

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 5278-03  
Bill No.: SS for SCS for HB 1558 with SA 1  
Subject: Crimes and Punishment; Sexual Offenses  
Type: Original  
Date: May 9, 2018

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Bill Summary: This proposal creates offenses regarding nonconsensual dissemination of private sexual images.

**FISCAL SUMMARY**

| <b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>  |                   |                   |                   |
|--|-------------------|-------------------|-------------------|
| FUND AFFECTED  | FY 2019           | FY 2020           | FY 2021           |
| General Revenue                                      | (\$20,687)        | (\$50,641)        | (\$71,024)        |
| <b>Total Estimated Net Effect on General Revenue</b> | <b>(\$20,687)</b> | <b>(\$50,641)</b> | <b>(\$71,024)</b> |

| <b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>              |            |            |            |
|---|------------|------------|------------|
| FUND AFFECTED   | FY 2019    | FY 2020    | FY 2021    |
|   |            |            |            |
|   |            |            |            |
| <b>Total Estimated Net Effect on <u>Other</u> State Funds</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 8 pages.

| <b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>                  |                |                |                |
|---|----------------|----------------|----------------|
| <b>FUND AFFECTED</b>  | <b>FY 2019</b> | <b>FY 2020</b> | <b>FY 2021</b> |
|   |                |                |                |
|   |                |                |                |
| <b>Total Estimated Net Effect on <u>All</u> Federal Funds</b> | <b>\$0</b>     | <b>\$0</b>     | <b>\$0</b>     |

| <b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b> |                |                |                |
|---|----------------|----------------|----------------|
| <b>FUND AFFECTED</b>                                      | <b>FY 2019</b> | <b>FY 2020</b> | <b>FY 2021</b> |
|   |                |                |                |
|   |                |                |                |
| <b>Total Estimated Net Effect on FTE</b>                  | <b>0</b>       | <b>0</b>       | <b>0</b>       |

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

| <b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b> |                |                |                |
|--|----------------|----------------|----------------|
| <b>FUND AFFECTED</b>                       | <b>FY 2019</b> | <b>FY 2020</b> | <b>FY 2021</b> |
| <b>Local Government</b>                    | <b>\$0</b>     | <b>\$0</b>     | <b>\$0</b>     |

**FISCAL ANALYSIS**

**ASSUMPTION**

**Oversight** was unable to receive some of the agency responses in a timely manner due to the short fiscal note request time. Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

In response to a previous version of the proposal, officials from the **Department of Public Safety - Missouri Highway Patrol** assumed the proposal would not fiscally impact their agency.

In response to a previous version of the proposal, officials from the **Department of Corrections (DOC)** stated this legislation creates a new section to RSMo 573. No similar charge has previously existed, the expected outcome is difficult to assess. We estimate using an algorithm that calculates projections for similar conditions in the past and the standard response for a new class D nonviolent felony is as follows:

**Nonviolent Class D**

|                               | FY2019     | FY2020      | FY2021      | FY2022      | FY2023      | FY2024      | FY2025      | FY2026      | FY2027      | FY2028      |
|-------------------------------|------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>New</b>                    |            |             |             |             |             |             |             |             |             |             |
| Admissions                    | 3.0        | 3.0         | 3.0         | 3.0         | 3.0         | 3.0         | 3.0         | 3.0         | 3.0         | 3.0         |
| Probations                    | 5.0        | 5.0         | 5.0         | 5.0         | 5.0         | 5.0         | 5.0         | 5.0         | 5.0         | 5.0         |
| <b>Cumulative Populations</b> |            |             |             |             |             |             |             |             |             |             |
| Prison                        | 3.0        | 6.0         | 9.0         | 9.0         | 9.0         | 9.0         | 9.0         | 9.0         | 9.0         | 9.0         |
| Parole                        | 0.0        | 0.0         | 0.0         | 3.0         | 6.0         | 6.0         | 6.0         | 6.0         | 6.0         | 6.0         |
| Probation                     | 5.0        | 10.0        | 15.0        | 15.0        | 15.0        | 15.0        | 15.0        | 15.0        | 15.0        | 15.0        |
| <b>Impact</b>                 |            |             |             |             |             |             |             |             |             |             |
| Prison Population             | 3.0        | 6.0         | 9.0         | 9.0         | 9.0         | 9.0         | 9.0         | 9.0         | 9.0         | 9.0         |
| Field Population              | 5.0        | 10.0        | 15.0        | 18.0        | 21.0        | 21.0        | 21.0        | 21.0        | 21.0        | 21.0        |
| <b>Population Change</b>      | <b>8.0</b> | <b>16.0</b> | <b>24.0</b> | <b>27.0</b> | <b>30.0</b> | <b>30.0</b> | <b>30.0</b> | <b>30.0</b> | <b>30.0</b> | <b>30.0</b> |

The proposed offense is classified as nonviolent, but if the sexual images were of children, the department could consider this a sex and child abuse offense, as the offense of child pornography is also in chapter 573. Sex and child abuse offenses have a longer prison time served and may require the completion of the Missouri Sex Offender Program.

