

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4273-01  
Bill No.: HB 1362  
Subject: Crimes and Punishment; Probation and Parole; Department of Corrections  
Type: Original  
Date: February 20, 2006

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**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
General Revenue	(\$604,898)	(\$1,671,414)	(\$3,406,883)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(\$604,898)</b>	<b>(\$1,671,414)</b>	<b>(\$3,406,883)</b>

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

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

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

### **FISCAL ANALYSIS**

#### **ASSUMPTION**

Officials from the **Office of the Governor, Department of Mental Health, Department of Public Safety – Missouri State Highway Patrol, – Director’s Office, Office of the Secretary of State, Boone County Sheriff’s 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 **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 revises various laws pertaining to sex offenders. DOC assumes the following impact:

ASSUMPTION (continued)

§559.100 – Adds statutory rape 1<sup>st</sup> and statutory sodomy 1<sup>st</sup> to the list of no probation offenses

Impact is included in section 3 because of the proposed changes in the age limits of the child.

§§566.032 & 566.062 – Statutory Rape 1<sup>st</sup> Degree and Statutory Sodomy 1<sup>st</sup> Degree

The age of the child is reduced from under 14 to under 13. The minimum sentence increases to life imprisonment with parole eligibility after 25 years when the child is less than 13 years. No probation. From the OPII sex offender registration file, the victim is under 13 in 50% of statutory rape and statutory sodomy cases.

Prison Admissions

In FY05 there were 178 new admissions for statutory rape 1<sup>st</sup> and statutory sodomy 1<sup>st</sup>, of which 89 (50%) will be sentenced under the proposed statute. Offenders will serve 25 years instead of 9.2 years. The total impact of the legislation is 1,408 after 25 years (table below). The increase, however, will not begin until year 10 when the expected impact is 89.

New Admissions Statutory Rape 1st & Statutory Sodomy 1st, FY05

	MOCODE	Prison	Est. U-13	Under 13	Sentence yrs	% Served	Time Served	After enact	Increase Years	Pop. Increase
Statutory Rape 1st	11021	22	50%	11	14.1	67%	9.4	25	15.6	171
Statutory Rape 1st	11025	49	50%	25	11.4	67%	7.8	25	17.2	422
Statutory Rape 1st DDW	11032	5	50%	3	9.4	67%	6.4	25	18.6	44
Statutory Sodomy 1st	11076	47	50%	24	14.0	67%	10.7	25	14.3	334
Statutory Sodomy 1st DDW	11095	7	50%	4	20.7	67%	13.9	25	11.1	39
Statutory Sodomy 1st	11097	48	50%	24	12.8	67%	8.4	25	16.4	394
<b>Total</b>		<b>178</b>	<b>50%</b>	<b>89</b>	<b>13.7</b>	<b>67%</b>	<b>9.2</b>	<b>25</b>	<b>15.8</b>	<b>1,408</b>

Diverted Probation in FY05

47 offenders received probation for Statutory Rape 1<sup>st</sup> Degree and Statutory Sodomy 1<sup>st</sup> Degree in FY05, of which 24 (50%) are estimated to be sentenced under the changed statute 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 550).

Combined impact

	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15	FY16	Total
Prison										89	1,408
Diverted Probation	24	48	72	96	120	144	168	192	216	240	550
<b>Total</b>	<b>24</b>	<b>48</b>	<b>72</b>	<b>96</b>	<b>120</b>	<b>144</b>	<b>168</b>	<b>192</b>	<b>216</b>	<b>329</b>	<b>1,958</b>

ASSUMPTION (continued)

§§566.034 & 566.064 – Statutory Rape 2<sup>nd</sup> and Statutory Sodomy 2<sup>nd</sup>

Changes the age of child to 13 and the sentencing range is a Class A Felony. Probation and Parole are allowed. Offenders who at present are convicted of Statutory Rape 1<sup>st</sup> and Statutory Sodomy 1<sup>st</sup> and victimize children of 13 will be sentenced to the offense at 2<sup>nd</sup> degree. There will be no impact because the sentencing penalties are unchanged.

