

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0159-02
Bill No.: HCS for SB 200
Subject: Courts; Probation and Parole; Children and Minors; Crimes and Punishment;
Type: Original
Date: May 11, 2015

Bill Summary: This proposal modifies provisions related to judicial proceedings.

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|--|------------------------------|------------------------------|------------------------------|
| FUND AFFECTED | FY 2016 | FY 2017 | FY 2018 |
| General Revenue | (Less than \$519,340) | (Less than \$512,247) | (Less than \$306,745) |
| Total Estimated Net Effect on General Revenue | (Less than \$519,340) | (Less than \$512,247) | (Less than \$306,745) |

| ESTIMATED NET EFFECT ON OTHER STATE FUNDS | | | |
|---|------------|------------|------------|
| FUND AFFECTED | FY 2016 | FY 2017 | FY 2018 |
| | | | |
| | | | |
| Total Estimated Net Effect on <u>Other</u> State Funds | \$0 | \$0 | \$0 |

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 12 pages.

| ESTIMATED NET EFFECT ON FEDERAL FUNDS | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2016 | FY 2017 | FY 2018 |
| | | | |
| | | | |
| Total Estimated Net Effect on <u>All</u> Federal Funds | \$0 | \$0 | \$0 |

| ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE) | | | |
|---|-------------------|-------------------|-------------------|
| FUND AFFECTED | FY 2016 | FY 2017 | FY 2018 |
| General Revenue | 0 to 4 FTE | 0 to 4 FTE | 0 to 4 FTE |
| | | | |
| Total Estimated Net Effect on FTE | 0 to 4 FTE | 0 to 4 FTE | 0 to 4 FTE |

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

| ESTIMATED NET EFFECT ON LOCAL FUNDS | | | |
|--|----------------|----------------|----------------|
| FUND AFFECTED | FY 2016 | FY 2017 | FY 2018 |
| Local Government | \$0 | \$0 | \$0 |

FISCAL ANALYSIS

ASSUMPTION

§217.736

Officials at the **Department of Corrections (DOC)** assume this legislation proposes that offenders who were under 18 at the commission of the offense and who are serving an aggregate sentence of 40 years or more shall be eligible for release after serving 30 years. It is assumed that the bill will apply retroactively to offenders currently incarcerated in the Department of Corrections and will apply to all offenders serving sentences of forty years or more, including serving life sentences with and possibly without parole.

There are at present 285 offenders serving a sentence of forty years and who were under 18 at the commission of the offense. However, ninety-nine of the offenders are serving life without parole for Murder 1st degree or no parole for 50 years for Capital Murder. We would assume that they would have a hearing scheduled as long as they were not serving life without parole. There could be a potential conflict to have hearings on cases of life without parole as they are just that.

Therefore we assume 186 could be eligible for a parole hearing. Of the 186 offenders, 35 have served 30 years or more would be eligible for a parole hearing and possible release.

| Sentence | Incarcerated | Served 30 years+ | Served 30 years by FY2021 | Served 30 years by FY2025 |
|------------------|--------------|------------------|---------------------------|---------------------------|
| Life with parole | 137 | 19 | 7 | 18 |
| 40 years to life | 49 | 8 | 1 | 4 |
| Total | 186 | 27 | 8 | 22 |

The factors that the parole board is to consider before making a decision to release are difficult to quantify. The best estimate is, therefore, that 27 offenders could be eligible for a hearing in FY16. In the next five years another 8 offenders would be eligible and in the ten years of the budget horizon another 22 offenders would become eligible. The concern in making the estimate is that many of the offenders who have served 30 years or more and who are parole eligible have not been released because of the nature or circumstances of the offense.

The average time served of then young offenders who are parole eligible and have sentences of 40 years or more are released after serving an average of 24 years.

ASSUMPTION (continued)

This legislation would have an impact on the number of hearings but that is possibly minimal due to the small number of individuals eligible for a hearing. Any cost avoidance would come as a result of releasing individuals based upon the results of the hearing and would be offset somewhat by the costs of providing parole supervision.

In summary, the DOC believes the impact of this legislation would be minimal. There would be additional costs associated with holding additional hearings and placing individuals released on parole supervision. There could be cost avoidance from releasing the individuals from prison. However, the DOC is unable to project the outcome of the hearings and so the impact is "Unknown Savings".

