

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3386S.06P
 Bill No.: Perfected SS for SCS for SB Nos. 775, 751 & 640
 Subject: Children and Minors: Crimes and Punishment; Criminal Procedure; Courts;
 Education, Elementary and Secondary; Evidence; Sexual Offenses; Victims of
 Crime
 Type: Original
 Date: March 23, 2022

Bill Summary: This proposal modifies provisions relating to sexual offenses.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2023	FY 2024	FY 2025	Fully Implemented (FY 2027)
General Revenue	Less than (\$55,033)	Less than (\$134,722)	Less than (\$180,359)	Less than (\$259,542)
Total Estimated Net Effect on General Revenue	Less than (\$55,033)	Less than (\$134,722)	Less than (\$180,359)	Less than (\$259,542)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2023	FY 2024	FY 2025	Fully Implemented (FY 2027)
Total Estimated Net Effect on <u>Other State</u> Funds	\$0	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2023	FY 2024	FY 2025	Fully Implemented (FY 2027)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2023	FY 2024	FY 2025	Fully Implemented (FY 2027)
General Revenue	0 FTE	0 FTE	0 FTE	1 FTE
Total Estimated Net Effect on FTE	0 FTE	0 FTE	0 FTE	1 FTE

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS				
FUND AFFECTED	FY 2023	FY 2024	FY 2025	Fully Implemented (FY 2027)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§566.149, 566.150 & 566.155 – Sexual Offenders

Officials from the **Department of Corrections (DOC)** state this proposal modifies provisions relating to sexual offenses.

The first violation of the provisions of sections 566.150 and 566.155 is a class E felony and a second or subsequent violation of these sections is a class D felony. Thus, the bill essentially creates a new class E non-violent felony and a new non-violent class D felony for any person previously convicted under section 573.037.

For two new nonviolent class E felonies, the DOC estimates 2 people will be sentenced to prison and 4 to probation. The average sentence for a nonviolent class E felony offense is 3.4 years, of which 2.1 years will be served in prison with 1.4 years to first release. The remaining 1.3 years will be on parole. Probation sentences will be 3 years.

The cumulative impact on the department is estimated to be 4 additional offenders in prison and 15 additional offenders on field supervision by FY 2026.

Change in prison admissions and probation openings with legislation-Class E Felony (nonviolent)

	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031
New Admissions									
Current Law	0	0	0	0	0	0	0	0	0
After Legislation	2	2	2	2	2	2	2	2	2
Probation									
Current Law	0	0	0	0	0	0	0	0	0
After Legislation	4	4	4	4	4	4	4	4	4
Change (After Legislation - Current Law)									
Admissions	2	2	2	2	2	2	2	2	2
Probations	4	4	4	4	4	4	4	4	4
Cumulative Populations									
Prison	2	4	4	4	4	4	4	4	4
Parole			2	3	3	3	3	3	3
Probation	4	8	12	12	12	12	12	12	12
Impact									
Prison Population	2	4	4	4	4	4	4	4	4
Field Population	4	8	14	15	15	15	15	15	15
Population Change	6	12	18	19	19	19	19	19	19

For two new nonviolent class D felonies, the DOC estimates 6 people will be sentenced to prison and 10 to probation. The average sentence for a nonviolent class D felony offense is 5 years, of which 2.8 years will be served in prison with 1.7 years to first release. The remaining 2.2 years will be on parole. Probation sentences will be 3 years.

The cumulative impact on the DOC is estimated to be 17 additional offenders in prison and 43 additional offenders on field supervision by FY 2027.

Change in prison admissions and probation openings with legislation-Class D Felony (nonviolent)

	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031
New Admissions									
Current Law	0	0	0	0	0	0	0	0	0
After Legislation	6	6	6	6	6	6	6	6	6
Probation									
Current Law	0	0	0	0	0	0	0	0	0
After Legislation	10	10	10	10	10	10	10	10	10
Change (After Legislation - Current Law)									
Admissions	6	6	6	6	6	6	6	6	6
Probations	10	10	10	10	10	10	10	10	10
Cumulative Populations									
Prison	6	12	17	17	17	17	17	17	17
Parole			1	7	13	13	13	13	13
Probation	10	20	30	30	30	30	30	30	30
Impact									
Prison Population	6	12	17	17	17	17	17	17	17
Field Population	10	20	31	37	43	43	43	43	43
Population Change	16	32	48	54	60	60	60	60	60

Combined Cumulative Impact

The combined cumulative impact is 21 new prison admissions and 58 new offenders in the field by FY2027.

