

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0580-09
Bill No.: Perfected SS for SCS for SB 3
Subject: Mental Health; Mental Health Dept.; Disabilities; Crimes and Punishment
Type: Original
Date: March 28, 2007

Bill Summary: Enacts provisions on mental health reform.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
General Revenue	(Unknown exceeding \$268,568)	(Unknown exceeding \$280,879)	(Unknown exceeding \$286,306)
Total Estimated Net Effect on General Revenue Fund	(Unknown exceeding \$268,568)	(Unknown exceeding \$280,879)	(Unknown exceeding \$286,306)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
State Schools Moneys	0*	0*	0*
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

* **Unknown fines and penalties collected and distributed to schools nets to \$0.**

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 14 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
General Revenue	4	4	4
Total Estimated Net Effect on FTE	4	4	4

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Local Government	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator, Department of Public Safety (DPS) - Director's Office, DPS - Missouri State Highway Patrol** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Office of Attorney General** assume any potential costs arising from this proposal can be absorbed with existing resources.

Officials from the **Office of Prosecution Services (OPS)** state the proposed legislation includes provisions for new criminal acts and also creates new obligations for prosecuting attorneys. Any increase in the number of cases referred for criminal prosecution and any new statutory obligations for prosecutors will have an additional fiscal impact on County Prosecutors. Officials from the OPS were not able to establish an estimate for the increase in workload this proposal might create. It is, therefore, not possible to determine the extent to which this proposal would have a direct fiscal impact on county prosecutors or the OPS.

Officials from the **Department of Corrections (DOC)** state the penalty provision component of the proposal resulting in fiscal impact for the DOC, is for up to a class A felony for defined vulnerable person abuse. However, the offender could already be charged with existing crimes. Passage of this law may make it easier to prosecute and/or convict. False reporting of vulnerable person abuse is a class D felony and this is a new crime.

The DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

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 (FY 06 average of \$39.43 per inmate per day, or an annual cost of \$14,394 per inmate) or through supervision provided by the Board of Probation and Parole (FY 06 average of \$2.52 per offender per day, or an annual cost of \$920 per offender). Supervision by the DOC through probation or incarceration would result in additional unknown costs to the DOC. Seven (7) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

ASSUMPTION (continued)

At this time, the DOC is unable to determine the number of people who would be convicted under the provisions of this bill and therefore, the number of additional inmate beds that may be required as a consequence of passage of this proposal. The estimated construction costs 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.

Officials from the **Office of Secretary of State (SOS)** state the proposal requires the Department of Mental Health and the Department of Health and Senior Services to promulgate rules to implement this legislation regarding mental health reform. These rules would be published in both the Missouri Register and Code of State Regulations. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Mental Health and the Department of Health and Senior Services could require as many as 60 pages in the Code of State Regulations and 90 pages in the Missouri Register because of cost statements and fiscal notes, etc. that are not repeated in the Code. The estimated cost of a page in the Missouri Register is \$23. The estimated cost of a page in the Code of State Regulations is \$27. The SOS estimates a total cost of \$3,690 [(90 pgs. X \$23) + (60 pgs. X \$27)]. These costs are estimates and depend on the number of rules printed, rescinded, and amended.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Department of Mental Health (DMH)** state the impact is estimated at \$0 to greater than \$100,000 due to the potential impact on DMH's budget to address the increase cost on community providers to meet these requirements. The DMH has no facilities covered under chapter 198, but there are many contracted private providers covered under chapter 198.

Based on information included in the Federal Register, Vol. 71, No. 208/Friday, October 27, 2006/Proposed Rules: Renovation costs to install a fire sprinkler are two to three times higher than while the building is under construction. The cost of renovation is higher because installation must be performed in a piece-meal fashion while the building is occupied.

The average cost per square foot for installation as part of the building's construction is \$2.05, while the average cost of installation in an existing occupied building is \$4.10 to \$6.15 per

ASSUMPTION (continued)

square foot. An additional \$1,000 is required annually to test and maintain the fire sprinkler system.

