

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3091-07
Bill No.: SB 563
Subject: Crimes and Punishment; Department of Corrections; Highway Patrol; Courts;
 Criminal Procedure; Law Enforcement Officers and Agencies
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	(\$963,048)	(\$2,140,674)	(\$3,156,068)
Total Estimated Net Effect on General Revenue Fund	(\$963,048)	(\$2,140,674)	(\$3,156,068)

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 15 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Federal	(\$122,035)	(\$53,457)	(\$54,819)
Total Estimated Net Effect on <u>All</u> Federal Funds	(\$122,035)	(\$53,457)	(\$54,819)

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 **Missouri House of Representatives, Missouri Senate, Boone County Sheriff’s Department, City of Kansas City, Springfield Police Department,** and the **St. Louis Metropolitan Police Department** assume the proposal would have no fiscal impact on their agencies.

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

Officials from the **Department of Public Safety – Missouri State Highway Patrol (MHP)** assume the provisions in Section 43.533 would have a fiscal impact on their agency. The MHP’s Criminal Records and Identification Division estimate that approximately 1,800 incoming phone calls would be received per month. Based on 1,800 incoming calls per month, the annual cost per year for the phone service and anticipated postage is as follows:

ASSUMPTION (continued)

21,600 (1,800 x 12 months) x .06 cents a minute	=	\$1,296
21,600 (1,800 x 12 months) x .37 per envelope	=	\$7,992
Annual cost for 800 number (\$17 per month x 12)	=	<u>\$204</u>
		\$9,492 (recurring)

These costs are based on estimates. Since the actual fiscal impact will be determined by the public's use of the 800 number, there is no way to calculate exact costs. If the public's response is greater than anticipated, additional costs will be incurred.

Officials from the **Department of Corrections (DOC)** assume the proposal increases the penalties and terms of imprisonment for certain sexual offenses and adds new sexual offenses.

There are five provisions of this proposed legislation that will have a significant effect on DOC.

First, the provision stating that an offender convicted of Forcible Rape or Forcible Sodomy against a victim under the age of 13 will receive life imprisonment with parole eligibility after 25 years. The impact of the increased length of sentence would not occur within the 10 year scope of this fiscal note due to the fact that these offenders are already typically serving greater than 10 years. The impact within the 10 year scope of this fiscal note would be due to the removal of probation as a sentencing option. This provision would increase the number of incarcerated offenders by 8 per year beginning in the first year.

Second, the provision stating that an offender convicted of Statutory Rape 1st or Statutory Sodomy 1st against a victim under the age of 13 will receive life imprisonment with parole eligibility after 25 years. The impact of the increased length of sentence would not occur until year 9 due to the fact that these offenders already serve an average sentence of 8 years. The impact is projected to be 57 additional offenders in year 9 and 113 in year 10. There would be additional impact due to the removal of probation as a sentencing option. This provision would increase the number of incarcerated offenders by 20 per year beginning in the first year.

Third, the provision removing probation as a sentencing option for offenders convicted of Child Molestation 1st degree. This would result in 23 additional offenders per year serving an average of 6.3 years in prison beginning in the first year and leveling off at 145 offenders per year in year 7.

ASSUMPTION (continued)

Fourth, the provision stating that Child Molestation 2nd degree applies to an offender 21 years of age or older and the offense increases from a class A misdemeanor to a class D felony. The projected impact of this provision is 12 additional offenders per year beginning in the first year and leveling off at 32 offenders in year 3.

Fifth, the provision increasing the penalty of failing to register as a sex offender to a class C felony. The projected impact of this provision is 40 additional offenders.

The effect of passage of this bill amounts to:

- Year 1: 103 Additional offenders by the end of the year
- Year 2: 166 Additional offenders by the end of the year
- Year 3: 225 Additional offenders by the end of the year
- Year 4: 276 Additional offenders by the end of the year
- Year 5: 327 Additional offenders by the end of the year
- Year 6: 378 Additional offenders by the end of the year
- Year 7: 413 Additional offenders by the end of the year
- Year 8: 441 Additional offenders by the end of the year
- Year 9: 526 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	103	52	0	\$742,664	0	\$764,944
FY 2008	166	135	0	\$1,928,070	0	\$2,045,489
FY 2009	225	196	0	\$2,799,272	0	\$3,058,840
FY 2010	276	251	0	\$3,584,782	0	\$4,034,704
FY 2011	327	302	0	\$4,313,164	0	\$5,000,139
FY 2012	378	353	0	\$5,041,546	0	\$6,019,870
FY 2013	413	396	0	\$5,655,672	0	\$6,955,763
FY 2014	441	427	0	\$6,098,414	0	\$7,725,288
FY 2015	526	484	0	\$6,912,488	0	\$9,019,229
FY 2016	610	568	0	\$8,112,176	0	\$10,902,086
Total Ten-Year Fiscal Impact:						\$55,526,352

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).

