

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0468-14
Bill No.: Truly Agreed To and Finally Passed CCS for SS for SCS for HCS for HB 62
Subject: Crimes and Punishment; Law Enforcement Officers and Agencies; Drugs and Controlled Substances
Type: Original
Date: June 2, 2009

Bill Summary: The proposal modifies various crime prevention laws.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)
Total Estimated Net Effect on General Revenue Fund	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Various State Funds	\$0 or (More than \$100,000)	\$0 or (More than \$100,000)	\$0 or (More than \$100,000)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 or (More than \$100,000)	\$0 or (More than \$100,000)	\$0 or (More than \$100,000)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 15 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
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 2010	FY 2011	FY 2012
Local Government	\$0 or (More than \$100,000)	\$0 or (More than \$100,000)	\$0 or (More than \$100,000)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Agriculture, Coordinating Board for Higher Education, Office of Administration – Administrative Hearing Commission, Department of Transportation, Department of Natural Resources, Department of Labor and Industrial Relations, Department of Public Safety – Missouri State Highway Patrol, Missouri Ethics Commission, Missouri House of Representatives, State Auditor’s Office, Missouri Senate, State Treasurer’s Office, University of Missouri, and Metropolitan Community College of Kansas City** assume the proposal would have no fiscal impact on their agencies.

Officials from the **University of Central Missouri** and the **Springfield Police Department** did not respond to Oversight’s request for fiscal impact. However, in response to a previous version of the proposal (SS for SCS for HCS for HB 62, LR # 0468-11), officials assumed the proposal would have no fiscal impact on their agencies.

Officials from **Missouri State University, Missouri Western State University, and the City of Kansas City** did not respond to Oversight’s request for fiscal impact. However, in response to a previous version of the proposal (SCS for HCS for HB 62, LR # 0468-06), officials assumed the proposal would have no fiscal impact on their agencies.

Officials from the **Office of the Governor** assume the proposal would have no fiscal impact on their agency.

Officials from the **Office of the Attorney General (AGO)** assume any potential costs arising from this proposal can be absorbed within existing resources. AGO may need to request additional staff to handle the increase in workload if multiple cases arise from the proposal.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

ASSUMPTION (continued)

Officials from the **Department of Elementary and Secondary Education (DESE)** assume there is no state cost to the foundation formula associated with this proposal. Should the new crimes and amendments to current law result in additional fines or penalties, DESE cannot know how much additional money might be collected by local governments or the DOR to distribute to schools. To the extent fine revenues exceed 2004-2005 collections, any increase in this money distributed to schools increases the deduction in the foundation formula the following year. Therefore, the affected districts will see an equal decrease in the amount of funding received through the formula the following year; unless the affected districts are hold-harmless, in which case the districts will not see a decrease in the amount of funding received through the formula (any increase in fine money distributed to the hold-harmless districts will simply be additional money). An increase in the deduction (all other factors remaining constant) reduces the cost to the state of funding the formula.

Oversight assumes any increase or decrease in fine or penalty revenues generated cannot be determined. Therefore, the fiscal note does not reflect any fine or penalty revenues for the local school districts.

Officials from the **Department of Corrections (DOC)** assume the provisions in several sections would increase penalties, potentially resulting in increased incarcerations and/or probations to the DOC. In aggregate, these changes could impact the DOC by an unknown but greater than \$100,000 amount per fiscal 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 direct offender cost either through incarceration (FY08 average of \$15.64 per offender, per day or an annual cost of \$5,709 per inmate) or through supervision provided by the Board of Probation and Parole (FY08 average of \$2.47 per offender, per day or an annual cost of \$902 per offender).

At this time, the DOC is unable to determine the exact number of people who would be convicted under the provisions of this bill and whether or not additional inmate beds may be required as a consequence of passage of this proposal. The cumulative effect of various new legislation, if adopted as statute may require institutional facility expansion.

