

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3292-11
Bill No.: Perfected SS for SCS for SBs 714, 933, 899, & 758
Subject: Crimes and Punishment; Children and Minors; Criminal Procedure; Law Enforcement Officers and Agencies
Type: Original
Date: March 26, 2008

Bill Summary: The proposal modifies various provisions relating to sexual offenses.

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
Criminal Records System	Unknown	Unknown	Unknown
Total Estimated Net Effect on <u>Other</u> State Funds	Unknown	Unknown	Unknown

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 11 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 Natural Resources, Department of Public Safety – Director’s Office, Missouri House of Representatives, 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** 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 **Department of Public Safety – Missouri State Highway Patrol (MSHP)** assume the provisions in Section 43.651 of the legislation would allow the MSHP to establish a fee to screen potential new user names of social networking websites, or compare its database of registered users to the list of online identifiers of persons in the state sexual offender registry. The MSHP has determined this fee would be in the amount of \$25 per request. Although the MSHP has determined the fee, there is no way to determine the number of requests that will be received. Therefore, the fiscal impact is unknown.

Oversight assumes the number of internet service providers that would check online identifiers of potential users against the sexual offender registry can not be determined. Therefore, Oversight assumes the revenues to be unknown.

Officials from the **Office of Prosecution Services (OPS)** did not respond to Oversight's request for fiscal impact. However, in response to a previous version of the proposal (SB 714, LR # 3292-03), officials stated 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 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 \$2,500. 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.

ASSUMPTION (continued)

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.

Officials from the Office of the Attorney General, Office of Prosecution Services, Buchanan County Sheriff’s Department, Clark County Sheriff’s Department, Greene County Sheriff’s Department, Jackson County Sheriff’s Department, Platte County Sheriff’s Department, St. Louis County Police Department, St. Louis County Department of Justice Services, and the St. Louis Metropolitan Police Department did not respond to Oversight’s request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2009 (10 Mo.)	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>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2009 (10 Mo.)	FY 2010	FY 2011
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**CRIMINAL RECORDS SYSTEM
 FUND**

Revenues – Missouri State Highway
 Patrol

Database access fees	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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**ESTIMATED NET EFFECT ON
 CRIMINAL RECORDS SYSTEM
 FUND**

	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
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	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

The proposal may have a fiscal impact on small businesses who choose to compare their users to online identifiers in the sexual offender registry.

FISCAL DESCRIPTION

This act modifies various provisions relating to sexual offenses:

Any person required to register as a sexual offender must provide county law enforcement with any online identifying information he or she uses. Such information shall be made available to the public on the sex offender registry website, but only through specific searches using the online identifier. The information shall not be included in a general profile of the offender. (Section 43.650)

FISCAL DESCRIPTION (continued)

Subject to appropriations, the Highway Patrol shall make online identifying information of registered sex offenders available to certain electronic and computer businesses to prescreen users and to compare information held by the business. The patrol shall promulgate rules regarding the release and use of online identifying information and establish a fee for such service. Information obtained by the business shall not be used for any purpose other than for prescreening users or comparing the database of registered users against the list of online identifiers of persons on the sex offender registry in order to protect children from online sexual predators. (Section 43.651)

Juveniles certified as adults, who have committed an offense comparable to or more severe than aggravated sexual abuse, and those juveniles 14 years of age or older who are adjudicated of an offense that is comparable to or more severe than aggravated sexual abuse, shall be required to register as an adult sex offender. (Sections 211.425 and 589.400)

A statement made by a child under the age of fourteen relating to a pornography offense performed with or on a child by another person, that is otherwise inadmissible in court, shall be admissible as evidence if certain requirements are met, including the court finding that the statement provides sufficient indications of reliability and the child testifies at the proceedings or the court finds that the trauma that would result from testifying renders the child "unavailable" as a trial witness. Any statement of such a child is sufficient corroboration of a statement, admission, or confession regardless of whether or not the child is available to testify. (Section 491.075)

The proposal makes attempted sexual misconduct involving a child a class D felony in the same manner as committing sexual misconduct involving a child. The proposal also changes the crime of sexual misconduct of a child to include certain acts committed against a child victim less than 15 years of age instead of less than 14 years of age. (Section 566.083)

Currently, persons who have committed certain sexual offenses against a child are prohibited from being present in or loitering within five hundred feet of school without being a parent with school permission or from residing within one thousand feet of a school or licensed child-care facility. Under this proposal, persons who commit comparable offenses in any other state or foreign country or under tribal, federal, or military jurisdiction shall be subject to the same restrictions. (Sections 566.147 and 566.149)

A person commits the crime of age misrepresentation with intent to solicit a minor when he or she knowingly misrepresents his or her age with the intent to use the Internet to engage in criminal sexual conduct involving a minor. Such crime is a class D felony. (Section 566.153)