No. of Beds	\$4.10/Square Foot	\$6.15/Square Foot
<50 beds	\$100,450	\$150,675
50-99 beds	\$151,700	\$227,550
100-199 beds	\$305,450	\$458,175

Also, when renovating existing construction built before the 1980's, additional costs may develop due to the required abatement of hazardous materials to complete the project.

The Department will provide CIMOR training to the hot line staff at the Department of Health and Senior Services. They will have basic training on how to access screens to determine if the caller is a current or past client of DMH. The DMH will absorb these training costs.

With the addition of "suspicious" in Section 630.925.3 in regards to death review, the Department now assumes this would be a smaller number of reviews and the cost would be absorbed by DMH.

Officials from the **DPS - Division of Fire Safety (FS)** state the legislation requires the DPS-FS to oversee fire protection sprinkler systems in residential care facilities and assisted living facilities licensed by the Department of Health and Senior Services. This legislation impacts approximately 1,200 existing facilities and would require an annual inspection by DPS-FS staff. These are facilities which are not currently under division authority by any other inspection criteria.

Inspection of this type of fire protection sprinkler system requires subject matter expertise. To conduct inspections of this type, an individual would need training specific to sprinkler and alarm systems, as well as training for reviewing plans for sprinkler systems in proposed new facilities. These inspections would also take more time to conduct than those currently completed by the Division inspection staff.

Currently, the Division's inspection program has 11 field inspectors with two regional supervisors, who are also located in the field. Adding the technical expertise that this legislation would mandate, would require more oversight than manageable by existing regional supervisors. Current staff conducted 12,178 inspections and compliance-related activities in FY 06.

ASSUMPTION (continued)

Expanding the current program by an additional 1,200 inspections annually cannot be managed effectively with current staffing. For this reason, the Division has included a Public Safety Manager of Inspections in this fiscal note, along with an office support assistant. Supporting expense and equipment funding is also included.

The DPS-FS estimates it would need one (1) Public Safety Manager (\$45,000), one (1) Office Support Assistant (\$20,480), and two (2) Fire Safety Inspectors (\$40,960 each) to handle the increase in workload. The DPS-FS estimates total FY 08 costs of \$168,568; FY 09 costs of \$180,879; and FY 10 costs of \$186,306.

Officials from the **Department of Health and Senior Services (DOH)** assume that the calls of reports of abuse of a "vulnerable person" as defined in the legislation would be received by the Division of Senior and Disability Services (DSDS) Central Registry Unit (CRU) hotline in DOH and referred to the Department of Mental Health (DMH) for investigation by DMH staff as required in Section 630.1100.

The DSDS cannot estimate at this time the increase in the volume of phone calls that will result from the expanded utilization of the CRU hotline. A significant increase would result in additional staff needs. In FY 2006, 16.99 staff were assigned to the CRU hotline. Those 16.99 FTE received a total of 63,296 calls. 16,815 of those calls were reports of abuse, neglect, or financial exploitation (A/N/E) of non-institutionalized elderly or disabled persons. The ratio of A/N/E calls averaged 990 per FTE per year. Presently, the CRU is receiving a significant portion of mental health related calls. The DSDS would defer to DMH to determine an estimate of increased call volume due to this proposal, and will at this time assume that call volume increases will be absorbed by current staff. However, if the increase is substantial (i.e. greater than 990 calls/year), the DSDS would need to request funds and FTE to ensure proper handling of A/N/E calls to the CRU hotline. Also, the CRU hotline is presently operating at near capacity. If the volume of calls grows significantly, upgrades to the hotline equipment and voice-recording devices (all calls are recorded) will be required.

The DSDS policy states that Division staff will investigate in all cases where a referral is not able to be made (i.e., the referral agency will not accept the referral). If the CRU receives a significant number of additional calls that cannot be referred to another agency for investigation, DOH may need additional staff to conduct investigations. It is unknown how many investigations will be able to be referred to the DMH and the Department of Social Services, and how many additional investigations DOH would be required to do due to the increased volume of calls received by the CRU. It takes DOH an average of 15.88 hours to investigate an allegation of A/N/E. One Home and Community Service (HCS) field staff can investigate approximately

131.49 investigations per year (2080 hours per year/15.88 hours per investigation).

