

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3505-01
Bill No.: HB 1290
Subject: Children and Minors; Crimes and Punishment; Criminal Procedure; Law
Enforcement Officers and Agencies
Type: Original
Date: February 20, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
General Revenue	(\$225,426)	(\$489,575)	(\$816,232)
Total Estimated Net Effect on General Revenue Fund	(\$225,426)	(\$489,575)	(\$816,232)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Federal	(\$52,215)	(\$23,348)	(\$23,944)
Total Estimated Net Effect on <u>Other</u> State Funds	(\$52,215)	(\$23,348)	(\$23,944)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Local Government	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Social Services – Children’s Division, Department of Public Safety – Missouri State Highway Patrol, Boone County Sheriff’s Department, Springfield Police Department, and the St. Louis Metropolitan Police Department** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator (CTS)** assume some cases may become protracted. CTS does not anticipate a fiscal impact on the judiciary.

Officials from the **Department of Corrections (DOC)** assume the proposal increases the punishment for sexual offenders who offend against children and creates new crimes of statutory rape and sodomy in the second degree and changes the former second degree offenses to third degree. DOC assumes the following impact:

ASSUMPTION (continued)

1. §558.018 – Persistent Sex Offender

Proposes life imprisonment without probation or parole. Existing statute mandates at least 30 years with no probation or parole. Persistent Sex Offenders in prison have very long sentences. No impact to the DOC.

2. §559.100 – Adds 566.032 (statutory rape 1), 566.062 (statutory sodomy 1), and 566.212 (sexual trafficking of child) to list of offenses denied probation

However, statutory rape 1 and statutory sodomy 1 are re-defined to include only victims of less than 13 years and the impact of this amendment is included with sections 3 to 5.

3. §§566.032 & 566.062 – Statutory Rape 1st and Statutory Sodomy 1st apply when the victim is under 13

The current limit is under 14 years. The penalty is enhanced to a minimum of 25 years without probation or parole. When the offense is committed using a deadly weapon or with violence the minimum sentence is 35 years without probation or parole.

4. §§566.033 & 566.063 – Statutory Rape 2nd and Statutory Sodomy 2nd apply when the victim is under 15

The current limit is under 17 years. The offense is a class B felony, currently class C. No sentencing enhancements/restrictions apply.

5. §§566.034 & 566.064 – Statutory Rape 3rd and Statutory Sodomy 3rd apply when the victim is under 17 and the offender is 21 or older

The offense is a class C felony. The penalty is unchanged to current statute for offenders sentenced under this statute. No sentencing enhancements/restrictions apply.

Impact Analysis for 2-5, above

A search of the DOC OPII database for the age of the victim in cases of statutory rape 1st or statutory sodomy 1st indicated that about 50% of offenses were against victims of under 13 (see table).

ASSUMPTION (continued)

Using the age of victim data, fifty percent of admissions and probations for Statutory Rape 1st and Statutory Sodomy 1st will be sentenced under the new criteria. These offenders will serve sentences in excess of 25 years and the full impact is beyond the 10-year horizon of the budget. The current typical sentence is about 12 years.

There will be an immediate impact on the offenders who would have received probation (50% of those who received probation in FY05 for Statutory Rape 1st and Statutory Sodomy 1st). For the offenders who would have received a prison sentence, the impact will not occur until about the 8th year. The average sentence for Statutory Rape 1st and Statutory Sodomy 1st is 12 years and the average percent of sentence served is 67% (conditional release), which calculates to 8 yrs.

The impact of the changed Statutory Rape 2nd and Statutory Sodomy 2nd will effect those offenders would have been sentenced as Statutory Rape 1st and Statutory Sodomy 1st, but the victim was 13 years old. These offenders will receive lighter sentences. The average sentence for a violent class B felony is 10 years, a reduction of 2 years in sentence and 1.3 years in time served (67%).

It will also effect offenders who in FY05 were sentenced to Statutory Rape 2nd and Statutory Sodomy 2nd as a class C felony. These offenders will receive a 10-year sentence instead of a 6-year sentence. Based upon the OPII age of victim data, approximately 35% of offenders sentenced to Statutory Rape 2nd and Statutory Sodomy 2nd will be sentenced to the revised Statutory Rape 2nd and Statutory Sodomy 2nd statute. The sentence will be increased by 4 years and time served by 2.7 years.

For the remaining 75% of offenders who in FY05 were sentenced to Statutory Rape 2nd and Statutory Sodomy 2nd, they will be sentenced to Statutory Rape 3rd and Statutory Sodomy 3rd with no change in penalty.

