

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4830-06
Bill No.: HCS for HB 1632
Subject: Crimes and Punishment; Telecommunications
Type: Original
Date: March 2, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

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 5 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	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator** assume there will be no fiscal impact on the Courts.

Officials from the **Department of Public Safety - Office of the Director** and the **Office of Secretary of State - Administrative Rules Division** state there will be no fiscal impact to their respective agencies.

Officials from the **Office of Attorney General** assume that the costs of this measure may be absorbed. This proposal adds criminal penalties for the crime of unauthorized procurement or sale of a consumer's phone records without the consumer's consent. The Missouri AGO has already brought civil actions pursuant to Chapter 407, RSMo, to enjoin two companies that engage in this conduct. The AGO assumes that any criminal penalties authorized by this proposal would be brought by a local prosecutor that has jurisdiction. The AGO may handle any appeals from convictions under this proposal but assumes that there would be few appeals and that these appeals costs could be absorbed with existing resources.

Officials from the **Department of Economic Development - Public Service Commission (PSC)** and **Office of Public Counsel** state this proposal will not have a significant fiscal impact on their agency. The PSC will have to modify its existing rule on the release of customer

ASSUMPTION (continued)

proprietary network information to maintain consistency with legislation.

In response to the introduced version of this proposal, officials from the **Office of Prosecution Services** state this proposal will not have a significant fiscal impact on county prosecutors, although it may lead to an increase in prosecutions/ caseloads.

According to officials from the **Department of Corrections (DOC)**, the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

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 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).

The following factors contribute to DOC's minimal assumption:

- > DOC assumes the narrow scope of the crime will not encompass a large number of offenders.

- > The low felony status of the crime enhances the possibility of plea-bargaining or imposition of a probation sentence.

- > The probability exists that offenders would be charged with a similar but more serious offense or that sentences may run concurrent to one another.

In summary, supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials from the **Office of State Public Defender** did not response to a request for fiscal note.

<u>FISCAL IMPACT - State Government</u>	FY 2007	FY 2008	FY 2009
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Local Government

FY 2007

FY 2008

FY 2009

\$0

\$0

\$0

FISCAL IMPACT - Small Business

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

DESCRIPTION

This proposed legislation creates the crime of knowingly receiving, selling, or obtaining telephone records without a customer's consent.

“Telephone record” is defined as any information retained by a telecommunications carrier that relates to the telephone numbers dialed by the customer or the incoming numbers of calls directed to a customer or other data related to such calls typically contained on a customer telephone bill.

Exemptions include: the actions of law enforcement officers, Department of Corrections, or state agencies in performing their official duties; lawful use of the records in order to provide service; the use of records pursuant to the Victims of Child Abuse Act of 1990, and; the emergency use of records to prevent death or serious injury.

Customers and telecommunications companies can recover actual damages, illicit profits, and punitive damages from persons who violate these provisions. There is a two-year statute of limitation on the civil actions.

The proposal does not create any new cause of action against telecommunications companies, but does require them to establish reasonable procedures to guard against the theft of telephone records.

This legislation is not federally mandated and would not require additional capital improvements or rental space.

Regarding the subject of duplication, the PCS states the Federal Communications Commission, through 47 CFR 64 Subpart U has established guidelines for the release of customer proprietary network information (CPNI), which is defined as information that relates to the quantity, technical configuration, type, destination and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the

DESCRIPTION (continued)

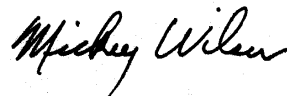
carrier by the customer solely by virtue of the customer-carrier relationship and information contained in the bills pertaining to telephone service. The PSC, through 4 CSR 240-33.160, has also implemented guidelines addressing the release of customer proprietary network information. The federal rules apply to wireline and wireless providers. The state rules apply to wireline providers. Also, the FCC is currently reviewing the issue of the inappropriate sale of wireless records.

SOURCES OF INFORMATION

Department of Public Safety
Office of the Director
Department of Economic Development
Public Service Commission
Office of Public Counsel
Office of State Courts Administrator
Department of Corrections
Office of Prosecution Services
Office of Attorney General
Office of Secretary of State
Administrative Rules Division

NOT RESPONDING

Office of State Public Defender



Mickey Wilson, CPA
Director
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