

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0471-01
Bill No.: HB 92
Subject: Crimes and Punishment; Law Enforcement Officers and Agencies
Type: Original
Date: February 5, 2007

Bill Summary: This proposal creates the crime of endangering the welfare of an unborn child and allows for physician referral and documentation to be used in criminal prosecutions.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
General Revenue	(Greater than \$4,147,883)	(Greater than \$4,388,053)	(Greater than \$4,503,021)
Total Estimated Net Effect on General Revenue Fund	(Greater than \$4,147,883)	(Greater than \$4,388,053)	(Greater than \$4,503,021)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Federal	(Greater than \$1,527,713)	(Greater than \$1,618,357)	(Greater than \$1,661,747)
Total Estimated Net Effect on <u>All</u> Federal Funds	(Greater than \$1,527,713)	(Greater than \$1,618,357)	(Greater than \$1,661,747)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
General Revenue	86.39 FTE	86.39 FTE	86.39 FTE
Federal	32.61 FTE	32.61 FTE	32.61 FTE
Total Estimated Net Effect on FTE	119 FTE	119 FTE	119 FTE

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Health and Senior Services, Office of the State Courts Administrator, Missouri State Highway Patrol** and the **Department of Public Safety** each assume the proposal would have no fiscal impact on their respective agencies.

Officials from the **Department of Mental Health (DMH)** state since section 191.737.5 does not require the information on children exposed to substance abuse to be used in criminal proceedings it is assumed there would be no violations of 42 CFR section 2.1© and the state would not be affected by loss of Federal grant money. Therefore, no fiscal impact to DMH.

Officials from the **Office of Prosecution Services (OPS)** are not aware of any estimates of the number of additional criminal cases that would be referred to County Prosecutors for charges because of this proposed legislation. Additionally, the OPS is not otherwise able to establish a workable estimate of the number of additional criminal cases that would be referred to County Prosecutors for charges, though it is believed that a number of additional criminal case referrals would result from this proposed legislation. It is difficult, therefore, to determine if this proposal would have a significant direct fiscal impact on county prosecutors or the Office of Prosecution Services.

Officials from the **Office of the State Public Defender (SPD)** state for purposes of the proposal, the SPD cannot assume existing staff will provide competent, effective representation for any new cases arising where indigent persons are charged with the proposed additional crime of endangering the welfare of an unborn child as defined in section 188.015, RSMo, if such person ingests, injects, consumes, inhales, or otherwise uses heroin, cocaine, lysergic acid diethylamide (LSD), or methamphetamine while such person is pregnant and such person knows or reasonably should have known that such person was pregnant or endangering the welfare of an unborn child for a first offense is a class C felony. For a second or subsequent offense endangering the welfare of an unborn child is a class B felony.

While the number of new cases may be too few or uncertain to request additional funding for this specific proposal, the SPD will continue to request sufficient appropriations to provide competent and effective representation in all of the SPD cases.

Oversight assumes the SPD could absorb the additional caseload that may result from this proposal within existing resources. Oversight assumes any significant increase in the workload of the SPD would be reflected in future budget request.

ASSUMPTION (continued)

Officials from the **Department of Social Services (DSS) - Children's Division (CD)** assume this proposal changes current law so that prenatal substance abuse is subject to prosecution. This will cause information pertaining to persons referred to the CD for services from the Department of Health and Senior Services to be potentially used for prosecution. This may deter clients from voluntarily participating in treatment and in services with the CD, and/or inhibit the CD's ability to effectively address the related substance abuse concerns with those persons due to potential criminal implications as well as deter pregnant mothers from prenatal care.

Further, pursuant to the new provision in section 210.145, a change in policy and procedure would be necessary for how CD staff respond to a drug-exposed child or family report. The new language would require those reports to be treated as investigations instead of as newborn crisis assessments. However, since the CD currently responds to these calls in some manner, it was determined that this change in procedure would not cause an additional fiscal impact, in and of itself.

This proposal also creates the crime of endangering the welfare of an unborn child if the parent ingests, consumes, inhales, or otherwise uses heroin, cocaine, LSD, or methamphetamine while such person is pregnant and such person knows or reasonably should have known that such person was pregnant. The CD currently does not accept reports or referrals to the child abuse/neglect hotline regarding children prior to birth. If the CD were required to be involved prior to the birth of a child it would mean a significant change to the CD policy, staff training and agency.

Currently the CD screens calls to the Child Abuse/Neglect Hotline involving parental drug use in the presence of a child, as a child abuse/neglect report, if there is a reported impact to the child. This proposed legislation would require the CD to treat every call alleging drug activity where children are present, involving methamphetamines, amphetamines, LSD, heroine or cocaine, as a report of child abuse or neglect, regardless of any reported impact to the child.

ASSUMPTION (continued)

Data was provided on how many calls were received by the Child Abuse/Neglect Hotline in FY '06 (118,708) and how many of those calls were screened out (64,711). The number of calls reported received and screened out in FY '06 has increased in comparison to FY '05, due to the implementation of the Family and Children Electronic System (FACES), which provides a more accurate count of all calls coming in. It is estimated 50% of the calls screened out (not taken as reports for investigation) pertained to drug involved households. It is further estimated 50% were specifically related to methamphetamines, cocaine, heroine or LSD. This allowed for an approximate calculation of 16,000 reports expected. Based on a caseload of 15 investigations per month per worker, 89 additional Children's Service Workers would be required to handle the increase in reports. Based on a 7 staff per supervisor ratio, 13 Children's Service Supervisors would be needed. Also additional clerical staff would be required based on a 6 professional staff per clerical ratio creating a need for 17 clerical FTE.

