

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4510-06
Bill No.: SCS for HCS for HB 1371
Subject: Crimes and Punishment; Criminal Procedure
Type: Original
Date: May 7, 2014

Bill Summary: This proposal modifies provisions relating to criminal law.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	\$0	(Up to \$37,384)	(More than \$1,463,191)
Total Estimated Net Effect on General Revenue Fund	\$0	(Up to \$37,384)	(More than \$1,463,191)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Highway Funds	\$0	\$0	(\$239,950)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	(\$239,950)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 16 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	0 FTE	0 FTE	22.5 FTE
Total Estimated Net Effect on FTE	0 FTE	0 FTE	22.5 FTE

- 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 2015	FY 2016	FY 2017
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the State Courts Administrator (CTS)** state they will need to adopt the new charge codes and develop a new charge code schema. There may be some unknown costs associated with updating the JIS (statewide court automation) system used by the courts and developing a new charge code schema. We would not anticipate a fiscal impact in excess of \$100,000.

Officials from the **Office of the State Public Defender (SPD)** state additional Public Defenders would be required to provide representation to the indigent accused of the new crimes created that would potentially result in jail time, if found guilty.

The SPD states there are changes that should reduce the number of attorneys we need:

(1) Creation of additional fine only offenses (class D misdemeanors) for first time offenders, thus rendering these defendants ineligible for our services:

-- Possession of a Controlled Substance (195.202) and Possession of Marijuana < 10 grams (195.203) (FY 2013 cases = 1,289)

-- Misdemeanor Use of Drug Paraphernalia for first time drug offenders (195.233) (FY2013 cases = 726)

-- Stealing (570.030) (FY2013 cases = 1,891) and Receiving (570.080) (FY2013 cases = 298) Less Than \$150 for first time stealing offenders.

(2) Increase in felony threshold value for property crimes from \$500 to \$750. Most statistically relevant offenses affected are:

-- Stealing (570.030); (FY2013 cases = 3,793)

-- Receiving (570.080); (FY2013 cases = 808)

-- Passing Bad Checks (570.120); (FY2013 cases = 835)

-- Property Damage (569.100); (FY2013 cases = 302)

-- Fraudulent Use of Credit Device (570.130); (FY2013 cases = 139)

RAS:LR:OD

ASSUMPTION (continued)

(3) Changing Stealing Third Offense to Stealing Fourth Offense (570.040); (FY2013 cases = 345)

The SPD states there are also changes that should increase the number of attorneys we need:

(1) Creation of new felony Assault Third Degree (565.070) (FY2013 cases = 945) and a new felony Domestic Assault Third Degree (565.074). (FY2013 cases = 1,654)

(2) Creation of new felony Harassment First Degree (565.090). (FY2013 cases = 147)

The estimate is that with these changes to stay at the level we are currently at, we would need an additional 6 attorneys and the current level of support staff.

The proposed legislation would also result in an increase in the number of trials, therefore an increased in the number of Appeals and PCRS would also increase. (FY2013 = 274 Jury Trials, 293 court trials)

The estimate is that with these changes, the SPD would need an additional 7.5 attorneys and the current level of support staff. SPD assumes a total need of 22.5 FTE (7.5 Assistant Public Defenders and 15 Legal Assistants) to implement the changes in this proposal. SPD assumes a total cost of approximately \$1.3 million per year for these FTE to the General Revenue Fund.

In a late response to the introduced version of this proposal, officials from the **Department of Corrections (DOC)** stated the bill proposes many changes to the criminal statutes, of which the most significant is the extension of the felony classes from four to five. The change is accomplished by creating a new felony class C with an overlapping sentence range. The current Class C and Class D felonies are renamed D and E.

