

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5403H.011
Bill No.: HB 2628
Subject: Elections; Science and Technology; Crimes and Punishment
Type: Original
Date: February 12, 2024

Bill Summary: This proposal creates the offense of distribution of synthetic media relating to elections or candidates for public office.

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|--|------------------|-------------------|-------------------|
| FUND AFFECTED | FY 2025 | FY 2026 | FY 2027 |
| General Revenue | (\$8,074) | (\$19,766) | (\$20,161) |
| | | | |
| Total Estimated Net Effect on General Revenue | (\$8,074) | (\$19,766) | (\$20,161) |

| ESTIMATED NET EFFECT ON OTHER STATE FUNDS | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2025 | FY 2026 | FY 2027 |
| | | | |
| | | | |
| Total Estimated Net Effect on <u>Other</u> State Funds | \$0 | \$0 | \$0 |

Numbers within parentheses: () indicate costs or losses.

| ESTIMATED NET EFFECT ON FEDERAL FUNDS | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2025 | FY 2026 | FY 2027 |
| | | | |
| | | | |
| Total Estimated Net Effect on <u>All</u> Federal Funds | \$0 | \$0 | \$0 |

| ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE) | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2025 | FY 2026 | FY 2027 |
| | | | |
| | | | |
| Total Estimated Net Effect on FTE | 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 |
| | | | |
| | | | |
| Local Government | \$0 | \$0 | \$0 |

FISCAL ANALYSIS

ASSUMPTION

§115.645 – Certain political advertisements

Officials from the **Department of Corrections (DOC)** state this proposal creates the offense of distribution of synthetic media relating to elections or candidates for public office. Section 115.645 creates penalties for distributing a synthetic media message with content about a candidate that is deceptive and fraudulent within ninety days of an election. The penalty for this offense is a class B misdemeanor, unless the violation includes intent to cause violence or bodily harm, in which case it is a class A misdemeanor. The penalty is a class E felony if the person commits the violation within five years of one or more prior convictions for this offense.

Misdemeanors fall outside the purview of the department, and there is no expected impact from that portion of the bill.

As these are new crimes, there is little direct data on which to base an estimate, and as such, the department estimates an impact comparable to the creation of a new class E 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.

The cumulative impact on the department is estimated to be 2 additional offenders in prison and 7 additional offenders on field supervision by FY 2027.

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 |

| | # to prison | Cost per year | Total Costs for prison | Change in probation & parole officers | Total cost for probation and parole | # to probation & parole | Grand Total - Prison and Probation (includes 2% inflation) |
|---------|----------------|------------------|----------------------------------|--|--|-------------------------------|--|
| Year 1 | 1 | (\$9,689) | (\$8,074) | 0 | \$0 | 2 | (\$8,074) |
| Year 2 | 2 | (\$9,689) | (\$19,766) | 0 | \$0 | 4 | (\$19,766) |
| Year 3 | 2 | (\$9,689) | (\$20,161) | 0 | \$0 | 7 | (\$20,161) |
| Year 4 | 2 | (\$9,689) | (\$20,564) | 0 | \$0 | 7 | (\$20,564) |
| Year 5 | 2 | (\$9,689) | (\$20,975) | 0 | \$0 | 7 | (\$20,975) |
| Year 6 | 2 | (\$9,689) | (\$21,395) | 0 | \$0 | 7 | (\$21,395) |
| Year 7 | 2 | (\$9,689) | (\$21,823) | 0 | \$0 | 7 | (\$21,823) |
| Year 8 | 2 | (\$9,689) | (\$22,259) | 0 | \$0 | 7 | (\$22,259) |
| Year 9 | 2 | (\$9,689) | (\$22,704) | 0 | \$0 | 7 | (\$22,704) |
| Year 10 | 2 | (\$9,689) | (\$23,159) | 0 | \$0 | 7 | (\$23,159) |

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 115.645, which will impact SPD's child clients, would take approximately fourteen 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 attorney. 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. However, if the charge was classified as a class D misdemeanor no jail time would be authorized and the cases would not qualify for SPD representation.

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 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 Public Safety - Missouri Highway Patrol** and **Office of the Secretary of State** 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** and **Missouri Ethics Commission** did not respond to **Oversight's** request for fiscal impact for this proposal.

| <u>FISCAL IMPACT – State Government</u> | FY 2025 (10 Mo.) | FY 2026 | FY 2027 |
|--|-------------------------|--------------------------|--------------------------|
| | | | |
| GENERAL REVENUE | | | |
| | | | |
| <u>Costs – DOC (\$115.645) Increased incarceration costs</u> | <u>(\$8,074)</u> | <u>(\$19,766)</u> | <u>(\$20,161)</u> |
| | | | |
| ESTIMATED NET EFFECT ON GENERAL REVENUE | <u>(\$8,074)</u> | <u>(\$19,766)</u> | <u>(\$20,161)</u> |
| | | | |

| <u>FISCAL IMPACT – Local Government</u> | FY 2025 (10 Mo.) | FY 2026 | FY 2027 |
|---|---------------------|-------------------|-------------------|
| | | | |
| | <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

CERTAIN POLITICAL ADVERTISEMENTS (Section 115.645)

This bill defines "deceptive and fraudulent deepfake" and "synthetic media".

The bill prohibits any person or entity from, within 90 days of an election, distributing a synthetic media message of any candidate or party for elective office who will appear on a state or local ballot.

This shall not apply if the synthetic media includes a disclaimer stating that it has been manipulated or generated by artificial intelligence. The nature of the disclaimer is specified in the bill.

This shall also not apply to a broadcaster if they acknowledge through content or a disclosure that there are questions about the authenticity of the media, if they acknowledge that a publication does not accurately represent the speech or conduct of the candidate, if a good faith effort has been made to establish that the broadcast is not a deepfake, or to media that constitutes satire or parody.

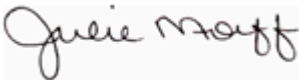
A candidate who is harmed by a violation of this section may seek injunctive or other equitable relief prohibiting the publication of the deepfake.

Penalties are specified in the bill.


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 Corrections
Department of Public Safety - Missouri Highway Patrol
Missouri Ethics Commission
Missouri Office of Prosecution Services
Office of the Secretary of State
Office of the State Courts Administrator
Office of the State Public Defender



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February 12, 2024



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