

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3210-02  
Bill No.: SB 570  
Subject: Crimes and Punishment; Criminal Procedure  
Type: Original  
Date: January 11, 2006

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
General Revenue	(\$1,525,220)	(\$3,663,537)	(\$5,768,788)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(\$1,525,220)</b>	<b>(\$3,663,537)</b>	<b>(\$5,768,788)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
<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 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>
Federal	(\$54,962)	(\$26,728)	(\$27,409)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>(\$54,962)</b>	<b>(\$26,728)</b>	<b>(\$27,409)</b>

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

**FISCAL ANALYSIS**

**ASSUMPTION**

Officials from the **Department of Public Safety – Missouri State Highway Patrol, 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** assume the proposed legislation would have no fiscal impact on the courts.

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 seven provisions of this proposed legislation that will have a significant effect on DOC.

ASSUMPTION (continued)

The first is the increased sentence length for offenders convicted of Forcible Rape and Forcible Sodomy and the removal of probation as a sentencing option for offenders convicted of Forcible Rape and Forcible Sodomy. The second provision is the increased sentence length for offenders convicted of Statutory Rape 1<sup>st</sup> and Statutory Sodomy 1<sup>st</sup> and the removal of probation as a sentencing option for offenders convicted of Statutory Rape 1<sup>st</sup> and Statutory Sodomy 1<sup>st</sup>. The third is the increased sentence length for offenders convicted of Statutory Rape 2<sup>nd</sup> and Statutory Sodomy 2<sup>nd</sup>. The penalty for this crime is increased from a class C to a class B felony. The fourth provision is the increased sentence length for offenders convicted of Child Molestation 1<sup>st</sup> and the removal of probation as a sentencing option for offenders convicted of Child Molestation 1<sup>st</sup>.

The fifth provision is the increased sentence length for offenders convicted of Child Molestation 2<sup>nd</sup>. The penalty for this crime is increased from a class A misdemeanor to a class D felony. The sixth provision is the increased sentence length for offenders convicted of Trafficking for the Purposes of Sexual Exploitation. The penalty for this crime is increased from a class B to a class A felony. The seventh provision is the increased sentence length for offenders convicted for failure to register as a sex offender. The penalty for this crime is increased from a class A misdemeanor to a class D felony unless the offender has been convicted of a sex offense of a child under age 14, when it increases from a class D felony to a class C felony. Repeat convictions will be enhanced by one felony class.

Using the age of victim data, 10% of forcible rape victims and 40% of forcible sodomy victims are under the age of 14. New admissions for Forcible Rape and Forcible Sodomy 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 17 years for these offenders; as these are dangerous felonies, these offenders typically serve approximately 85% of their sentence or 15 years. So this change would result in an additional ten years of incarceration, which is not within the 10-year scope of this fiscal note.

There will be no probation or parole for all cases of Forcible Rape and Forcible Sodomy. In FY05 there were 8 probation cases and they will serve to discharge (16.5 years). Therefore, there will be an immediate impact on those offenders resulting in an additional 8 offenders per year beginning in the first year.

ASSUMPTION (continued)

Offender admissions and probations for Statutory Rape 1<sup>st</sup> and Statutory Sodomy 1<sup>st</sup> 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 13.6 years for these offenders; these offenders typically serve approximately 67% of their sentence or 9 years. So this change would result in an additional year of incarceration within the 10-year scope of this fiscal note. There were 178 admissions in FY05, so this impact is projected to be 178 in year 10. Total impact will be 2,438.

There will be an immediate impact on the offenders who would have received probation in FY05 for Statutory Rape 1<sup>st</sup> and Statutory Sodomy 1<sup>st</sup>. There were 47 probations for Statutory Rape 1<sup>st</sup> and Statutory Sodomy 1<sup>st</sup>, so the impact is projected to be an additional 47 offenders per year beginning in the first year.