For individuals charged with a nonviolent D Felony, the average sentence is 5 years with 3 years incarceration (including parole violators) and 2 years on parole. For probationers the average term is 3 years, as the offense is expected to be eligible for earned compliance discharge credits.

ASSUMPTION (continued)

We expect an increase in population of 8 in the first year, with 3 going to prison and 5 to probation. There are not enough increases expected to the probation population to warrant a new caseload requiring additional probation and parole officers.

This bill also adds the additional offense of threatening to disseminate private sexual images. Since this is also a new charge and there is little data to review, the standard response for a new class E felony is as follows:

|                               | FY2019   | FY2020   | FY2021   | FY2022   | FY2023   | FY2024   | FY2025   | FY2026   | FY2027   | FY2028   |
|-------------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| <b>New</b>                    |          |          |          |          |          |          |          |          |          |          |
| Admissions                    | 1        | 1        | 1        | 1        | 1        | 1        | 1        | 1        | 1        | 1        |
| Probations                    | 7        | 7        | 7        | 7        | 7        | 7        | 7        | 7        | 7        | 7        |
| <b>Cumulative Populations</b> |          |          |          |          |          |          |          |          |          |          |
| Prison                        | 1        | 2        | 2        | 2        | 2        | 2        | 2        | 2        | 2        | 2        |
| Releases to Supervision       | 0        | 0        | 1        | 1        | 1        | 1        | 1        | 1        | 1        | 1        |
| Probation                     | 2        | 7        | 6        | 6        | 5        | 5        | 5        | 5        | 5        | 6        |
| <b>Impact</b>                 |          |          |          |          |          |          |          |          |          |          |
| Prison Population             | 1        | 2        | 2        | 2        | 2        | 2        | 2        | 2        | 2        | 2        |
| Field Population              | 2        | 4        | 7        | 7        | 7        | 7        | 7        | 7        | 7        | 7        |
| <b>Population Change</b>      | <b>3</b> | <b>6</b> | <b>9</b> | <b>9</b> | <b>9</b> | <b>9</b> | <b>9</b> | <b>9</b> | <b>9</b> | <b>9</b> |
| <b>P&amp;P Officers +/-</b>   | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |

The average sentence for a new class E felony is 3.4 years. In the first year, we expect an increase of 1 to the institutional population and an increase of 2 to the field population. This is not significant enough to require an additional probation and parole officer.

The combined impact of these two offenses is as follows:

|                               | FY2019    | FY2020    | FY2021    | FY2022    | FY2023    | FY 2024   | FY2025    | FY2026    | FY2027    | FY2028    |
|-------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| <b>New</b>                    |           |           |           |           |           |           |           |           |           |           |
| Admissions                    | 4         | 4         | 4         | 4         | 4         | 4         | 4         | 4         | 4         | 4         |
| Probations                    | 7         | 7         | 7         | 7         | 7         | 7         | 7         | 7         | 7         | 7         |
| <b>Cumulative Populations</b> |           |           |           |           |           |           |           |           |           |           |
| Prison                        | 4         | 8         | 11        | 11        | 11        | 11        | 11        | 11        | 11        | 11        |
| Parole                        |           |           | 1         | 4         | 7         | 7         | 7         | 7         | 7         | 7         |
| Probation                     | 7         | 14        | 21        | 21        | 21        | 21        | 21        | 21        | 21        | 21        |
| <b>Impact</b>                 |           |           |           |           |           |           |           |           |           |           |
| Prison Population             | 4         | 8         | 11        | 11        | 11        | 11        | 11        | 11        | 11        | 11        |
| Field Population              | 7         | 14        | 22        | 25        | 28        | 28        | 28        | 28        | 28        | 28        |
| <b>Population Change</b>      | <b>11</b> | <b>32</b> | <b>33</b> | <b>33</b> | <b>39</b> | <b>39</b> | <b>39</b> | <b>39</b> | <b>39</b> | <b>39</b> |

ASSUMPTION (continued)

The average sentence is still 3.4 years. We expect the incarcerated population to increase by 4 the first year, and by 8 the second year. The largest influence at four years still does not reach the need for a new probation and parole officer.

