

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5402H.01I
 Bill No.: HB 2573
 Subject: Crimes and Punishment; Courts; Science and Technology
 Type: Original
 Date: March 4, 2024

Bill Summary: This proposal creates the offense of and civil penalties for disclosure of intimate digital depictions.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2025	FY 2026	FY 2027	Fully Implemented (FY 2028)
General Revenue	(\$40,371)	(\$98,828)	(\$141,126)	(\$174,795)
Total Estimated Net Effect on General Revenue	(\$40,371)	(\$98,828)	(\$141,126)	(\$174,795)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2025	FY 2026	FY 2027	Fully Implemented (FY 2028)
Total Estimated Net Effect on Other State Funds	\$0	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2025	FY 2026	FY 2027	Fully Implemented (FY 2028)
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 2025	FY 2026	FY 2027	Fully Implemented (FY 2028)
Total Estimated Net Effect on FTE	0	0	0	\$0

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS				
FUND AFFECTED	FY 2025	FY 2026	FY 2027	Fully Implemented (FY 2028)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§537.043 and 573.570 – Disclosure of intimate digital depictions

Officials from the **Department of Corrections (DOC)** state this proposal creates the offense of and civil penalties for disclosure of intimate digital depictions.

Creates sections 537.043 and 573.570, including the offense of disclosure of an intimate digital depiction. The penalty for this offense is a class E felony, unless it is a second or subsequent offense or it is reasonable to expect that the offense could impact government activity or facilitate violence, in which case it is a class C felony.

For each new nonviolent class E felony, the department estimates one person could 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.

Change in prison admissions and probation openings with legislation-Class E Felony (nonviolent)

	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032	FY2033	FY2034
New Admissions										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	1	1	1	1	1	1	1	1	1	1
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	2	2	2	2	2	2	2	2	2	2
Change (After Legislation - Current Law)										
Admissions	1	1	1	1	1	1	1	1	1	1
Probations	2	2	2	2	2	2	2	2	2	2
Cumulative Populations										
Prison	1	2	2	2	2	2	2	2	2	2
Parole			1	1	1	1	1	1	1	1
Probation	2	4	6	6	6	6	6	6	6	6
Impact										
Prison Population	1	2	2	2	2	2	2	2	2	2
Field Population	2	4	7	7	7	7	7	7	7	7
Population Change	3	6	9	9	9	9	9	9	9	9

For each new class C felony, the department estimates four people will be sentenced to prison and six to probation. The average sentence for a class C felony offense is 6.9 years, of which 3.7 years will be served in prison with 2.1 years to first release. The remaining 3.2 years will be on parole. Probation sentences will be 3 years.

Change in prison admissions and probation openings with legislation-Class C Felony

	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032	FY2033	FY2034
New Admissions										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	4	4	4	4	4	4	4	4	4	4
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	6	6	6	6	6	6	6	6	6	6
Change (After Legislation - Current Law)										
Admissions	4	4	4	4	4	4	4	4	4	4
Probations	6	6	6	6	6	6	6	6	6	6
Cumulative Populations										
Prison	4	8	12	15	15	15	15	15	15	15
Parole				1	5	9	13	13	13	13
Probation	6	12	18	18	18	18	18	18	18	18
Impact										
Prison Population	4	8	12	15	15	15	15	15	15	15
Field Population	6	12	18	19	23	27	31	31	31	31
Population Change	10	20	30	34	38	42	46	46	46	46

Combined Cumulative Estimated Impact

The combined cumulative estimated impact on the department is 17 additional offenders in prison and 26 additional offenders on field supervision by FY 2028.

	# to prison	Cost per year	Total Costs for prison	Change in # to probation & parole officers	Total cost for probation and parole	# to probation & parole	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	5	(\$9,689)	(\$40,371)	0	\$0	8	(\$40,371)
Year 2	10	(\$9,689)	(\$98,828)	0	\$0	16	(\$98,828)
Year 3	14	(\$9,689)	(\$141,126)	0	\$0	25	(\$141,126)
Year 4	17	(\$9,689)	(\$174,795)	0	\$0	26	(\$174,795)
Year 5	17	(\$9,689)	(\$178,291)	0	\$0	30	(\$178,291)
Year 6	17	(\$9,689)	(\$181,856)	0	\$0	34	(\$181,856)
Year 7	17	(\$9,689)	(\$185,494)	0	\$0	38	(\$185,494)
Year 8	17	(\$9,689)	(\$189,203)	0	\$0	38	(\$189,203)
Year 9	17	(\$9,689)	(\$192,988)	0	\$0	38	(\$192,988)
Year 10	17	(\$9,689)	(\$196,847)	0	\$0	38	(\$196,847)

If this impact statement has changed from statements submitted in previous years, it could be due to an increase/decrease in the number of offenders, a change in the cost per day for institutional offenders, and/or an increase in staff salaries.