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.

ASSUMPTION (continued)

Officials from the **Department of Social Services – Division of Youth Services (DYS)** assume fewer than three youth currently receiving dual jurisdiction services would not be eligible under the proposal. Thus, the possible reduction in the number of future referrals and placements to the dual jurisdiction program is not considered significant and would result in no cost reductions for the DHS. Conversely, the provisions in §211.071 could result in increased numbers of certified youth referred to the dual jurisdiction program by the court of general jurisdiction. Combined, the provisions may result in no significant change in DHS commitments.

Officials from the **Department of Social Services – Division of Legal Services (DLS)** assume Section 489.042 of the proposal requires any sexual offender that possesses a personal computer to allow his probation and parole officer access to the computer as a condition of probation or parole, to prevent the offender from obtaining and keeping child pornography. The Department of Social Services' State Technical Assistance Team (STAT) is the only state agency that specializes in computer forensics involving child exploitation or child pornography. STAT assumes they will receive the majority of the referrals from the Board of Probation and Parole. For every 18 cases referred, STAT estimates that one Forensic Computer Examiner would be needed.

STAT would also experience increased caseloads due to the provisions that would require an increased sentence of life imprisonment with eligibility for parole after 25 years. STAT assumes many defendants who may have pled guilty to a lesser sentence will go to trial.

STAT assumes they would require a total of two additional FTE Investigators III (each at \$40,000 per year) to perform forensic computer examinations. In addition, specialized equipment and training would be required. STAT estimates the total cost of the proposal would be \$571,650 in FY 07, \$463,242 in FY 08, and \$476,534 in FY 9. This would be divided among the General Revenue and Federal Funds.

Oversight assumes the Department of Social Services would house the additional FTE within existing facilities. The Equipment and Expense has been reduced to eliminate the rent.

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.

ASSUMPTION (continued)

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this proposal for Administrative Rules is less than \$1,500. The SOS recognizes this is a small amount and does not expect additional funding would be required to meet these costs. However, SOS also recognizes that many such bills may be passed in a given year and that collectively the costs may be in excess of what the SOS can sustain with their core budget. Any additional required funding would be handled through the budget process.

Officials from the **Office of the State Public Defender (SPD)** assume existing staff could not provide competent, effective representation. 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 – Missouri State Highway Patrol</u>			
Toll-free telephone line	(Less than \$15,000)	(Less than \$15,000)	(Less than \$15,000)
<u>Costs – Department of Corrections</u>			
Incarceration costs	(\$764,994)	(\$2,045,489)	(\$3,058,840)
<u>Costs – Department of Social Services</u>			
Personal Service (1.2 FTE)	(\$40,984)	(\$50,430)	(\$51,691)
Fringe Benefits	(\$18,057)	(\$22,219)	(\$22,775)
Equipment and Expense	(\$124,013)	(\$7,536)	(\$7,762)
<u>Total Costs – DOS</u>	<u>(\$183,054)</u>	<u>(\$80,185)</u>	<u>(\$82,228)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$963,048)</u>	<u>(\$2,140,674)</u>	<u>(\$3,156,068)</u>
FEDERAL FUNDS			
<u>Costs – Department of Social Services</u>			
Personal Service (0.8 FTE)	(\$27,322)	(\$33,620)	(\$34,461)
Fringe Benefits	(\$12,038)	(\$14,813)	(\$15,183)
Equipment and Expense	(\$82,675)	(\$5,024)	(\$5,175)
<u>Total Costs – DOS</u>	<u>(\$122,035)</u>	<u>(\$53,457)</u>	<u>(\$54,819)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>(\$122,035)</u>	<u>(\$53,457)</u>	<u>(\$54,819)</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 strengthens the laws against sexual offenders:

§43.533 – Toll-Free Sexual Offender Hotline

This section requires the Highway Patrol, subject to appropriation, to operate a toll-free telephone number to disseminate information regarding individuals registered as sexual offenders.

§188.023 – Abortion Clinic Personnel

This section specifies that any abortion clinic personnel who has prima facie evidence that a client has been the victim of statutory rape is required to report such crime in the same manner as mandatory reporters.

§211.011 – Purpose of Juvenile Courts

This section modifies the purpose of the Juvenile Courts. Under this act, the purpose of the juvenile courts is not only to facilitate the care, protection, and discipline of children within the juvenile court system, but also to promote and support repairing the harm of crime, increasing the safety of the citizens of the state, emphasizing accountability, and providing alternatives to incarceration for non-violent offenders.

