

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3727-01
Bill No.: HB 1451
Subject: Crimes and Punishment; Elderly; Disabilities; Criminal Procedure
Type: Original
Date: January 6, 2020

Bill Summary: This proposal modifies the offense of abuse of an elderly person, a person with disability, or a vulnerable person and the offense of financial exploitation of an elderly person or person with a disability.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2025)
General Revenue	(Less than \$142,573)	(Less than \$204,220)	(Less than \$246,168)	(Less than \$330,580)
Total Estimated Net Effect on General Revenue	(Less than \$142,573)	(Less than \$204,220)	(Less than \$246,168)	(Less than \$330,580)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2025)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2025)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2025)
General Revenue	0	0	0	1 FTE
Total Estimated Net Effect on FTE	0	0	0	1 FTE

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2025)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§565.184 and 570.145 - Abuse of an elderly, disabled person or vulnerable person

Officials from the **Department of Corrections (DOC)** state this bill modifies the offense of abuse of an elderly person, a person with disability, or a vulnerable person and the offense of financial exploitation of an elderly person or person with a disability. Section 565.184 subsection (2) updates the offense of abuse of an elderly person, a person with a disability, or a vulnerable person, from a class A misdemeanor to a class D felony. Section 570.145 subsection (2) updates the offense of financial exploitation of an elderly person or person with a disability, from a class A misdemeanor to a class E felony, if the amount involved is less than five hundred dollars. It also decreases the amount of money involved in financial exploitation under subsections (1) & (2), but the felony class is unchanged.

In FY2019, 18 people were charged under section 565.184 for abuse as a class A misdemeanor that is now updated to a class D felony. In FY2019, three people were charged under section 570.145 for financial exploitation that is now updated to class E felony. For each new nonviolent class D felony, the DOC estimates three people will be sentenced to prison and five to probation. The average sentence for a nonviolent class D felony offense is 5 years of which, 2.8 years will be served in prison with 1.7 years to first release. The remaining 2.2 years will be on parole. Probation sentences will be 3 years.

Thus, for section 565.184, keeping in view the FY 2019 misdemeanor charges, the DOC estimates approximately 7 people will be sentenced to prison and 11 to probation. The impact on the DOC is estimated to be 20 additional offenders in prison and 48 on field supervision by FY2025.

For each new nonviolent class E felony, the DOC estimates one person will be sentenced to prison and two to probation. The average sentence for a nonviolent class E felony offense is 3.4 years of which, 2.1 years will be served in prison with 1.4 years to first release. The remaining 1.3 years will be on parole. Probation sentences will be 3 years. Thus, for section 570.145, keeping in view the FY 2019 misdemeanor charges, impact on the DOC is estimated to be two additional offenders in prison and seven on field supervision by FY 2025.

The total combined impact on the DOC is an estimated addition of 22 new persons in prison and 55 under supervision by FY 2025.

ASSUMPTION (continued)

	# to prison	Cost per year	Total Costs for prison	# of probation & parole officers	# to probation and parole	Total cost for probation and parole	Grand Total - Prison and Probation (includes a 2% inflation)
Year 1	8	(\$6,386)	(\$42,573)	0	13	\$0	(\$42,573)
Year 2	16	(\$6,386)	(\$104,220)	0	26	\$0	(\$104,220)
Year 3	22	(\$6,386)	(\$146,168)	0	41	\$0	(\$146,168)
Year 4	22	(\$6,386)	(\$149,091)	0	48	\$0	(\$149,091)
Year 5	22	(\$6,386)	(\$152,073)	1	55	(\$78,507)	(\$230,580)
Year 6	22	(\$6,386)	(\$155,015)	1	55	(\$70,320)	(\$225,435)
Year 7	22	(\$6,386)	(\$158,217)	1	55	(\$71,083)	(\$229,300)
Year 8	22	(\$6,386)	(\$161,381)	1	55	(\$71,854)	(\$233,235)
Year 9	22	(\$6,386)	(\$164,609)	1	55	(\$72,635)	(\$237,244)
Year 10	22	(\$6,386)	(\$167,901)	1	55	(\$73,425)	(\$241,326)

If this impact statement has changed from statements submitted in previous years, it is because the DOC has changed the way probation and parole daily costs are calculated to more accurately reflect the way the Division of Probation and Parole is staffed across the entire state.