If the projected impact of legislation is less than 1,500 offenders added to or subtracted from the department's institutional caseload, the marginal cost of incarceration will be utilized. This cost of incarceration is \$26.545 per day or an annual cost of \$9,689 per offender and includes such

costs as medical, food, and operational E&E. However, if the projected impact of legislation is 1,500 or more offenders added or removed to the department's institutional caseload, the full cost of incarceration will be used, which includes fixed costs. This cost is \$99.90 per day or an annual cost of \$36,464 per offender and includes personal services, all institutional E&E, medical and mental health, fringe, and miscellaneous expenses. None of these costs include construction to increase institutional capacity.

DOC's cost of probation or parole is determined by the number of P&P Officer II positions that are needed to cover its caseload. The DOC average district caseload across the state is 51 offender cases per officer. An increase/decrease of 51 cases would result in a cost/cost avoidance equal to the salary, fringe, and equipment and expenses of one P&P Officer II. Increases/decreases smaller than 51 offender cases 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.

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

Officials from the **Office of the State Public Defender (SPD)** state per the recently released National Public Defense Workload Study, the new charge contemplated by this change to Section 573.570, creating a class C felony, would take approximately fifty-seven hours of SPD work for reasonably effective representation. If one hundred cases were filed under this section in a fiscal year, representation would result in a need for an additional three attorneys. Because the number of cases that will be filed under this statute is unknown, the exact additional number of attorneys necessary is unknown. Each case would also result in unknown increased costs in the need for core staff, travel, and litigation expenses.

Oversight assumes this proposal will create a minimal number of new cases and that the SPD can absorb the additional caseload required by this proposal with current staff and resources. Therefore, Oversight will reflect no fiscal impact to the SPD for fiscal note purposes. However, if multiple bills pass which require additional staffing and duties, the SPD may request funding through the appropriation process.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS. The enactment of a new crime [573.570] creates additional responsibilities for county prosecutors and the circuit attorney which may, in turn, result in additional costs, which are difficult to determine.

Officials from the **Office of State Courts Administrator (OSCA)** state there may be some impact but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

Officials from the **Department of Health and Senior Services**, the **Department of Labor and Industrial Relations**, the **Department of Mental Health**, the **Department of Public Safety - Missouri Highway Patrol**, the **Department of Social Services**, the **Office of the Secretary of State**, the **Phelps County Sheriff’s Department**, the **Kansas City Police Department**, and the **St. Louis County Police Department** each assume the proposal will have no 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.

Officials from the **Attorney General’s Office** did not respond to **Oversight’s** request for fiscal impact for this proposal.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other local law enforcement were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System (MOLIS) database is available upon request.

<u>FISCAL IMPACT</u> – <u>State</u> <u>Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027	Fully Implemented (FY 2028)
GENERAL REVENUE				
<u>Costs</u> – DOC (§§537.043 and 573.570) Increased incarceration costs	<u>(\$40,371)</u>	<u>(\$98,828)</u>	<u>(\$141,126)</u>	<u>(\$174,795)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(\$40,371)</u>	<u>(\$98,828)</u>	<u>(\$141,126)</u>	<u>(\$174,795)</u>

<u>FISCAL IMPACT</u> – <u>Local</u> <u>Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027	Fully Implemented (FY 2028)
	<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

DISCLOSURE OF INTIMATE DIGITAL DEPICTIONS (Sections 537.043 and 573.570)

This bill establishes the "Taylor Swift Act".

Except as provided in the bill, an individual who is the subject of an intimate digital depiction, as defined in the bill, that is disclosed without the consent of the individual and the disclosure was made by a person who knows or recklessly disregards that the individual has not consented may bring a civil action against the other person.

In the case of an individual that is a minor or otherwise in need of representation, a representative may assume the individual's rights as listed in the bill, but in no event can the defendant be named as such representative.

For the purposes of a civil action based on disclosure of an intimate digital depiction: an individual's consent, as defined in the bill, to the intimate digital depiction's creation will not establish consent to its disclosure. Consent will be validly given only if the requirements listed in the bill are fulfilled.

The bill lists what an individual may recover in the event of a civil action based on disclosure of an intimate digital depiction, what the court may order as relief, and in what situations an individual may not bring an action for relief. A disclaimer stating that the intimate digital depiction was unauthorized or that the depicted individual, as defined in the bill, was not involved in the development of the material is not a defense.

The bill establishes the offense of disclosure of an intimate digital depiction if the person discloses or threatens to disclose an intimate digital depiction: with the intent to harass, annoy, threaten, alarm, or cause harm to the depicted individual; or with the actual knowledge that, or reckless disregard for whether, such disclosure or threatened disclosure will cause harm to the depicted individual.

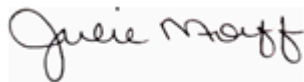
The bill lists the penalties associated with the offense of disclosure of an intimate digital depiction as well as whether certain defenses can be applied to the offense.

A provider of an interactive computer service will not be held liable in relation to an unauthorized digital depiction for attempting to restrict access to said digital depiction.

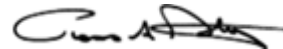
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Corrections
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Mental Health
Department of Public Safety – Missouri Highway Patrol
Department of Social Services
Missouri Office of Prosecution Services
Office of the Secretary of State
Office of the State Courts Administrator
Office of the State Public Defender
Phelps County Sheriff's Department
Kansas City Police Department
St. Louis County Police Department



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