

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2894-03
Bill No.: Perfected SCS for SBs 662 & 704
Subject: Law Enforcement Officers and Agencies; Pawnbrokers; Real and Personal Property; Crimes and Punishment; Evidence; Criminal Procedure
Type: Corrected#
Date: April 17, 2002
#To correct Department of Corrections assumptions.

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON STATE FUNDS | | | |
|--|-----------------------------------|-----------------------------------|-----------------------------------|
| FUND AFFECTED | FY 2003 | FY 2004 | FY 2005 |
| General Revenue# | Could exceed \$100,000 | Could exceed \$100,000 | Could exceed \$100,000 |
| | | | |
| Total Estimated Net Effect on <u>All</u> State Funds# | Could exceed \$100,000 | Could exceed \$100,000 | Could exceed \$100,000 |

| ESTIMATED NET EFFECT ON FEDERAL FUNDS | | | |
|---|------------|------------|------------|
| FUND AFFECTED | FY 2003 | FY 2004 | FY 2005 |
| None | | | |
| | | | |
| Total Estimated Net Effect on <u>All</u> Federal Funds | \$0 | \$0 | \$0 |

| ESTIMATED NET EFFECT ON LOCAL FUNDS | | | |
|--|------------|------------|------------|
| FUND AFFECTED | FY 2003 | FY 2004 | FY 2005 |
| Local Government | \$0 | \$0 | \$0 |

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 9 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Public Safety – Missouri Highway Patrol** and the **Boone County Sheriff's Department** assume the proposed legislation would have no fiscal impact on their agency.

In response to a similar proposal from the current session (SB 662), officials from the **Callaway County Sheriff's Department** assumed the proposed legislation would save the department time in returning property to its lawful owner. However, the proposed legislation would have no fiscal impact on their agency.

Officials from the **Office of State Public Defender** assume existing staff could provide representation for those stealing cases arising where indigent persons were charged with escalated felonies due to the amount of dollars involved and for those cases arising where indigent persons were charged with illegal access to the pawnbroker database, a class C felony. The State Public Defender System further assumes, although the possible penalties for several crimes involving theft of items worth less than \$500 will be reduced, existing staff will continue to provide representation where indigent persons were charged. In reality, the workload on these particular felony reduced to misdemeanor cases would be less, but then the number of these cases is very minimal when compared to the total State Public Defender caseload. Last Fiscal Year, the State Public Defender System provided representation in 4,856 stealing cases, 15 stealing animals cases, 863 receiving stolen property cases, and 2,202 forgery cases. Passage of more than one bill increasing penalties on existing crimes or creating new crimes would require the State Public Defender System to request increased appropriations to cover the cumulative cost of representing indigent persons accused in the now more serious cases or in the new additional cases.

Officials from the **Office of State Courts Administrator** would not anticipate a significant impact on the workload of the judiciary as a result of the proposed legislation.

Officials from the **Office of Prosecution Services** assume the cost of the proposed legislation can be absorbed by prosecutors.

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** assumes the proposed legislation would have the following fiscal impact on their department:

Theft Offenses Component

The bill proposes increasing the minimum dollar amount from \$150 to \$500 for a number of theft offenses. If the amount illegally obtained is less than \$500 then the offense becomes a misdemeanor offense for which offenders can receive probation but not prison sentences. This change should prove to find more offenders receiving misdemeanor (or lesser) charges and less offenders receiving felony (or more extensive) sentences, as so outlined for each crime. There are 13 offenses included in the bill, but only 4 have significant numbers being admitted to prison. The significant offenses are receiving stolen property, issuing a bad check, credit card fraud and failure to return property.

The DOC database does not have a value of property shown for the above-mentioned crimes, so potential numbers cannot be determined. In 1998 the stealing limit was raised from \$150 to \$750 and this resulted in a 35% decrease in class C felony prison admissions. The DOC estimates that raising the limit from \$150 to \$500 in this bill for the noted property offenses will also result in an annual reduction of prison admissions. A snapshot of the DOC database for FY 01 indicates that 324 offenders with applicable charges served an overall average of 12 months in prison.

Offenders who would have received term and 120-day shock incarceration sentences are included in this average:

| | |
|----------------------------|------------|
| Receiving Stolen Property | 141 |
| Issuance of Bad Checks | 149 |
| Credit Card Fraud | 22 |
| Failure to Return Property | <u>12</u> |
| | <u>324</u> |

DOC is unable to determine the number of offenders who would not receive prison sentences due to passage of the theft component of this proposal. However, it would be offset by the increased number of probationers. The average probation time for a misdemeanor is 2 years.