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Eighteen (18) persons would have to be incarcerated per each fiscal year to exceed \$100,000 annually. DOC estimates potential costs could be in excess of \$100,000 per year.

ASSUMPTION (continued)

Officials from the **Department of Revenue (DOR)** provided the following Office of Administration – Information Technology Services Division (ITSD DOR) impact:

ITSD DOR estimates this legislation could be implemented utilizing one existing Computer Information Technologist III for one month at a rate of \$4,441. ITSD DOR estimates the IT portion of this request can be accomplished within existing resources; however, if priorities shift, additional FTE/overtime would be needed to implement the provisions of the proposal.

Officials from the **Office of Prosecution Services** assume the proposal would have no measurable fiscal impact the Office of Prosecution Services or county prosecutors.

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.

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 **Columbia Police Department** assume they would be required to enforce elements of the new legislation. This will have a financial impact on their agency. This will take additional resources to investigate and enforce these laws. Officials estimate the overall resources would cost several hundred dollars to a few thousands annually.

ASSUMPTION (continued)

Section 407.1500 – Data Security Breaches

Officials from the **Office of Administration – Division of Purchasing and Materials Management (DPMM)** did not respond to Oversight’s request for fiscal impact. However, in response to a similar proposal from the current session (SCS SBs 207 & 245, LR # 0794-04), officials assumed, in order to comply with Section 407.1500.10, DPMM would have to develop bid language that required a contractor that has access to individuals’ personal data to disclose any breach of security of their system following discovery or notification of the breach. Notification would have to be made to any resident of the state whose personal information was disclosed. Also, the contractor would have to notify the owner or licensee of the personal information indicating there was a breach of security.

Currently, DPMM has a contract that requires the contractor to immediately suspend contract performance and notify the contract administrator if there has been a breach of security, fraud, or misrepresentation in connection with the services being provided under the contract.

Officials from the **Department of Elementary and Secondary Education (DESE)** assume, per Office of Administration – Information Technology Services Division (OA ITSD) staff, the proposal would require anyone with personal information to notify consumers if there is a security breach.

The cost to post notice would depend on the number of people involved in a breach – but if the MOSIS system was breached, the cost would be around \$500,000 to mail out letters or contact parents in another manner. The number of kids in the MOSIS system is around 1,000,000. Costs would be similar if a breach occurred in teacher certification. This would not include time to gather the information, compose the notice, and other tasks.

There would be a cost to handle inquiries and other administrative tasks. If there is a breach, much work will be required to field questions and answer phone calls. The amount of time would depend on the severity and size of the breach. A “normal” breach could result in approximately 800 hours of additional administrative support.

ASSUMPTION (continued)

Officials from the **Department of Health and Senior Services (DHSS)** assume Section 407.1500 of the proposed legislation creates a new section relating to security breaches. The definitions differ from those used by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). DHSS is composed of some parts that are regulated by HIPAA and some parts that are not, which makes it a “hybrid entity” as defined by HIPAA. The covered entity parts of the department that are regulated by HIPAA fit within the proposed Section 407.1500.3(2) so they would not have increased costs under the proposal. However, the non-covered entity parts of DHSS fit within the definition of “person” in Section 407.1500.1(8) provided in the proposed statute and would be subject to the new notification requirement because they acquire personal information regarding residents of Missouri. The number of licensees/registrants/clients in the various databases within DHSS, not covered by HIPAA, varies significantly and depending on the situation, a breach could impact more than one database. It is impossible to determine the costs related to an unforeseen breach; therefore, the fiscal impact for this legislation is unknown.

Officials from the **Department of Social Services (DOS)** assume DOS and the Information Technology Services Division in the Office of Administration (OA – ITSD) maintain security for all their databases and has policy and procedures in place for employees to minimize the possibility of a security breach. Therefore, DOS does not anticipate cost. However, if a breach were to occur, the cost of notification as outlined in the bill could exceed \$100,000 (GR). DOS does not anticipate a need for additional FTEs.