It will also affect offenders who in FY05 were sentenced to Statutory Rape 2<sup>nd</sup> and Statutory Sodomy 2<sup>nd</sup> as a class C felony. As a class B felony, 75 % of offenders will receive prison sentences as opposed to the current level of 61%. This will cause 9 120-day sentences and 26 probations to be sentenced to prison immediately. These offenders will see their time served from 4.4 years to 6.3 years. Therefore, the full impact of this change will occur after year 6. The impact is projected to be 35 additional offenders in years 1 – 4 plus 141 additional offenders in year 5, and 282 additional offenders in years 6, 7, 8, 9 and 10.

The bill will also affect offenders who in FY05 were sentenced to Child Molestation 1<sup>st</sup>. These offenders will serve sentences in excess of 25 years. There were 89 prison admissions in FY05 with an average sentence of 9.2 years and an average time served of 6.2 years. Therefore, the impact will not begin until after 6 years and will be an additional 89 offenders per year or 356 by year 10.

In FY05 there were 22 probation cases but who will serve at least 25 years. Therefore, there will be an immediate impact on those offenders resulting in an additional 22 offenders per year beginning in the first year.

The offense of Child Molestation 2<sup>nd</sup> will increase from a class A misdemeanor to a class D felony. For FY05 there were 20 probation openings for Child Molestation 2<sup>nd</sup>. It is estimated that 37% of these offenders will come to prison instead for an average sentence of 2.7 years. This will result in an increase of 7 offenders in year 1, 14 offenders in year 2, and 19 offenders per year after that.

ASSUMPTION (continued)

The crime of Trafficking for the Purpose of Sexual Exploitation was a new offense in FY04 and there were no admissions in FY05. This bill increases the penalty from a class B felony to a class A felony. Similar offenses would indicate that increasing the felony class would add 5 years to the sentence and 3.5 years to time served. The estimate of the number of admissions is 2 per year beginning in the sixth year and up to 7 by year 10.

The bill increases sentence length for offenders convicted for failure to register as a sex offender. The penalty for this crime is increased from a class A misdemeanor to a class D felony unless the offender has been convicted of a sex offense of a child under age 14, when it increases from a class D felony to a class C felony. Repeat convictions will be enhanced by one felony class. In FY05 there were 19 offenders with convictions who were either revoked from supervision or admitted for a new commitment and 27 probations. The number of new convictions increased greatly in 2005. Increasing the offense to a class C felony is likely to increase the time served by about 1 year because sex offenders generally serve to conditional release. This will result in an increase of 19 offenders in FY07 and 40 in FY08.

The effect of passage of this bill amounts to:

Year 1: 138 Additional offenders by the end of the year  
Year 2: 277 Additional offenders by the end of the year  
Year 3: 395 Additional offenders by the end of the year  
Year 4: 507 Additional offenders by the end of the year  
Year 5: 760 Additional offenders by the end of the year  
Year 6: 1,005 Additional offenders by the end of the year  
Year 7: 1,173 Additional offenders by the end of the year  
Year 8: 1,340 Additional offenders by the end of the year  
Year 9: 1,508 Additional offenders by the end of the year  
Year 10: 1,854 Additional offenders by the end of the year

Please see the following chart used to outline costs:

ASSUMPTION (continued)

<b>Increased Sentences for Sexual Offenses Assumptions</b>			
	<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

	<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 2006	0	(current year which will have no costs incurred)				
FY 2007	138	69	0	\$985,458	0	\$1,015,022
FY 2008	277	208	0	\$2,970,656	0	\$3,151,569
FY 2009	395	336	0	\$4,798,752	0	\$5,243,726
FY 2010	507	451	0	\$6,441,182	0	\$7,249,607
FY 2011	760	634	0	\$9,054,788	0	\$10,496,981
FY 2012	1,005	883	0	\$12,611,006	0	\$15,058,201
FY 2013	1,173	1,089	0	\$15,553,098	0	\$19,128,349
FY 2014	1,340	1,257	0	\$17,952,474	0	\$22,741,657
FY 2015	1,508	1,424	0	\$20,337,568	0	\$26,535,913
FY 2016	1,854	1,681	0	\$24,008,042	0	\$32,264,801
<b>Total Ten-Year Fiscal Impact:</b>						<b>\$142,885,826</b>

ASSUMPTION (continued)

It is estimated 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).