§§566.034 & 566.064 – Statutory Rape 3<sup>rd</sup> and Statutory Sodomy 3<sup>rd</sup>

New offense that re-classifies the 2<sup>nd</sup> degree offense to 3<sup>rd</sup> degree with the same penalties if the offender is aged from 21 to 29. If the offender is 30+, then the offense is a class B felony. There is an impact for offenders who are 30 or older. Data from OPII indicates that 48% of offenders convicted of 2<sup>nd</sup> degree were 30+.

If offenders are sentenced to class B offenses, then the sentence will increase and there will be fewer offenders receiving 120 day or probation sentences. Child Molestation 1<sup>st</sup> degree is used as the likely sentence for the class B offense. For 48% of offenders, the average sentence will increase from 6.1 years to 9.4 years and the offenders will serve 67% before release (an increase in 2.1 yrs in time served). The impact is an increase of 163 in the population that will begin after 4 years (6.1 yrs \* 67%).

**Age of Offender for Statutory Rape 2<sup>nd</sup> and Statutory Sodomy 2<sup>nd</sup> and Impact of Class B for 30 yrs and over**

RSMO	Age of Offender				Est. Fel B	Sentence		Increase Sentence	Served Percent	Additional Time	Inc. Population
	Under 30	30+	TOTAL	% 30+		Fel C	Fel B				
Stat. Rape 2nd 566.034	58	25	83	30%	25	58	94	3.6	67%	241	60
Stat. Sodomy 2nd 566.064	25	51	76	67%	51	64	94	3.0	67%	201	103
TOTAL	83	76	159	48%	76	61	94			214	163

Probation Diversion

15% will be diverted from probation to prison (60% to 75%)

	Class	Prison	120 Day	Prob	Total	Prison Percent
Stat. Rape 2nd 566.034	C	74	9	29	112	66%
Stat. Sodomy 2nd 566.064	C	67	9	45	121	55%
Child Molestation 1st	B	80	4	22	106	75%

ASSUMPTION (continued)

The time served by the diverted probation offenders

Diverted Probation (15%)	35
Under 30 Time Served (52%)	18
Over 30 (48%)	17
Time Served	
Under 30 Time Served (67% *6.1)	4.1
Over 30 (67% *9.4)	6.3
Increase in Population	
Under 30	74
Over 30	107
Total Diversion	181

Total Impact

	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15	FY16	Total
Prison			76	163	163	163	163	163	163	163	163
Diverted Probation	35	70	105	140	175	181	181	181	181	181	181
Total	35	70	181	303	338	344	344	344	344	344	344

§566.068 – Child Molestation 2<sup>nd</sup> degree

Enhances the penalty from a misdemeanor to a class D felony. Using Endangering the Welfare of a Child as a comparison, increasing the penalty to a class D felony is estimated to result in 67% of offenders receiving a 4 year prison sentence. The increase will begin in FY07 and will result in a total population increase of 36.

Child Molestation 2 <sup>nd</sup> Degree	Probation FY 95	Diverted 67%	Avg Sentence	Percent Served	Time Served	Inc Pop
FY 05	20	13.4	4	67%	2.7	36

	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15	FY16	Total
Diverted Probation	13	25	36	36	36	36	36	36	36	36	36

ASSUMPTION (continued)

§566.083 – Sexual misconduct involving a child

Removes the definition of the sexual act from the statute and adds the attempt to the offense. The impact of the removal of the definition is not assessed. The attempt of the offense is an offense that would be sentenced to one class lower. There have only been 5 out of 320 sentences in OPII that have been sentenced as an attempt (misdemeanor). No impact.

§566.147 – Adds community residential programs for persons with developmental disabilities to the list of facilities that registered sex offenders should not reside within a 1,000 ft.

In FY05 there was 1 offender admitted for the offense and insufficient information to quantify the impact.

§568.060 – Abuse of a child

Splits abuse of a child into two offenses by removing sub-section 2 concerning photographing a child in a prohibited sexual act. (to section 9)

§573.024 – Photographing a child in a prohibited sexual act

New offense that is a class C felony if the age of the child is from 14-17. If the child is under 14 then the offense is a class B felony. There is insufficient information in OPII to estimate the percent of child abuse cases that include the obscenity charge or the age of the child. Abuse of a child is not an offense that requires MOSOP. In FY05 there were 25 offenders incarcerated and 50 probations. DOC assumes the impact not known, could be over \$100,000.

