

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3727-03  
Bill No.: HCS for HB 1451  
Subject: Crimes and Punishment; Elderly; Disabilities; Criminal Procedure  
Type: Original  
Date: February 17, 2020

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Bill Summary: This proposal modifies provisions relating to the protection of certain persons.

**FISCAL SUMMARY**

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
General Revenue	(Less than \$137,252)	(Less than \$191,192)	(Less than \$199,660)	(Less than \$279,156)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(Less than \$137,252)</b>	<b>(Less than \$191,192)</b>	<b>(Less than \$199,660)</b>	<b>(Less than \$279,156)</b>

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
General Revenue	0 FTE	0 FTE	0 FTE	1 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>0 FTE</b>	<b>0 FTE</b>	<b>0 FTE</b>	<b>1 FTE</b>

☒ 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 2024)
<b>Local Government</b>	<b>\$0 to Unknown</b>	<b>\$0 to Unknown</b>	<b>\$0 to Unknown</b>	<b>\$0 to Unknown</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### §§409.610 and 409.615 - Qualified individuals

Officials from the **Department of Health and Senior Services (DHSS)** state §409.610 of this proposed legislation requires the DHSS to provide information regarding a qualified adult to the reporting qualified individual or investment advisor representative upon request, subsequent to notifying the department of potential financial exploitation of the qualified adult. The DHSS, Division of Senior and Disability Services, Section of Adult Protective Services investigators are responsible for investigating reports of financial exploitation.

An Adult Protective Community Worker II (average salary \$36,170) would be responsible to provide the information requested to the qualified individual. The Special Investigations Unit investigates on average 100 reports of financial exploitation of this nature and anticipates a 20% increase in these types of reports. Providing the new required information to the qualified individual is estimated to take 30 minutes per report. Assuming 120 reports ( $100 \times 0.20$ ;  $100 + 20$ ), it is estimated providing this information to qualified individuals will take an additional 60 hours ( $120 \times .5$ ), or 0.03 FTE ( $60 \text{ hours} / 2,080 \text{ hours}$ ) for total personal service cost of \$904.25 ( $\$36,170 \times 0.03 \times 10/12$ ) for FY 2021 and \$1,085.10 ( $\$36,170 \times 0.03$ ) in subsequent years.

DHSS anticipates being able to absorb the costs of the Adult Protective Community Worker. However, until the FY 2021 budget is final, the department cannot identify specific funding sources.

Section 409.615.3(3) permits the holding of disbursement or transaction for the account of a qualified adult to be extended by the Director of DHSS, after notifying the Commissioner of Securities. With this proposed legislative change, DHSS would continue to work closely with Secretary of State, Securities Commissioner. If, during our investigation it is determined an extension is needed due to additional time required for investigation and/or medical assessment and court proceedings when the qualified adult's capacity is in question, then DHSS would either continue with investigation and/or the Office of General Counsel would be responsible for guardianship/conservatorship petition through Probate Court when the department has exhausted alternative arrangements.

The further investigation would be the responsibility of the Adult Protective Community Worker and as described in prior section, the department anticipates being able to absorb the costs. Additionally, it would be the responsibility of Office of General Counsel attorneys to petition and participate in probate court hearings, which is anticipated to be absorbed by the department.

ASSUMPTION (continued)

Also, within this subsection, DHSS would be responsible for conducting reviews of circumstances every thirty days to determine if the order extension should remain in effect. This would be the responsibility of the Adult Protective Community Worker and as described in prior section.

DHSS anticipates being able to absorb the costs. However, until the FY 2021 budget is final, the department cannot identify specific funding sources.

**Oversight** assumes DHSS is provided with core funding to handle a certain amount of activity each year. Oversight assumes DHSS could absorb the costs related to this proposal.

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

Officials from the **Department of Corrections (DOC)** state this legislation enhances the penalty of abuse of an elderly person, a person with disability, or a vulnerable person to a class E felony. It also enhances the penalty for the offense of financial exploitation of an elderly person or person with a disability and modifies the value limits of certain offenses. This bill adds two offenses as a new class E felony that were earlier dealt as class A misdemeanors.

In FY 2019, there were 18 persons charged with an A misdemeanor under subdivision 565.184.2.