If this impact statement has changed from statements submitted in previous years, it is because the Department of Corrections (DOC) has changed the way probation and parole daily costs are calculated to more accurately reflect the way the Division of Probation and Parole is staffed across the entire state.

In December 2017, the DOC reevaluated the calculation used for computing the Probation and Parole average daily cost of supervision and revised the cost calculation to be used for 2018 fiscal notes. The new calculation estimates the increase/decrease in caseloads at each Probation and Parole district due to the proposed legislative change. For the purposes of fiscal note calculations, the DOC averaged district caseloads across the state and came up with an average caseload of 51 offender cases per officer. The new calculation assumes that an increase/decrease of 51 cases in a district would result in a change in costs/cost avoidance equal to the cost of one FTE staff person in the district. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

In instances where the proposed legislation would only affect a specific caseload, such as sex offenders, the DOC will use the average caseload figure for that specific type of offender to calculate cost increases/decreases.

The DOC cost of incarceration is \$17.003 per day or an annual cost of \$6,206 per offender. The DOC cost of probation or parole is determined by the number of P&P Officer II positions that would be needed to cover the new caseload.

ASSUMPTION (continued)

The DOC would assume this legislation will result in long term cost as indicated in the chart.

|        | # to<br>prison | Cost per<br>year | Total Costs<br>for <b>prison</b> | # to<br>probation<br>& parole | Cost per<br>year | Total cost<br>for<br><b>probation<br/>and parole</b> | Grand Total -<br>Prison and<br>Probation<br>(includes and<br>2% inflation) |
|--------|----------------|------------------|----------------------------------|-------------------------------|------------------|--|--|
| Year 1 | 4              | (\$6,206)        | (\$20,687)                       | 7                             | absorbed         | \$0  | (\$20,687)   |
| Year 2 | 8              | (\$6,206)        | (\$50,641)                       | 14                            | absorbed         | \$0  | (\$50,641)   |
| Year 3 | 11             | (\$6,206)        | (\$71,024)                       | 22                            | absorbed         | \$0  | (\$71,024)   |
| Year 4 | 11             | (\$6,206)        | (\$72,444)                       | 25                            | absorbed         | \$0  | (\$72,444)   |
| Year 5 | 11             | (\$6,206)        | (\$73,893)                       | 28                            | absorbed         | \$0  | (\$73,893)   |

In response to a previous version, officials from the **Office of State Public Defender (SPD)** could not assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the proposed new crime of nonconsensual dissemination of private sexual images, a new class D felony; or threatening non consensual dissemination of private sexual images, a new Class E felony.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

**Oversight** assumes the SPD can absorb the additional caseload that may result from this proposal.

In response to a previous version, officials from the **Office of Prosecution Services (OPS)** assume the proposal would not have a measurable fiscal impact on their agency. The creation of a new crime creates additional responsibilities for county prosecutors which may, in turn, result in additional costs which are difficult to determine.

Officials from the **Office of the State Courts Administrator** state there may be some impact, but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

| <u>FISCAL IMPACT - State Government</u>   | FY 2019                  | FY 2020                  | FY 2021                  |
|---|--------------------------|--------------------------|--------------------------|
| <b>GENERAL REVENUE</b>  |                          |                          |                          |
| <u>Costs</u> - DOC - increased incarceration costs for nonconsensual dissemination of private sexual images and/or threatening the nonconsensual dissemination of private sexual images | <u>(\$20,687)</u>        | <u>(\$50,641)</u>        | <u>(\$71,024)</u>        |
| <b>ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND</b>   | <b><u>(\$20,687)</u></b> | <b><u>(\$50,641)</u></b> | <b><u>(\$71,024)</u></b> |

| <u>FISCAL IMPACT - Local Government</u> | FY 2019    | FY 2020    | FY 2021    |
|---|------------|------------|------------|
|   | <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 creates the offense of nonconsensual dissemination of private sexual images, which is a class D felony. A person commits such offense when he or she: intentionally disseminates an image of another person fitting criteria specified in the bill; obtains the image under circumstances in which a reasonable person would know or understand that the image was to remain private; and knows or should have known that the person in the image has not consented to the dissemination. The bill specifies certain exceptions to the offense.

The bill also creates the offense of threatening the nonconsensual dissemination of private sexual images, a new class E felony.

This proposal contains 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.

L.R. No. 5278-03  
Bill No. SS for SCS for HB 1558 with SA 1  
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SOURCES OF INFORMATION

Department of Public Safety - Missouri Highway Patrol  
Office of Prosecution Services  
Office of the State Public Defender  
Department of Corrections  
Office of the State Courts Administrator

Ross Strope

A handwritten signature in black ink, appearing to read "Ross Strope", with a stylized flourish at the end.

Acting Director  
May 9, 2018