§575.155 – New offense for helping a sex predator avoid compliance with sex offender registration

The penalty is a Class A misdemeanor that the department would supervise. Also proposes to allow a sex offender to petition a circuit court to remove the lifetime registration if the offender was under 21 at the time of the offenses after 10 years. No significant impact to DOC assessed.

ASSUMPTION (continued)

**Total Impact to DOC of Bill**

Incarceration

	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15	FY16	Total
Stat. Rape 1st & Stat. Sodomy 1st	24	48	72	96	120	144	168	192	216	240	1,920
Stat. Rape 3rd & Stat. Sodomy 3rd	35	70	105	140	175	210	245	280	315	350	2,800
Child Molestation 2nd	13	26	39	52	65	78	91	104	117	130	1,040
<b>Total</b>	<b>72</b>	<b>144</b>	<b>216</b>	<b>288</b>	<b>360</b>	<b>432</b>	<b>504</b>	<b>576</b>	<b>648</b>	<b>720</b>	<b>5,800</b>

Supervision

Total Impact 2,250 after 35 years. None within 10 years.

The Bill requires lifetime time supervision of offenders found guilty of Statutory Rape 1<sup>st</sup> and Statutory Sodomy 1<sup>st</sup>. The supervision will begin after 25 years incarceration. The average age of an offender at the beginning of supervision/incarceration for Statutory Rape 1<sup>st</sup> and Statutory Sodomy 1<sup>st</sup> was 34 in FY05. The average age on release after serving 25 years will be 59 years with an expected remaining life of about 10 years under supervision. The estimated number of offenders under supervision after 10 years is 2,250 (225 admissions/probation in FY05 \* 10 years). The impact is after 35 years.

Please see the following chart used to outline costs:

ASSUMPTION (continued)

<b>Operating Expense of Sex Offender Modification Bill</b>			
	<u><b>Cost</b></u>	<u><b>Days</b></u>	<u><b>Total</b></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

	<b>End FY Population</b>	<b>Average Population</b>	<b>Emer Hsng Expense</b>	<b>Operating Expense</b>	<b>Construction Expense</b>	<b>Total Cost w/ Inflation</b>
FY 2006	0	(current year which will have no costs incurred)				
FY 2007	72	36	0	\$514,152	0	\$529,577
FY 2008	143	108	0	\$1,542,456	0	\$1,636,392
FY 2009	289	216	0	\$3,084,912	0	\$3,370,967
FY 2010	435	362	0	\$5,170,084	0	\$5,818,975
FY 2011	494	465	0	\$6,641,130	0	\$7,698,890
FY 2012	524	509	0	\$7,269,538	0	\$8,680,209
FY 2013	548	536	0	\$7,655,152	0	\$9,414,871
FY 2014	572	560	0	\$7,997,920	0	\$10,131,526
FY 2015	596	584	0	\$8,340,688	0	\$10,882,706
FY 2016	709	653	0	\$9,326,146	0	\$12,533,560
<b>Total Ten-Year Fiscal Impact:</b>						<b>\$70,697,673</b>



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 **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.

ASSUMPTION (continued)

STAT also assumes that Sections 566.032, 566.034, 566.036, 566.062, 566.064, 566.065, 566.068, 566.083, 566.147, 568.060, and 573.024 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.

Section 573.024 would create a new crime of photographing or filming a child less than seventeen years of age, engaging in a prohibited sexual act or simulation of such. Since digital media is the preferred medium for these crimes, law enforcement will need to utilize specialized investigators to recover this data for use in court proceedings. The Department of Social Services, State Technical Assistance Team (STAT) is the only state agency who specializes in computer forensics involving child exploitation or child pornography. STAT will assume they will receive the majority of the referrals from local law enforcement. For every 18 cases referred for examination, it is estimated that one forensic computer examiner (FTE) would be needed, since the work is time intensive and very specialized. It is also estimated that an additional \$30,000 dollars in specialized equipment and training would be needed for each new forensic computer examiner FTE. 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.