Proposed authorized felony cases:

Current Class	Range	Proposed Class	Range
Class A	10-30 years, or life	Class A	10-30 years, or life
Class B	5-15 years	Class B	5-15 years
Class C	1 day - 7 years	Class C	3-10 years
Class D	1 day - 4 years	Class D	1 day - 7 years
		Class E	1 day - 4 years

The assessment is based upon an assumption that a change in the authorized range of the felony class will result in a change in sentencing practice. In some instances sentencing will have to

RAS:LR:OD

ASSUMPTION (continued)

change because the current sentence is outside of the proposed authorized range, for example, a current class B offense that will be a new class C offense cannot have a sentence of more than 10 years. Sentencing, however, can also be thought of being relative to the range of allowed sentences. The methodology has to take account of both factors.

The methodology used to estimate the change is to compare the range of authorized sentences before and after the change and to assume an equal distribution between each sentence in the range. For example, if the sentence range is reduced from 1 to 7 to 1 to 4 then the average sentence, assuming equal distribution, will be reduced from 3.5 to 2.5 years. The reduction will be $2.5/3.5$ applied to the average current sentence in FY13.

Drug Offenses

There will likely be reductions in institutional populations from proposed changes to the drug statutes. Most drug offenses are reduced by one felony class.

No reduction in population will occur due to changes in drug possession. The current felony class is C. In this bill the class is D, which is equivalent to the current class C.

Stealing Related Offenses

The proposed increase in the minimum value of a felony stealing or stealing related offense from \$500 to \$750 is estimated to reduce the number of felony convictions by 15. Stealing-related offenses include stealing, receiving stolen property, passing bad checks, fraudulent use of a credit card device, and counterfeiting. As the felony class is unchanged (old class C) no change is estimated to the average sentence. Stealing over \$25,000 becomes a class C felony with a maximum sentence of 10 years. A reduction in new admissions for felony stealing will not result in an increase in probation stealing misdemeanor cases because the DOC does not supervise nonviolent misdemeanor offenses.

Involuntary Manslaughter 1st degree

The felony class for involuntary manslaughter 1st degree will be increased from a class C to the new class C. The maximum sentence will increase from 7 to 10 years.

Assault and Domestic Assault

The legislation proposes four levels of assault and the creation of a special victim category to incorporate the offense of assault of a law enforcement officer etc.. Most of the changes are not expected to impact sentencing severity but assault 2nd when the victim is a special victim will be a dangerous felony and serve 85%. The Assault 3rd is revised to be an E felony when the offense is found to be knowingly caused and becomes a class D when the victim is a special victim.

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ASSUMPTION (continued)

Assault 4th degree will be the misdemeanor offense. Based upon the offenses of probations in FY13 it is estimated that 28% of assault 3rd and 4th degree convictions will receive a prison sentence. Domestic Assault 3rd and 4th degree is similarly defined and estimated.

Child Kidnaping

The offense will become a class B unless the child is younger than 2. No significant impact.

Robbery 2nd degree

The felony class for Robbery 2nd degree will be reduced from class B to the new class C.

Unlawful discharge of a firearm

There is an extensive re-writing of weapon offenses. New offenses include unlawful discharge of a weapon (first and second degree) and the retirement of unlawful use of a weapon and a number of other weapon offenses. The proposed sentencing for the new offenses is similar to the existing statute and no impact on the institutional population is expected.

Incest, Use of a child in a sexual performance

No probation for a prior offense. The numbers of convictions for either offense is small (1 in FY13) and no impact is expected.

Abandonment of a child

No offenses were received in FY13, no impact expected.

DWI

The legislation adds another level for prior DWI offenders with six or more DWI convictions (habitual offender). The offense is a class B offense and a dangerous felony. The number of DWI offenders who are likely to be sentenced as habitual is estimated to be 66 and the average sentence will be 8.2 years. The estimate of habitual offenders is based upon DOC admissions for DWI offenders and the prior DWI records in the DOC offender database. The DOC is currently incarcerating 501 chronic offenders and 350 had six or more DWI convictions. The sentence for the chronic offender will be reduced from a Class B to the new Class C and the number of admissions will be reduced by the number of offenders who will be sentenced as habitual offenders.