The DOH based the plan review portion of the fiscal note on a five year period which is allowed for facilities to achieve compliance with the sprinkler portion of the legislation, since that is the greater portion of the hours required. The fiscal note calculations were determined by taking the total hours needed to perform the work divided equally across five years. Depending on how many facilities begin installation in each of the five years, the DOH may need a higher FTE allotment in the earlier years versus the later years.

Plan Review:

Intermediate Care and Skilled Nursing Facilities (ICF/SNF) - There are 102 facilities that will require a plan review and an onsite inspection. The DOH estimates 5 hours per facility for plan review for a total of 510 hours. (102 facilities X 5 hrs.)

Residential Care and Assisted Living Facilities (RCF/ALF) - There are 572 facilities that will require a plan review and onsite inspection (372 with no sprinkler system and 200 needing upgrades to the existing sprinkler system). The DOH estimates 4 hours per facility for plan review for a total of 2,288 hours (572 facilities X 4 hrs.). In addition, 194 facilities will need to install and/or upgrade the fire alarm system. The DOH estimates 3 hours per facility for plan review for a total of 582 hours (194 facilities X 3 hrs.).

Plan review total hours over 5 years: 3,380 hours (510 hrs. + 2,288 hrs. + 582 hrs.)
Plan review FTE per year: .325 (3,380 hrs./5 yrs./ 2,080 standard hrs. per yr.), rounds to .33 FTE.

Standard costs are included for the .33 FTE (Engineering Consultant).

Plan review costs are assumed to be paid from the General Revenue Fund.

Loan Program Administration:

Sections 198.074 and 198.075 establish a loan program to assist facilities with the cost of installing sprinkler systems. It includes provisions regarding facilities that would be eligible and the time frames for repayment. The legislation establishes the "Fire Safety Standards Loan Fund" but does not indicate the source of funding for the fund. The Department has no experience with making business loans and is unsure how much, if any, funding would be available for loan. At present, the department cannot calculate the fiscal impact of administering such a program, but it is believed to be in excess of \$100,000.

ASSUMPTION (continued)

The legislation does not say that the cost to administer the loan program will be funded by the "Fire Safety Standards Loan Fund", therefore, the DOH assumes these costs would be paid by the General Revenue Fund.

The total fiscal impact of the legislation (both plan review and loan program administration) on the General Revenue Fund is considered to be unknown, greater than \$100,000.

Fire Safety Standards Loan Fund:

It is impossible to calculate the impact on this fund, as there is no mechanism in the legislation for funding the loans, or any way to determine the number of loans applied for, amounts requested, etc.

Oversight assumes the DOH would not hire 0.33 FTE Engineering Consultant and would have current staff absorb the additional duties.

Officials from the **Department of Social Services (DOS)** state the fiscal impact of the proposal is unknown less than \$50,000 annually, but the impact falls outside the period of this fiscal note.

Oversight notes language in the proposal provides for an increase in civil penalties from \$100 to \$10,000 for each day a provider is in noncompliance with of the provisions of this proposal. Civil penalties are to be deposited in the State Schools Moneys Fund. **Oversight** assumes unknown penalties may be collected as a result of this proposal. **Oversight** also notes that if penalties are collected, a reduction in General Revenue transfers to schools will occur for the amount of penalties collected. However, since it is unknown whether any penalties will be collected, **Oversight** is not presenting this in the fiscal note.

Officials from the **Office of the State Public Defender (SPD)** did not respond to our request for a statement of fiscal impact. However, in response to an earlier version of this proposal, the SPD assumed that existing staff could provide representation for those few cases arising where indigent persons were charged with vulnerable person abuse. However, 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 the indigent accused in the now more serious cases or in the new additional cases.

