

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3083-03
Bill No.: SB 588
Subject: Crimes and Punishment; Department of Corrections
Type: Original
Date: January 11, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
General Revenue	(\$147,105)	(\$454,553)	(\$780,316)
Total Estimated Net Effect on General Revenue Fund	(\$147,105)	(\$454,553)	(\$780,316)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
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 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Local Government	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Public Safety – Missouri State Highway Patrol** assume the proposal would have no fiscal impact on their agency.

Officials from the **Office of State Courts Administrator (CTS)** assume some cases may become protracted, but CTS does not anticipate a fiscal impact on the judiciary.

Officials from the **Department of Corrections (DOC)** assume changes to the existing statutes that have the potential for fiscal impact for the DOC are mainly in ages of the victim and/or offender. Information in DOC's offender database covers the age of the victim in only a small percentage of sexual offense cases and the data is linked to the offender, not to the sentence. However, in the instances where age data exists, about 50% of offenses were against victims under the age of 13 years of age. DOC assumes this percentage is a fair standard in making estimate assumptions for the purpose of this fiscal note.

ASSUMPTION (continued)

There are four provisions of this proposed legislation that will impact DOC. The first is the increased sentence length for offenders convicted of Statutory Rape 1st degree and Statutory Sodomy 1st degree. The second is the removal of probation as a sentencing option for offenders convicted of Statutory Rape 1st degree and Statutory Sodomy 1st degree. The third is the increased sentence length for offenders convicted of Statutory Rape 2nd degree and Statutory Sodomy 2nd degree. And the fourth is the decreased sentence length for offenders who would have previously been convicted of Statutory Rape 1st degree and Statutory Sodomy 1st degree who will now fall under Statutory Rape 2nd degree and Statutory Sodomy 2nd degree.

Using the age of victim data, 50% of admissions and probations for Statutory Rape 1st degree and Statutory Sodomy 1st degree will be sentenced under the new criteria. These offenders will serve sentences in excess of 25 years and the full impact is beyond the 10 year horizon of the budget. The current typical sentence is about 12 years for these offenders, these offenders typically serve approximately 67% of their sentence or 8 years. So this change would result in an additional two years of incarceration within the 10 year scope of this fiscal note. This impact is projected to be 57 offenders in year 9 and 113 in year 10.

There will be an immediate impact on the offenders who would have received probation (50% of those who received probation in FY05 for Statutory Rape 1st degree and Statutory Sodomy 1st degree). The impact is projected to be an additional 20 offenders per year beginning in the first year.

It will also affect offenders who in FY05 were sentenced to Statutory Rape 2nd degree and Statutory Sodomy 2nd degree as a class C felony. These offenders will receive a 10-year sentence instead of a 6-year sentence. Based upon the DOC database age of victim, approximately 35% of offenders sentenced to Statutory Rape 2nd degree and Statutory Sodomy 2nd degree will be sentenced to the revised Statutory Rape 2nd degree and Statutory Sodomy 2nd degree statute. The sentence will be increased by 4 years and time served by 2.7 years. The impact is projected to be 110 additional offenders in year 5, 220 additional offenders in year 6 and 352 additional offenders in years 7, 8, 9 and 10.

The impact of the changed Statutory Rape 2nd and Statutory Sodomy 2nd will affect those offenders who would have been sentenced as Statutory Rape 1st and Statutory Sodomy 1st but the victim was 13 years old. These offenders will receive lighter sentences. The average sentence for a violent class B felony is 10 years, a reduction of 2 years in sentence and 1.3 years in time served (67% conditional release). The impact is projected to be 55 fewer offenders a year beginning in year 8.

ASSUMPTION (continued)

For the remaining 75% of offenders who in FY05 were sentenced to Statutory Rape 2nd and Statutory Sodomy 2nd they will be sentenced to Statutory Rape 3rd and Statutory Sodomy 3rd with no change in penalty.

The effect of passage of this bill amounts to:

- Year 1: 20 Additional offenders by the end of the year
- Year 2: 40 Additional offenders by the end of the year
- Year 3: 60 Additional offenders by the end of the year
- Year 4: 80 Additional offenders by the end of the year
- Year 5: 210 Additional offenders by the end of the year
- Year 6: 340 Additional offenders by the end of the year
- Year 7: 492 Additional offenders by the end of the year
- Year 8: 457 Additional offenders by the end of the year
- Year 9: 534 Additional offenders by the end of the year
- Year 10: 610 Additional offenders by the end of the year

Please see the following chart used to outline costs:

Increased Minimum Time Served Assumptions			
	<u>Cost</u>	<u>Days</u>	<u>Total</u>
Operating Expenses	39.13	365	14,282
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 2006	0	(current year which will have no costs incurred)				
FY 2007	20	10	0	\$142,820	0	\$147,105
FY 2008	40	30	0	\$428,460	0	\$454,553
FY 2009	60	50	0	\$714,100	0	\$780,316
FY 2010	80	70	0	\$999,740	0	\$1,125,216
FY 2011	210	145	0	\$2,070,890	0	\$2,400,729
FY 2012	340	275	0	\$3,927,550	0	\$4,689,700
FY 2013	492	416	0	\$5,941,312	0	\$7,307,064
FY 2014	457	475	0	\$6,783,950	0	\$8,593,705
FY 2015	534	496	0	\$7,083,872	0	\$9,242,846
FY 2016	610	572	0	\$8,169,304	0	\$10,978,861
Total Ten-Year Fiscal Impact:						\$45,720,095

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:

- \$39.13 (FY05 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.

