

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4154-02
Bill No.: SB 869
Subject: Crimes and Punishment; Children and Minors
Type: Original
Date: January 23, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
General Revenue	(\$652,029)	(\$1,807,780)	(\$3,079,150)
Total Estimated Net Effect on General Revenue Fund	(\$652,029)	(\$1,807,780)	(\$3,079,150)

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 14 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Federal	(\$52,215)	(\$23,348)	(\$23,944)
Total Estimated Net Effect on <u>All</u> Federal Funds	(\$52,215)	(\$23,348)	(\$23,944)

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 Mental Health, Department of Public Safety – Missouri State Highway Patrol**, and the **Boone County Sheriff’s 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 Corrections (DOC)** assume the proposal strengthens laws against sexual offenders:

ASSUMPTION (continued)

§217.735 – Life time electronic monitoring of sex offenders convicted of certain sex crimes and with a previous conviction of a sex offense (RSMo 566)

DOC assumes Section 217.735 requires that the offense be committed after August 28, 2006. The statute was first passed in the 2005 session and GPS electronic monitoring has not yet been implemented. As the fiscal note for the FY05 bill was based upon new commitments, the proposed change should have no additional impact. The FY06 estimate of the impact of lifetime monitoring is:

- a. 211 offenders convicted of the selected offenses against children of less than 14 would be placed on supervision per year.
- b. Of which 28 offenders would have prior sex offenses and be placed on lifetime GPS monitoring.
- c. In ten years there would be 280 offenders on lifetime monitoring.

§559.106 – Places the date of offense (Aug 28, 2006) as the start for lifetime supervision following probation and who meets the lifetime supervision criteria

DOC assumes no additional impact for this section.

§§566.030 (Forcible Rape) and 566.060 (Forcible Sodomy) – When the victim is less than 12 years the sentence is life imprisonment and parole eligibility after 25 years. No probation.

DOC states the national crime victimization survey excludes victims under 12 and so the estimate of victims who are under 12 is obtained from DOC's OPII Sex Offender Registration files that record the lowest age of a sex victim. The data indicates that 10% of forcible rape victims were under 12 and 40% of forcible sodomy victims were under 12.

Both forcible rape and forcible sodomy are dangerous felonies and serve 85%. In FY05, there were 16 new admissions for forcible rape and 17 admissions for forcible sodomy. As the average time served is 14 years for forcible rape and 15 years for forcible sodomy the impact of the legislation will not start until after the ten-year budget horizon.

In FY05 there were 5 probations for forcible rape and 3 for forcible sodomy. These 8 offenders will serve 25 years before release. In the first year of this bill, there would be 8 admissions with a cumulative effect of 8 more every year thereafter. After 10 years the impact will be 80.

ASSUMPTION (continued)

In summary there will be 8 offenders in FY07; 16 in FY08; 24 in FY08 and so on with 80 in FY16 for this section of the proposal.

§§566.032 (Statutory Rape 1st Degree) and 566.062 (Statutory Sodomy 1st Degree) – The minimum sentence increases to life imprisonment with parole eligibility after 25 years when the victim is less than 12 years. No probation allowed for anyone convicted of the 1st degree offense.

DOC reports, from the OPII sex offender registration file, the victim is under 12 in 38% of statutory rape and statutory sodomy cases.

In FY05 there were 178 new admissions for statutory rape 1st and statutory sodomy 1st of which 68 (38%) will be sentenced under the proposed statute. Offenders will serve 25 years instead of 9.2 years. The total impact of the legislation is 1,070 after 25 years. The increase, however, will not begin until year 10 when the expected impact is 68.

47 offenders received probation for Statutory Rape 1st Degree and Statutory Sodomy 1st Degree in FY05 and they will serve 25 years before release. The impact will begin in FY07 and will increase cumulatively with 47 additional offenders per each year for 25 years before becoming static.

In summary, in FY07 there will be 47 offenders, followed by FY08 with 94; FY09 is 141 and so on through FY16 with 538 (470 diverted + 68 longer terms) as a result of the changes to these sections.

§566.067 (Child Molestation 1st degree) – Will deny probation

In FY05 there were 91 prison admissions and 23 probation openings for Child Molestation 1st. Offenders serving prison sentences are estimated to serve 6.3 years before release. The 23 offenders who would have received probation are expected to serve 6.3 years. In the first year of this bill, there would be 23 admissions with a cumulative effect of 23 more every year thereafter. This will increase the population until it reaches 145 when the number becomes static and that occurs in FY13.

DOC estimates that in FY07 there will be 23 offenders; 46 in FY08; 69 in FY09 and so on until FY16 indicates the static total of 145.

ASSUMPTION (continued)

§566.083 – Sexual misconduct involving a child

DOC assumes the proposal removes the definition of the sexual act from the statute and adds the attempt to the offense. The impact of the removal of the definition is not assessed. The attempt of the offense is an offense that would be sentenced to one class lower. There have only been 5 out of 320 sentences in OPII that have been sentenced as an attempt (misdemeanor). DOC assumes no impact.

§566.090 – Sexual Misconduct 1st

DOC assumes the proposal adds exposing of genitals to definition of sexual misconduct. The offense is a misdemeanor. In FY05 there were 31 probations. DOC assumes the impact is not known, but it is unlikely to be significant.

§566.212 – Sexual trafficking of a child – Will deny probation or 120 day sentences

DOC assumes this is a new offense and the DOC has no admission data. As the offense is a class A felony, the number of probation sentences is likely to be low. DOC assumes no assessed impact.

