

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4908-08
Bill No.: HCS for HB 1698, 1236, 995, 1362, & 1290
Subject: Criminal Procedure
Type: Original
Date: March 24, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
General Revenue	(Less than \$440,460)	(Less than \$863,391)	(Less than \$1,226,824)
Total Estimated Net Effect on General Revenue Fund	(Less than \$440,460)	(Less than \$863,391)	(Less than \$1,226,824)

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

* Offsetting savings and losses to State School Moneys Fund in FY 2008 and FY 2009.

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	(\$80,653)	(\$46,696)	(\$47,889)
Total Estimated Net Effect on <u>All</u> Federal Funds	(\$80,653)	(\$46,696)	(\$47,889)

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Local Government**	Unknown	\$0	\$0

** Local School Districts would have offsetting income from increased fines and losses from reduced distribution from State School Moneys Fund in FY 2008 and FY 2009.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Mental Health, Department of Public Safety – Missouri State Highway Patrol, – Director’s Office, 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 the Attorney General (AGO)** assume there is a potential of additional criminal appeals based upon the tougher criminal provisions contained in this proposal. AGO assumes costs can be absorbed in handling additional appeals. However, because the impact on the number of appeals is unknown, the AGO may seek additional appropriations in future years if the number of new appeals becomes significant.

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.

ASSUMPTION (continued)

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would increase the penalties and terms of imprisonment for certain sex offenses and create several new offenses. Some cases may become protracted, but CTS would not anticipate a fiscal impact on the judiciary.

CTS assumes the legislation would also permit certain sex offenders to petition the court to have their name removed from the sex offender registry. CTS have no way of determining how many sex offenders might avail themselves of this procedure. There may be some, unknown, impact on the workload of the courts. In all, CTS would not anticipate a fiscal impact in excess of \$100,000.

Officials from the **Department of Elementary and Secondary Education (DESE)** assume there is no state cost to the foundation formula associated with this proposal. Should the new crimes and amendments to current law result in additional fines or penalties, DESE cannot know how much additional money might be collected by local governments or the DOR to distribute to the schools. To the extent fine revenues exceed 2004-2005 collections, any increase in this money distributed to schools increases the deduction in the foundation formula the following year. Therefore, the affected districts will see an equal decrease in the amount of funding received through the formula the following year; unless the affected districts are hold-harmless, in which case the districts will not see a decrease in the amount of funding received through the formula (any increase in fine money distributed to the hold-harmless districts will simply be additional money). An increase in the deduction (all other factors remaining constant) reduces the cost to the state of funding the formula.

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 566.030, 566.032, 566.060, 566.062, 566.066, 566.083, 566.090, 566.101, 566.147, 566.149, 566.151, 568.020, 568.060, and 575.189 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. The investigator would require specialized investigative equipment.

To summarize, STAT assumes they will need a total of two Investigator III FTEs (each at \$40,000 per year), one for additional computer examinations and one for additional investigative needs for the increased penalties.

STAT estimates the total cost of the proposal would be \$219,951 in FY 07, \$139,307 in FY 08, and \$139,307 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 **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 DOC's 10 year time projection.

ASSUMPTION (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.

ASSUMPTION (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 charts used to outline costs:

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 which will have no costs incurred)				
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 Impact:						\$1,627,104

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	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

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.
- \$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.

