

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0716-01
Bill No.: HB 351
Subject: Prisons and Jails; Courts
Type: Original
Date: February 2, 2009

Bill Summary: The proposal requires any person who pleads guilty to or is found guilty of a felony to serve a minimum prison term of eighty five percent of his or her sentence.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	(Less than \$100,000)	(\$10,568,163 to Unknown)	(\$39,741,925 to Unknown)
Total Estimated Net Effect on General Revenue Fund	(Less than \$100,000)	(\$10,568,163 to Unknown)	(\$39,741,925 to Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on FTE	0	0	0

☒ 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 2010	FY 2011	FY 2012
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Mental Health** assume the proposal would have no fiscal impact on their agency.

Officials from the **Office of Prosecution Services** did not respond to Oversight's request for fiscal impact. However, in response to a similar proposal from the current session (SB 46, LR # 0529-01), officials assumed the proposal would have no fiscal impact on their agency.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Office of the Attorney General (AGO)** did not respond to Oversight's request for fiscal impact. However, in response to a similar proposal from the current session (SB 46, LR # 0529-01), officials assumed the costs associated with this proposal are unknown but less than \$100,000. The costs depend on the number of new appeals that could be generated by those sentenced under the longer term.

Officials from the **Department of Corrections (DOC)** assume this bill requires offenders with term sentences to serve 85% of the sentence before being eligible for parole. The estimate of the impact of this bill is based upon the number of offenders admitted as new court commitments, probation revocations, and probation revocation returns (120 day returns). The bill also impacts parolees returning with new sentences; but, because the number of parolees returned with new sentences is likely to be significantly reduced after offenders are released after serving 85% of the initial sentence, no impact has been calculated.

This proposal also excludes jail credit time from the computation of time served. This bill does not affect the sentencing of offenders to probation or to shock or treatment programs as authorized by statute nor does it affect the parole board's discretionary authority to determine the release dates of parolees returned with technical violations of supervision.

The bill may generate litigation for the DOC as it conflicts with certain provisions of §217.362, §559.115, and §558.019, RSMo (the current minimum prison term statute). It also may generate litigation because of potential Equal Protection issues (requiring those who cannot afford to post bond to serve a longer period of time in custody than those who can afford to post a bond) and ex post facto issues (by making the application of the statute dependent upon the date of conviction rather than the date of the crime).

ASSUMPTION (continued)

This bill will have a very significant and immediate impact upon the prison population. In FY08, 7,034 offenders admitted as new court commitments or as probation revocations served about 38% of the sentence on first release. If offenders had served 85% of the sentence, the total impact on the institutional population would be an increase of 17,022 offenders.

**Impact upon the Offender Population
if Offenders released in FY08 had served 85% of Sentence
Release to Parole or on Completion of Sentence, no Dangerous Felons**

	Released	Average Sentence (yrs)	Time Served (yrs)	Percent Served	Total Inmate Years
Existing Statutes	7,034	5.2	2.0	38.3%	14,068
With 85% minimum	7,034	5.2	4.4	85%	31,090
Net Impact					17,022

In order to estimate the rate at which the population increased in the next ten years the increase in time served was calculated by length of sentence and the percent served applied to the new admissions in FY08.

ASSUMPTION (continued)

New Admissions Released in FY08 by Length of Sentence

Sentence (yrs)	Releases	Average Time Served (yrs)	Percent Served
1	41	1.0	100%
2	491	0.7	33%
3	1,541	0.9	30%
4	1,338	1.2	29%
5	1,544	1.7	33%
6	252	2.1	35%
7	885	2.3	33%
8	125	3.1	39%
9	28	5.2	58%
10	282	4.4	44%
15	208	7.2	52%
20	65	11.3	58%
25	31	16.9	69%
30	42	18.7	62%
45	4	26.2	66%

For offenders sentenced in FY10 and required to serve 85% minimum term, the release date will be delayed. For example, in FY11 when 3,523 offenders would have been released without the mandated 85%, only 33 offenders are projected to be released. Similarly in FY12, 2,787 offenders would have been released without the 85% mandate, but only 516 are projected to be released. The total cumulative impact over the ten-yr. projection period is 16,866.