**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.

ASSUMPTION (continued)

Officials from the **Office of the State Public Defender (SPD)** did not respond to Oversight's request for fiscal impact. However, in response to a similar proposal from the current session (SB 563, LR # 3091-07), officials assumed existing staff could not provide competent, effective representation. 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 Office of the State Public Defender, Greene County Sheriff's Department, Jackson County Sheriff's 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
<b>GENERAL REVENUE FUND</b>			
<u>Costs</u> – Department of Corrections			
Incarceration/probation cost	(\$526,577)	(\$1,636,392)	(\$3,370,967)
<u>Costs</u> – Department of Social Services			
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</u> – DOS	<u>(\$78,321)</u>	<u>(\$35,022)</u>	<u>(\$35,916)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(\$604,898)</u></b>	<b><u>(\$1,671,414)</u></b>	<b><u>(\$3,406,883)</u></b>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2007 (10 Mo.)	FY 2008	FY 2009
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**FEDERAL FUNDS**

<u>Costs</u> – Department of Social Services			
Personal Service (0.4 FTE)	(\$11,754)	(\$14,463)	(\$14,825)
Fringe Benefits	(\$5,179)	(\$6,373)	(\$6,532)
Equipment and Expense	(\$35,282)	(\$2,512)	(\$2,587)
<u>Total Costs</u> – DOS	(\$52,215)	(\$23,348)	(\$23,944)

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>(\$52,215)</u></b>	<b><u>(\$23,348)</u></b>	<b><u>(\$23,944)</u></b>
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<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
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**POLITICAL SUBDIVISIONS**

<u>Costs</u> – County Prosecutors			
Increased cases	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>

<b>ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS</b>	<b><u>(More than \$100,000)</u></b>	<b><u>(More than \$100,000)</u></b>	<b><u>(More than \$100,000)</u></b>
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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. 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 (§§566.032, 566.062);
2. Changes the victim's age from younger than 17 years of age to at least 13 but less than 14 and increases the penalty to a minimum of 10 years' imprisonment, unless serious physical injury is inflicted, a deadly weapon is displayed, or the victim is subjected to sexual intercourse or deviate sexual intercourse with more than one person, in which case the term of imprisonment is a minimum of 15 years, for the crimes of statutory rape in the second degree and statutory sodomy in the second degree (§§566.034, 566.064);
3. Creates the crime of statutory rape in the third degree when a person older than 21 years of age has sexual intercourse with a person younger than 17. The crime will be a class C felony unless the offender is older than 30, in which case it will be a class B felony (§566.036);
4. Creates the crime of statutory sodomy in the third degree when a person older than 21 years of age has deviate sexual intercourse with a person younger than 17. The crime will be a class C felony unless the offender is older than 30, in which case it will be a class B felony (§566.065);
5. Increases the crime of child molestation in the second degree from a class A misdemeanor to a class D felony. Subsequent convictions of this crime are increased from a class D felony to a class C felony as well as for instances in which the perpetrator inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner, or the offense was committed as part of a ritual or ceremony (§566.068);
6. Adds community residential programs to the list of places where a sex offender cannot establish residency within 1,000 feet (§566.147);
7. Limits the definition of "child abuse" to only those instances in which a person knowingly inflicts cruel and inhuman punishment on a child younger than 17 years of age (§568.060);

8. Creates the crime of photographing a child younger than 17 years of age engaging in a prohibited sexual act or knowingly permitting a child younger than 17 to engage in a prohibited sexual act. The crime will be a class C felony unless the child is younger than 14, in which case it will be a class B felony (§573.024);
9. Creates the crime of harboring a sexual predator, a class A misdemeanor (§575.155); and
10. Allows an individual that has been required to register on the sex offender registry for a crime that he or she committed while younger than 21 years of age to petition to have his or her name removed (§589.400).

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 Mental Health  
Department of Corrections  
Department of Social Services  
Department of Public Safety  
    – Missouri State Highway Patrol  
    – Director's Office  
Office of Prosecution Services  
Office of the Secretary of State  
Boone County Sheriff's Department  
St. Louis Metropolitan Police Department

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**NOT RESPONDING**

**Office of the State Public Defender  
Greene County Sheriff's Department  
Jackson County Sheriff's 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