

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3595-01
Bill No.: HB 1056
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	(\$710,871)	(\$2,004,753)	(\$3,282,032)
Total Estimated Net Effect on General Revenue Fund	(\$710,871)	(\$2,004,753)	(\$3,282,032)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 15 pages.

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

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 **Office of the Governor, Department of Social Services, 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** assume the proposed legislation would have no fiscal impact on the courts.

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 **Department of Corrections (DOC)** assume the proposal increases punishment for sexual offenders who offend against children less than twelve and creates new crimes of tampering with electronic monitoring equipment and aiding a sexual offender. DOC assumes the following impact:

ASSUMPTION (continued)

§217.735 – Lifetime monitoring of offenders convicted of certain sex crimes against children under 14 and have a prior sex conviction

Adds that the bill applies to offenses committed after August 28, 2006 and adds incest and child endangerment (when there is a sexual component) convictions when sexual intercourse occurred. The changes not are assessed to have any additional impact on DOC.

§558.018 – Persistent Sex Offender and Predatory Sex Offenders

Adds a statement that sentences may be greater but not in excess of authorized sentences. No impact assessed on DOC.

§559.106 – Lifetime monitoring for certain sex offenders receiving probation

Adds any other offense that the Board of Probation & Parole is required to supervise for life to the list that the court must supervise for life when granted probation. This should not apply to offenders with life sentences and parole eligibility because statute allows early discharge.

Lifetime monitoring is added to all the offenses listed below against children under 12. No impact is assessed within the 10-year budget horizon because the offenders will be serving 25 years.

§§566.030 & 566.060 – Forcible Rape 1st and Forcible Sodomy 1st

Increases the penalty to life imprisonment and no parole eligibility until 25 years when the child was less than 12 years and the offender was 18 or older. No probation.

The national crime victimization survey excludes victims under 12 and so the estimate of victims who are under 12 is obtained from the DOC OPII Sex Offender Registration file that records the lowest age of a sex victim. The data indicates that 10% of forcible rape victims were under 12 and 40% of forcible sodomy victims were under 12. Only 2 of 37 offenders were under 18 at the time of the offense.

Prison Admissions

Both forcible rape and forcible sodomy are dangerous felonies and serve 85%. In FY05, there were 16 new admissions for forcible rape and 17 admissions for forcible rape. As the average time served is 14 years for forcible rape and 15 years for forcible sodomy, the impact of the legislation will not start until after the ten-year budget horizon.

ASSUMPTION (continued)

Diverted Probation Sentences

In FY05 there were 5 probations for forcible rape and 3 for forcible sodomy, totaling 8, of which 2 (20%) will be against children under 12. These offenders will serve 25 years before release. In FY07, there will be 2 additional offenders in prison; 4 in FY08; 6 in FY09; 8 in FY10; 10 in FY11; 12 in FY12; 14 in FY13; 16 in FY14; 18 in FY15; and 20 in FY16.

§§566.032 & 566.062 – Statutory Rape 1st Degree and Statutory Sodomy 1st Degree

The minimum sentence increases to life imprisonment with parole eligibility after 25 years when the victim is less than 12 years and when the offender is 18 years or older. No probation. Increases the penalty only when the child is under 12.

From the DOC OPII sex offender registration file, the victim is under 12 in 38% of statutory rape and statutory sodomy cases, and 7 offenders were under 18 at the time of the offense.

Prison Admissions

In FY05, there were 160 new admissions for statutory rape 1st and statutory sodomy 1st by offenders 18 or older and of which 61 (38%) will be sentenced under the proposed statute. Offenders will serve 25 years instead of 9.2 years. The increase, however, will not begin until year 10 (FY16), when the expected impact is 61.

Diverted Probation in FY05

40 offenders 18 and over received probation for Statutory Rape 1st Degree and Statutory Sodomy 1st Degree in FY05 and they will serve 25 years before release. The impact will begin in FY07 and will increase for 25 years (total impact after 25 years is 1,000).

Combined Impact

In FY07, there will be 40 additional offenders in prison; 80 in FY08; 120 in FY09; 160 in FY10; 200 in FY11; 240 in FY12; 280 in FY13; 320 in FY14; 360 in FY15; and 461 in FY16.

§§566.034 & 566.064 – Statutory Rape 2nd and Statutory Sodomy 2nd

Limits the age of the victim to 12-16. DOC assumes the legislative change is intended to reduce the plea-bargaining (prosecute/sentence for 2nd degree instead of 1st degree). DOC assumes no impact assessed.

ASSUMPTION (continued)

§566.067 – Child Molestation 1st degree

For offenders 18 or older and when the victim is under 12, the proposal increases the penalty to lifetime incarceration and no parole for 25 years. No probation. No change in sentencing if the victim is 12-14.

From the DOC OPII age of victim data, about 70% of children are under 12 at the time of the offense and the percentage is applied to child molestation 1st prison and probation sentencing in FY05.