DESCRIPTION (continued)

§211.071 – Rebuttable Presumption for Transfer of Juvenile to Court of General Jurisdiction

This section creates a rebuttable presumption that a child shall be transferred to a court of general jurisdiction for prosecution if the child has committed murder, first degree assault, forcible rape or sodomy, first degree robbery, or distribution of drugs, or has committed two or more prior unrelated offenses that would be felonies if committed by adults.

§§217.735 & 559.106 – Lifetime Supervision & Electronic Monitoring

This section changes which offenders must be under lifetime supervision by the Board of Probation and Parole and electronically monitored. Currently, this section requires prior sex offenders, who commit rape, sodomy, child molestation, sexual misconduct or abuse, enticement of a child, or sexual trafficking of a child, against a child under the age of 14, to under lifetime supervision and electronically monitored. Under this act, any person convicted of forcible rape, forcible sodomy, statutory rape in the first degree, or statutory sodomy in the first degree shall be under lifetime supervision and electronically monitored for a first offense. Prior sex offenders who commit child molestation, sexual misconduct or abuse, enticement of a child, or sexual trafficking of a child, against a child under the age of 14 shall continue to be subject to lifetime supervision and electronic monitoring.

§489.042 – Computer Access for Probation/Parole Officers

This section authorizes the Board of Probation and Parole or the court to require a person who is required to register as a sexual offender to give his or her assigned probation or parole officer access to his or her personal home computer as a condition of probation or parole in order to prevent such offender from obtaining and keeping child pornography or committing an offender under Chapter 566 RSMo.

§566.061 – Definition of Dangerous Felony

This section redefines the term “dangerous felony” to include child kidnapping. It also includes any statutory rape in the first degree and statutory sodomy in the first degree, without restricting the crimes to those with a victim under the age of 12.

§566.010 – Criminal Code Definitions

This section modifies the definition of the term “deviate sexual intercourse.”

DESCRIPTION (continued)

§566.030 – Forcible Rape

Under this section, the authorized term of imprisonment for a person who commits forcible rape and the victim is less than 12 years of age, shall be life imprisonment with eligibility for parole after 25 years. A person convicted of or pleading guilty to forcible rape or attempt to commit forcible rape shall not be granted a suspended imposition of sentence or suspended execution of sentence.

§566.032 – Statutory Rape in the First Degree

Under this section, the authorized term of imprisonment for a person who commits statutory rape in the first degree and the victim is less than 12 years of age, shall be life imprisonment with eligibility for parole after 25 years. A person convicted of or pleading guilty to statutory rape in the first degree shall not be granted a suspended imposition of sentence or suspended execution of sentence.

§566.060 – Forcible Sodomy

Under this section, the authorized term of imprisonment for a person who commits forcible sodomy and the victim is less than 12 years of age, shall be life imprisonment with eligibility for parole after 25 years. A person convicted of or pleading guilty to forcible rape or attempt to commit forcible sodomy shall not be granted a suspended imposition of sentence or suspended execution of sentence.

§566.062 – Statutory Sodomy in the First Degree

Under this section, the authorized term of imprisonment for a person who commits statutory sodomy in the first degree and the victim is less than 12 years of age, shall be life imprisonment with eligibility for parole after 25 years. A person convicted of or pleading guilty to statutory sodomy in the first degree shall not be granted a suspended imposition of sentence or suspended execution of sentence.

§566.066 – Luring of a Child

This section creates the crime of unlawful luring of a child. A person commits this crime when he or she intentionally lures or attempts to lure a child under the age of 14 into a car or building without the consent of the parent or guardian for an unlawful purpose. Luring of a child is a class C felony.

§566.067 – Child Molestation in the First Degree

This section prohibits a person convicted of or pleading guilty to child molestation from being granted a suspended imposition of sentence or suspended execution of sentence.

DESCRIPTION (continued)

§566.068 – Child Molestation in the Second Degree

This section redefines the crime of child molestation in the second degree. Under this act, a person over 21 years of age, rather than any person of any age, commits child molestation if he or she subjects another person who is less than seventeen years of age to sexual contact. Under this act, the penalty for child molestation in the second degree is increased from a class A misdemeanor to a class D felony, unless the person has previously been convicted of a sexual offense, displays a weapon, inflicts serious injury, or commits the offense as part of a ritual, in which case, the crime is a class C felony.

