

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0041-08  
Bill No.: SCS for SBs 37, 322, 78, 351, & 424  
Subject: Alcohol and Controlled Substances; Drunk Driving and Boating; Crimes and Punishment  
Type: Original  
Date: April 11, 2005

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue	(\$3,526,942 to Unknown)	(\$8,321,625 to Unknown)	(\$11,677,514 to Unknown)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(\$3,526,942 to Unknown)</b>	<b>(\$8,321,625 to Unknown)</b>	<b>(\$11,677,514 to Unknown)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 13 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**FISCAL ANALYSIS**

ASSUMPTION

Officials from the **Department of Transportation, Department of Revenue, Department of Public Safety – Division of Fire Safety, – Capitol Police, – Missouri State Water Patrol, – Missouri State Highway Patrol,** and the **City of Springfield** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Office of the Attorney General (AGO)** assume the costs of representing the state on additional appeals brought under Section 577.023, RSM0, may be absorbed with existing resources. However, to the extent that this section now provides for mandatory minimums on sentences for aggravated or chronic offenders, AGO does anticipate an increase in the number of cases appealed. If the number of new appeals under this provision exceeds 25 in any fiscal year, the AGO would anticipate the need for 1 FTE Assistant Attorney General I to handle these additional appeals.

Officials from the **Office of State Courts Administrator (CTS)** assume the legislation would establish penalties for allowing minors to possess alcohol or drugs on real property. While there may be a number of violations, CTS would not expect the degree of enforcement to be so great as to fiscally impact the courts.

ASSUMPTION (continued)

CTS assumes the proposed legislation would also enhance the penalties for “chronic” and “aggravated” drunk offenders, remove some restrictions to obtaining a limited driving privilege, and create the crime of “aggravated vehicular manslaughter.” Some cases may become protracted, but CTS would not anticipate a fiscal impact on the judiciary.

CTS also assumes the legislation would provide that anyone under the age of 21 who has a detectable blood alcohol content based on chemical testing is guilty of a misdemeanor. Depending on the degree of enforcement, there is the potential for a large increase in the number of cases filed, especially since the level of intoxication for minors is .02. CTS assumes any significant increase in the number of cases filed and the corresponding increase in the workload of the courts will be addressed in future budget requests.

CTS assumes the legislation would also provide that courts may not grant suspended imposition of sentences for certain chronic/aggravated offenders. CTS would not anticipate a fiscal impact on the judiciary.

The legislation would also increase the penalty for involuntary manslaughter when certain conditions are met (alcohol, leaving a highway), and redefine the crime of endangering the welfare of a child to include driving while intoxicated. CTS would not expect a fiscal impact on the judiciary to result from these provisions.

Officials from the **Office of Prosecution Services** assume the proposal would not have a significant direct fiscal impact on county prosecutors.

Officials from the **Department of Corrections (DOC)** assume the proposed legislation modifies various provisions concerning alcohol-related offenses.

This bill creates the class B felony of Aggravated Vehicular Manslaughter; removes the 10-year requirement when counting prior convictions when defining a persistent offender for intoxicated-related traffic offenses; and creates the category of both aggravated and chronic offenders for DWI and BAC offenses. As proposed, aggravated offenders are required to serve a minimum of 60 days before eligibility for probation or parole and chronic offenders are required to serve a minimum of 2 years before eligibility for probation or parole. Chronic offenders would also be ineligible for 120-day programming and release pursuant to passage of this proposal. It must be noted there are currently enough people in the 120-day programs to keep them full and flowing even with this exclusion.

ASSUMPTION (continued)

The wording of the new crime of Aggravated Vehicular Manslaughter simply states, “causes the death” which is a much lower threshold than “criminal negligence” currently used for involuntary manslaughter. Offenders charged with involuntary manslaughter (vehicle-intoxicated) are class C felons. There were 17 new admissions in FY04 and the average sentence was 5.2 years. Average time served was 46.7% or 2.4 years. Involuntary manslaughter is a serious offense and these offenders serve a higher percentage of time than average class C felons in general. In order to approximate the impact of this new crime, a similar class B felony of voluntary manslaughter will be used to compare impacts. In FY04, the average sentence was 13.1 years and the average time served is 60.6% or 7.8 years. If these offenders were charged with the new crime this proposed law would yield: Annualized =  $((65 \text{ months} \times 17 \text{ offenders}) / 12 \text{ months per year}) = 92/\text{year}$  and this impact would begin in the 3rd year impact of this fiscal impact statement.