In FY 2019, three persons were charged with an A misdemeanor for financial exploitation that is now updated to class E felony. No person was sentenced with a class A, class B, class C, class D, or a class E felony under 570.145.

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.

According to the number charged in FY 2019, we estimate there will be 15 people sentenced to prison and 51 to probation by FY 2024 with the ratio of standard class E felony.

ASSUMPTION (continued)

Change in prison admissions and probation openings with legislation

	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030
<b>New Admissions</b>										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	7	7	7	7	7	7	7	7	7	7
<b>Probation</b>										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	14	14	14	14	14	14	14	14	14	14
<b>Change (After Legislation - Current Law)</b>										
Admissions	7	7	7	7	7	7	7	7	7	7
Probations	14	14	14	14	14	14	14	14	14	14
<b>Cumulative Populations</b>										
Prison	7	14	15	15	15	15	15	15	15	15
Parole			6	9	9	9	9	9	9	9
Probation	14	28	42	42	42	42	42	42	42	42
<b>Impact</b>										
Prison Population	7	14	15	15	15	15	15	15	15	15
Field Population	14	28	48	51	51	51	51	51	51	51
Population Change	21	42	63	66	66	66	66	66	66	66

	# 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	7	(\$6,386)	(\$37,252)	0	14	\$0	(\$37,252)
Year 2	14	(\$6,386)	(\$91,192)	0	28	\$0	(\$91,192)
Year 3	15	(\$6,386)	(\$99,660)	0	48	\$0	(\$99,660)
Year 4	15	(\$6,386)	(\$101,653)	1	51	(\$77,503)	(\$179,156)
Year 5	15	(\$6,386)	(\$103,686)	1	51	(\$69,567)	(\$173,254)
Year 6	15	(\$6,386)	(\$105,760)	1	51	(\$70,320)	(\$176,080)
Year 7	15	(\$6,386)	(\$107,875)	1	51	(\$71,083)	(\$178,959)
Year 8	15	(\$6,386)	(\$110,033)	1	51	(\$71,854)	(\$181,887)
Year 9	15	(\$6,386)	(\$112,233)	1	51	(\$72,635)	(\$184,868)
Year 10	15	(\$6,386)	(\$114,478)	1	51	(\$73,425)	(\$187,903)

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.

ASSUMPTION (continued)

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.

**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 or financial exploitation of an elderly person from an A misdemeanor to a E 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 and 35 new cases under charge code 570.145 of the 62,002 total cases opened.

Charge Code	Description	Number of Cases
565.184	Abuse of an elderly person, a person with a disability or a vulnerable person	8
570.145	Financial exploitation of elderly/disabled person	35
	Total Number of Cases	43

ASSUMPTION (continued)

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.

Bill as a Whole

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

Officials from the **Office of the Secretary of State (SOS)** state 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 fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

ASSUMPTION (continued)

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could require additional resources.

**Oversight** notes the **Attorney General's Office**, the **Department of Commerce and Insurance**, the **Department of Public Safety - Missouri State Highway Patrol**, the **Office of Administration**, and the **Office of State Courts Administrator** have each stated the proposal would not have a direct fiscal impact on their respective organizations.

In response to a previous version, officials from the **Department of Social Services** stated the proposal would not have a direct fiscal impact on their organization.

**Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

In response to similar legislation (HCS for HB 354) from 2019, officials from the **SOS** stated in calendar years 2017 and 2018, approximately 3 Respondents were penalized under Section 409.4-412 for a total amount of approximately \$400,000 and approximately 51 Respondents were penalized under Section 409.6-604 for a total amount of approximately \$1,672,000. The money collected is forwarded to the state treasury for the benefit of the county and township school funds in accordance with Article IX, Section 7 of the Missouri Constitution.

The Securities Division does not estimate an increase in the number of penalties imposed, but the penalties themselves would increase, so the gross amount would be higher.

**Oversight** notes the bill changes the maximum amount of civil penalties that may be assessed and that there may be an increase in the gross amount collected pursuant to Section 409.4-412 and 409.6-604. Without additional information, and since this is a maximum amount possible, Oversight will reflect a zero to unknown amount of additional penalty revenue to school districts.