§478.252

In response to similar legislation this year, Perfected HCS for HB 1044, officials at the **Office of the State Courts Administrator** assumed the proposed legislation establishes the Armed Offender Docket Pilot Project within the Jackson County Circuit Court to handle all matters regarding a person accused or convicted of first degree robbery or a firearms offense. The selected charges disposed by guilty outcome during FY14 for Jackson County are listed below:

- 125 - Armed Criminal Action
- 107 - Unlawful use of a weapon (Subsections 1-4)
 - 1 - Atmp-Unlawful use of a weapon (Subsections 1-4)
- 24 - Unlawful possession of a firearm
 - 3 - Unlawful possesses, transport, manufacture, repair/sale of illegal weapon
 - 2 - Possession of a defaced firearm
 - 2 - Discharge/shoot firearm at or from motor vehicle/shoot at person, motor vehicle, or building/habitable structure-persistent offender
 - 4 - Discharge/shoot firearm at or from motor vehicle, shoot at person, anthr motor vehicle or any building/habitable structure-physical injury/death

The selected charges disposed by guilty outcome during FY14 for Jackson County were 268. These are the total number of charges, not cases, as there may be more than one charge affiliated with a case. There may be some impact but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

ASSUMPTION (continued)

In response to similar legislation this year, Perfected HCS for HB 1044, officials at the **Department of Corrections** assumed no fiscal impact from this proposal. Based on an analysis, there were 87 cases placed under supervision and 25 sentenced to prison in FY14. There may be potential diversions from prison sentences as a result of legislation enacting a pilot Armed Offender Docket, which increases population for probation and parole. Specialty court assignments require a greater number of work hours from Probation and Parole Officers II staff than regular supervision, thus increasing the overall caseload.

Officials at the **Office of the Attorney General** assume that any potential costs arising from this proposal can be absorbed with existing resources.

Officials at the **Office of Prosecution Services** assume no fiscal impact from this proposal.

In response to similar legislation this year, Perfected HCS for HB 1044, officials at the **Office of the State Public Defender** and the **Department of Higher Education** each assumed no fiscal impact to their respective agencies from this proposal.

In response to similar legislation this year, Perfected HCS for HB 1044, officials at the **Missouri State University**, the **Metropolitan Community College**, the **Missouri Western College**, the **University of Missouri**, and the **University of Central Missouri** each assumed no fiscal impact to their respective entities from this proposal.

Officials at Jackson County did not respond to **Oversight's** request for fiscal impact.

§§558.046, 558.047

In response to similar legislation this year, SB 280, officials at the **Office of the State Public Defender (MSPD)** assume there are 84 juveniles currently serving life without parole. This legislation appears to give them an automatic right to a new sentencing hearing upon request if their case isn't final for purposes of appeal. MSPD estimates 5 of the 84 cases would be eligible under this proposed legislation. MSPD would incur a minimum of \$15,000 times 5 cases for litigation costs. Plus MSPD would have to contract out these 5 cases to private attorneys for the sentencing phase at a cost of approximately \$5,000 per case.

ASSUMPTION (continued)

The 84 will be new cases requiring expert witnesses to appear during the sentencing hearing at an estimated cost of \$2,000 per case. Since this is a temporary increase in caseload, MSPD would contract the 84 cases to private counsel. Each case would cost approximately \$3,000 for the sentencing phase only. MSPD has split this one-time cost over the next two fiscal years, as it is uncertain as to when the 84 inmates will file the required petition for a new hearing.

In summary, the MSPD assumes a cost of \$420,000 (84 cases * \$2,000 for expert witnesses = \$168,000) plus (84 cases * \$3,000 for private counsel for sentencing phase = \$252,000). The total cost (\$168,000 + \$252,000 = \$420,000) would be split over two years.

In response to similar legislation this year, SB 280, officials at the **Department of Corrections (DOC)** assume prison admissions could be reduced per year from this proposal. Offenders that are released from incarceration due to this legislation will be placed under supervision of the department until their sentence obligations have been met. The FY14 average cost of supervision is \$6.72 per offender per day or an annual cost of \$2,453 per offender. The DOC cost of incarceration is \$16.725 per day or an annual cost of \$6,105 per offender. The DOC assumes this legislation could result in long term cost avoidance. Potential cost avoidance as indicated in the following chart will vary according to the population.

This bill modifies the sentencing provisions for offenders who are sentenced for First Degree Murder when the offender was under the age of 18 at the time of the commission of the offense.

At present there are a total of 72 offenders serving time for First Degree Murder at the Department of Corrections with a known offense date, who were under the age of 18 at the time of that offense. Of these, 1 was age 14 at the time of the offense, 10 were age 15, and the remaining 61 were aged 16 or 17. Note that for most offenders, birthdates are not verified, so there may be some discrepancies between what is in our system and the actual ages of the offenders.