ASSUMPTION (continued)

**Impact Upon Releases from New Admissions in FY10 who will serve 85% of Sentence
 FY10 to FY 19**

Estimated Year of Release	Releases with Current Time Served	Releases After Serving 85%	Impact on Year End Population	Cumulative Impact on Year End Population
FY10	175	175	—	—
FY11	3,523	33	3,490	3,490
FY12	2,787	516	5,761	9,251
FY13	139	2,974	2,926	12,177
FY14	275	1,587	1,614	13,791
FY15	47	271	1,390	15,181
FY16		929	461	15,642
FY17	209	139	531	16,173
FY18		47	484	16,657
FY19		275	209	16,866
10 Year Total	7,155	6,946	16,866	

ASSUMPTION (continued)

The matrix showing the impact of admissions by year on the end of year population is given below:

Net Impact on Institutional Population of Increasing Time Served to 85% of Sentence

Year End Population	Admission Year									Total	Cumulative Impact
	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18		
FY10	0									0	0
FY11	3490	0								3490	3490
FY12	2271	3490								5761	9251
FY13	-2835	2271	3490							2926	12177
FY14	-1312	-2835	2271	3490						1614	13791
FY15	-224	-1312	-2835	2271	3490					1390	15181
FY16	-929	-224	-1312	-2835	2271	3490				461	15642
FY17	70	-929	-224	-1312	-2835	2271	3490			531	16173
FY18	-47	70	-929	-224	-1312	-2835	2271	3490		484	16657
FY19	-275	-47	70	-929	224	-1312	-2835	2271	3490	209	16866
Total	968	484	531	461	1390	1614	2926	5761	3490	16866	

It may be that there will be a decline in recidivism rates because of the shorter time offenders spend on supervision but an analysis of recidivism rates of new admissions released since FY1990 indicated that recidivism rates of the 85%+ offenders are almost as high as for the other offenders. (Note that the recidivism rates include only returns to prison within the same commitment.) Many offenders who are now released after the conditional release date (67% or higher) are offenders considered to be high risk and so the comparison may over state the recidivism rates of low risk offenders who will be required to serve 85% of sentence.

ASSUMPTION (continued)

**First Releases FY1990 – FY2009
 Released to Parole**

	Releases	Percent Returned within Commitment			
		6 mos	12 mos	2 yrs	3 yrs
Served 85% or more	2,039	15.8	26.1	37.4	44.1
Served less than 85%	60,743	16.6	28.3	42.3	48.2
Total	62,782	16.5	28.3	42.1	48.1

The bill is estimated to increase the institutional population by 17,022 offenders, of which 16,866 will occur in the first ten years. The increases over the first four years are shown below:

FY10	—
FY1	3,490
FY12	9,251
FY13	12,177

The exclusion of jail credit time in the computation of the time served will also add about 3 months to the time offenders serve in prison. The impact of this proposal is 3 months times 7,155 new admissions = 1,789 offender years. This impact is in addition to the above impact.

The following charts detail the estimated fiscal impact for the scope of the fiscal note (FYs 2010, 2011, and 2012), the estimated ten-year fiscal impact, and the assumptions used in determining these costs:

ASSUMPTION (continued)

85% Minimum Prison Terms			
	<u>Cost</u>	<u>Days</u>	<u>Total</u>
Per Diem Operating Expenses	45.02	365	0
Construction (C4 or C5 \$55,000)			0
Inmate Direct Cost	15.64	365	5,709
Operating Inflation (3.0%)			1.030
Inmate Direct Inflation (3.0%)			1.030
Construction Inflation (3.0%)			1.030

	End FY Population	Average Population	Direct Offender Expense	Operating Expense	Construction Expense	Total Cost w/ Inflation
FY 2009	0	(current year which will have no costs incurred)				
FY 2010	0	0	0	0	0	\$0
FY 2011	3,490	1,745	9,961,507	0	0	\$10,568,163
FY 2012	9,251	6,371	36,369,491	0	0	\$39,741,925
FY 2013	12,177	10,714	61,161,940	0	0	\$68,838,302
FY 2014	13,791	12,984	74,120,462	0	0	\$85,925,930
FY 2015	15,181	14,486	82,694,780	0	0	\$98,741,892
FY 2016	15,642	15,412	87,980,943	0	0	\$108,205,462
FY 2017	16,173	15,908	90,812,409	0	0	\$115,038,443
FY 2018	16,657	16,415	93,706,669	0	0	\$122,265,949
FY 2019	16,866	16,762	95,687,553	0	0	\$128,596,070
Total Ten-Year Fiscal Impact:						\$777,922,136
Use either the operating cost OR inmate direct cost for each fiscal year.						