The bill defines chronic offender and makes those qualifying class B felons. One way to qualify is to have 4 or more intoxication-related traffic offenses. FY04 records indicate that 733 people were placed on probation for DWI. Of those, 17% (or 125 people) had four or more intoxication-related traffic offenses. 341 people received 120-day sentences of which 40% (or 136 people) had 4 or more intoxication-related traffic offenses. 300 people received a prison sentence of which 40% (or 120 people) had 4 or more intoxicated related traffic offenses. These people will be required to spend 2 years in prison before being eligible for parole or probation.

The average class D felony for DWI receives a 3.6 year sentence and serves 41.7% or 1.5 years. The average nonviolent class B felon receives 7.4 years and serves 38.9% or 2.8 years. This means a person receiving a prison sentence will spend 16 more months in prison. Those receiving 120-day sentences will serve 20 additional months and those now assigned probation will serve 24 months. If these offenders were charged with the new crime this proposed law would yield:

Probation: Annualized =  $((24 \text{ months} \times 125 \text{ offenders}) / 12 \text{ months per year}) = 250/\text{year}$

120-day: Annualized =  $((20 \text{ months} \times 136 \text{ offenders}) / 12 \text{ months per year}) = 226/\text{year}$

Prison: Annualized =  $((16 \text{ months} \times 120 \text{ offenders}) / 12 \text{ months per year}) = 160/\text{year}$

for a cumulative total of 636/year. The 250 and 226 impact would be felt the first year of implementation for a total of 476 offenders and the last 160 impact would not be felt until the 3rd year.

ASSUMPTION (continued)

The final aspect is the aggravated offender and this makes those qualifying class C felons. Of the 643 offenders in FY04, 60% (or 386) who had 3 convictions for DWI would now be classified as aggravated offenders and receive class C felonies instead of class D felonies. The average class D DWI-felony, when including 120-day sentences, served 21.9% or .8 yrs of their sentence. Class C felons received 4.7 years and served 27.4% or 1.2 years. If these offenders were charged with the new crime this proposed law would yield: Annualized = (.4 years x 387 offenders) = 155 people which would begin in the 2nd year out.

These assumptions should be considered a conservative estimate as it is unknown how many people would fall under the auspices of these laws, if passed, due to the 10-year past limitation (now excluded) for counting the total number of previous crimes when determining the persistent definition of offender. Another factor that deems these assumptions to be conservative is the fact that other crimes can be included as counting toward the numbers of past crimes for chronic and aggravated crimes and these were not taken into account when this data was compiled. These preceding facts make up the Unknown portion of this fiscal impact. The measurable cumulative impact of this bill is that a total of 883 people (with the full effect felt the third year out) would be added annually to the existing prison population for this portion of the bill.

This bill also enhances the criminal criteria of endangering the welfare of a child if a person is charged with a DWI and a child less than 17 years of age is present in the vehicle, punishable as a class A misdemeanor. This should have a minimal impact on DOC population.

This bill also increases the penalty from a class C to an A felony for Involuntary Manslaughter I pursuant to outlined circumstances. DOC received 17 new admittances in FY04 for Involuntary Manslaughter I. The average prison time served for a class C felony is 15 months, so the effect of increasing the penalty provisions for this crime to a class A felony would begin in the 2nd year after this bill passed into law. A random spot check of 2 of these cases showed the BAC to exceed the newly proposed criteria, however at the time of this writing, the statistics have yet to be received from DOR showing the BAC of each Involuntary Manslaughter I case. It is unknown the exact number of offenders who would be serving additional prison time due to passage of this bill therefore the fiscal impact beginning in the second year is an Unknown amount at this time.

The following charts detail the estimated fiscal impact for the scope of the fiscal note (FYs 2006, 2007, and 2008), the estimated ten-year fiscal impact, and the assumptions used in determining these costs:

<b>Chronic and Aggravated Drunk Drivers Assumptions</b>			
	<u>Cost</u>	<u>Days</u>	<u>Total</u>
Operating Expenses	38.37	365	14,005
Construction (C4 or C5 \$55,000)			0
Emergency Housing	0.00	365	0
Operating Inflation (3.0%)			1.030
Emer. Hsng. Inflation (10%)			1.100
Construction Inflation (3.0%)			1.030