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 – State Technical Assistance Team (STAT)** assume STAT assists law enforcement, Children’s Division staff, Juvenile Officers, and other multidisciplinary team members, in the investigations of child sexual abuse. This bill changes many sexual offenses involving children under the age of fourteen years. The bill would require a sentence of life imprisonment or a term of twenty-five years without probation or parole. This provision will cause many defendants who might have pled guilty, to want to go to trial instead. This will cause additional work to be done on each investigation, to ensure that a very thorough investigation has been completed. Since STAT is requested by many law enforcement agencies and prosecuting attorneys within the state, to assist in these matters, it is expected that STAT caseloads will increase requiring an additional FTE Investigator III (at \$40,000 per year). This Investigator would require specialized equipment and training. Funding for this position would be divided among General Revenue and Federal Funds. STAT estimates the total cost to be \$470,685 in FY 07, \$231,621 in FY 08, and \$238,267 in FY 09.

**Oversight** assumes the Department of Social Services would house the one 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.

Officials from the **Office of the State Public Defender (SPD)** assume the proposal increases the minimum sentence from 5 to 25 years for statutory rape and child molestation with the sentence to be served without the possibility of probation or parole. There will be no chance to plead these cases absent a reduced charge. This proposed change in legislation would require more trials. In FY 05, the SPD had 173 statutory rape and 179 child molestation cases. SPD assumes ½ will now go to trial. Each trial requires at least 50 additional hours of attorney time with corresponding support staff time. SPD assumes the legislation would require 5 additional Assistant Public Defenders (each at \$41,676 per year), 1.75 Paralegal/Investigators (each at \$25,932 per year), and 1 Secretary (at \$21,564 per year). SPD estimates the total cost to be \$440,021 in FY 07, \$487,042 in FY 08, and \$499,571 in FY 09.

**Oversight** assumes the Office of the State Public Defender would house the additional FTE within existing facilities. The Equipment and Expense has been reduced to eliminate the rent.



<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
<b>GENERAL REVENUE FUND</b>			
<u>Costs – Department of Corrections</u>			
Incarceration costs	(\$1,015,022)	(\$3,151,569)	(\$5,243,726)
<u>Costs – Department of Social Services</u>			
Personal Services (0.6 FTE)	(\$20,492)	(\$25,215)	(\$25,845)
Fringe Benefits	(\$9,029)	(\$11,110)	(\$11,387)
Equipment and Expense	<u>(\$52,922)</u>	<u>(\$3,768)</u>	<u>(\$3,881)</u>
	(\$82,443)	(\$40,093)	(\$41,113)
<u>Costs – Office of the State Public Defender (SPD)</u>			
Personal Services (7.75 FTE)	(\$235,173)	(\$289,263)	(\$296,495)
Fringe Benefits	(\$103,617)	(\$127,449)	(\$130,636)
Equipment and Expense	<u>(\$88,965)</u>	<u>(\$55,163)</u>	<u>(\$56,818)</u>
<u>Total Costs – SPD</u>	<u>(\$427,755)</u>	<u>(\$471,875)</u>	<u>(\$483,949)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(\$1,525,220)</u></b>	<b><u>(\$3,663,537)</u></b>	<b><u>(\$5,768,788)</u></b>
 <b>FEDERAL FUNDS</b>			
<u>Costs – Department of Social Services</u>			
Personal Service (0.4 FTE)	(\$13,661)	(\$16,810)	(\$17,230)
Fringe Benefits	(\$6,019)	(\$7,406)	(\$7,592)
Equipment and Expense	<u>(\$35,282)</u>	<u>(\$2,512)</u>	<u>(\$2,587)</u>
<u>Total Costs – DOS</u>	<u>(\$54,962)</u>	<u>(\$26,728)</u>	<u>(\$27,409)</u>
<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>(\$54,962)</u></b>	<b><u>(\$26,728)</u></b>	<b><u>(\$27,409)</u></b>