In December 2019, the DOC reevaluated the calculation used for computing the Probation and Parole average daily cost of supervision and revised the cost calculation to be used for 2020 fiscal notes. For the purposes of fiscal note calculations, the DOC averaged district caseloads across the state and came up with an average caseload of 51 offender cases per officer. The new calculation assumes that an increase/decrease of 51 cases would result in a change in costs/cost avoidance equal to the cost of one FTE staff person. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

In instances where the proposed legislation would only affect a specific caseload, such as sex offenders, the DOC will use the average caseload figure for that specific type of offender to calculate cost increases/decreases. For instances where the proposed legislation affects a less specific caseload, DOC projects the impact based on prior year(s) actual data for DOC's 44 probation and parole districts.

The DOC cost of incarceration is \$17.496 per day or an annual cost of \$6,386 per offender. The DOC cost of probation or parole is determined by the number of P&P Officer II positions that would be needed to cover the new caseload.

ASSUMPTION (continued)

Oversight does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC's impact for fiscal note purposes.

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** state they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the enhanced penalties for the abuse of an elderly person from an A misdemeanor to a D felony. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

In Fiscal Year 2019, SPD's Trial Division opened 8 cases under charge code 565.184 of the 62,002 total cases opened.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

Oversight notes over the last three fiscal years, the SPD has lapsed a total of \$153 of General Revenue appropriations (\$2 out of \$28.0 million in FY 2017; \$150 out of \$42.5 million in FY 2018; and \$1 out of \$46.0 million in FY 2019). Therefore, Oversight assumes the SPD is at maximum capacity, and the increase in workload resulting from this bill cannot be absorbed with SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, Oversight assumes the cost for a new APD could approach \$100,000 per year.

Oversight assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS.

ASSUMPTION (continued)

Oversight notes the **Department of Health and Senior Services**, the **Department of Mental Health**, the **Department of Public Safety - Missouri State Highway Patrol**, the **Department of Social Services**, and the **Office of State Courts Administrator** have each stated the proposal would not have a direct fiscal impact on their respective organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023	Fully Implemented (FY 2025)
GENERAL REVENUE FUND				
DOC (§565.184 & §570.145) Increased incarceration costs	(\$42,573)	(\$104,220)	(\$146,168)	(\$152,073)
Personal service	\$0	\$0	\$0	(\$40,326)
Fringe benefit	\$0	\$0	\$0	(\$25,411)
Expense and Equipment	\$0	\$0	\$0	(\$12,770)
<u>Total Costs - DOC</u>	(\$42,573)	(\$104,220)	(\$146,168)	(\$230,580)
FTE Change - DOC	0 FTE	0 FTE	0 FTE	1 FTE
<u>Costs - SPD</u> (§565.184 & §570.145) Salaries, fringe benefits, and equipment and expense	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Less than \$142,573)</u>	<u>(Less than \$204,220)</u>	<u>(Less than \$246,168)</u>	<u>(Less than \$330,580)</u>
Estimated Net FTE change for General Revenue	0 FTE	0 FTE	0 FTE	1 FTE

FISCAL IMPACT -
Local Government

FY 2021 (10 Mo.)	FY 2022	FY 2023	Fully Implemented (FY 2025)
<u>\$0</u>	<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 bill modifies the offense of abuse of an elderly person, person with a disability, or a vulnerable person by adding negligence and increasing the classification from a class A misdemeanor to a class D felony. The bill also increases the offense of financial exploitation of an elderly person or a person with a disability from a minimum class A misdemeanor to a class E felony and lowers the threshold for charging the individual with a class D or class C felony.

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



Julie Morff
Director
January 6, 2020



Ross Strope
Assistant Director
January 6, 2020