	<b>End FY Population</b>	<b>Average Population</b>	<b>Emer Hsng Expense</b>	<b>Operating Expense</b>	<b>Construction Expense</b>	<b>Total Cost w/ Inflation</b>
FY 2005	0	(current year which will have no costs incurred)				
FY 2006	476	238	0	\$3,333,190	0	\$3,433,186
FY 2007	631	554	0	\$7,758,770	0	\$8,231,279
FY 2008	833	757	0	\$10,601,785	0	\$11,584,857
FY 2009	833	883	0	\$12,366,415	0	\$13,918,509
FY 2010	833	883	0	\$12,366,415	0	\$14,336,064
FY 2011	833	883	0	\$12,366,415	0	\$14,766,146
FY 2012	833	883	0	\$12,366,415	0	\$15,209,131
FY 2013	833	883	0	\$12,366,415	0	\$15,665,405
FY 2014	833	883	0	\$12,366,415	0	\$16,135,367
FY 2015	833	883	0	\$12,366,415	0	\$16,619,428
<b>Total Ten-Year Fiscal Impact:</b>						\$129,899,372

DOC estimates 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.

ASSUMPTION (continued)

Assumptions used to determine cost and rounded to the nearest whole number include:

- \$38.37 (FY04 cost) inmate per capita costs with an inflation rate of 3% per each subsequent year; and
- \$3.15 (FY03 cost) average daily probation costs with an inflation rate of 3% per each subsequent year.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY04 average of \$38.37 per inmate per day, or an annual cost of \$14,005 per inmate) or through supervision provided by the Board of Probation and Parole (FY03 average of \$3.15 per offender per day, or an annual cost of \$1,150 per offender).

The DOC anticipates the need for additional capital improvements as a result of the legislation. The estimated construction cost for one new medium to maximum-security inmate bed is \$55,000. Utilizing this per-bed cost provides for a conservative estimate by the DOC, as facility start-up costs are not included and entire facilities and/or housing units would have to be constructed to cover the cost of housing new commitments resulting from the effect of this new legislation, if adopted as statute.

In summary, supervision by the DOC through incarceration or probation 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 Secretary of State (SOS)** assume the proposal would give the Department of Revenue the authority to adopt rules to implement the provisions of this act. These rules would be published in the Missouri Register and the Code of State Regulations. These rules could require as many as 12 pages in the Code of State Regulations and half again as many pages in the Missouri Register, as cost statements, fiscal notes, and the like are not repeated in the Code. The estimated cost of a page in the Missouri Register is \$23 and the estimated cost of a page in the Code of State Regulations is \$27. Based on these costs, the estimated cost of the proposal is \$738 in FY 06 and unknown in subsequent years. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded, or withdrawn.

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ASSUMPTION (continued)

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which would require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Office of the State Public Defender (SPD)** assume the proposed legislation increases the penalty for involuntary manslaughter from a class C to a class A felony when the death results from a driving while intoxicated (DWI) blood alcohol level of 1.5 times the legal limit. The SPD had 32 cases of involuntary manslaughter last year. Nearly all were DWI related. The SPD estimates at least 20 of the 32 potentially elevated cases will go to trial. The increased number of trials would require 1 FTE Assistant Public Defender (at \$41,476 per year), 1/4 FTE Paralegal/Investigator (each at \$25,932 per year), and 1/4 FTE Secretary (each at \$21,564 per year). The SPD estimates the total cost of the proposal to be \$98,506 in FY 06, \$96,217 in FY 07, and \$98,704 in FY 08.

**Oversight** assumes the additional FTE would be housed within existing facilities and has eliminated the cost of rent from the SPD's estimates.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
<b>GENERAL REVENUE FUND</b>			
<u>Costs – State Public Defender (SPD)</u>			
Personal Service (1.5 FTE)	(\$45,570)	(\$56,051)	(\$57,452)
Fringe Benefits	(\$19,440)	(\$23,911)	(\$24,509)
Expense and Equipment	<u>(\$28,746)</u>	<u>(\$10,384)</u>	<u>(\$10,696)</u>
<u>Total Costs – SPD</u>	(\$93,756)	(\$90,346)	(\$92,657)
<u>Costs – Department of Corrections (DOC)</u>			
Incarceration/probation costs	(\$3,433,186 to <u>Unknown</u> )	(\$8,231,279 to <u>Unknown</u> )	(\$11,584,857 to <u>Unknown</u> )
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(\$3,526,942 to Unknown)</u></b>	<b><u>(\$8,321,625 to Unknown)</u></b>	<b><u>(\$11,677,514 to Unknown)</u></b>

<u>FISCAL IMPACT - Local Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
	<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.