Impact from enhanced prison sentences

The impact begins after 6 years in FY13 with 56 offenders per year.

Impact from Diverted Probation

The impact is 15 offenders per year.

Combined Impact

In FY07, there will be 15 additional offenders in prison; 30 in FY08; 45 in FY09; 60 in FY10; 75 in FY11; 90 in FY12; 161 in FY13; 232 in FY14; 303 in FY15 ;and 374 in FY16.

§566.068 – Child Molestation 2nd

The proposal restricts the minimum age of the child to 12. DOC assumes no assessed impact. DOC assumes the proposal is intended to restrict judicial discretion/plea bargaining.

§566.040 – Sexual Assault

Enhances the penalty to lifetime incarceration and no parole or probation for 25 years if the victim is under 12. Sexual assault is a class C felony.

From the OPII age of victim data, about 14% of children are under 12 at the time of the offense and the percentage is applied to sex assault prison and probation sentencing in FY05. DOC assumes the combined result of new admissions and prison diversions is minimal.

ASSUMPTION (continued)

§566.070 – Deviate Sexual Assault

Enhances the penalty to lifetime incarceration and no parole or probation for 25 years if the victim is under 12. Deviate Sexual Assault is a class C felony.

From the OP2 age of victim data, about 15% of children are under 12 at the time of the offense and the percentage is applied to deviate sex assault prison and probation sentencing in FY05.

Impact from prison sentences

The impact begins in the 4th year, with 3 offenders per year.

Impact from Diverted Probation

The impact is 2 offenders per year.

Combined Impact

In FY07, there will be 2 additional offenders in prison; 4 in FY08; 6 in FY09; 11 in FY10; 16 in FY11; 21 in FY12; 26 in FY13; 31 in FY14; 36 in FY15; and 41 in FY16.

§566.090 – Sexual Misconduct 1st

Enhances the penalty to lifetime incarceration and no parole or probation for 25 years if the victim is under 12. Deviate Sexual Assault is a class C felony.

From the OPII age of victim data, about 24% of children are under 12 at the time of the offense and the percentage is applied to deviate sex assault prison and probation sentencing in FY05. DOC assumes no impact.

Impact from Diverted Probation

The impact is 7 offenders per year. In FY07 there will be 7 additional offenders in prison; 14 in FY08; 21 in FY09; 28 in FY10; 35 in FY11; 42 in FY12; 49 in FY13; 56 in FY14; 63 in FY15; and 70 in FY16.

ASSUMPTION (continued)

§566.100 – Sexual Abuse

Enhances the penalty to lifetime incarceration and no parole or probation for 25 years if the victim is under 12. Sexual Abuse is a class C felony. No impact to DOC.

Impact from Diverted Probation

The impact is 1 offender per year. In FY07 there will be 1 additional offender in prison; 2 in FY08; 3 in FY09; 4 in FY10; 5 in FY11; 6 in FY12; 7 in FY13; 8 in FY14; 9 in FY15; and 10 in FY16.

§568.045 – Endangering the Welfare of a Child

Enhances the penalty to lifetime incarceration and no parole or probation for 25 years if the victim is under 12. Applies only to sexual conduct when the offender is parent or guardian, sub-division 2. Endangerment of a child is a class C felony and does not require MOSOP unless a sexual activity was involved. OPII age of victim indicates that only 13 of 922 sentences involved sexual activity. No impact to DOC.

§569.092 – Creates the crime of tampering with electronic monitoring equipment, a class C felony

This will apply to a large population, but the likelihood is that if an offender was known to have tampered with the monitor then the offender would be revoked. The new offense would be served concurrently with existing offenses. In last session, a similar statute was passed (§575.205). No impact to DOC.

§575.157 – Creates the crime of aiding a sexual offender to fail to register as a sex offender

The statute could apply to many persons in contact with sex offenders. No impact is assessed because of lack of data but the statute could impact the DOC. Fiscal impact is Unknown.

§589.407 – Registration of a Sex Offender

Adds additional information on the registration form including temporary addresses and colleges. No impact is assessed to DOC.

ASSUMPTION (continued)

§589.414 – Sex Offender Registration

Requires county and city law enforcement officers to forward changes in registration details to MULES with 3 days. No impact assessed to DOC.

§589.425 – Sex Offender Registration

Increases the penalty from a class A misdemeanor to a class D felony unless the offender has been convicted of a sex offense of a child under 14 when it increases from a class D felony to a class C Felony. Repeat convictions will be enhanced by one felony class.

There are already 13 separate offense codes for registration violations. In 2005 there were 19 offenders with convictions who were either revoked from supervision or admitted for a new commitment in 2005 and 27 probations. The number of new convictions increased greatly in 2005. Increasing the offense to a class C felony is likely to increase the time served by about 1 year because sex offenders generally serve to conditional release. The impact is 19 in FY07 and 40 in FY08 and each year thereafter.