§568.080 – Use of a child in a sexual performance – Will deny probation or 120 day sentences

In FY05 there were 2 probations opened. DOC assumes no significant impact.

§568.090 – Promoting a sexual performance by a child – Will deny probation or 120 day sentences

In FY05 there was 1 probation opened. DOC assumes no significant impact.

§589.414 Sex Offender Registration – Additional reporting requirements, no changes in penalty

DOC assumes no impact assessed.

Cumulative Bill Total

DOC assumes the cumulative effect of the proposal to be 78 offenders in FY07; 156 in FY08; 234 in FY09; etc. to a total of 763 in FY16.

ASSUMPTION (continued)

Please see the following chart used to outline costs:

Sex Offender Longer Terms 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

	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	78	39	0	\$556,998	0	\$573,708
FY 2008	156	117	0	\$1,670,994	0	\$1,772,758
FY 2009	234	195	0	\$2,784,990	0	\$3,043,234
FY 2010	312	273	0	\$3,898,986	0	\$4,388,343
FY 2011	390	351	0	\$5,012,982	0	\$5,811,420
FY 2012	468	429	0	\$6,126,978	0	\$7,315,932
FY 2013	530	499	0	\$7,126,718	0	\$8,764,964
FY 2014	585	558	0	\$7,969,356	0	\$10,095,342
FY 2015	640	613	0	\$8,754,866	0	\$11,423,114
FY 2016	763	702	0	\$10,025,964	0	\$13,474,057
Total Ten-Year Fiscal Impact:						\$66,662,872

ASSUMPTION (continued)

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).

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 **Department of Social Services – Division of Legal Services** assume the proposal 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 instead want to go to trial. This will cause additional work to be done on each investigation. Since the Department of Social Services' State Technical Assistance Team (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.

ASSUMPTION (continued)

STAT also assumes that Sections 566.030, 566.032, 566.060, 566.062, 566.067, 566.083, 566.090, 566.212, 568.080, and 568.090 RSMo, which increase the penalties for violations of these statutes, will create a substantial drop in the number of guilty pleas. These cases will all have to go to trial. Prosecutors will require a more thorough and professional investigation concerning the violations of these crimes. Prosecutors and law enforcement will turn to STAT for additional help in the investigation and prosecution of these child sexual abuse cases, especially in rural areas where law enforcement is limited in manpower. STAT assumes that the additional requests for assistance would necessitate the need for at least one additional regular commissioned field investigator (Investigator III, at \$40,000 per year). The investigator would require specialized investigative equipment.

STAT estimates the total cost of the proposal would be \$270,685 in FY 07, \$231,621 in FY 08, and \$238,267 in FY 09. This would be divided among the General Revenue and Federal Funds.

Oversight has, for fiscal note purposes only, changed the starting salary for the Investigator III to correspond to the second step above minimum for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees over the last six months of FY 2002 and policy of the Oversight Subcommittee of the Joint Committee on Legislative Research. Oversight also 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 **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.

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)** did not respond to Oversight's request for fiscal impact. However, in response to a similar proposal from the current session (SB 563, LR #3091-07), officials assumed 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.

Officials from the Greene County Sheriff's Department, Jackson County Sheriff's Department, and the St. Louis County Police Department did not respond to Oversight's request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
GENERAL REVENUE FUND			
<u>Costs – Department of Corrections</u>			
Incarceration/Probation costs	(\$573,708)	(\$1,772,758)	(\$3,043,234)
<u>Costs – Department of Social Services</u>			
Personal Service (0.6 FTE)	(\$17,631)	(\$21,695)	(\$22,237)
Fringe Benefits	(\$7,768)	(\$9,559)	(\$9,798)
Equipment and Expense	<u>(\$52,922)</u>	<u>(\$3,768)</u>	<u>(\$3,881)</u>
<u>Total Costs – DOS</u>	<u>(\$78,321)</u>	<u>(\$35,022)</u>	<u>(\$35,916)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$652,029)</u>	<u>(\$1,807,780)</u>	<u>(\$3,079,150)</u>
FEDERAL FUNDS			
<u>Costs – Department of Social Services</u>			
Personal Service (0.4 FTE)	(\$11,754)	(\$14,463)	(\$14,825)
Fringe Benefits	(\$5,179)	(\$6,373)	(\$6,532)
Equipment and Expense	<u>(\$35,282)</u>	<u>(\$2,512)</u>	<u>(\$2,587)</u>
<u>Total Costs – DOS</u>	<u>(\$52,215)</u>	<u>(\$23,348)</u>	<u>(\$23,944)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>(\$52,215)</u>	<u>(\$23,348)</u>	<u>(\$23,944)</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:

§§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 the proposal, 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.

§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 without eligibility for probation or parole until the person has served at least 25 years of his or her sentence or unless the person has reached the age of 75 years and has served at least 15 years of such sentence. 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.

DESCRIPTION (continued)

§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 without eligibility for probation or parole until the person has served at least 25 years of his or her sentence or unless the person has reached the age of 75 years and has served at least 15 years of such sentence. 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.

§566.067 – 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.

§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.

DESCRIPTION (continued)

§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.

§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.

§§589.407 & 589.414 – Vehicle Information Requirement

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.

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 Mental Health
Department of Corrections
Department of Social Services
Department of Public Safety
 – Missouri State Highway Patrol
Office of Prosecution Services
Office of the Secretary of State
Boone County Sheriff's Department

NOT RESPONDING

Office of the State Public Defender
Greene County Sheriff's Department
Jackson County Sheriff's Department
St. Louis County Police Department



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Director
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