ASSUMPTION (continued)

It is estimated 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:

- \$15.64 (FY08 cost) inmate daily direct expenses with an inflation rate of 3% per each subsequent year.

If additional persons are serving extended sentences in the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender cost either through incarceration (FY08 average of \$15.64 per offender, per day or an annual cost of \$5,709 per inmate) or through supervision provided by the Board of Probation and Parole (FY08 average of \$2.47 per offender, per day or an annual cost of \$902 per offender).

In summary, supervision by the DOC through probation or incarceration 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 amount per year.

Officials from the **Office of the State Public Defender (SPD)** assume for the purpose of this proposed legislation, and as a result of excessive caseloads, the SPD cannot provide competent, effective representation for any new cases arising where indigent persons are charged with a felony facing serving 85% of their sentence (without credit for time served).

The impact of making every criminal offense an 85% one will be to significantly increase the number of defendants opting to take their chance with a jury because the best offer the prosecutor can make will still involve extremely high prison sentences and trial therefore carries relatively little risk. 85% applied to existing sentencing statutes would be an extremely expensive proposition for public defenders, the judicial system, and the Department of Corrections.

The elimination of credit for time served while awaiting trial also poses risks. Public defender clients cannot constitutionally be treated any differently than private attorney clients without running afoul of the equal protection and due process clauses of the U.S. and MO Constitutions. Since the jail time counts against sentences ultimately imposed, the end result for public defender and private attorney clients remains comparable. If that time no longer counts against any sentence imposed, public defender clients will wind up serving up to a year or two longer than private attorney clients simply because they had a public defender.

ASSUMPTION (continued)

Oversight assumes the Office of the State Public Defender (SPD) could experience increased cases as a result of the proposal. Until the increased cases as a result of the proposal are sufficient to justify additional personnel, Oversight assumes the 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.

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
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GENERAL REVENUE FUND

Costs – Office of the Attorney General

Increased appeals	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
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Costs – Department of Corrections

Incarceration/probation costs	<u>\$0</u>	<u>(\$10,568,163 to Unknown)</u>	<u>(\$39,741,925 to Unknown)</u>
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ESTIMATED NET EFFECT ON

GENERAL REVENUE FUND

<u>(Less than \$100,000)</u>	<u>(\$10,568,163 to Unknown)</u>	<u>(\$39,741,925 to Unknown)</u>
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FISCAL IMPACT - Local Government

FY 2010 (10 Mo.)	FY 2011	FY 2012
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<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

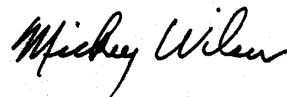
The proposed legislation requires any person who pleads guilty to or is found guilty of a felony on or after August 28, 2009, to serve a minimum prison term of eighty-five percent of his or her sentence.

Nothing in this proposal shall prohibit the court from ordering a defendant to participate and complete substance abuse or mental health treatment as an alternative to serving a term of imprisonment and, upon successful completion of the treatment program, from having the defendant's charges, petition, or penalty dismissed, reduced, or modified. However, if such defendant fails to complete the treatment ordered by the court and the court requires such defendant to serve his or her sentence, such person shall serve eighty-five percent of such sentence. Nothing in this proposal shall prohibit the court from making an authorized disposition of the defendant, including sentencing the defendant to serve a prison term or pay a fine, suspend the imposition of the sentence, or pronounce the sentence and suspend its execution.

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 Mental Health
Department of Corrections
Office of Prosecution Services
Office of the State Public Defender



Mickey Wilson, CPA
Director
February 2, 2009