

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5213-02
Bill No.: SB 1194
Subject: Crimes and Punishment; Criminal Procedure; Children and Minors
Type: Original
Date: April 7, 2008

Bill Summary: The proposal increases the punishment for forcible rape or sodomy of a child under the age of twelve to be either death or life imprisonment without probation or parole.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
General Revenue	(\$1,282,124)	(\$1,535,964)	(\$1,582,043)
Total Estimated Net Effect on General Revenue Fund	(\$1,282,124)	(\$1,535,964)	(\$1,582,043)

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 7 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
General Revenue	6.5	6.5	6.5
Total Estimated Net Effect on FTE	6.5	6.5	6.5

☒ 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	(Unknown)	(Unknown)	(Unknown)

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 the proposal increases the punishment of for forcible rape or sodomy of a child under the age of twelve, but these people could already be charged. Any extra time these people would serve in prison would occur after both the three and ten year scope of this fiscal note. DOC assumes no fiscal impact for the scope of the fiscal note.

Officials from the **Office of Prosecution Services (OPS)** assume, in the absence of any estimates of the number of criminal cases the provisions of this proposed legislation would apply to, it is not possible at this time to provide estimates concerning the extent of any fiscal impact on County Prosecutors. Therefore the fiscal impact to County Prosecutors is unknown.

The Office of Prosecution Services is attempting to obtain information from the Office of State Courts Administrator as to the number of cases have been filed by prosecutors for the forcible rape of a child under the age of 12 years of age. If such efforts are successful, and if a reasonable estimate of the fiscal impact can be determined, this fiscal note response will be amended.

OPS assumes this proposal would not have a significant direct fiscal impact on the Office of Prosecution Services.

Officials from the **Office of the State Public Defender (SPD)** assume the proposal would result in increased costs to the SPD. In Fiscal Year 2007, the SPD provided representation in 171 first degree rape cases and 82 first degree sodomy cases. If just 5% of these cases had a victim of less than 12 years old, the potential is there for an additional 12 to 13 death penalty cases each year.

ASSUMPTION (continued)

SPD assumes they would require 4 FTE Assistant Public Defenders III (each at \$75,768 per year plus fringe benefits, equipment, and expenses), 1.5 FTE Paralegal/Investigators (each at \$27,768 per year plus fringe benefits, equipment, and expenses), and 1 FTE Clerk III (at \$23,100 per year plus fringe benefits, equipment, and expenses). SPD also assumes they would incur expert witness review and testimony costs of approximately \$900,000 per year. SPD estimates the total cost of the proposal to be in excess of \$1.3 million in FY 09 and \$1.5 million in subsequent years.

Oversight assumes the Office of the State Public Defender (SPD) would house the additional FTE within existing facilities. Therefore, Oversight has eliminated rent costs from the SPD's estimates.

For information purposes, **Oversight** reviewed information from a 1998 study conducted by the U.S. Department of Justice and the Centers for Disease Control and Prevention entitled, *Prevalence, Incidence, and Consequences of Violence Against Women*. Researchers found that 1 in 6 women had experienced an attempted rape or a completed rape. At the time they were raped, 22% were under the age of twelve.

<u>FISCAL IMPACT - State Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
GENERAL REVENUE FUND			
<u>Costs – Office of the State Public Defender (SPD)</u>			
Personal Service	(\$315,716)	(\$390,224)	(\$401,931)
Fringe Benefits	(\$139,610)	(\$172,557)	(\$177,734)
Equipment and Expense	(\$76,798)	(\$46,183)	(\$47,568)
Expert Witness Review and Testimony	(\$750,000)	(\$927,000)	(\$954,810)
<u>Total Costs – SPD</u>	<u>(\$1,282,124)</u>	<u>(\$1,535,964)</u>	<u>(\$1,582,043)</u>
FTE Change – SPD	6.5 FTE	6.5 FTE	6.5 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$1,282,124)</u>	<u>(\$1,535,964)</u>	<u>(\$1,582,043)</u>
Estimated Net FTE Change for General Revenue Fund	6.5 FTE	6.5 FTE	6.5 FTE

FISCAL IMPACT - Local Government

FY 2009
(10 Mo.)

FY 2010

FY 2011

LOCAL GOVERNMENT

Costs – County Prosecutors

Increased prosecutorial costs

(Unknown)

(Unknown)

(Unknown)

**ESTIMATED NET EFFECT ON
LOCAL GOVERNMENT**

(Unknown)

(Unknown)

(Unknown)

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

Currently, a person who pleads guilty to or is found guilty of forcible rape or sodomy of a child under the age of twelve shall receive a sentence of life imprisonment without eligibility for probation or parole for thirty years. Under this proposal, such crimes are punishable by either death or life imprisonment without probation, parole, or release, unless the offender has not yet reached the age of eighteen, in which case, the punishment shall only be life imprisonment without probation, parole, or release.

The crimes of forcible rape or sodomy of a child under the age of twelve are treated in the same manner as first degree murder. With limited exceptions, such crimes may not be tried together with any offense other than such offense of the same nature. At any such trial, when the death penalty has not been waived, opposing counsel shall provide each other with certain information, such as a list of witnesses and a list of mitigating or aggravating circumstances that the counsel intends to prove at the second stage of the bifurcated trial.

For such crimes, the trial shall be bifurcated into two stages unless there has been a waiver of the death penalty. The first stage shall determine only whether a defendant is guilty or not guilty. The issue of punishment shall only be submitted to the trier of fact at the second stage of the trial after a finding of guilt. If the trier of fact finds the defendant guilty of such offense, evidence of mitigating and aggravating circumstances may be presented during the second stage of the trial. The proposal lists what types of circumstances which may be presented as evidence.

FISCAL DESCRIPTION (continued)

The proposal provides the procedural requirements for such trials and the necessary conclusions that must be made by the trier of fact to impose the death penalty. It also requires the judge to include certain considerations and information in the jury instructions when the jury is deciding whether to impose the death penalty.

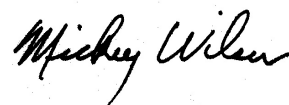
Before trial, any defendant in such cases may waive the right to trial by jury. However, such waiver must be made for both stages of the trial unless there is an agreement with the state. Upon written agreement of the parties and with leave of the court, the issue of the defendant's mental retardation may be taken up by the court and decided prior to trial without prejudicing the defendant's right to have the issue submitted to the trier of fact.

As with persons who are found guilty of or plead guilty to murder in the first degree, if the death penalty is found to be unconstitutional in the future, those persons who are found guilty of or plead guilty to such crimes shall be sentenced to life imprisonment with probation, parole, or release.

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

A handwritten signature in black ink, appearing to read "Mickey Wilson". The signature is written in a cursive, flowing style.

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Mickey Wilson, CPA
Director
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