ASSUMPTION (continued)

Age of Victim in OPII

Statutory Rape and Sodomy 1st Degree

Mocode	Age of Victim						Total	Pcmt u-13
	10	11	12	13	14	15		
11021	9	2	7	29	4	1	52	35%
11025	3		2	5		1	11	45%
11076	16	5	3	12	1	1	38	63%
11095		1					1	100%
11097	8		2	1	3		14	71%
	36	8	14	47	8	3	116	50%

Statutory Rape and Sodomy 2nd Degree

	Age of Victim						Total	Pct under 14
	10	11	12	13	14	15		
11022	4	4	6	17	31	41	34	137
11077	25	5	11	14	21	15	16	107
	29	9	17	31	52	56	50	244

Intake in FY05

Admission & Time served FY05

	M O C O D E	Prison	yrs	% Served	Probation	Total
Statutory Rape 1st	11025	49	11.6	67%	19	68
Statutory Rape 1st, DDW	11032	5	9.6	67%	1	6
Statutory Sodomy 1st DDW	11095	7	20.7	67%	6	13
Statutory Sodomy 1st	11097	48	12.8	67%	14	62
Statutory Rape 2nd	11022	83	5.6	67%	45	128
Statutory Sodomy 2nd	11077	76	6.6	67%	29	105
Total		268			114	382

Total impact of changes to statutory rape and statutory sodomy

Sentence	Estim ated Sentence yrs	Estim ated Intake per yr	Percent Served	New Imm ate Yrs	Old Imm ate Yrs	Pop. Increase
<i>Longer Sentences for 1st degree</i>						
Statutory Rape 1st	25	34	100%	850	381	469
Statutory Rape 1st, DDW	35	3	100%	105	32	73
Statutory Sodomy 1st DDW	35	9	100%	315	97	218
Statutory Sodomy 1st	25	31	100%	775	412	363
<i>Shorter sentences (would have been 1st degree)</i>						
Statutory Rape 2nd	10	27	67%	181	217	-36
Statutory Sodomy 2nd	10	28	67%	184	221	-37
<i>Longer sentences for 2nd who remain 2nd</i>						
Statutory Rape 2nd	10	29	67%	195	117	78
Statutory Sodomy 2nd	10	27	67%	178	107	71
<i>Unchanged sentences</i>						
Statutory Rape 3rd	5.6	54	67%	202	202	0
Statutory Sodomy 3rd	6.6	49	67%	218	218	0
Total		291		3,204	2,004	1,199

ASSUMPTION (continued)

Cumulative impact of proposed changes to statutory rape and statutory sodomy within 10 years

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Previous Probation: Annual Inchoate (time served over 10 years)										
Statutory Rape 1st	10	19	29	38	48	57	67	76	86	95
Statutory Rape 1st, DDW	1	1	2	2	3	3	4	4	5	5
Statutory Sodomy 1st DDW	3	6	9	12	15	18	21	24	27	30
Statutory Sodomy 1st	7	14	21	28	35	42	49	56	63	70
Cumulative Total	20	40	60	80	100	120	140	160	180	200
Offenders who would have gone to prison										
Longer Sentences: (1st 2 yrs in budget horizon)										
Statutory Rape 1st									25	49
Statutory Rape 1st, DDW									3	5
Statutory Sodomy 1st DDW									5	11
Statutory Sodomy 1st									24	48
Reduced sentences: (1.5 yrs less to serve impact after 7 years)										
Statutory Rape 2nd								-27	-27	-27
Statutory Sodomy 2nd								-28	-28	-28
Longer Sentences: (2.5 yrs more to serve impact after 4 years)										
Statutory Rape 2nd					56	112	179	179	179	179
Statutory Sodomy 2nd					54	108	173	173	173	173
Total					220	330	408	243	410	466
Total Impact over 10 years	20	40	60	80	320	450	548	403	590	666

Impact within Budget Horizon

Increase in population within 10 years: 666

Increase in two years: 40

6. §566.083 – Sexual Misconduct Involving a Child

Removes the wording defining the sexual act. No change to penalty. No impact to DOC.

7. §566.151 – Enticement of a Child

Removes the penalty for the attempt of the offense, but that will be covered in Inchoate Offenses. No other substantive changes. No impact to DOC.

8. §566.212 – Sexual Trafficking of a Child

Makes it an unclassified felony with a minimum prison term of 15 years. The offense was class A with no sentencing restrictions. This is a new offense and the DOC has not yet received anyone. DOC assumes the likely impact is low.