DOS would incur costs to notify the persons in case of a security breach. Some of these notifications are already covered under HIPAA since we are a covered entity, but it does not correspond directly to our HIPAA obligations, as some of the definitions are different. It is unknown as to what costs would be, as the numbers of security breaches, the number of people involved, and the cost of notifying them are all unknown. Since there is a clause in the legislation that allows a different path to be taken if the cost is greater than \$100,000.00, it is assumed that our costs would be unknown to \$100,000.00, as the alternate routes are not as costly. However, this is per incident and it is unknown if there would be more than one incident per year.

OA – ITSD has security measures in place to prevent breaches. However, if a breach were to occur OA – ITSD would have to notify the Attorney General. OA – ITSD would also work with the appropriate Division to generate and send letters to the customers involved. OA – ITSD considers this as part of their normal job duties and therefore, would have no fiscal impact. Any associated costs, such as paper or postage, would not be the responsibility of ITSD.

ASSUMPTION (continued)

Officials from the **Department of Conservation (MDC)** assume the proposal would have a fiscal impact on MDC funds if a data security breach did occur, but MDC does not anticipate any breaches. MDC has two million plus records for permit customers. However, if a breach did occur, the exact amount of the impact is unknown, but is expected to exceed \$100,000.

Oversight assumes the fiscal impact to various state agencies and local government in the event of a data security breach could exceed \$100,000 per year. As the likelihood or frequency of a data security breach is unknown, Oversight has reflected the cost to the general revenue fund, various state funds, and local government as \$0 or (more than \$100,000) per fiscal year.

Officials from the Joint Committee on Legislative Research, Office of the Lieutenant Governor, Buchanan County Sheriff's Department, Jackson County Sheriff's Department, St. Louis County Police Department, Kansas City Police Department, and the St. Louis Metropolitan Police Department did not respond to Oversight's request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
GENERAL REVENUE FUND			
<u>Costs – Department of Corrections</u>			
Incarceration/probation costs (various sections)	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)
<u>Costs – Various state agencies</u>			
Consumer notification of data security breach (§407.1500)	<u>\$0 or (More than \$100,000)</u>	<u>\$0 or (More than \$100,000)</u>	<u>\$0 or (More than \$100,000)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>

FISCAL DESCRIPTION

The proposed legislation modifies various crime prevention laws:

Section 173.754 – Specifies that a person who knowingly uses or attempts to uses a false or misleading degree from any institution of higher education or a degree from any institution of higher education in a false or misleading manner, in connection with any business, employment, occupation, profession, trade, or public office will be guilty of a class C misdemeanor;

Section 303.024 – Specifies that any person who knowingly or intentionally produces, manufactures, sells, or otherwise distributes a fraudulent document intended to serve as a motor vehicle insurance identification card will be guilty of a class D felony and any person who possesses a fraudulent card will be guilty of a class B misdemeanor;

Section 306.109 – Specifies that any person who possesses or uses a beer bong or other drinking device used to consume similar amounts of alcohol or any large volume alcohol container holding more than four gallons of an alcoholic beverage on any river of this state or who possesses an expanded polypropylene cooler on or within 50 feet of any river in this state will be guilty of a class A misdemeanor. This section does not apply to the Mississippi, Missouri, or Osage Rivers;

Section 407.1500 – Requires any person that owns, is licensed, or conducts business in Missouri who owns or licenses personal information of a resident of Missouri in any form to notify the affected consumer that there has been a breach of security following the discovery or notification of the breach. Any person maintaining or possessing records or data containing personal information on residents of Missouri that the person does not own or license must also notify the owner or licensee of the information of any breach of security immediately following the discovery of the breach. The manner and description of the notice which must be provided in order to prevent violation of these provisions are specified. The Attorney General has the exclusive authority to bring an action to obtain actual damages for a willful and knowing violation and may seek a civil penalty not to exceed \$150,000 per security breach;