There are an additional 21 individuals who were minors at the time of sentencing or the start of their sentences, however, exact ages cannot be determined for these individuals. Further, the average time to the start of a sentence from the date of an offense is 117 days; there are a total of 4 individuals who have no known offense date, but were sentenced within 117 days of their 18th birthday. Finally, there are a total of 7 offenders who committed capital murder as minors who are currently serving time. While this statute does not apply to these offenders, it is possible that they would also be released by the Governor in the interest of fairness. Thus, there are 104 individuals who are currently serving time with DOC who may be eligible to be resentenced.

ASSUMPTION (continued)

It is not possible to determine if any of the offenders currently serving life without parole would be resentenced to terms of less than 30 years. Due to the seriousness of this offense, it is assumed that all offenders would be resentenced to a life term, but with the possibility of parole. As per 558.019, a life sentence is calculated as 30 years for the purposes of parole eligibility, making these offenders eligible for parole once they have served a total of 25.5 years. It is assumed that these offenders will be paroled at that point, as this is generally the case for dangerous felons.

Therefore, the DOC is expected to have some savings from the passage of this bill, as juvenile offenders experience reduced sentences and become eligible for parole.

Oversight assumes from this proposal that the process for juveniles who have been sentenced for first degree murder to petition for a review of their sentence would result in a cost avoidance/savings to the DOC, however, we are unable to determine the exact amount at this time. Therefore, Oversight will reflect an unknown savings.

Officials at the **Office of the Attorney General** assume that any potential costs arising from this proposal can be absorbed with existing resources.

Officials at the **Office of Prosecution Services** and the **Department of Social Services** each assume no fiscal impact to their respective agencies from this proposal.

In response to similar legislation this year, SB 280, officials at the **Office of the State Courts Administrator** and the **Department of Mental Health** each assumed no fiscal impact to their respective agencies from this proposal.

§§556.061, 565.020, 565.030, 565.032, 565.033, 565.040

In response to a previous version, officials at the **Office of the State Public Defender (MSPD)** assumed there are 84 juveniles currently serving life without parole. This legislation appears to give them an automatic right to a new sentencing hearing upon request if their case isn't final for purposes of appeal. MSPD estimates 5 of the 84 cases would be eligible under this proposed legislation. MSPD would incur a minimum of \$15,000 times 5 cases for litigation costs. Plus MSPD would have to contract out these 5 cases to private attorneys for the sentencing phase at a cost of approximately \$5,000 per case.

ASSUMPTION (continued)

The 84 will be new cases requiring expert witnesses to appear during the sentencing hearing at an estimated cost of \$2,000 per case. Since this is a temporary increase in caseload, MSPD would contract the 84 cases to private counsel. Each case would cost approximately \$3,000 for the sentencing phase only. MSPD has split this one-time cost over the next two fiscal years, as it is uncertain as to when the 84 inmates will file the required petition for a new hearing.

Assuming the MSPD provides representation in just 5 juvenile Murder 1st cases per year. The RubinBrown weight we used in our Budget Request was 85.9 for non-capital homicide, without taking into account travel or court time. Assuming an attorney can provide representation in just 3 of these types of cases per year, that is 693.3 hours (2080 / 3), which is 1.5 attorneys (3,035.5 / 2,080). At 3 cases per year, it would require an additional 1.5 attorneys. Plus, these estimated 5 new cases would also require at least \$15,000 of litigation costs.

In summary, the MSPD assumes a cost of \$420,000 (84 cases * \$2,000 for expert witnesses = \$168,000) plus (84 cases * \$3,000 for private counsel for sentencing phase = \$252,000). The total cost (\$168,000 + \$252,000 = \$420,000) would be split over two years.

Oversight will assume a range of costs for this proposal. The following is a list of costs for the period of this fiscal note:

FY 2016 costs will be (\$409,340 to \$519,340)
FY 2017 costs will be (\$302,247 to \$512,247)
FY 2018 costs will be (\$0 to \$306,745)

Oversight will also assume a range in FTEs between 0 to 4 FTEs per year for this fiscal note period.

Officials at the **Office of the Attorney General** assume that any potential costs arising from this proposal can be absorbed with existing resources.

Officials at the **Department of Social Services** and the **Office of Prosecution Services** each assume no fiscal impact to their respective agencies from this proposal.

In response to a previous version, officials at the **Department of Mental Health**, the **Department of Corrections** and the **Office of the State Courts Administrator** each assumed no fiscal impact to their respective agencies from this proposal.

ASSUMPTION (continued)

Bill as a whole

Officials at the **Office of the Attorney General** assume that any potential costs arising from this proposal can be absorbed with existing resources.