ASSUMPTION (continued)

9. §566.250 – Sex Offender Searches

Allows law enforcement officers to search the house of any registered sex offender living within 3 miles of the last location of a missing child. No impact assessed.

Please see the following chart used to outline costs:

Operating Expense of Sex Offender Modification Bill			
	<u>Cost</u>	<u>Days</u>	<u>Total</u>
Operating Expenses	39.13	365	14,282
Construction (C4 or C5 \$55,000)			0
Emergency Housing	0.00	365	0
Operating Inflation (3.0%)			1.030
Emer. Hsng. Inflation (10%)			1.100
Construction Inflation (3.0%)			1.030

ASSUMPTION (continued)

	End FY Population	Average Population	Emer Hsng Expense	Operating Expense	Construction Expense	Total Cost w/ Inflation
FY 2006	0	(current year which will have no costs incurred)				
FY 2007	20	10	0	\$142,820	0	\$147,105
FY 2008	40	30	0	\$428,460	0	\$454,553
FY 2009	60	50	0	\$714,100	0	\$780,316
FY 2010	80	70	0	\$999,740	0	\$1,125,216
FY 2011	320	200	0	\$2,856,400	0	\$3,311,350
FY 2012	450	385	0	\$5,498,570	0	\$6,565,580
FY 2013	548	499	0	\$7,126,718	0	\$8,764,964
FY 2014	403	476	0	\$6,798,232	0	\$8,611,797
FY 2015	590	497	0	\$7,098,154	0	\$9,261,481
FY 2016	666	628	0	\$8,969,096	0	\$12,053,715
Total Ten-Year Fiscal Impact:						\$51,076,077

DOC estimates the increase in population will increase incrementally over the fiscal year. For cost estimates, a snapshot of the midyear average population was used to determine fiscal impact.

Assumptions used to determine cost and rounded to the nearest whole number include:

- \$39.13 (FY05 cost) inmate per capita costs with an inflation rate of 3% per each subsequent year.
- \$3.15 (FY03 cost) average daily probation costs with an inflation rate of 3% per each subsequent year.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY05 average of \$39.13 per inmate, per day or an annual cost of \$14,282 per inmate) or through supervision provided by the Board of Probation and Parole (FY03 average of \$3.15 per offender, per day or an annual cost of \$1,150 per offender).

ASSUMPTION (continued)

Estimated construction cost for one new medium to maximum-security inmate bed is \$55,000. Utilizing this per-bed cost provides for a conservative estimate by the DOC, as facility start-up costs are not included and entire facilities and/or housing units would have to be constructed to cover the cost of housing new commitments resulting from the cumulative effect of various new legislation, if adopted as statute.

In summary, supervision by the DOC through incarceration or probation would result in additional costs and although the exact fiscal impact is unknown, it is estimated that potential costs will be in excess of the indicated measurable dollar amounts per year.

Officials from the **Department of Social Services – Division of Legal Services** assume the proposal would require a sentence of life imprisonment with eligibility for parole after twenty-five years for some offenses. This provision will cause many defendants who might have pled guilty, to instead want to go to trial. This will cause additional work to be done on each investigation. Since the Department of Social Services' State Technical Assistance Team (STAT) is requested by many law enforcement agencies and prosecuting attorneys within the state to assist in these matters, it is expected that STAT caseloads will increase requiring an additional FTE.

STAT also assumes that Sections 566.032, 566.034, 566.035, 566.062, 566.063, 566.064, 566.083, 566.151, and 566.212 RSMo, which increase the penalties for violations of these statutes, will create a substantial drop in the number of guilty pleas. These cases will all have to go to trial. Prosecutors will require a more thorough and professional investigation concerning the violations of these crimes. Prosecutors and law enforcement will turn to STAT for additional help in the investigation and prosecution of these child sexual abuse cases, especially in rural areas where law enforcement is limited in manpower. STAT assumes that the additional requests for assistance would necessitate the need for at least one additional regular commissioned field investigator (Investigator III, at \$40,000 per year). The investigator would require specialized investigative equipment.

STAT estimates the total cost of the proposal would be \$270,685 in FY 07, \$231,621 in FY 08, and \$238,267 in FY 09. This would be divided among the General Revenue and Federal Funds.

ASSUMPTION (continued)

Oversight has, for fiscal note purposes only, changed the starting salary for the Investigator III to correspond to the second step above minimum for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees and policy of the Oversight Subcommittee of the Joint Committee on Legislative Research. Oversight also assumes the Department of Social Services would house the additional FTE within existing facilities. The Equipment and Expense has been reduced to eliminate the rent.