DESCRIPTION

Under the current law, a person applying for a limited driving privilege is barred from receiving a limited driving privilege if he or she has previously been granted the privilege within the immediate preceding five years. Under the proposed legislation, this restriction would be removed. (Section 302.309)

The proposal would prohibit any owner, occupant, or other person or legal entity with a lawful right to the use and enjoyment of any property from knowingly allowing a minor to drink or knowingly failing to stop a minor from drinking on such property, unless the person is the minor's parent or guardian. Any person who violates this provision would be guilty of a Class B misdemeanor. The proposal would provide a defense to prosecution for licensed retailers, who sold to a minor, with a reasonable belief that the person was 21 because the minor presented a identification card containing a photography and purporting to establish that such individual was 21 years of age. (Section 311.310)

This act provides for a minor, upon a specific finding of probable cause, to receive a minor in possession (MIP) if he or she has a detectable blood alcohol content. (Section 311.325)

The proposal would create the crime of aggravated vehicular manslaughter. A person would commits this crime if he or she, while in an intoxicated condition, operates a motor vehicle in this state, and when so operating with criminal negligence causes the death of any person not a passenger in the vehicle operated by the defendant, causes the death of two or more persons, or causes the death of any person while the defendant's blood alcohol is greater than or equal to .20 percent of alcohol by weight in the defendant's blood. Committing the crime of aggravated vehicular manslaughter would be a Class B felony. (Section 565.022)

DESCRIPTION (continued)

The proposal would provide that a person who commits involuntary manslaughter in the first degree is guilty of a Class A felony if at least one of the following conditions exist: (1) the person has a blood alcohol level that is at least one and a half times the legal limit; or (2) a fatality occurs when the person's vehicle leaves a public thoroughfare or its right of way. Currently, involuntary manslaughter in the first degree is a class C felony. (Section 565.024)

A person who operates a vehicle in violation of the statutes concerning involuntary manslaughter, assault in the second degree, diving while intoxicated, and driving with excessive blood alcohol content, while a child who is less than 17 years old is present would be guilty of endangering the welfare of a child in the second degree. Such offense would be a class A misdemeanor unless committed as part of a ritual or ceremony, in which case, it would be a class D felony. (Section 565.050)

The proposal would define an "aggravated offender" as a person who has pleaded to or been found guilty of three or more intoxication-related traffic offenses; or one intoxicated-related traffic offense and certain enumerated crimes (involuntary manslaughter, aggravated vehicular manslaughter, assault in the second degree, or assault of a law enforcement officer).

The proposal would also define a "chronic offender" as a person who has pleaded guilty to or has been found guilty of four or more intoxication-related traffic offenses; on two or more of separate occasions certain enumerated crimes (e.g. involuntary manslaughter, aggravated vehicular manslaughter, assault in the second degree); or two or intoxicated-related traffic offenses plus has been found guilty of certain enumerated crimes (e.g. involuntary manslaughter, aggravated vehicular manslaughter, assault in the second degree).

Any person who is found guilty of a DWI or driving with an excessive blood alcohol content (BAC) and is proved to be an aggravated offender shall be guilty of a class C felony. Aggravated offenders shall not be eligible for parole or probation until they serve a minimum of 60 days imprisonment.

Any person who is found guilty of a DWI or driving with an excessive blood alcohol content (BAC) and is proved to be a chronic offender shall be guilty of a Class B felony. Chronic offenders shall not be eligible for parole or probation until they serve a minimum of two years imprisonment.

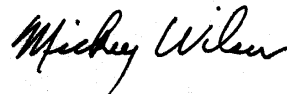
DESCRIPTION (continued)

The proposal would clarify that the penalty enhancement provisions in Section 577.023 relating to prior/persistent offenders would be applied consistently whether in municipal, county, and state courts. Specifically, this proposal would clarify that when an individual is charged under a municipal ordinance the individual is not entitled to suspended imposition of sentence if he/she meets the definition and classification as prior or persistent offender under Section 577.023.1(2) and (3). (Section 577.023)

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 Transportation  
Department of Corrections  
Department of Revenue  
Department of Public Safety  
    – Division of Fire Safety  
    – Capitol Police  
    – Missouri State Water Patrol  
    – Missouri State Highway Patrol  
Office of Prosecution Services  
Office of the Secretary of State  
Office of the State Public Defender  
City of Springfield



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