Total Impact on Prison Populations:

The total impact on prison populations is as follows: FY07 – 86; FY08 – 174; FY09 – 241; FY10 – 311; FY11 – 381; FY12 – 451; FY13 – 577; FY14 – 703; FY15 – 829; and FY16 – 1,016.

Please see the following chart used to outline costs:

ASSUMPTION (continued)

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

	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	86	43	0	\$614,126	0	\$632,550
FY 2008	174	130	0	\$1,856,660	0	\$1,969,731
FY 2009	241	208	0	\$2,970,656	0	\$3,246,116
FY 2010	311	276	0	\$3,941,832	0	\$4,436,567
FY 2011	381	346	0	\$4,941,572	0	\$5,728,636
FY 2012	451	416	0	\$5,941,312	0	\$7,094,237
FY 2013	577	514	0	\$7,340,948	0	\$9,028,440
FY 2014	703	640	0	\$9,140,480	0	\$11,578,887
FY 2015	829	766	0	\$10,940,012	0	\$14,274,234
FY 2016	1,016	923	0	\$13,182,286	0	\$17,715,890
Total Ten-Year Fiscal Impact:						\$75,705,288

ASSUMPTION (continued)

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).

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 **Office of the Secretary of State (SOS)** assume 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 proposal for Administrative Rules is less than \$1,500. The SOS recognizes this is a small amount and does not expect additional funding would be required to meet these costs. However, SOS also recognizes that many such bills may be passed in a given year and that collectively the costs may be in excess of what the SOS can sustain with their core budget. Any additional required funding would be handled through the budget process.

ASSUMPTION (continued)

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 the provisions which increase the penalties for violations of certain sexual crimes 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 \$139,695 in FY 07, \$69,654 in FY 08, and \$71,441 in FY 09. This would be divided among the General Revenue and Federal Funds.

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 the 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 crimes of tampering with electronic monitoring equipment and/or aiding a sexual offender. The increased penalties proposed for sex offenders who commit crimes against children will also increase the SPD workload. 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.

ASSUMPTION (continued)

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 the 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	(\$632,550)	(\$1,969,731)	(\$3,246,116)
<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>(\$710,871)</u>	<u>(\$2,004,753)</u>	<u>(\$3,282,032)</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>

FISCAL IMPACT - Local Government

FY 2007
 (10 Mo.)

FY 2008

FY 2009

POLITICAL SUBDIVISIONS

Costs – County Prosecutors

Increased cases

(More than
\$100,000)

(More than
\$100,000)

(More than
\$100,000)

**ESTIMATED NET EFFECT ON
 POLITICAL SUBDIVISIONS**

(More than
\$100,000)

(More than
\$100,000)

(More than
\$100,000)

FISCAL IMPACT - Small Business

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

DESCRIPTION

In instances where the victim is younger than 12 years of age and the offender is 18 years of age or older, this bill increases the penalties for the following crimes:

1. Forcible rape or attempt to commit forcible rape from a term of imprisonment of not less than five years to not less than 30 years without eligibility for probation, parole, or release for the first offense. For a subsequent offense, the penalty is increased from a term of imprisonment of not less than 10 years to life imprisonment without eligibility for probation, parole, or release;
2. Statutory rape in the first degree, forcible sodomy, and statutory sodomy in the first degree from a term of imprisonment of not less than five years to not less than 30 years without eligibility for probation, parole, or release for the first offense and life imprisonment without eligibility for probation, parole, or release for a subsequent offense;
3. Sexual assault and deviate sexual assault from a class C felony to a term of imprisonment of not less than 30 years without eligibility for probation, parole, or release for the first offense and life imprisonment without eligibility for probation, parole, or release for a subsequent offense;

DESCRIPTION (continued)

4. Child molestation from a class B felony to a term of not less than 30 years without eligibility for probation, parole, or release for the first offense and life imprisonment without eligibility for probation, parole, or release for a subsequent offense;
5. Sexual misconduct in the first degree from a class A misdemeanor for the first offense and class D felony for a subsequent offense to a felony in which the term of imprisonment is not less than 30 years for the first offense and a term of life imprisonment for a subsequent offense; and
6. Child endangerment in the first degree from a class C felony for the first offense and class B felony for a subsequent offense to a term of imprisonment of not less than 30 years for the first offense and a term of life imprisonment for a subsequent offense.

The bill also creates the crimes of tampering with electronic monitoring equipment and aiding a sexual offender.

A person required to register as a sexual offender who is enrolled, employed, or carrying on a vocation at a higher education institution is required to include identifying information of that institution. Any person who has a place of residence defined as a motor vehicle, mobile home, manufactured home, vessel, live-aboard vessel, or houseboat must also include the description and registration number of the residence on his or her registration.

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 the Governor
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 Secretary of State
Office of the State Public Defender
Boone County Sheriff's Department
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



Mickey Wilson, CPA
Director
February 20, 2006