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

FISCAL IMPACT - Small Business

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

DESCRIPTION

This act increases the minimum sentence for certain sexual offenses and strengthens the registration requirements for all sexual offenders:

§566.030 – Forcible Rape

This section increases the minimum sentence for forcible rape to 25 years when the victim is a child less than fourteen years of age. Also, a person who is convicted of or has pleaded guilty to forcible rape shall serve his or her term of imprisonment without the possibility of probation or parole.

§566.032 – Statutory Rape in the First Degree

This section increases the sentence for statutory rape in the first degree from 5 years to 25 years. Also, a person who is convicted of or has pleaded guilty to this crime shall serve his or her term of imprisonment without the possibility of probation or parole.

§566.034 – Statutory Rape in the Second Degree

Currently, statutory rape in the second degree is a class C felony, with a sentence of 1 to 7 years. This act makes the crime a class B felony, with a sentence of 5 to 15 years.

DESCRIPTION (continued)

§566.060 – Forcible Sodomy

This section increases the minimum sentence for forcible sodomy to 25 years when the victim is a child less than 14 years of age. Also, a person who is convicted of or has pleaded guilty to this crime shall serve his or her term of imprisonment without the possibility of probation or parole.

§566.062 – Statutory Sodomy in the First Degree

This section increases the minimum sentence for statutory sodomy in the first degree from 5 years to 25 years. Also, a person who is convicted of or has pleaded guilty to this crime shall serve his or her term of imprisonment without the possibility of probation or parole.

§566.067 – Child Molestation in the First Degree

This section increases the minimum sentence for child molestation in the first degree from 5 years to 25 years. Also, a person who is convicted of or has pleaded guilty to this crime shall serve his or her term of imprisonment without the possibility of probation or parole.

§566.068 – Child Molestation in the Second Degree

Currently, child molestation in the second degree is a class A misdemeanor in most circumstances, with a sentence of up to 1 year. Under certain severe circumstances, the crime is a class D felony, with a sentence of 1 to 4 years. Under this act, child molestation in the second degree is a class D felony, with a sentence of 1 to 4 years, but under severe circumstances, it is a class C felony, with a sentence of 1 to 7 years.

§566.209 – Trafficking for Sexual Exploitation

This section increases the penalty for trafficking for the purposes of sexual exploitation from a class B felony to a class A felony.

§566.212 – Sexual Trafficking of a Child

This section creates a minimum sentence of 25 years for a person who commits sexual trafficking of a child if the victim was less than 14 years of age at the time of the offense.

§589.407 & 589.414 – Required Information for Sexual Offender Registration

In addition to personal information, fingerprints, and a photograph, these sections requires 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.

§589.414 also requires sexual offenders to report to the county law enforcement agency bi-annually, instead of annually, to verify their information. A sexual offender must also annually update his or her photograph on file.

DESCRIPTION (continued)

§589.409 – Authority of Law Enforcement to Notify Neighbors

Within 10 days of a sexual offender completing his or her registration, the chief law enforcement officer of the county may 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 of less than 17 years of age.

§589.418 – Assisting a Sex Offender in Eluding Law Enforcement

Under this section, any person who knowingly 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 D felony.

§589.425 – Increasing the Penalty for Failing to Register

This section increases the penalty for failing to register as a sexual offender when required to do so by Sections 589.400 to 589.425, RSMo. Under this act, a person who is required to register and does not meet all the requirements is guilty of a class D 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 C felony. A second or subsequent offense is 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.

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  
Office of Prosecution Services  
Office of the State Public Defender  
Boone County Sheriff's Department  
City of Kansas City  
Springfield Police Department  
St. Louis Metropolitan Police Department



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