Child Molestation

There is an extensive re-writing of child molestation offenses but the proposed changes do not have an expected impact, except for child molestation 4th degree that is expected to make misdemeanor child molestation a felony and require incarceration. In FY13 there were 15

ASSUMPTION (continued)

probation offenders for child molestation. Offenders serving child molestation offenses and released in FY131 served 76% of the sentence. Child Molestation 1st degree will be a dangerous felony.

Removing 120-day sentences from the commitment count for the minimum prison term
Current statutes exclude the first 120-day sentence from the calculation of the minimum prison term. The bill will remove all 120-day sentences and there will, therefore, be fewer offenders serving a MPT of 40%, 50% or 80% minimum time served. The proposed bill specifies that any commitment pursuant §§217.738 (regimented discipline program, 559.115 (120-day treatment program), and 217.785 (post-conviction program) shall not be counted as a previous prison commitment for the purpose of determining a minimum prison term, regardless of whether the offender was released on probation.

Timing of the Impact

An estimate of when the changes in SB 491 will impact the institutional population is based upon the expected averages of sentences and time served of offender. If offenders are admitted to prison who would not otherwise have been sentenced to prison then the impact occurs in the year following the enactment of the bill. For offenders who will serve longer then the impact will be after the date they would have been released.

Projected Impact on the Prison Population

Although the DOC has made some preliminary projections on the impact of this bill below, the actual impact is dependent on the implementation of the statute changes by the courts and prosecutors.

Fiscal Year	Number
2015	142
2016	201
2017	(273)
2018	(284)
2019	(338)
2020	(274)
2021	(240)
2022	(219)
2023	(219)
2024	(219)

ASSUMPTION (continued)

FY15 - The initial impact of the proposed legislation for the first year may be an increase of unknown cost because of changes to assault 3rd, domestic assault 3rd, and child molestation 4th that are expected to increase the population immediately. The initial impact in the first year may be an increase because of the admissions of offenders due to changes in the offenses.

Changes to assault, DWI, involuntary manslaughter 1st, and sex offenses are expected to increase the population of offenders sentenced for these crimes over the long term. However, the majority of the long term impact will not take effect until beyond the 10-year scope of this bill.

FY16 and FY17 - The proposed changes to the statutes for drugs, stealing, bad checks, and the elimination of all 120-day releases from the minimum prison term commitment count are expected to reduce the long term institutional population. The unknown savings impact is the number of offenders who are affected by the statute multiplied by the time served. The timing of the impact of these savings does not take place until FY16 and FY17, at which time this reduction in the offender population exceeds the population increase from assaults, DWI, involuntary manslaughter and sex offenses.

In summary, DOC anticipates an unknown cost in FY 2015 and FY 2016 and an unknown savings in FY 2017 and beyond.

Officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** state this bill revises and changes the laws regarding the Missouri criminal code. This would greatly affect the Criminal Justice Information Services (CJIS) Division as well as all agencies that report criminal history information based on violations of the Missouri Criminal Code. Since this information is reported utilizing the associated Missouri Criminal Charge Code, the current Missouri Charge Code system by which charge codes are created and maintained will have to be rewritten. In addition, changes to the criminal history reporting system will need to occur with this rewrite. While the Missouri Criminal Charge Code system is in the initial stages of the rewrite, passage of this bill would greatly expedite the need for this change.

As the Criminal History Record System impacts all criminal justice agencies in Missouri, implementation of the changes to the Missouri Criminal Charge Code system would be a concerted effort between all of the criminal justice agencies in Missouri, with a special emphasis on the Highway Patrol's CJIS Division and the Office of State Courts Administrators (OSCA), as these are the entities responsible for production and distribution of the Missouri Criminal Charge Codes.

