COMMITTEE ON LEGISLATIVE RESEARCH OVERSIGHT DIVISION

FISCAL NOTE

<u>L.R. No.</u>: 4908-03 <u>Bill No.</u>: HB 1698

Subject: Criminal Procedure

<u>Type</u>: Original

Date: February 20, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND						
FUND AFFECTED	FY 2007	FY 2008	FY 2009			
General Revenue	(More than \$397,801)	(More than \$828,369)	(More than \$1,190,907)			
Total Estimated Net Effect on General Revenue Fund	(More than \$397,801)	(More than \$828,369)	(More than \$1,190,907)			

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

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 16 pages.

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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					
Local Government* \$0 \$0					

^{*}Offsetting revenues and costs to county law enforcement agencies.

FISCAL ANALYSIS

ASSUMPTION

Officials from the Coordinating Board for Higher Education, Office of Administration, Department of Economic Development, Department of Mental Health, Department of Labor and Industrial Relations, Department of Public Safety – Missouri Veterans Commission, – Director's Office, – Missouri Gaming Commission, Missouri Consolidated Health Care Plan, Joint Committee on Public Employee Retirement, Joint Committee on Legislative Research, Missouri Ethics Commission, Missouri House of Representatives, State Auditor's Office, Missouri Senate, State Treasurer's Office, State Tax Commission, and the Springfield Police Department assume the proposal would have no fiscal impact on their agencies.

Officials from the **Department of Public Safety** – **Missouri State Highway Patrol (MHP)** assume, based on agencies utilizing MOAPS for the processing of fingerprints, there will be minimal impact for the MHP.

Oversight assumes the Missouri State Highway Patrol could absorb any minimal impact within existing resources.

ASSUMPTION (continued)

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Officials from the **Office of Prosecution Services** assume the proposal will not have a significant direct fiscal impact on county prosecutors, although it may lead to an increase in prosecutions/caseloads.

Officials from the **Office of State Courts Administrator (CTS)** assume, based on a 50% felony collection rate, that the legislation will produce \$149,755 in the first 12 months, \$293,875 in the second 12 months, \$313,466 in the third 12 months, and \$333,017 annually thereafter. Based on a 60% felony collection rate, CTS assumes the legislation will produce \$153,670 in the first 12 months, \$301,703 in the second 12 months, \$325,189 in the third 12 months, and \$348,674 annually thereafter.

Oversight assumes, for fiscal note purposes, a 50% felony collection rate. Oversight has reduced the first 12 months estimate to reflect 10 months.

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.

Officials from the **Department of Elementary and Secondary Education (DESE)** assume the proposal will have little to no impact on the agency. Employees within the department who have substantial contact with children under the age of sixteen are currently subjected to background checks. In addition, all pupil-contact individuals seeking employment in the schools currently undergo background checks.

Officials from the **Department of Health and Senior Services (DHSS)** assume they average 17 new hires per year in positions with substantial direct contact with children under the age of 16. Estimating a cost of \$36.50 for each background check (\$12.50 for fingerprint processing + \$24.00 for submission to FBI for nationwide checks), DHSS assumes the cost is \$620.50 per year.

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<u>ASSUMPTION</u> (continued)

Officials from the **Department of Conservation (MDC)** assume the proposed legislation would have minimal negative impact on MDC funds due to more extensive FBI background checks on certain employment applicants.

Oversight assumes state agencies may require the applicant to reimburse the agency for the cost of a background check. Therefore, Oversight assumes no impact on this provision to state agencies.

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 566.030, 566.032, 566.060, 566.062, 566.083, 566.090, and 566.151 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 \$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.

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<u>ASSUMPTION</u> (continued)

Officials from the **Department of Social Services** – **Human Resource Center (HRC)** assume the provisions requiring background checks before hiring persons with substantial direct contact with children under the age of sixteen would impact HRC. HRC projects two additional FTE Human Resource Managers (each at \$45,648 per year) and one FTE Senior Office Support Assistant (at \$21,900 per year) to coordinate the collection and processing of the fingerprints of potential employees. HRC did not include the cost of the background checks because this would normally be paid by the hiring division. HRC estimates the cost to be \$164,322 in FY 07, \$180,582 in FY 08, and \$185,143 in FY 09.

Oversight assumes, based on information received from Department of Social Services (DOS) officials, that DOS conducts does post-employment criminal background checks on employees who have direct contact with youth. Oversight assumes the resources used for these post-employment background checks could be used for the required pre-employment checks. Therefore, Oversight assumes no fiscal impact to DOS – HRC.