Change in prison admissions and probation openings with legislation

	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031
New Admissions									
Current Law	0	0	0	0	0	0	0	0	0
After Legislation	8	8	8	8	8	8	8	8	8
Probation									
Current Law	0	0	0	0	0	0	0	0	0
After Legislation	14	14	14	14	14	14	14	14	14
Change (After Legislation - Current Law)									
Admissions	8	8	8	8	8	8	8	8	8
Probations	14	14	14	14	14	14	14	14	14
Cumulative Populations									
Prison	8	16	21	21	21	21	21	21	21
Parole	0	0	3	10	16	16	16	16	16
Probation	14	28	42	42	42	42	42	42	42
Impact									
Prison Population	8	16	21	21	21	21	21	21	21
Field Population	14	28	45	52	58	58	58	58	58
Population Change	22	44	66	73	79	79	79	79	79

If this impact statement has changed from statements submitted in previous years, it could be due to an increase/decrease in the number of offenders, a change in the cost per day for institutional offenders, and/or an increase in staff salaries.

If the projected impact of legislation is less than 1,500 offenders added to or subtracted from the department’s institutional caseload, the marginal cost of incarceration will be utilized. This cost of incarceration is \$22.616 per day or an annual cost of \$8,255 per offender and includes such costs as medical, food, and operational E&E. However, if the projected impact of legislation is 1,500 or more offenders added or removed to the department’s institutional caseload, the full cost of incarceration will be used, which includes fixed costs. This cost is \$88.12 per day or an annual cost of \$32,162 per offender and includes personal services, all institutional E&E, medical and mental health, fringe, and miscellaneous expenses. None of these costs include construction to increase institutional capacity.

DOC’s cost of probation or parole is determined by the number of P&P Officer II positions that are needed to cover its caseload. The DOC average district caseload across the state is 51 offender cases per officer. An increase/decrease of 51 cases would result in a cost/cost avoidance equal to the salary, fringe, and equipment and expenses of one P&P Officer II. Increases/decreases smaller than 51 offender cases 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.

	# to prison	Cost per year	Total Costs for prison	# to probation & parole	Change in P&P Officers	Total cost for probation and parole	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	8	(\$8,255)	(\$55,033)	14	0	\$0	(\$55,033)
Year 2	16	(\$8,255)	(\$134,722)	28	0	\$0	(\$134,722)
Year 3	21	(\$8,255)	(\$180,359)	45	0	\$0	(\$180,359)
Year 4	21	(\$8,255)	(\$183,966)	52	1	(\$79,810)	(\$263,776)
Year 5	21	(\$8,255)	(\$187,645)	58	1	(\$71,897)	(\$259,543)
Year 6	21	(\$8,255)	(\$191,398)	58	1	(\$72,673)	(\$264,071)
Year 7	21	(\$8,255)	(\$195,226)	58	1	(\$73,460)	(\$268,686)
Year 8	21	(\$8,255)	(\$199,130)	58	1	(\$74,255)	(\$273,385)
Year 9	21	(\$8,255)	(\$203,113)	58	1	(\$75,060)	(\$278,173)
Year 10	21	(\$8,255)	(\$207,175)	58	1	(\$75,873)	(\$283,048)

Oversight notes during the past two fiscal years, 57 people have been found guilty under §566.150:

	Felony guilty dispositions
FY 2021	29
FY 2020	28
Total	57

Of the 29 individuals convicted in FY 2021, three were charged with a D felony, and 26 were charged with an E felony. In FY 2020, all 28 individuals were convicted with an E felony.

Oversight notes this proposal adds offenders who have been convicted of possession of child pornography under §573.037 to the statute. Therefore, Oversight will assume DOC's estimated number of additional prisoners may be too high and will assume less than the estimate provided by DOC.

Oversight also inquired the **Department of Public Safety's Office of the Director (DPS-DO)** regarding the forensic exams in §595.201.2(2) of this proposal and DPS-DO responded as follows:

In SFY21, the DPS SAFE program paid providers 2,961 claims in the amount of \$1,733,429.07

Regardless of any omissions to [RSMo 595.201.2\(2\)](#), DPS SAFE is required to comply with [RSMo 595.220](#) and pay appropriate medical providers.