ASSUMPTION (continued)

The current criminal charge code system is maintained by a Criminal History Specialist within the CJIS Division. The Criminal History Specialist is responsible for updating the Missouri Charge Code System, preparation of reports, and maintaining statistical data as well as coordinating updates to all necessary state and local criminal justice agencies in the state. One temporary employee will be needed to assist with the implementation of the changes to the charge code system. The current salary for a temporary employee is \$9.45 per hour at 1,000 hours for an annual cost of \$9,450.

Approximately 280 Livescan fingerprint devices used throughout the state would have to be updated with the new charge code scheme and the Integration Module (IM) and the Fingerprint Data Router (FDR) for the state Automated Fingerprint Identification System (AFIS). The estimated cost for the Livescan and AFIS modifications has been determined by MorphoTrack, the state AFIS vendor, to be approximately \$50,000.

In addition to the Livescan and AFIS enhancements, the state's Computerized Criminal History (CCH) system will require updates as well. The estimated changes to the CCH system by the state's CCH Vendor, Computer Projects of Illinois, include a total of 1,770 (150 + 240 + 300 + 300 + 300 + 210 + 180 + 90) hours of combined work @ \$100 per hour for a total price of \$177,000 (1,770 x \$100) based on the following projections:

- 150 hours - Discovery and Design
- 240 hours - Changes to the Uniform Charge Code Table application and database
- 300 hours - Other database changes to adjust for Charge Code changes
- 300 hours - Stored procedure code
- 300 hours - Forms - Messenger, CCH Client, UCT Editor, SOR, etc.
- 210 hours - Switch transaction changes
- 180 hours - Testing
- 90 hours - Project Management

In addition, modifications would need to be made to the following:

Niche/FATPOT (50 hours at \$70 per hour)	\$3,500
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The systems affected are components of commercial systems purchased by the Patrol and since the programming code is not available to the Patrol, all changes must be made by the vendor.

ASSUMPTION (continued)

The MHP estimates that approximately 440 hours of in-house programming efforts would be needed to modify the DWITS database, DWITS interfaces, MULES/4 DNA Profiling Interface with BEAST, and various reports associated with these systems. For purposes of this fiscal note, the MHP believes this impact will be handled in-house and can be absorbed; therefore, the Highway Patrol anticipates no fiscal impact for these modifications. However, it is possible that multiple bills similar to this cost may be passed by the General Assembly in a given year and, collectively, those costs maybe in excess of what can be sustained within our core budget. If so, the Patrol may request funding for the costs of supporting these bills should the need arise based on a review of the finally approved bills signed by the Governor.

Even though this projects a cost to Highway funds (of \$239,950: \$9,450 + \$177,000 + \$50,000 + \$3,500), the Patrol is pursuing a grant to potentially fund the cost of this project.

Officials from the **Department of Revenue (DOR)** stated the proposal would not have an impact on Total State Revenues. Also, in response to the introduced version of this proposal, DOR assumed the proposal would have an impact on federal funding. However, DOR states this substitute has addressed those issues and DOR assumes the only impact the proposal will have on their department is administrative costs.

DOR assumes the need to update systems and procedures at a level of effort valued at \$37,384 in FY 2015 and \$60,258 in FY 2016.

Oversight assumes DOR is provided with core funding to handle a certain amount of activity each year. Oversight assumes DOR could absorb at least some of the costs related to this proposal within their current appropriation level. Oversight will therefore range the administrative cost from this proposal to DOR as "up to" their estimate.

Officials from the **Attorney General's Office** assume that any potential costs arising from this proposal could be absorbed with existing resources.

Officials from the **Joint Committee on Administrative Rules** state this proposal is not anticipated to cause a fiscal impact to their agency beyond its current appropriation.

Officials from the **Department of Elementary and Secondary Education (DESE)** state there is no anticipated state cost to the foundation formula associated with this proposal. To the extent fine revenues exceed 2004-2005 collections, any increase in this money distributed to school districts increases the deduction in the foundation formula the following year. Therefore, the

ASSUMPTION (continued)

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.

In response to a previous version of the proposal, according to officials from the **Office of the Secretary of State (SOS)**, 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 fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

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.