Sections 409.5-508 and 409.6-604 – Specifies that any person convicted of criminal securities fraud will be fined up to \$1 million, imprisoned for up to 10 years, or both and may be ordered to pay restitution for any loss plus an interest rate of 8% per year from the date of the violation or an additional civil penalty of up to \$5,000 for each violation against an elderly or disabled person;

FISCAL DESCRIPTION (continued)

Section 544.665 – Creates the crime of failure to appear if a person knowingly fails to appear before any court or judicial officer as required. Failure to appear will be a class D felony if the criminal matter for which the person was released included a felony, a class A misdemeanor if the criminal matter includes a misdemeanor, or an infraction if the criminal matter includes only an infraction or a violation of a municipal ordinance;

Section 556.036 – Specifies that the statute of limitations for certain arson offenses will be five years;

Section 565.063 – Revises the definition of “domestic assault offense” to include any offense committed in another state or any federal, tribal, or military offense which, if committed in Missouri, would be considered a domestic assault offense;

Section 565.081 – Specifies that a person who commits the crime of assault of a probation and parole officer in the first degree will be guilty of a class A felony;

Sections 565.081, 565.082, and 565.083 – Expands the crime of assault of a law enforcement officer, emergency personnel, or probation and parole officer in the first, second, and third degrees to include a corrections officer;

Section 565.084 – Expands the crime of tampering with a judicial officer to include juvenile officers and deputy juvenile officers;

Section 566.148 – Prohibits certain sexual offenders from being physically present or loitering within 500 feet of or approaching, contacting, or communicating with any child younger than 18 years of age in any child care facility building or the real property comprising any child care facility when children younger than 18 years of age are present in the building or on the grounds unless the person is the parent, guardian, or custodian of a child in the building or on the grounds. Any person violating these provisions will be guilty of a class A misdemeanor;

Section 566.150 – Prohibits certain sexual offenders from knowingly being present in or loitering within 500 feet of any real property comprising any public park with playground equipment or a public swimming pool. Any person violating this provision will be guilty of a class D felony for the first offense and a class C felony for a subsequent offense;

FISCAL DESCRIPTION (continued)

Section 566.155 – Prohibits certain sexual offenders from serving as an athletic coach, manager, or trainer for any sports team in which a child younger than 17 years of age is a member. Any person violating this provision will be guilty of a class D felony for the first offense and a class C felony for a subsequent offense;

Section 568.045 – Specifies that any person who possesses amphetamine or methamphetamine in the presence or residence of a person younger than 17 years of age will be guilty of endangering the welfare of a child in the first degree;

Sections 570.030 and 570.080 – Specifies that a person who steals or receives a stolen firearm, explosive weapon, livestock, or captive wildlife will be guilty of a class C felony. Any person who is convicted of stealing or receiving stolen wildlife or captive wildlife when the value of the animal or animals stolen exceeds \$3,000 will be guilty of a class B felony and must serve 80% of his or her sentence before being eligible for probation, parole, conditional release, or any other early release by the Department of Corrections;

Section 570.040 – Specifies that the term “stealing-related offense” will include robbery and clarifies that a person who has pled guilty to or been found guilty of two separate stealing offenses which were committed on two separate occasions will be guilty of a class B felony;

Sections 573.020, 573.023, 573.025, 573.030, 573.035, 573.037, 573.040, and 573.065 – Removes the requirement that an offender have knowledge of the content and character of obscene materials or pornographic items for the crimes of promoting obscenity in the first and second degrees, sexual exploitation of a minor, promoting child pornography in the first and second degrees, possession of child pornography, furnishing pornographic material to minors, and coercing acceptance of obscene material;

Sections 573.023, 573.037, and 573.060 – Adds a standard of recklessness to the crimes of sexual exploitation of a minor, possession of child pornography, and public display of explicit sexual material;