In response to similar legislation from this year, SB 751, officials from the **Missouri Department of Conservation** assumed the proposal will have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this agency.

Bill as a Whole

Officials from the **Department of Elementary and Secondary Education**, the **Department of Health and Senior Services**, the **Department of Commerce and Insurance**, the **Department of Public Safety's Office of the Director**, the **Missouri Highway Patrol**, the **Department of Social Services**, the **Missouri Office of Prosecution Services**, the **Office of the State Public Defender**, the **Phelps County Sheriff's Department**, the **Kansas City Police Department** and the **St. Louis County Police Department** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

In response to a previous version, officials from the **Office of the State Courts Administrator**, the **Attorney General's Office**, the **St. Joseph Police Department** and the **Hermann Area Hospital District** each assumed the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other hospitals and police and sheriff's departments were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System (MOLIS) database is available upon request.

Senate Amendment #2

In response to similar legislation from this year, SB 1224, officials from the **Office of the State Public Defender (SPD)** stated the proposed legislation creates an offense under Section 573.550 of providing obscene material to a student and therefore, could increase the number of persons who are eligible for representation by State Public Defender (SPD). The fiscal impact of this legislation on SPD is unknown as the number of additional cases eligible for representation as the result of the legislation is unknown, but it is anticipated that any increase would be less than \$250,000.

Oversight notes in FY22 the SPD was appropriated moneys for 53 additional FTE. Oversight assumes this proposal will create a minimal number of new cases and that the SPD can absorb the additional caseload required by this proposal with current staff and resources. Therefore, Oversight will reflect no fiscal impact to the SPD for fiscal note purposes. However, if multiple bills pass which require additional staffing and duties, the SPD may request funding through the appropriation process.

Officials from the **Department of Corrections**, the **Department of Commerce and Insurance**, the **Department of Health and Senior Services**, the **Department of Public Safety's Office of the Director**, the **Department of Social Services**, the **Kansas City Police Department** and the **St. Joseph Police Department** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

In response to similar legislation from this year, SB 1224, officials from the **Missouri Highway Patrol** and the **Missouri Office of Prosecution Services** each assumed the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

<u>FISCAL IMPACT</u> – State Government	FY 2023 (10 Mo.)	FY 2024	FY 2025	Fully Implemented (FY 2027)
GENERAL REVENUE FUND				
<u>Cost – DOC p 5</u> (§§566.149, 566.150 & 566.155) Increased incarceration costs	Less than (\$55,033)	Less than (\$134,722)	Less than (\$180,359)	Less than (\$187,645)
<u>Cost – DOC</u>				
Personal Service	\$0	\$0	\$0	(\$40,326)
Fringe Benefits	\$0	\$0	\$0	(\$27,741)
Equipment & Expense	\$0	\$0	\$0	(\$3,830)
Total Cost – DOC	\$0	\$0	\$0	(\$71,897)
FTE Change	0 FTE	0 FTE	0 FTE	1 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>Less than</u> <u>(\$55,033)</u>	<u>Less than</u> <u>(\$134,722)</u>	<u>Less than</u> <u>(\$180,359)</u>	<u>Less than</u> <u>(\$259,542)</u>
Estimated Net FTE Change for General Revenue Fund	0 FTE	0 FTE	0 FTE	1 FTE

<u>FISCAL IMPACT</u> <u>- Local</u> <u>Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025	Fully Implemented (FY 2027)
	<u>\$0</u>	<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 act modifies provisions relating to sexual offenses.

WITNESSES IN CASES INVOLVING SEXUAL OFFENSES (Section 491.015)

Under current law, in prosecutions related to sexual offenses a witness's prior sexual conduct or specific instances of prior sexual conducts is inadmissible, except in certain instances.

This act provides that this evidence is inadmissible at any trial, hearing, or court proceeding and not a subject for inquiry during a deposition or during discovery, except in certain instances.

SEXUAL OFFENDERS (Sections 566.149, 566.150, & 566.155)

Under current law, certain offenders shall not knowingly be present in certain areas, such as schools, public parks with playgrounds, public swimming pools, and athletic fields primarily used by children. Additionally, under current law, certain offenders cannot serve as an athletic coach or trainer for a sport team if a child less than 17 years of age is a member of the team.