Officials from the **Office of State Treasurer** did not respond to our request for a statement of fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2008 (10 Mo.)	FY 2009	FY 2010
GENERAL REVENUE FUND			
<u>Costs - Department of Corrections</u>			
Increase in incarceration and parole costs	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)
<u>Costs - Department of Mental Health</u>			
Community provider cost increases	(\$0 to greater than \$100,000)	(\$0 to greater than \$100,000)	(\$0 to greater than \$100,000)
<u>Costs - Department of Public Safety</u>			
Personal service costs (4.0 FTE)	(\$90,849)	(\$112,289)	(\$115,658)
Fringe benefits	(\$41,118)	(\$50,822)	(\$52,347)
Equipment and supplies	(\$36,601)	(\$17,768)	(\$18,301)
Total <u>Cost</u> - Department of Public Safety	<u>(\$168,568)</u>	<u>(\$180,879)</u>	<u>(\$186,306)</u>
FTE Change - DPS - Fire Safety	4.0 FTE	4.0 FTE	4.0 FTE
<u>Costs - Department of Health and Senior Services</u>			
Increase in hotline calls and investigations	<u>(Unknown greater than \$100,000)</u>	<u>(Unknown greater than \$100,000)</u>	<u>(Unknown greater than \$100,000)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Unknown exceeding \$268,568)</u>	<u>(Unknown exceeding \$280,879)</u>	<u>(Unknown exceeding \$286,306)</u>
Estimated Net FTE Change for General Revenue Fund	4.0 FTE	4.0 FTE	4.0 FTE

<u>FISCAL IMPACT - State Government</u>	FY 2008 (10 Mo.)	FY 2009	FY 2010
STATE SCHOOLS MONEYS FUND			
Fines and Penalties	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
Transfer-Out - Schools			
Transfer-out of fines and penalties	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON STATE SCHOOLS MONEYS FUND	<u>\$0*</u>	<u>\$0*</u>	<u>\$0*</u>

* Unknown fines and penalties collected and distributed to schools nets to \$0.

<u>FISCAL IMPACT - Local Government</u>	FY 2008 (10 Mo.)	FY 2009	FY 2010
<u>LOCAL GOVERNMENTS - SCHOOLS</u>			
Transfer-In - State Schools Moneys Fund			
Fines and penalties	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS - SCHOOLS	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
LOCAL GOVERNMENTS - PROSECUTING ATTORNEYS			
Costs - Prosecuting Attorneys			
Increase in criminal prosecutions	<u>(\$0 to Unknown)</u>	<u>(\$0 to Unknown)</u>	<u>(\$0 to Unknown)</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS - PROSECUTING ATTORNEYS	<u>(\$0 to Unknown)</u>	<u>(\$0 to Unknown)</u>	<u>(\$0 to Unknown)</u>

FISCAL IMPACT - Small Business

Small business in-home providers would be required to ensure their staff are trained on reporting requirements. Also, small business care facilities will be required to install sprinkler systems, heat rise detectors, and smoke alarms.

FISCAL DESCRIPTION

This proposal modifies various provisions relating to mental health.

FIRE SAFETY STANDARDS

This proposal provides that new facilities and facilities with major renovations, as determined and approved by the department of health and senior services, shall have commercial sprinklers installed by August 28, 2007. Current facilities with sprinklers in place, either residential or commercial, prior to August 28, 2007, shall be allowed to continue to meet all current fire safety laws, rules and regulations.

This proposal also sets a time line for current facilities that do not have sprinklers in place, with a final deadline of 2012, unless the facility receives an exemption from the department and presents evidence from a certified sprinkler system representative or licensed engineer that the facility is unable to install an approved residential sprinkler system due to the unavailability of water supply requirements or the facility meets the safety requirements of the National Fire Protection guidelines pertaining to residential board and care occupancies.