FISCAL DESCRIPTION (continued)

The proposal 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 three years. (Section 573.025)

The proposal prohibits any person convicted of promoting child pornography in the second degree from being eligible for probation. (Section 573.035)

The proposal 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)

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)

Under this proposal, attempting to furnish pornographic materials to a minor is a class A misdemeanor in the same manner as actually furnishing the materials to a minor. (Section 573.040)

The definition of “sexual assault” includes enticement of a child or any attempt to commit such act. (Section 589.015)

Persons who conspire to commit an offense listed on the sex offender registry shall be required to register as well as the persons who actually commit the crimes. Persons who are on the register for conspiring to commit an offense will have his or her information posted on the Highway Patrol sexual offender registry website. Also, persons who have committed comparable offenses under a tribal jurisdiction must register. The proposal also adds the crime of abuse of a child when such abuse is sexual in nature to the list of crimes for which a person must register as a sexual offender. (Section 589.400)

FISCAL DESCRIPTION (continued)

Currently, a person required to register in another state must register in Missouri if he or she is attending school or training here for more than fourteen days per year. The proposal specifies instead that persons attending any educational institution, whether public or private, including any secondary school, trade school, professional school, or institution of higher education for more than seven days in a twelve-month period must register.

A person convicted of attempting or conspiring to commit felonious restraint when the victim is the person's child, nonsexual child abuse, or parental kidnapping, shall be removed from the registry.

A person on the sex offender registry for attempting to commit or conspiring to commit the crimes of promoting prostitution in the second or third degree, public display of explicit sexual material, or statutory rape in the second degree, when no physical force was used in the commission of the crime, may make a petition to the court for removal after ten years.

The proposal specifies that if a registered sex offender changes or obtains a new online identifier, the person shall report such information in the same manner as a change in residence before using the identifier. (Section 589.402)

Currently, correctional facilities must obtain and forward the address of a sex offender being released to county law enforcement. The proposal requires the facility to complete the initial registration prior to release and forward it to the county law enforcement within three business days. When the person being released lists an out-of-state address, the registration shall be forwarded to the Highway Patrol. The court must forward to county law enforcement the address of a sex offender who is released from county jail within three days. (Section 589.403)

Under this proposal, a register sex offender shall have three days, rather than ten days, upon conviction, release from incarceration, or placement on probation, to register with law enforcement. (Section 589.405)

Along with other registration information provided by a sex offender, he or she must also provide county law enforcement with palm prints and a DNA sample if one has not already been taken. When reporting semiannually with law enforcement, a sex offender must allow the chief law enforcement officer to take a current photograph of the offender rather than providing a photograph himself or herself. (Section 589.407)

FISCAL DESCRIPTION (continued)

The proposal changes the length of time that a sex offender has to contact law enforcement with any changes in registry information from ten days to three days. Also, the offender must appear in person to county law enforcement regarding all changes in information rather than only those regarding moving outside of the county. (Section 409.414)

The proposal makes the crime of failing to register as a sex offender a class D felony for the first offense, unless the crime for which the person must register is an unclassified felony, a class A or B felony, or a felony involving a child under the age of fourteen, in which case, it is a class C felony. Currently, the crime is a class A misdemeanor, unless the aggravating circumstances exist, and it is a class D felony. (Section 589.425)

The proposal creates the “Cyber Crime Investigation Fund.” This fund shall be used for the administration of the cyber crime investigation grant program. Beginning with fiscal year 2010, the general assembly shall appropriate \$3 million to the fund annually. The Department of Public Safety shall administer the fund. The proposal allows money distributed by the Department of Public Safety to investigate internet sex crimes against children to be used to fund training for prosecuting and circuit attorneys. Currently, the money can only be used for other purposes, including training law enforcement personnel. (Section 650.120)

The proposal contains an emergency clause for Sections 491.075, 573.025, 573.035, 573.037, and 573.038. These sections 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 Natural Resources
Department of Corrections
Department of Public Safety
 – Missouri State Highway Patrol
 – Director’s Office
Missouri House of Representatives
Missouri Senate
Office of the Secretary of State
Office of the State Public Defender
Boone County Sheriff’s Department

NOT RESPONDING

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Bill No. Perfected SS for SCS for SBs 714, 933, 899, & 758
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Office of the Attorney General
Office of Prosecution Services
Buchanan County Sheriff's Department
Clark County Sheriff's Department
Greene County Sheriff's Department
Jackson County Sheriff's Department
Platte County Sheriff's Department
St. Louis County Police Department
St. Louis County Department of Justice Services
St. Louis Metropolitan Police Department



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Director
March 26, 2008