Section 575.150 – Increases the penalty for the crime of resisting or interfering with arrest, detention, or stop from a class D felony to a class C felony and specifies that resisting or interfering with an arrest for a probation warrant, a parole warrant, a capias warrant, or a bench warrant where the warrant issued was related to a felony will be a class D felony;

FISCAL DESCRIPTION (continued)

Section 575.153 – Creates the crime of disarming a peace or correctional officer if a person intentionally removes from or deprives the peace or correctional officer of the use of his or her firearm or other deadly weapon while the officer is acting within the scope of his or her official duties. The crime, a class C felony, does not include situations in which the person does not know or could not reasonably have known that the person was a peace or correctional officer or if the officer was engaged in felonious conduct at the time of the disarmament;

Section 575.260 – Expands the crime of tampering with a judicial proceeding to include influencing the official action of a state prosecuting or circuit attorney;

Section 578.024 – Specifies that the owner or possessor of a dog that has previously bitten a person or domestic animal without provocation and bites any person on a subsequent occasion will be guilty of a class B misdemeanor. If the attack results in serious injury to any person, the owner or possessor will be guilty of a class A misdemeanor. If the attack results in serious injury to any person and a previous attack also resulted in a serious injury, the owner or possessor will be guilty of a class D felony;

Section 578.028 – Specifies that any person who removes an electronic or transmitting collar from a dog without the permission of the dog's owner with the intent to prevent or hinder the owner from locating the dog will be guilty of a class A misdemeanor;

Sections 578.250 – 578.265 – Prohibits the use or possession of an alcohol beverage vaporizer. Any substance that has been approved by the federal Food and Drug Administration as an over-the-counter or therapeutic drug product administered by an authorized medical practitioner is exempt from this provision;

Section 589.425 – Specifies that any person who has committed an offense in any other state or foreign country or under federal, tribal, or military jurisdiction, which if committed in this state would be a sexual offense, will be guilty of a class C felony if the person fails to register as a sexual offender on a second offense;

FISCAL DESCRIPTION (continued)

Section 3 – Creates the crime of promoting online sexual solicitation if the person or entity knowingly allows a web-based classified service owned or operated by a person or entity to be used by individuals to post advertisements promoting prostitution, enticing a child to engage in sexual conduct, or promoting sexual trafficking of a child after receiving notice from the Attorney General that the advertisement is prohibited. Anyone promoting online sexual solicitation will be guilty of a felony, punishable by a \$5,000 fine for each day of violation.

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

Sections 577.023 and 577.029 of the proposal contain an Emergency Clause, and would be in full force and effect upon the proposal's passage and approval.

SOURCES OF INFORMATION

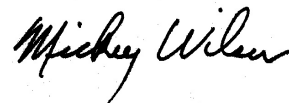
Office of the Attorney General
Department of Agriculture
Coordinating Board for Higher Education
Office of Administration
 – Administrative Hearing Commission
Office of State Courts Administrator
Department of Elementary and Secondary Education
Department of Transportation
Department of Natural Resources
Department of Corrections
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Revenue
Department of Social Services
Department of Public Safety
 – Director's Office
 – Missouri State Highway Patrol
Office of the Governor
Department of Conservation
Missouri Ethics Commission
Missouri House of Representatives
Office of Prosecution Services

SOURCES OF INFORMATION (continued)

Office of the State Auditor
Missouri Senate
Office of the Secretary of State
Office of the State Public Defender
State Treasurer's Office
University of Missouri
Metropolitan Community College of Kansas City
Missouri State University
Missouri Western State University
University of Central Missouri
City of Kansas City
Boone County Sheriff's Department
Columbia Police Department
Springfield Police Department

NOT RESPONDING

**Joint Committee on Legislative Research
Office of the Lieutenant Governor
Buchanan County Sheriff's Department
Jackson County Sheriff's Department
St. Louis County Police Department
Kansas City Police Department
St. Louis Metropolitan Police Department**



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Director
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