Officials from the **Department of Transportation, Office of Prosecution Services, the Department of Natural Resources, the Administrative Hearing Commission, the Missouri Gaming Commission, the Office of the State Auditor, the Department of Agriculture, the Missouri Department of Conservation, the Department of Insurance, Financial Institutions and Professional Registration, the Department of Mental Health, the Department of Economic Development, the Missouri Ethics Commission, and the Department of Labor and Industrial Relations** each assume the proposal would not fiscally impact their respective agencies.

ASSUMPTION (continued)

In response to a previous version of this proposal, officials from the **Department of Corrections**, the **Department of Health and Senior Services**, and the **Department of Social Services** each assumed the proposal would not fiscally impact their respective agencies..

The effective date of the numerous changes to the criminal code is January 1, 2017. Therefore, **Oversight** will adjust the fiscal impact to the various state agencies to the appropriate fiscal year(s).

<u>FISCAL IMPACT - State Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
GENERAL REVENUE			
<u>Savings</u> - Department of Corrections			
Decrease incarceration/probation costs from changes within the proposal	\$0	\$0	\$0
(Note: Savings for the Department of Corrections would occur in years after those reflected in the fiscal note.)			
<u>Costs</u> - Department of Corrections			
Increase incarceration/probation costs from changes within the proposal	\$0	\$0	(Unknown)
<u>Costs</u> - Office of the State Courts Administrator - to update the JIS system	\$0	\$0	(Less than \$100,000)
<u>Costs</u> - Department of Revenue - to updates various systems	\$0	(Up to \$37,384)	(Up to \$60,258)
<u>Costs</u> - Office of the State Public Defender			
Personal Service (24 FTE)	\$0	\$0	(\$799,656)
Fringe Benefits	\$0	\$0	(\$407,865)
Expense and Equipment	<u>\$0</u>	<u>\$0</u>	<u>(\$195,412)</u>
<u>Total Costs</u> - SPD	<u>\$0</u>	<u>\$0</u>	<u>(\$1,402,933)</u>
FTE Change - SPD	0 FTE	0 FTE	22.5 FTE
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>\$0</u>	<u>(Up to \$37,384)</u>	<u>More than (\$1,463,191)</u>
Estimated Net FTE Change for the General Revenue Fund	0 FTE	0 FTE	22.5 FTE

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2015 (10 Mo.)	FY 2016	FY 2017
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HIGHWAY FUNDS

<u>Costs - Missouri Highway Patrol</u>			
Temporary Employee	\$0	\$0	(\$9,450)
Consultant Fees	\$0	\$0	(\$177,000)
Niche/FATPOT Modifications	\$0	\$0	(\$3,500)
MorphoTrack Modifications	\$0	\$0	(\$50,000)
Total Costs - MHP	\$0	\$0	(\$239,950)
 ESTIMATED NET EFFECT TO HIGHWAY FUNDS	 <u>\$0</u>	 <u>\$0</u>	 <u>(\$239,950)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This bill changes the laws regarding the criminal code.

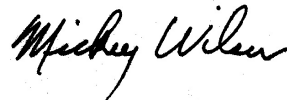
This proposal is effective January 1, 2017.

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

RAS:LR:OD

SOURCES OF INFORMATION

Office of the State Courts Administrator
Office of the State Public Defender
Attorney General's Office
Department of Social Services
Office of the State Auditor
Department of Economic Development
Department of Public Safety
Department of Labor and Industrial Relations
Department of Health and Senior Services
Administrative Hearing Commission
Department of Insurance, Financial Institutions and Professional Registration
Department of Mental Health
Joint Committee on Administrative Rules
Missouri Gaming Commission
Department of Elementary and Secondary Education
Department of Agriculture
Missouri Department of Conservation
Office of Prosecution Services
Department of Revenue
Department of Transportation
Office of the Secretary of State
Department of Natural Resources
Department of Corrections



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