Officials from the **Department of Social Services – Division of Youth Services (DYS)** assume the proposal would lengthen the estimated time to fill vacancies. DYS would incur overtime to maintain required coverage during periods of vacancies. DYS estimates this cost to be more than approximately \$123,000 per year.

In addition, DYS assumes at least 500 background checks will be required to fill vacancies. DYS assumes the cost of background checks for its new hires to be at least \$18,000. However, if DYS finds background checks can be expeditiously conducted by the Highway Patrol under the provisions of Section 43.527 RSMo, the cost of the background checks may be zero. This statute states there shall be no charge for information supplied to criminal justice agencies for the administration of criminal justice.

DYS assumes the total fiscal impact to be unknown, but more than \$100,000 per year.

Officials from the **Department of Corrections (DOC)** assume the proposal modifies laws regarding sexual offenders. DOC has the following assumptions on the portions of this bill to have potential fiscal impact:

§558.018 – Enhances the Sentence of Persistent Sex Offenders to Lifetime Incarceration

These offenders already serve long sentences. Although, this change will affect DOC, there is no impact felt within the 10 year time projection of this fiscal note.

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<u>ASSUMPTION</u> (continued)

§§566.030 & 566.060 – Forcible Rape and Forcible Sodomy

The proposal requires a life sentence and at least 25 years incarceration when the victim is under 12. The proposal allows 15 year minimum when the offender is 75 and has served at least 15 years. This would apply to offenders who were over 50 at sentencing. Both statutes are dangerous felonies and are already required to serve 85% of sentence. Statute assesses life sentences as 30 years and 85% of 30 years is 25.5 years.

Relatively few offenders who assault young children are convicted of forcible rape or forcible sodomy. The total impact is estimated at 362 but the impact will not occur until 17 years out, the time when offenders would be released under current sentencing.

§§566.032 & 566.060 – Statutory Rape 1st and Statutory Sodomy 1st

The proposal adds the attempt to the commission of the offense. The attempt of the offense is currently sentenced as a B felony with 9 admissions in FY05. Making the attempt a class A felony would add 4.67 years to the average time served. The impact would begin in FY12 with 9; 18 in FY13; 17 in FY14; and 33 in FY15 and each year thereafter.

§566.147 – Sex Offenders Not to Reside Within 1,000 Feet of School

DOC states residency is made retrospective. DOC assumes it is difficult to estimate impact. DOC assumes an unknown impact.

§566.151 – Child Enticement

The proposal enhances the sentence from class B felony to 5 years with minimum time served of 5 years and no probation. In 2005 there were 9 probation sentences who would have to serve 5 years. The total impact is 57 that would be reached in FY12. Impact would begin in FY07 with 9; 18 in FY08; 27 in FY09; 36 in FY10; 55 in FY11; and 57 in FY12, remaining static thereafter.

§575.159 – Aiding an Offender

Aiding an offender to avoid registration is a class D felony. DOC assumes unknown impact for newly created crime.

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<u>ASSUMPTION</u> (continued)

§589.425 – Sex Offender Registration

The proposal increases the penalty of failing to register to a class C felony from a class A misdemeanor. 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; 40 in FY08 as well as each year thereafter.

This bill also requires 10 year electronic monitoring after the third violation of sex offender registration. At present, there are three offenders who have three or more convictions for registration violations. However, as the number of registration violations is increasing, it is estimated that the number may double to 6 per year. The impact after 10 years would be 60. The breakdown is as follows: FY07 is 6; FY08 is 12; FY09 is 18; FY10 is 24; FY11 is 30; FY12 is 36; FY13 is 42; FY14 is 48, FY15 is 54; and FY16 is 60 on GPS monitoring.

DOC Combined Impact Summary

Incarceration impact per fiscal year is as follows: FY07 is 28; FY08 is 58; FY09 is 67; FY10 is 76; FY11 is 95; FY12 is 106; FY13 is 115; FY14 is 124, FY15 is 130; and FY16 is 130.

GPS monitoring numbers are as follows: FY07 is 6; FY08 is 12; FY09 is 18; FY10 is 24; FY11 is 30; FY12 is 36; FY13 is 42; FY14 is 48, FY15 is 54; and FY16 is 60.

