

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0041-09
Bill No.: Perfected SS for SCS for SBs 37, 322, 78, 351, & 424
Subject: Alcohol and Controlled Substances; Drunk Driving and Boating; Crimes and Punishment
Type: Original
Date: April 25, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue	(\$193,756 to Unknown)	(\$190,346 to Unknown)	(\$192,657 to Unknown)
Total Estimated Net Effect on General Revenue Fund	(\$193,756 to Unknown)	(\$190,346 to Unknown)	(\$192,657 to Unknown)

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

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 9 pages.

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

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

FISCAL ANALYSIS

ASSUMPTION

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

In response to a previous version of the proposal (SCS for SBs 37, 322, 78, 351, & 424, LR # 0041-08), officials from the **City of Springfield** assumed the proposal would have no fiscal impact on their agency.

Officials from the **Department of Revenue** assume any cost resulting from the proposed legislation could be absorbed within existing resources.

ASSUMPTION (continued)

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 within 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.

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 blood alcohol content of .02 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. 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.

ASSUMPTION (continued)

In response to a previous version of the proposal (SCS for SBs 37, 322, 78, 351, & 424, LR # 0041-08), officials from the **Office of Prosecution Services** assumed 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.

Currently, the DOC cannot predict the number of new commitments which may result from the enhancement of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

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).

At this time, the DOC is unable to determine the number of people who would be convicted under the provisions of this bill and the number of additional inmate beds that may be required as a consequence of passage of this proposal. 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 cumulative effect of various new legislation, if adopted as statute.

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. DOC assumes the impact would be more than \$100,000 per year for their agency.

ASSUMPTION (continued)

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 16 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 \$984 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.

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. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

In response to a previous version of the proposal (SCS for SBs 37, 322, 78, 351, & 424, LR # 0041-08), officials from the **Office of the State Public Defender (SPD)** assumed 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) with a certain blood alcohol level. 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
GENERAL REVENUE FUND			
<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	(More than <u>\$100,000</u>)	(More than <u>\$100,000</u>)	(More than <u>\$100,000</u>)
 ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
	<u>(\$193,756 to Unknown)</u>	<u>(\$190,346 to Unknown)</u>	<u>(\$192,657 to Unknown)</u>

<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)

DESCRIPTION (continued)

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 knowingly violates this provision would be guilty of a class A misdemeanor. A person who recklessly violates this provision would be guilty of a class B misdemeanor. (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 blood alcohol content of .02 percent. (Section 311.325)

The proposal would restructure the statute regarding involuntary manslaughter in the first degree and change the penalty for the crime depending on aggravating circumstances. Currently, involuntary manslaughter in the first degree is a class C felony if: (1) a person recklessly causes the death of another, or (2) while in an intoxicated condition operates a vehicle, and when doing so, acts with criminal negligence to cause the death of another. Under this proposal, the penalty for recklessly causing a death would remain a class C felony, but the penalty for causing a death while operating a vehicle when intoxicated would be increased to a class B felony. Additionally, a person would be guilty of a class B felony and would serve 85% of his or her sentence if, in an intoxicated condition operates a vehicle, and when doing so, acts with criminal negligence to cause the death of a person not a passenger, cause the death of two or more persons, or cause the death of any person while he or she has a blood alcohol content of at least .18 but less than .24 percent. If, under the same standards, a person causes the death of another while he or she has a blood alcohol content of at least .24, he or she would be guilty of a class A felony and would serve 85% of his or her sentence. (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 create two new types of offenders ("aggravated offenders" and "chronic offenders") for the purposes of applying the enhanced penalties and prison requirements of Section 577.023.

DESCRIPTION (continued)

The proposal would modify the definition of a “persistent offender.” Under the provisions of the proposal, a “persistent offender” would be a person convicted of two or more intoxication-related traffic offenses. Under the current law, the prior offenses must have occurred within 10 years of the offense for which the person is being charged.

The proposal would define an “aggravated offender” as a person who has pleaded to or been found guilty of: (1) three or more intoxication-related traffic offenses, or (2) one intoxicated-related traffic offense and certain enumerated crimes (involuntary manslaughter, assault in the second degree, or assault of a law enforcement officer).

The proposal would define a “chronic offender” as a person who has pleaded guilty to or has been found guilty of: (1) four or more intoxication-related traffic offenses; (2) on two or more of separate occasions certain enumerated crimes (e.g. involuntary manslaughter or assault in the second degree); or (3) two or intoxicated-related traffic offenses plus has been found guilty of certain enumerated crimes (e.g. involuntary manslaughter or assault in the second degree).

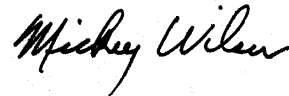
Any person who is found guilty of a DWI or driving with an excessive blood alcohol content (BAC) and is proved to be an aggravated offender would be guilty of a class C felony. Aggravated offenders would not be eligible for parole or probation until they serve a minimum of 60 days imprisonment.

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 would be guilty of a class B felony. Chronic offenders would not be eligible for parole or probation until they serve a minimum of two years imprisonment. (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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