

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3292-03
Bill No.: SB 714
Subject: Crimes and Punishment; Children and Minors; Criminal Procedure
Type: Original
Date: February 1, 2008

Bill Summary: The proposal revises various provisions relating to child pornography.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
General Revenue	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
Total Estimated Net Effect on General Revenue Fund	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on FTE	0	0	0

- 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 2009	FY 2010	FY 2011
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Public Safety – Director’s Office** and the – **Missouri State Highway Patrol** 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 they cannot currently 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 (FY07 average of \$41.21 per inmate per day, or an annual cost of \$15,040 per inmate) or through supervision provided by the Board of Probation and Parole (FY07 average of \$2.43 per offender per day, or an annual cost of \$887 per offender).

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. 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 probation or incarceration would result in additional unknown costs to the department. Seven (7) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the provisions of this proposed modification to statute, DOC assumes the impact would be less than \$100,000 per year for the DOC for the first three years and over \$100,000 per year beginning in the fourth year of implementation.

ASSUMPTION (continued)

Officials from the **Office of Prosecution Services (OPS)** state any increase in the number of cases referred for criminal prosecution will have an additional fiscal impact on county prosecutors. However, officials from the OPS are not aware of any estimates of the number of additional criminal cases that would be referred to county prosecutors for charges because of this proposed legislation. Additionally, the OPS is not otherwise able to establish a workable estimate of the number of additional criminal cases that would be referred to county prosecutors for charges. It is therefore, not possible to determine if this proposal would have a significant direct fiscal impact on county prosecutors or the OPS.

Oversight assumes the Office of Prosecution Services and county prosecutors could absorb any additional costs incurred as a result of the proposed legislation within existing resources.

Officials from the **Office of the State Public Defender (SPD)** assume increasing penalties on existing crimes, or creating new crimes, will require more SPD resources. While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional appropriations for this specific bill, the SPD will continue to request sufficient appropriations to provide competent and effective representation in all its cases.

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

<u>FISCAL IMPACT - State Government</u>	FY 2009	FY 2010	FY 2011
GENERAL REVENUE FUND			
<u>Costs – Department of Corrections</u>			
Incarceration/probation costs	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>

FISCAL IMPACT - Local Government

FY 2009

FY 2010

FY 2011

\$0

\$0

\$0

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

The proposal modifies various provisions relating to child pornography:

A person is guilty of promoting child pornography in the first degree if, knowing of its contents and character, such person possesses with the intent to promote or promotes child pornography of a child less than fourteen years of age or obscene material portraying what appears to be a child less than fourteen years of age. This section prohibits any person who pleads guilty to or is found guilty of promoting child pornography in the first degree from being eligible for probation or parole for at least 3 years. (Section 573.025)

A person is guilty of promoting child pornography in the second degree if, knowing of its contents and character, such person possesses with the intent to promote or promotes child pornography of a minor under the age of eighteen or obscene material portraying what appears to be a minor under the age of eighteen. This section prohibits any person convicted of promoting child pornography in the second degree from being eligible for probation. (Section 573.035)

A person commits possession of child pornography if, knowing of its content and character, such person possesses any child pornography of a minor under the age of eighteen or obscene material portraying a minor under the age of eighteen. This section makes possession of child pornography a class C felony unless the person possesses more than twenty still images or one film or videotape of child pornography or has previously committed this offense, in which case, the crime is a class B felony. Currently, possession of child pornography is a class D felony unless the offender has previously committed this offense, in which case, the crime is a class C felony. (Section 573.037)

FISCAL DESCRIPTION (continued)

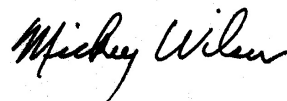
In any criminal proceeding, any property or material that constitutes child pornography shall remain in the custody of the state or the court. The court shall deny requests to copy or reproduce the child pornography if it is made reasonably available to the defendant by providing ample opportunity for inspection, viewing, and examination at a state or other governmental facility. (Section 573.038)

The proposal contains an emergency clause, and would be in full force and effect upon passage and approval.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of State Courts Administrator
Department of Corrections
Department of Public Safety
 – Missouri State Highway Patrol
 – Director's Office
Office of Prosecution Services
Office of the State Public Defender



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Director
February 1, 2008