A matching dollar for dollar loan is available for qualifying facilities, and a payment schedule is provided for up to ten years. Also, all new facilities are required to have complete fire alarm systems in place by August 28, 2007, with current facilities in compliance by 2009. (Sections 198.074 and 198.075)

VULNERABLE PERSONS

This proposal defines "vulnerable person" as any person in the custody, care, or control of the department that is receiving services from an operated, funded, licensed, or certified program. This proposal also creates the crime of "vulnerable person abuse" and provides for mandatory reporting of suspected vulnerable person abuse as well as investigation protocols. (Sections 565.210 to 565.220, 630.005, 630.163)

FISCAL DESCRIPTION (continued)

SEX OFFENDER NOTIFICATION

This proposal provides that the Department of Mental Health shall develop rules, guidelines, and protocols for an initial notification to parents or guardians of a resident when first entering the care and custody of the department regarding the possibility of being placed in a facility with another resident who is either a registered sexual offender or who has been determined to lack capacity to stand trial for offenses the resident would have otherwise been required to register as a sexual offender. Such rules and protocols shall include the process and mechanisms for assessing risk, for planning and providing care and safety, and for the provision of services and supports necessary to mitigate risk for persons residing in a state mental health facility.

The department shall also notify a parent or guardian of a resident that a registered sexual offender is residing in or has been placed in the same state facility as the resident. Such protocols shall also provide a mechanism for the parent or guardian to raise any concerns and to seek consultation prior to placement of the registered sexual offender.

The department shall also develop rules and protocols to obtain consent from the parent or guardian of a resident who has been determined to lack capacity to stand trial for offenses the resident would have otherwise been required to register as a sexual offender to disclose his or her name and criminal charges to the other parents or guardians of residents residing in the same facility. Such request for disclosure shall inform all parties of the steps to be taken in the event consent to disclose is given or denied. Refusal to grant consent under this subsection by a parent or guardian shall not prevent placement.

ABUSE AND NEGLECT INVESTIGATIONS

Under current law the findings of abuse and neglect investigations conducted by the Department of Mental Health are confidential and reports of the investigations can only be issued to the parent or guardian of the Department of Mental Health client who is the subject of the investigation. This proposal makes the final reports of substantiated Department of Mental Health abuse and neglect investigations at state facilities and contract providers available as public documents, with restrictions on the release of any identifying information about clients and staff. (Section 630.167)

This proposal increases the penalty for a mandated reporter not reporting abuse and neglect from an infraction to a Class A misdemeanor. This proposal also imposes sanctions and penalties on providers that prevent or discourage the reporting of abuse and neglect. (Section 630.165)

FISCAL DESCRIPTION (continued)

CIVIL IMMUNITY AND ADMINISTRATIVE PENALTIES

This proposal gives civil immunity to employees of the Department of Mental Health and contract providers who engage in discussion with the intent to help ensure that facilities and providers are aware of past history of potential employees that might create a danger to clients. (Section 630.950)

This proposal increases the penalty for community providers who do not correct problems cited by the Department of Mental Health in licensing inspections. The current fine is 100 dollars per day. This proposal increases the penalty for up to 10,000 dollars per day. (Section 630.755)

LICENSURE

The Department of Mental Health shall notify the Department of Health and Senior Services within ten days of revoking a license of an operator of a facility. If the Department of Health and Senior Services has not already done so, the department shall, within 30 days of such notice, initiate an investigation of the facility to determine whether licensure action is appropriate. (Section 630.725)

MENTAL HEALTH FATALITY REVIEW PANEL

This proposal establishes a mental health fatality review panel to review all suspicious deaths of clients of the Department of Mental Health. (Sections 630.925 to 630.927)

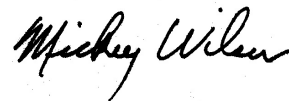
The director of the Department of Mental Health shall promulgate rules, guidelines and protocols for hospitals and physicians to use to help them identify suspicious deaths of clients in the care and custody of the department. (Section 630.975)

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 Attorney General
Office of State Courts Administrator
Department of Mental Health
Department of Corrections
Department of Health and Senior Services
Department of Social Services
Department of Public Safety -
 Director's Office
 Division of Fire Safety
 Missouri State Highway Patrol
Office of Prosecution Services
Office of Secretary of State

NOT RESPONDING: Office of State Public Defender and Office of State Treasurer



Mickey Wilson, CPA
Director
March 28, 2007