Officials from the Office of the State Public Defender, Columbia Police Department, Greene County Sheriff's Department, Jackson County Sheriff's Department, Kansas City Police Department, Columbia Public Schools, Kansas City Public Schools, Mexico Public Schools, Nixa Public Schools, Parkway Public Schools, Sedalia School District, and the St. Louis Public Schools 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>Savings</u> – Reduced appropriations to State School Moneys Fund	\$0	Unknown	Unknown
<u>Costs</u> – Office of State Courts Administrator			
Increased workload	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<u>Costs</u> – Department of Corrections			
GPS monitoring cost	(\$13,534)	(\$41,821)	(\$71,792)
Incarceration/probation cost	(\$205,946)	(\$651,526)	(\$983,199)
<u>Total Costs</u> – DOC	(\$219,480)	(\$693,347)	(\$1,054,991)
<u>Costs</u> – Department of Social Services			
Personal Service (1.2 FTE)	(\$35,262)	(\$43,390)	(\$44,475)
Fringe Benefits	(\$15,537)	(\$19,118)	(\$19,596)
Equipment and Expense	(\$70,181)	(\$7,536)	(\$7,762)
<u>Total Costs</u> – DOS	(\$120,980)	(\$70,044)	(\$71,833)
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Less than \$440,460)</u>	<u>(Less than \$863,391)</u>	<u>(Less than \$1,226,824)</u>
STATE SCHOOL MONEYS FUND			
<u>Savings</u> – Reduced distributions to local school districts	\$0	Unknown	Unknown
<u>Losses</u> – Reduced appropriations from General Revenue Fund	\$0	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON STATE SCHOOL MONEYS FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
FEDERAL FUNDS			
<u>Costs</u> – Department of Social Services			
Personal Service (0.8 FTE)	(\$23,508)	(\$28,927)	(\$29,650)
Fringe Benefits	(\$10,358)	(\$12,745)	(\$13,064)
Equipment and Expense	<u>(\$46,787)</u>	<u>(\$5,024)</u>	<u>(\$5,175)</u>
<u>Total Costs</u> – DOS	<u>(\$80,653)</u>	<u>(\$46,696)</u>	<u>(\$47,889)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>(\$80,653)</u>	<u>(\$46,696)</u>	<u>(\$47,889)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
POLITICAL SUBDIVISIONS			
<u>Revenues</u> – School Districts			
Income from fines	Unknown	Unknown	Unknown
<u>Losses</u> – School Districts			
Reduced distributions from State School Moneys Fund	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS	<u>Unknown</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:

1. 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);
2. Permits the Board of Probation and Parole to access information on the home computer of a registered sexual offender (§489.042);
3. Increases the penalty for a persistent sexual offender from a minimum of 30 years' imprisonment to life imprisonment without eligibility for probation or parole (§588.018);
4. 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);
5. 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);
6. 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);
7. 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);
8. Specifies that no sexual offender will be present or loiter within 500 feet of the real property of any school or in any conveyance owned, leased, or contracted by a school when persons younger than 18 years of age are present unless the offender is a parent, legal guardian, or custodian of the person and has obtained permission from the school administration (§566.149);

DESCRIPTION (continued)

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. Limits the definition of "child abuse" to only those instances in which a person knowingly inflicts cruel and inhuman punishment on a younger than 17 years of age (§568.060);
11. Creates the crime of aiding a sexual offender. The penalty for this crime will be a class D felony (§575.159);
12. Specifies that individuals institutionally committed under the "sexual psychopath" statutes in effect prior to 1980 can be guilty of escaping from commitment. Escape from commitment or detention is a class D felony (§§575.195, 632.484, 632.489, 632.495);
13. Requires any person registered as a sexual offender to report semi-annually to a county law enforcement agency or the chief law enforcement agency of a city not within a county and to provide an updated photograph of himself or herself when reporting in the month of his or her birth (§589.414);
14. Allows an individual that has been required to register on the sex offender registry of a crime that he or she committed while younger than 21 years of age or who has committed certain other crimes to petition to have his or her name removed (§589.400);
15. Requires sexual offenders to provide the date of their birth, their physical description and that of their vehicle; nature and dates of the offenses requiring the offender to register; and the date in which the offender was released from the Department of Mental Health, prison, or jail or placed on parole, supervised release, or probation (§§589.402, 589.407);
16. 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); and
17. Requires the Department of Corrections to notify the State Highway Patrol of any offender who is required to be electronically monitored (Section 1).

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 Attorney General
Office of State Courts Administrator
Department of Economic Development
Department of Elementary and Secondary Education
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
Boone County Sheriff's Department
Springfield Police Department
St. Louis Metropolitan Police Department

NOT RESPONDING

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
Columbia Public Schools
Kansas City Public Schools
Mexico Public Schools
Nixa Public Schools
Parkway Public Schools
Sedalia School District
St. Louis Public Schools

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