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 (FY05 average of \$39.13 per inmate, per day or an annual cost of \$14,282 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).

ASSUMPTION (continued)

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 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 Prosecution Services (OPS)** assume the cost to county prosecutors would be a significant unknown amount, over \$100,000 per year. OPS assumes the legislation would significantly increase the trial dockets for the prosecutors because there would be no incentive for plea bargaining. The cost for each office is unknown, but would be significant.

Officials from the **Office of State Public Defender (SPD)** assume existing staff could not provide competent, effective representation for any cases arising where indigent persons were charged with the proposed additional crime of statutory rape or sodomy in the second degree if he or she has sexual intercourse with another person who is less than fifteen years old. SPD assumes this new crime will require more SPD resources. While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional appropriations for this specific bill, the SPD will continue to request sufficient appropriations to provide competent and effective representation in all its cases.

Oversight assumes the Office of the State Public Defender (SPD) could absorb the costs of the proposed legislation within existing resources. Oversight assumes any significant increase in the workload of the SPD would be reflected in future budget requests.

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
GENERAL REVENUE FUND			
<u>Costs – Department of Corrections</u>			
Incarceration costs	<u>(\$147,105)</u>	<u>(\$454,553)</u>	<u>(\$780,316)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$147,105)</u>	<u>(\$454,553)</u>	<u>(\$780,316)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
POLITICAL SUBDIVISIONS			
<u>Costs – County Prosecutors</u>			
Increased cases	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>
ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

The proposed legislation increases the penalties and terms of imprisonment for certain sexual offenses:

§558.018 – Persistent Sexual Offenders

This section increases the minimum term of imprisonment for a “persistent sexual offender” from 30 years without probation or parole to life imprisonment without eligibility for probation or parole.

§559.100 – Offenders Who Cannot Receive Probation/Parole

This section specifies that the courts cannot place a person convicted of statutory rape in the first degree, statutory sodomy in the first degree, or sexual trafficking of a child on probation or parole.

DESCRIPTION (continued)

§566.032 – Statutory Rape in the First Degree

This section redefines statutory rape in the first degree so that it can be committed against a child who is less than thirteen instead of fourteen years of age. Under this section, the minimum term of imprisonment is increased from 5 years to 25 years without probation or parole under most circumstances. If the person committing the crime inflicts serious injury, displays a weapon or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, the minimum term of imprisonment is increased from 10 years to 35 years without probation or parole.

§566.033 – Statutory Rape in the Second Degree

Under this section, a person commits statutory rape in the second degree if he or she has sexual intercourse with another person who is less than 15 years old.

§566.034 – Statutory Rape in the Third Degree

This section redefines the current crime of statutory rape in the second degree as statutory rape in the third degree. A person commits this crime, if being over 21 years of age, he or she has sexual intercourse with another person who is less than 17 years of age.

§566.062 – Statutory Sodomy in the Second Degree

This section redefines statutory sodomy in the first degree so that it can be committed against a child who is less than thirteen instead of fourteen years of age. Under this section, the minimum term of imprisonment is increased from 5 years to 25 years without probation or parole under most circumstances. If the person committing the crime inflicts serious injury, displays a weapon or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, the minimum term of imprisonment is increased from 10 years to 35 years without probation or parole.

§566.063 – Statutory Sodomy in the Second Degree

Under this section, a person commits statutory sodomy in the second degree if he or she has deviate sexual intercourse with another person who is less than 15 years old.

§566.034 – Statutory Sodomy in the Third Degree

This section redefines the current crime of statutory sodomy in the second degree as statutory rape in the third degree. A person commits this crime, if being over 21 years of age, he or she has sexual intercourse with another person who is less than 17 years of age.

DESCRIPTION (continued)

§566.083 – Sexual Misconduct Involving a Child

This section makes technical changes to the terminology used in order to ensure that offenders who receive a suspended imposition of sentence or suspended execution of sentence are still in violation of this section.

§566.151 – Enticement of a Child

This section makes technical changes to the terminology used in order to ensure a person is guilty of such an offense if he or she entices or lures a child who is less than 15 years of age to engage in sexual conduct. This section also removes the provision that makes attempting to entice a child a Class D felony.

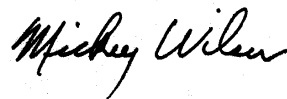
§566.212 – Sexual Trafficking of a Child

This section changes the crime of sexual trafficking of a child from a Class A felony to a felony with a minimum term of imprisonment of 15 years without probation or parole.

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 Corrections
Department of Public Safety
– Missouri State Highway Patrol
Office of Prosecution Services
Office of the State Public Defender



Mickey Wilson, CPA
Director

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