Officials from the **Office of Prosecution Services (OPS)** assume the cost to county prosecutors would be a significant unknown amount, over \$100,000 per year. OPS assumes the legislation would significantly increase the trial dockets for the prosecutors because there would be no incentive for plea bargaining. The cost for each office is unknown, but would be significant.

Officials from the **Office of State Public Defender (SPD)** assume existing staff could not provide competent, effective representation for any cases arising where indigent persons were charged with the proposed additional crime of statutory rape or sodomy in the second degree if he or she has sexual intercourse with another person who is less than fifteen years old. SPD assumes this new crime will require more SPD resources. While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional appropriations for this specific bill, the SPD will continue to request sufficient appropriations to provide competent and effective representation in all its cases.

Oversight assumes the Office of the State Public Defender (SPD) could absorb the costs of the proposed legislation within existing resources. Oversight assumes any significant increase in the workload of the SPD would be reflected in future budget requests.

Officials from the Columbia Police Department, Greene County Sheriff's Department, Jackson County Sheriff's Department, Kansas City Police Department, and St. Louis County Police Department did not respond to Oversight's request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
GENERAL REVENUE FUND			
<u>Costs – Department of Corrections</u>			
Incarceration/Probation costs	(\$147,105)	(\$454,553)	(\$780,316)
<u>Costs – Department of Social Services</u>			
Personal Service (0.6 FTE)	(\$17,631)	(\$21,695)	(\$22,237)
Fringe Benefits	(\$7,768)	(\$9,559)	(\$9,798)
Equipment and Expense	<u>(\$52,922)</u>	<u>(\$3,768)</u>	<u>(\$3,881)</u>
<u>Total Costs – DOS</u>	<u>(\$78,321)</u>	<u>(\$35,022)</u>	<u>(\$35,916)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$225,426)</u>	<u>(\$489,575)</u>	<u>(\$816,232)</u>
FEDERAL FUNDS			
<u>Costs – Department of Social Services</u>			
Personal Service (0.4 FTE)	(\$11,754)	(\$14,463)	(\$14,825)
Fringe Benefits	(\$5,179)	(\$6,373)	(\$6,532)
Equipment and Expense	<u>(\$35,282)</u>	<u>(\$2,512)</u>	<u>(\$2,587)</u>
<u>Total Costs – DOS</u>	<u>(\$52,215)</u>	<u>(\$23,348)</u>	<u>(\$23,944)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>(\$52,215)</u>	<u>(\$23,348)</u>	<u>(\$23,944)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
POLITICAL SUBDIVISIONS			
<u>Costs – County Prosecutors</u>			
Increased cases	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>
ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>

FISCAL IMPACT - Small Business

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

DESCRIPTION

The proposed legislation changes the laws regarding sexual offenses:

1. Increases the penalty for a person found to be a persistent sexual offender from a minimum 30 years' imprisonment to life imprisonment without eligibility for probation or parole;
2. Lowers the victim's age from younger than 14 years of age to younger than 13 and increases the penalty from a minimum of five years' imprisonment to a minimum of 25 years with lifetime supervision for the crimes of statutory rape in the first degree and statutory sodomy in the first degree;
3. Reclassifies the crimes of statutory rape in the second degree and statutory sodomy in the second degree to be that of statutory rape in the third degree and statutory sodomy in the third degree and creates new requirements for the crimes of statutory rape in the second degree and statutory sodomy in the second degree. Statutory rape in the second degree is committed when a person has sexual intercourse with a person younger than 15 years of age. Statutory sodomy in the second degree is committed when a person has deviate sexual intercourse with a person younger than 15 years of age. These crimes are class B felonies;
4. Eliminates the crime of attempting to entice a child;
5. Changes the crime of sexual trafficking of a child from a class A felony to a term of a minimum of 15 years' imprisonment; and
6. Allows any law enforcement agency investigating a missing child report to search for the missing child in the home or other property of a registered sexual offender whose home or property is within a three-mile radius from where the child was last seen or thought to have been seen.

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

Office of State Courts Administrator
Department of Corrections
Department of Social Services
Department of Public Safety
 – Missouri State Highway Patrol
Office of Prosecution Services
Office of the State Public Defender
Boone County Sheriff
Springfield Police Department
St. Louis Metropolitan Police Department

NOT RESPONDING

Columbia Police Department
Greene County Sheriff's Department
Jackson County Sheriff's Department
Kansas City Police Department
St. Louis County Police Department

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
February 20, 2006