In addition to the staffing need, there will be a substantial impact on Family Centered Services, Alternative Care Cases and systems updates. The fiscal impact is unknown at this time. However, if even 1% of the 16,000 reports caused a single child to come into care, the cost to Foster Care would be \$627,840. The methodology is as follows: $16,000 \times 1\% = 160$ children, $160 \text{ children} \times \327 (the traditional maintenance rate of \$227 + \$100 professional parenting fee) $\times 12 \text{ months} = \$627,840$. Therefore, our fiscal impact is unknown but greater than \$6.1 million (\$6.07 million FTE cost + \$627,840 program cost).

Oversight has, for fiscal note purposes only, changed the starting salary for the DSS positions to correspond to the first 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 for a six month period and the policy of the Oversight Subcommittee of the Joint Committee on Legislative Research.

Officials from the **Department of Corrections (DOC)** state 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.

ASSUMPTION (continued)

If additional persons are sentenced to the custody of the DOC due to the provisions of this proposal, the DOC will incur a corresponding increase in operational cost either through incarceration (FY06 average of \$39.43 per inmate, per day or an annual cost of \$14,392 per inmate) or through supervision provided by the Board of Probation and Parole (FY06 average of \$2.52 per offender, per day or an annual cost of \$920 per offender).

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Seven (7) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

<u>FISCAL IMPACT - State Government</u>	FY 2008 (10 Mo.)	FY 2009	FY 2010
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GENERAL REVENUE FUND

Costs - Department of Social Services

Personal Service	(\$1,991,349)	(\$2,462,292)	(\$2,536,161)
Fringe Benefits	(\$901,285)	(\$1,114,433)	(\$1,147,866)
Equipment and Expense	(\$699,437)	(\$255,516)	(\$263,182)
Program Cost	(<u>Greater than</u> \$455,812)	(<u>Greater than</u> \$455,812)	(<u>Greater than</u> \$455,812)

<u>Total Costs - DOS</u>	(<u>Greater than</u> \$4,047,883)	(<u>Greater than</u> \$4,288,053)	(<u>Greater than</u> \$4,403,021)
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FTE Change - DOS	86.39 FTE	86.39 FTE	86.39 FTE
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<u>Costs - Department of Corrections</u>	(<u>Less than</u> \$100,000)	(<u>Less than</u> \$100,000)	(<u>Less than</u> \$100,000)
Incarceration/probation costs			

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	(<u>Greater than</u> \$4,147,883)	(<u>Greater than</u> \$4,388,053)	(<u>Greater than</u> \$4,503,021)
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Estimated Net FTE Change for General Revenue Fund	86.39 FTE	86.39 FTE	86.39 FTE
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FEDERAL FUND

Costs - Department of Social Services

Personal Service	(\$751,556)	(\$929,295)	(\$957,174)
Fringe Benefits	(\$340,154)	(\$420,599)	(\$433,217)
Equipment and Expense	(\$263,975)	(\$96,435)	(\$99,328)
Program Cost	<u>(Greater than</u>	<u>(Greater than</u>	<u>(Greater than</u>
	<u>\$172,028)</u>	<u>\$172,028)</u>	<u>\$172,028)</u>
<u>Total Costs - DOS</u>	<u>(Greater than</u>	<u>(Greater than</u>	<u>(Greater than</u>
	<u>\$1,527,713)</u>	<u>\$1,618,357)</u>	<u>\$1,661,747)</u>
FTE Change - DOS	32.61 FTE	32.61 FTE	32.61 FTE

ESTIMATED NET EFFECT ON FEDERAL FUND	<u>(Greater than</u>	<u>(Greater than</u>	<u>(Greater than</u>
	<u>\$1,527,713)</u>	<u>\$1,618,357)</u>	<u>\$1,661,747)</u>

Estimated Net FTE Change for Federal Fund	32.61 FTE	32.61 FTE	32.61 FTE
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FISCAL IMPACT - Local Government	FY 2008 (10 Mo.)	FY 2009	FY 2010
	<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.

FISCAL DESCRIPTION

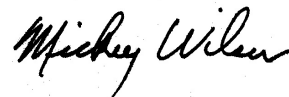
This legislation creates the crime of endangering the welfare of an unborn child if a person ingests, injects, consumes, inhales, or otherwise uses heroin, cocaine, LSD, or methamphetamine while she is pregnant and knows or reasonably should have known that she was pregnant. Endangering the welfare of an unborn child is a class C felony for the first offense and a class B felony for any subsequent offense. The legislation also adds heroin, cocaine, and LSD to the list of controlled substances that when manufactured, produced, prepared, sold, transported, tested, analyzed, or used in the presence or residence of a person younger than 17 years of age will be endangerment of a child in the first degree.

Any referral and associated documentation that a child has been exposed to alcohol or a Schedule I, II, or III controlled substance may be used in any criminal prosecution.

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

Department of Social Services
Department of Mental Health
Department of Health and Senior Services
Department of Public Safety
Office of the State Courts Administrator
Missouri State Highway Patrol
Office of the State Public Defender
Office of Prosecution Services
Department of Corrections



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Director
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