

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1740-01
Bill No.: SB 424
Subject: Alcohol; Crimes and Punishment; Drunk Driving/Boating
Type: Original
Date: March 15, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue	(\$3,433,186 to Unknown)	(\$8,231,279 to Unknown)	(\$11,584,857 to Unknown)
Total Estimated Net Effect on General Revenue Fund	(\$3,433,186 to Unknown)	(\$8,231,279 to Unknown)	(\$11,584,857 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 10 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 Revenue, Department of Public Safety – Missouri State Highway Patrol, – Capitol Police,** and the **– Missouri State Water Patrol** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator** assume some cases may become protracted, but officials assume the proposed legislation would have no fiscal impact on the courts.

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

ASSUMPTION (continued)

Officials from the **Office of the State Public Defender (SPD)** assume existing staff could provide representation for those few cases arising where indigent persons were charged under the enhanced penalties for chronic and aggravated drunk offenders and the creation of the crime of aggravated vehicular manslaughter. Passage of more than one bill increasing penalties on existing crimes or creating new crimes would require the SPD to request increased appropriations to cover the cumulative cost of representing indigent persons accused in the now more serious cases or in the new additional cases.

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 8 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 \$492 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.

Officials from the **Department of Corrections (DOC)** assume the 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 yr sentence and serves 41.7% or 1.5 years. The average nonviolent class B felon receives 7.4 yrs and serves 38.9% or 2.8 yrs. 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 = $((20 \text{ months} \times 136 \text{ offenders}) / 12 \text{ months per year}) = 226 / \text{year}$; and
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 yrs 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 makes 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.

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:

Chronic and Aggravated Drunk Drivers			
	<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

ASSUMPTION (continued)

	End FY Population	Average Population	Emer Hsng Expense	Operating Expense	Construction Expense	Total Cost w/ Inflation
FY 2005	0	(current year which will have no costs incurred)				
FY 2006	476	238	0	\$333,190	0	\$3,433,186
FY 2007	631	554	0	\$7,758,770	0	\$8,231,279
FY 2008	883	757	0	\$10,601,785	0	\$11,584,857
FY 2009	883	883	0	\$12,366,415	0	\$13,918,509
FY 2010	883	883	0	\$12,366,415	0	\$14,336,064
FY 2011	883	883	0	\$12,366,415	0	\$14,766,146
FY 2012	883	883	0	\$12,366,415	0	\$15,209,131
FY 2013	883	883	0	\$12,366,415	0	\$15,665,405
FY 2014	883	883	0	\$12,366,415	0	\$16,135,367
FY 2015	126	883	0	\$12,366,415	0	\$16,619,428
Total Ten-Year Fiscal Impact:						\$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.

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

ASSUMPTION (continued)

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).

DOC assumes the legislation would result in the need for additional capital improvements. 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.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
GENERAL REVENUE FUND			
<u>Costs – Department of Corrections</u>			
Incarceration/probation costs	<u>(\$3,433,186 to Unknown)</u>	<u>(\$8,231,279 to Unknown)</u>	<u>(\$11,584,857 to Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$3,433,186 to Unknown)</u>	<u>(\$8,231,279 to Unknown)</u>	<u>(\$11,584,857 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 is removed.

The proposal would create the crime of aggravated vehicular manslaughter. A person would commit 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 would:

1. Cause the death of any person not a passenger in the vehicle operated by the defendant;
2. Cause the death of two or more persons, or
3. Cause 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.

The proposal would create two new types of offenders for the purposes of applying the enhanced penalties and prison requirements of Section 577.023, RSMo.

The proposal would modify the definition of a "persistent offender." Under the provisions of the legislation, 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.

DESCRIPTION (continued)

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, aggravated vehicular 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, aggravated vehicular manslaughter, 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, 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 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.

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 State Courts Administrator
Department of Transportation
Department of Corrections
Department of Revenue
Department of Public Safety
 – Missouri State Highway Patrol
 – Capitol Police
 – Missouri State Water Patrol
Office of Prosecution Services
Office of the Secretary of State
Office of the State Public Defender



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