Officials at the **Office of Prosecution Services** and **Department of Social Services** each assume no fiscal impact to their respective agencies from this proposal.

| <u>FISCAL IMPACT - State Government</u> | FY 2016 (10 Mo.) | FY 2017 | FY 2018 |
|--|-------------------------------------|-------------------------------------|-------------------------------------|
| GENERAL REVENUE | | | |
| <u>Costs - Office of the State Public Defender</u> | | | |
| Personal Service | (\$132,828) | (\$134,156) | (\$135,498) |
| Fringe Benefits | (\$69,077) | (\$69,768) | (\$70,466) |
| Equipment and Expense of 4 FTEs | (\$32,435) | (\$21,448) | (\$21,984) |
| One Time Litigation Costs | (\$75,000 to \$84,000) | (\$0 to \$84,000) | \$0 |
| One Time Contract Counsel Costs | (\$25,000 to \$126,000) | (\$0 to \$126,000) | \$0 |
| On Going Litigation Costs | <u>(\$75,000)</u> | <u>(\$76,875)</u> | <u>(\$78,797)</u> |
| Total Costs - MSPD | (\$409,340 to <u>\$519,340</u>) | (\$302,247 to <u>\$512,247</u>) | (\$0 to <u>\$306,745</u>) |
| FTE Change - MSPD | 0 to 4 FTE | 0 to 4 FTE | 0 to 4 FTE |
| <u>Savings - DOC - on offenders released early by a youth offender parole hearing (\$217.736)</u> | Unknown | Unknown | Unknown |
| <u>Savings - DOC - cost avoidance resulting from a reduction in prison admissions (§§558.046, 558.047)</u> | Unknown | Unknown | Unknown |
| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | (Less than <u>\$519,340</u>) | (Less than <u>\$512,247</u>) | (Less than <u>\$306,745</u>) |
| Estimated Net FTE Change for the General Revenue Fund | 0 to 4 FTE | 0 to 4 FTE | 0 to 4 FTE |
| <u>FISCAL IMPACT - Local Government</u> | FY 2016 (10 Mo.) | FY 2017 | FY 2018 |
| | <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

§§556.061, 565.020, 565.030, 565.032, 565.033, 565.040

Under current law, offenders who were under the age of 18 at the time they committed first degree murder must be sentenced to life imprisonment without eligibility for probation, parole, or conditional release. In June of 2013, the U.S. Supreme Court in *Miller v. Alabama* held that mandatory life sentences without parole for juvenile criminal offenders are unconstitutional. As a result, there is no punishment for first degree murder under current law in Missouri that is enforceable against those who committed murder before they turned 18.

This act repeals the mandatory life sentence found to be unconstitutional in *Miller v. Alabama*. Under this act, a person who was 16 or 17 years old at the time of the crime may be sentenced to either imprisonment for at least 50 years or life imprisonment without parole. A person who was under the age of 16 may be sentenced to imprisonment for at least 35 years or life without parole.

Any person who was sentenced to life imprisonment without parole for a crime committed before the person turned 18 whose case is not final for purposes of appeal may, within six months of the effective date of the act, file a motion with the sentencing court for a review of the person's sentence. This act specifies that the new procedures for juvenile first degree murderers do not apply to cases that are final for purposes of appeal. The offense of murder in the first degree was added to the definition of "dangerous felony".

This act repeals obsolete provisions stating that certain trials are to proceed in a single stage. Other technical changes were made in this act to make the provisions align with amendments to the criminal code in SB 491 (2014). This act contains an emergency clause for the provisions regarding the penalty for first degree murder.

FISCAL DESCRIPTION (continued)

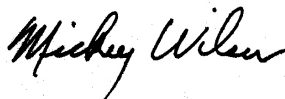
§§558.046, 558.047

This act provides a process for juveniles who have been sentenced for first degree murder to petition for a review of their sentences. This act states that the provisions allowing for such review have retroactive application. This act provides the requirements for the petition to be accepted by a sentencing court and allows the prosecutor 30 days to reply. Unless the petition has been returned to the person for failing to provide all the required information, the court must hold a hearing to determine if the person is currently serving a mandatory sentence of life without parole for an offense committed while the person was under the age of 18. If the court determines the person is eligible for resentencing, the court must set the matter for resentencing the defendant in the same manner as if the defendant had never been sentenced. Family members of victims have the right to participate in the hearing. The provisions of this act contain an emergency clause.

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 the Attorney General
Department of Corrections
Office of the State Courts Administrator
Office of Prosecution Services
Department of Mental Health
Department of Social Services
Office of the State Public Defender
Missouri State University
Metropolitan Community College
Missouri Western College
University of Missouri
University of Central Missouri



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