Please see the following chart used to outline costs:

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ASSUMPTION (continued)

GPS Monitoring Expense of Sex Offender Modification Bill						
	<u>Cost</u>	<u>Days</u>	<u>Total</u>			
Operating Expenses	0	365	0			
Construction (C4 or C5 \$55,000)			0			
GPS Monitoring Cost	12.00	365	4,380			
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	GPS Operating Expense	Construction Expense	Total Cost w/ Inflation
FY 2006	0	(current year v	which will have	no costs incurr	ed)	
FY 2007	6	3	0	\$13,140	0	\$13,534
FY 2008	12	9	0	\$39,420	0	\$41,821
FY 2009	18	15	0	\$65,700	0	\$71,792
FY 2010	24	21	0	\$91,980	0	\$103,524
FY 2011	30	27	0	\$118,260	0	\$137,096
FY 2012	36	33	0	\$144,540	0	\$172,588
FY 2013	42	39	0	\$170,820	0	\$210,087
FY 2014	48	45	0	\$197,100	0	\$249,680
FY 2015	54	51	0	\$223,380	0	\$291,460
FY 2016	60	57	0	\$249,660	0	\$335,522
Total Ten-	Year Fiscal Im	pact:				\$1,627,104

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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 v	which will have	no costs incurr	ed)	
FY 2007	28	14	0	\$199,948	0	\$205,946
FY 2008	58	43	0	\$614,126	0	\$651,526
FY 2009	67	63	0	\$899,766	0	\$983,199
FY 2010	76	72	0	\$1,028,304	0	\$1,157,365
FY 2011	95	86	0	\$1,228,252	0	\$128,538
FY 2012	106	101	0	\$1,442,482	0	\$371,332
FY 2013	115	111	0	\$1,585,302	0	\$614,126
FY 2014	124	120	0	\$1,713,840	0	\$914,048
FY 2015	130	127	0	\$1,813,814	0	\$1,271,098
FY 2016	130	130	0	\$1,856,660	0	\$1,613,866
Total Ten-Year Fiscal Impact:					\$1,956,634	

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<u>ASSUMPTION</u> (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.
- \$12.00 (current) average daily GPS Electronic Monitoring 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.

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<u>ASSUMPTION</u> (continued)

Officials from the **Boone County Sheriff's Department** assume the proposal would generate revenues of approximately \$34,860 annually (6,972 criminal cases in 2005 x \$5.00 per case) for the purpose of financing the verification of registered sex offender information. As of February 2006, Boone County has 179 offenders on its registry. Semi-annual verification would require one full time employee. Their list is currently administered by a detective. Total cost for a detective would be approximately \$93,300 in FY 06 (salary, benefits, and equipment) and a minimum of approximately \$53,800 per year thereafter (salary and benefits). Boone County would also experience losses of approximately \$58,400 in the first year and a minimum of \$19,000 in subsequent years.

Officials from the Office of the Attorney General, Office of the State Public Defender, Columbia Police Department, Greene County Sheriff's Department, Jackson County Sheriff's Department, Kansas City Police Department, and the St. Louis Metropolitan Police Department did not respond to Oversight's request for fiscal impact.

FISCAL IMPACT - State Government	FY 2007 (10 Mo.)	FY 2008	FY 2009
GENERAL REVENUE FUND	(10 1/10.)		
Costs – Department of Corrections			
GPS monitoring cost	(\$13,534)	(\$41,821)	(\$71,792)
Incarceration/probation cost	<u>(\$205,946)</u>	(\$651,526)	<u>(\$983,199)</u>
<u>Total Costs</u> – DOC	(\$219,480)	(\$693,347)	(\$1,054,991)
<u>Costs</u> – Department of Social Services			
Personal Service (0.6 FTE)	(\$17,631)	(\$21,695)	(\$22,237)
Personal Service (Overtime)	(More than	(More than	(More than
	\$100,000)	\$100,000)	\$100,000)
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	(More than	(More than	(More than
	\$178,321)	<u>\$135,022)</u>	<u>\$135,916)</u>
ESTIMATED NET EFFECT ON			
GENERAL REVENUE FUND	(More than	(More than	(More than
	\$397,801)	\$828,369)	\$1,190,907)

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FISCAL IMPACT - State Government FEDERAL FUNDS	FY 2007 (10 Mo.)	FY 2008	FY 2009
Costs – Department of Social Services Personal Service (0.4 FTE) Fringe Benefits Equipment and Expense Total Costs – DOS ESTIMATED NET EFFECT ON	(\$11,754) (\$5,179) (\$35,282) (\$52,215)	(\$14,463) (\$6,373) (\$2,512) (\$23,348)	(\$14,825) (\$6,532) (\$2,587) (\$23,944)
FEDERAL FUNDS	<u>(\$52,215)</u>	<u>(\$23,348)</u>	<u>(\$23,944)</u>
FISCAL IMPACT - Local Government POLITICAL SUBDIVISIONS	FY 2007 (10 Mo.)	FY 2008	FY 2009
Revenues – County Law Enforcement Surcharge on felony and misdemeanor cases (§488.5362)	\$124,795	\$293,875	\$313,446
Costs – County Law Enforcement Review and verify addresses of sexual offenders (§488.5362)	(\$124,795)	(\$293,875)	(\$313,446)
ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS	<u>\$0</u>	<u>\$0</u>	<u>\$0</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 offenders:

BLG:LR:OD (12/02)

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DESCRIPTION(continued)

- 1. Requires a state department, agency, board, or commission hiring a person for a full-time, part-time, or temporary position with substantial direct contact with children younger than 16 years of age to request a background check. The state department, agency, board, or commission cannot hire any individual for a position with substantial direct contact with children younger than 16 years of age who has pled guilty or been found guilty of any offense for which the person is required to register as a sex offender or who has not disclosed his or her criminal history (§105.003);
- 2. Defines the terms adverse result, electronic communication services, foreign corporation, Missouri corporation, properly served, and remote computing services and specifies the procedures to reveal the identity of a person using electronic communications services and the recipient or destination of communications sent to or from those individuals (§351.609);
- 3. Adds a \$5 surcharge on all criminal cases in which the defendant pleads guilty or nolo contendere or is convicted of a felony or misdemeanor. The surcharge will be used to verify the addresses of registered sexual offenders residing in the county (§488.5362);
- 4. Increases the penalty for a persistent sexual offender from a minimum of 30 years' imprisonment to life imprisonment without eligibility for probation or parole (§588.0180);
- 5. Specifies that a prior sex offender is a person who has previously pled guilty or has been found guilty of a sexual offense or of incest, when the person had sexual intercourse or deviate sexual intercourse with the victim or of knowingly engaging in sexual conduct with a person younger than 17 years of age over whom the person is a parent, guardian, or otherwise charged with the care and custody (§559.106);
- 6. Increases the penalty for the crimes of forcible rape and forcible sodomy from five years' imprisonment to life imprisonment without eligibility for probation or parole until the offender has served 25 years or the offender has reached 75 years of age and has served 15 years, when the victim was younger than 12 years of age (§§566.030, 566.060);
- 7. Creates the crimes of attempting to commit statutory rape in the first degree and attempting to commit statutory sodomy in the first degree (§§566.032, 566.062);

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<u>DESCRIPTION</u>(continued)

- 8. Specifies that a person commits the crime of sexual misconduct involving a child irrespective of if the person committed the crime in person or via the Internet or other electronic means or if a peace officer masqueraded as a minor (§566.083);
- 9. Changes the penalty for the crime of enticement of a child from a class C felony to a minimum of five years' imprisonment and a maximum of 30 years' imprisonment. Creates the crime of attempting to commit enticement of a child (566.151);
- 10. Creates the crime of aiding a sexual offender. The penalty for this crime will be a class D felony (§575.159);
- 11. Requires any person registered as a sexual offender to provide an updated photograph of himself or herself when reporting annually to a county law enforcement agency (§589.414);
- 12. Requires any person registered as a sexual offender and who has committed his or her third violation of the registration laws to be electronically monitored for a period of 10 years and 10 additional years for each subsequent violation (§589.425);
- 13. Requires the chief law enforcement officer of each county to review semiannually the address of each offender required to register in his or her county and verify if the offender is residing at that address (§589.575); and
- 14. The State Highway Patrol must compile a list of those offenders no longer residing at their last address and provide it to the Attorney General or head law enforcement agency of the states of Tennessee, Kentucky, Illinois, Iowa, Nebraska, Kansas, Oklahoma, and Arkansas (§589.576).

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

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SOURCES OF INFORMATION

Coordinating Board for Higher Education

Office of Administration

Office of State Courts Administrator

Department of Economic Development

Department of Elementary and Secondary Education

Department of Mental Health

Department of Corrections

Department of Health and Senior Services

Department of Labor and Industrial Relations

Department of Social Services

Department of Public Safety

- Missouri State Highway Patrol
- Missouri Veterans Commission
- Director's Office
- Missouri Gaming Commission

Missouri Consolidated Health Care Plan

Joint Committee on Public Employee Retirement

Joint Committee on Legislative Research

Department of Conservation

Missouri Ethics Commission

Missouri House of Representatives

Office of Prosecution Services

State Auditor's Office

Missouri Senate

Office of the Secretary of State

State Treasurer's Office

State Tax Commission

Boone County Sheriff's Department

Springfield Police Department

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NOT RESPONDING

Office of the Attorney General
Office of the State Public Defender
Columbia Police Department
Greene County Sheriff's Department
Jackson County Sheriff's Department
Kansas City Police Department
St. Louis County Police Department
St. Louis Metropolitan Police Department

Mickey Wilson, CPA

Mickey Wilen

Director

February 20, 2006