISCAL IMPACT – Small Business

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

FISCAL DESCRIPTION

This act provides that if a person is found to have suffered from a serious mental illness at the time of the commission of the offense, as provided in the act, and has significantly impaired capacity to exercise rational judgment or appreciate the wrongfulness of his or her conduct, then he or she shall be ineligible for a sentence of death. The diagnosis of a defendant with a serious mental illness may be made at any time prior to, on, or after the date of the commission of the offense.

The court may order a mental evaluation of the defendant at the request of the prosecuting attorney or the defendant; however, the results of the evaluation shall not be used as evidence against the defendant. If a defendant raises the matter of having a serious mental illness, the prosecuting or circuit attorney shall have the burden of proving beyond a reasonable doubt that the serious mental illness did not exist at the time of the offense. The defendant is entitled to a pretrial hearing on the eligibility of the defense.

A defendant's pleading of not guilty due to incapacity to stand trial shall not preclude the defendant from raising the matter of serious mental illness.

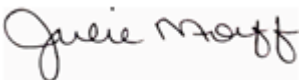
Finally, under current law, if a jury is unable to agree upon the punishment for the offense of murder in the first degree, the court is to instruct the jury that the judge may decide upon a punishment of life imprisonment without eligibility for parole or a sentence of death.

This act repeals the provision that a judge may decide upon a punishment of death if the jury is unable to agree.

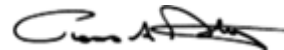
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

#### SOURCES OF INFORMATION

Attorney General's Office  
Department of Corrections  
Department of Mental Health  
Department of Public Safety – Missouri Highway Patrol  
Office of Administration  
Office of the Governor  
Missouri Office of Prosecution Services  
Office of the State Courts Administrator  
Office of the State Public Defender  
Phelps County Sheriff's Department



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