§566.069 – Child Molestation in the Third Degree

Under this act, a person commits the crime of child molestation in the third degree if, being under 21 years of age, he or she subjects another person who is less than 17 years of age to sexual contact. This crime is a class A misdemeanor unless the actor has committed a prior sex offense or inflicts serious injury, displays a deadly weapon, or commits the offense as part of a ritual, in which case, the crime is a class D felony.

§566.083 – Sexual Misconduct with a Child

This section makes any attempt to commit sexual misconduct with a child a class D felony and specifies that the section may be violated by actions performed in person or via the Internet. It is not an affirmative defense that the other person whom the offense was committed against was a peace officer masquerading as a minor.

§566.090 – Sexual Misconduct in the First Degree

Under this section, a person can commit sexual misconduct in the first degree by knowingly exposing his or her genitals to another person without consent for the purpose of sexual gratification.

§566.151 – Enticement of a Child

This section removes the penalty for attempting to entice a child and increases the penalty for enticing a child from a class C felony to a class B felony, unless the person has committed certain other offenses, in which case, it is a class A felony.

§566.212 – Sexual Trafficking of a Child

A person convicted of or pleading guilty to sexual trafficking a child shall not be granted a suspended imposition of sentence or suspended execution of sentence.

DESCRIPTION (continued)

§568.080 – Use of a Child in a Sexual Performance

This section prohibits a person convicted of or pleading guilty to using a child in a sexual performance from being granted a suspended imposition of sentence or suspended execution of sentence.

§568.090 – Promoting the Sexual Performance of a Child

This section prohibits a person convicted of or pleading guilty to promoting a sexual performance by a child from being granted a suspended imposition of sentence or suspended execution of sentence.

§573.010 – Child Pornography

This section modifies the definition of “child pornography” to include material or performance that shows a minor in a state of nudity, unless: (1) it is disseminated, displayed, possessed, or brought to this state for a bona fide artistic, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing studies or research, librarian, clergyman, prosecutor, judge, or other person with proper interest; and (2) the parents or guardians consent in writing to the use of such material.

§§589.400 & 589.414 – Temporary Residence Requirement

These sections specify that registration requirements apply to sexual offenders establishing or changing residency, regardless of whether it is permanent or temporary.

§§589.407 & 589.414 – Vehicle Information Requirement

In addition to personal information, fingerprints, and a photograph, these sections require a sexual offender to provide a physical description of his or her vehicle when originally registering and update such information when he or she changes vehicle.

DESCRIPTION (continued)

§589.408 – Notification Regarding Sexual Offenders

This section authorizes the chief law enforcement officer of the county, within 10 days of a sexual offender's registration, to publish notice in the newspaper that such person intends to reside in the county. Within 10 days of a sexual offender completing his or her registration, the chief law enforcement officer of the county shall have the authority to provide written notice to individuals living within one-mile of an offender's primary residence of such person's intent to reside there, if the offense for which the person must register was committed against a victim less than 17 years of age or the offender is considered a "persistent sexual offender" or a "predatory sexual offender." In addition, any probation or parole officer supervising such offender shall have the authority to provide written or verbal notification to such surrounding persons. Within ten days of an offender completing his or her sexual offender registration, the chief law enforcement officer of the county shall have the authority to provide written notice to any public or private school located within the county of the sexual offender's intention to reside within the county, if the victim was a child less than 17 years of age at the time of the offense. Upon receiving notice, the administrator or superintendent shall release the information to appropriate school personnel.

§589.418 – Assisting a Sexual Offender

Under this section, any person who assists a sexual offender in eluding a law enforcement agency that is seeking to find the sexual offender to question him or her about, or to arrest the offender for, his or her noncompliance with the registration requirements is guilty of a class C felony.

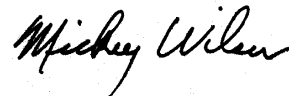
§589.425 – Failure to Register

This act increases the penalty for failing to register as a sexual offender when required to do so by law. Under this act, a person who is required to register and does not complete all the requirements of registration is guilty of a class C felony unless the person failing to register was convicted of a sex crime which is an unclassified felony, a class A felony, a class B felony, or any felony involving a child under the age of 14, in which case, it is a class B felony. A second or subsequent offense is a class B felony unless the person failing to register was convicted of a sex crime which is an unclassified felony, a class A felony, a class B felony, or any felony involving a child under the age of 14, in which case, it is a class A felony.

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 Social Services
Department of Public Safety
 – Missouri State Highway Patrol
Missouri House of Representatives
Missouri Senate
Office of Prosecution Services
Office of the Secretary of State
Office of the State Public Defender
Boone County Sheriff's Department
City of Kansas City
Springfield Police Department
St. Louis Metropolitan Police Department



Mickey Wilson, CPA
Director
January 11, 2006