<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023	Fully Implemented (FY 2024)
<b>GENERAL REVENUE FUND</b>				
DOC (§565.184 & §570.145) Increased incarceration costs	(\$37,252)	(\$91,192)	(\$99,660)	(\$101,653)
Personal service	\$0	\$0	\$0	(\$39,927)
Fringe benefit	\$0	\$0	\$0	(\$25,160)
Expense and Equipment	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>(\$12,416)</u>
<u>Total Costs - DOC</u>	<u>(\$37,252)</u>	<u>(\$91,192)</u>	<u>(\$99,660)</u>	<u>(\$179,156)</u>
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</u> <u>\$100,000)</u>	 <u>(Less than</u> <u>\$100,000)</u>	 <u>(Less than</u> <u>\$100,000)</u>	 <u>(Less than</u> <u>\$100,000)</u>
 <b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	 <b><u>(Less than</u></b> <b><u>\$137,252)</u></b>	 <b><u>(Less than</u></b> <b><u>\$191,192)</u></b>	 <b><u>(Less than</u></b> <b><u>\$199,660)</u></b>	 <b><u>(Less than</u></b> <b><u>\$279,156)</u></b>
 Estimated Net FTE change for General Revenue	 0 FTE	 0 FTE	 0 FTE	 1 FTE

<u>FISCAL IMPACT -</u> <u>Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023	Fully Implemented (FY 2024)
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**SCHOOL  
DISTRICTS**

<u>Income - potential</u> increase in penalties §409.4-412 & §409.6-604	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
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**ESTIMATED NET  
EFFECT TO  
SCHOOL  
DISTRICTS**

<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</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

This bill modifies the offense of abuse of an elderly person, person with a disability, or a vulnerable person by changing “knowingly” to “intentionally ‘ and increasing the classification from a class A misdemeanor to a class E 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 bill adds broker-dealers and investment advisors (or investment advisor representatives) to the individuals covered under the Senior Savings Protection Act. Broker-dealers and investment advisors may notify the Department of Health and Senior Services, the Commissioner of Securities, or an immediate family member of his or her reasonable belief that financial exploitation of an vulnerable person has occurred or is being attempted. The department or Commissioner may provide information on the vulnerable person to the reporting individual upon request.

FISCAL DESCRIPTION (continued)

In the instance of a reasonable belief of financial exploitation, the bill allows a broker-dealer, investment advisor, or associated person to refuse a transaction from the account of the vulnerable person for a maximum of 10 business days. To refuse a transaction or disbursement, the broker-dealer, investment advisor, or associated person must send written notice to the vulnerable person, along with contact information for the Investor Protection Hotline. Following the refusal of a transaction or disbursement, the Commissioner or department may enter an order to extend the refusal for the time necessary to protect the vulnerable person, but the agency issuing the order must review the circumstances every 30 days.

The bill specifies a broker-dealer or investment advisor who complies with the Senior Savings Protection Act will be immune to civil liability.

A broker-dealer or investment advisor must provide access to records relevant to the suspected financial exploitation to the department, the Commissioner, or law enforcement.

The Commissioner must update their training website to include resources to assist broker-dealers and investment advisors in the prevention and detection of financial exploitation.

The bill allows a rule to be adopted to require a notice filing by an issuer to include a:

- (1) Copy of the Form 1-A or other forms required by the Securities and Exchange Commission;
- (2) Consent of service of process and a payment of a fee of \$100; and
- (3) Payment of \$50 fee for any late filing.

This bill raises the maximum civil penalty under the Senior Savings Protection Act from \$5,000 to \$25,000 for each violation. The bill also raises the maximum penalty after a hearing from \$1,000 to \$25,000 for each violation and the penalty for a finding of a violation against an elderly or disabled person from \$5,000 to \$15,000 for each violation.

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

Attorney General's Office  
Department of Commerce and Insurance  
Department of Health and Senior Services  
Department of Corrections  
Department of Public Safety - Missouri State Highway Patrol  
Department of Social Services  
Missouri Office of Prosecution Services  
Office of Administration  
Office of State Courts Administrator  
Office of Secretary of State  
State Public Defender's Office



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