This act adds that any person found guilty of the offense of possession of child pornography shall not knowingly be present in such areas and shall not serve as an athletic coach.

OFFENSE OF PROVIDING EXPLICIT SEXUAL MATERIAL TO A STUDENT (Section 573.550)

This act provides that a person commits the offense of providing explicit sexual material to a student if such person is affiliated with a public or private elementary or secondary school in an official capacity and, knowing of its content and character, such person provides, assigns, supplies, distributes, loans, or coerces acceptance of or the approval of the providing of explicit sexual material to a student or possesses with the purpose of providing, assigning, supplying distributing, loaning, or coercing acceptance of or the approval of the providing of explicit sexual material to a student.

This offense is a class A misdemeanor.

SEXUAL ASSAULT SURVIVORS BILL OF RIGHTS (Section 595.201)

Under current law, sexual assault survivors have rights relating to how a criminal investigation regarding a sexual assault must be conducted.

This act provides that sexual assault survivors retain these rights regardless of whether a criminal investigation or prosecution results or regardless if he or she has previously waived any of these rights. A sexual assault survivor, for purposes of this act, is any person who is fourteen years of age or older and who may be a victim of a sexual offense who presents themselves to an appropriate medical provider, law enforcement officer, prosecuting attorney, or court. Under this act, a sexual assault survivor has the right to:

- Consult with an employee or volunteer of a rape crisis center;
- A sexual assault forensic examination;
- A shower and change of clothing;
- Request to be examined by an appropriate medical provider or interviewed by a law enforcement officer of the gender of the survivor's choosing, when available;
- An interpreter who can communicate in the language of the sexual assault survivor's choice, as reasonably available;
- Notification and basic overview of the options of choosing a reported evidentiary collection kit, unreported evidentiary collection kit, and anonymous evidentiary collection kit;
- Notification about the evidence tracking system;
- Notification about the right to certain information considered a closed record, such as a complete incident report; and
- Be free from intimidation, harassment, and abuse in any related criminal or civil proceeding and the right to reasonable protection from the offender.

Additionally, this act provides that a survivor must be informed of the survivor's rights by a medical provider, law enforcement officer, and a prosecuting attorney in a timely manner. A document shall be developed by the Department of Public Safety, in collaboration with certain Missouri-based stakeholders, which shall be provided to a sexual assault survivor explaining the survivor's rights. The document shall include:

- A description of the rights of the sexual assault survivor pursuant to this act; and
- Telephone and internet means for contacting a local rape crisis center.

This act repeals duplicate rights found in other provisions of current law. Additionally, this act repeals the requirement that a law enforcement officer shall upon written request provide a free, complete, and unaltered copy of all law enforcement reports concerning the sexual assault within 14 days to the survivor.

CLOSED RECORDS OF VICTIMS OF SEXUAL ASSAULT (Section 595.226)

Under current law, certain identifiable information of victims of domestic assault or stalking shall be closed and redacted from public record. This act adds that such identifiable information shall also include, but shall not be limited to, the victim's personal email address, birth date, health status, or any information from a forensic testing report.

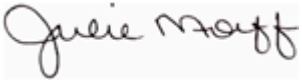
This act also repeals provisions relating to when a court may disclose such identifying information of a victim and provides that any person who is requesting identifying information of a victim and who has a legitimate interest in obtaining such information, may petition the court for an in camera inspection of the records. If the court determines the person is entitled to all or any part of such records, the court may order production and disclosure of the records, but only if the court determines that the disclosure to the person or entity would not compromise the welfare or safety of the victim.

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

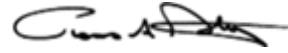
SOURCES OF INFORMATION

Office of the State Courts Administrator
Attorney General's Office
Office of the State Public Defender
Missouri Office of Prosecution Services
Department of Corrections
Department of Public Safety
Department of Social Services
Department of Elementary and Secondary Education
Missouri Department of Conservation
Department of Commerce and Insurance
Department of Health and Senior Services
Kansas City Police Department
St. Joseph Police Department
St. Louis County Police Department
Phelps County Sheriff's Department
Hermann Area Hospital District

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