The DOC's FY 01 average per diem for incarceration is \$35.78 per inmate (or an annual cost of \$13,060 per inmate) and supervision provided by the Board of Probation and Parole is \$3.34 per offender, per day (or an annual cost of \$1,219 per offender). The savings due to passage of the theft component of the proposal is unknown but is expected to exceed \$100,000 per year.

ASSUMPTION (continued)

Internet Access of Pawnshop Information to Law Enforcement Officers Component

This bill requires Internet access of pawnshop information to law enforcement officials. Penalty provisions, the component of the bill to potential fiscal impact for the DOC, is for a class C felony.

Currently, the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this section of the proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to these provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY01 average of \$35.78 per inmate per day, or an annual cost of \$13,060 per inmate) or through supervision provided by the Board of Probation and Parole (FY01 average of \$3.34 per offender per day, or an annual cost of \$1,219 per offender).

At this time, the DOC is unable to determine the number of additional inmate beds that may be required as a consequence of passage of this section of the proposal. Estimated construction cost for one new medium to maximum-security inmate bed is \$55,000. Utilizing this per-bed cost provides for a conservative estimate by the DOC, as facility start-up costs are not included and entire facilities and/or housing units would have to be constructed to cover the cost of housing new commitments resulting from the cumulative effect of various new legislation, if adopted as statute.

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

Stealing Component

The bill proposes creating a new felony class D for stealing from \$150 to \$425 and reducing the amount from \$750 to \$425 for class C stealing. From the effects of changing the stealing limits from \$150 to \$750 in 1998, the DOC estimates that 68% of offenders stealing \$150 or more steal over \$750, 16% steal between \$150 and \$425 and 16% steal between \$425 and \$750.

ASSUMPTION (continued)

Using admission and release statistics for FY01, the DOC estimates that there will be 130 offenders who will be admitted to prison for the Felony D offense and an additional 130 offenders who will be convicted of Class C stealing. The estimated time served for these offenses is 10 months and 16 months respectively (including those offenders who may receive 120 shock probation).

The effect of the stealing change is, therefore, 260 new admissions per year offenders and the fiscal impact is 283 inmates per year. The effect in FY03 is 260. This would be somewhat offset by the number of offenders who previously could have been given probation.

Receiving Stolen Property Component

The effect of the change is to reduce the sentence of offenders convicted of receiving from \$150 to \$425 from a class C felony to a class D felony. The estimate of the number of prison admissions affected is based upon the above stealing analysis. In FY01 there were 141 admissions of which 23 are estimated to be class D felons. The difference in time served from a class C to a class D in FY01 is a 4 month reduction. The impact, therefore, is $23 * 0.33 = 7$ per year.

Net Impact for Stealing and Receiving Stolen Property Components

253 inmates in FY03 and 276 inmates per year from FY04 on. In summary, supervision by the DOC through incarceration or probation would result in additional costs and although the exact fiscal impact is unknown, it is estimated that potential costs will be in excess of the indicated measurable dollar amount per year.

The DOC estimates the increase in population will increase incrementally over the fiscal year. For cost estimates, a snapshot of the midyear average population was used to determine fiscal impact.

Assumptions used to determine cost and rounded to the nearest whole number include:

- ▶ \$35.78 (FY01 cost) inmate per capita costs with an inflation rate of 3% per each subsequent year.
- ▶ \$3.34 (FY01 cost) average daily probation costs with an inflation rate of 3% per each subsequent year.

The following charts detail the estimated fiscal impact of the stealing and receiving stolen property components on the DOC for the scope of the fiscal note (FYs 2003, 2004, and 2005),

ASSUMPTION (continued)

the estimated ten-year fiscal impact, and the assumptions used in determining these costs:

| Stealing Limit Revisions | | | |
|---|--------------|-------------|---------------|
| | <u>Cost</u> | <u>Days</u> | <u>Total</u> |
| Operating Expenses | 35.78 | 365 | 13,060 |
| Construction (C4 or C5 \$55,000) | | | 0 |
| Emergency Housing | 0.00 | 365 | 0 |
| Operating Inflation (3.0%) | | | 1.030 |
| Emer. Hsng. Inflation (10%) | | | 1.100 |
| Construction Inflation (3.0%) | | | 1.030 |

| | End FY Population | Average Population | Emer Hsng Expense | Operating Expense | Construction Expense | Total Cost w/ Inflation |
|--------------------------------------|------------------------------|--|------------------------------|------------------------------|---------------------------------|------------------------------------|
| FY 2002 | 0 | (current year which will have no costs incurred) | | | | |
| FY 2003 | 253 | 127 | 0 | 1,658,620 | 0 | 1,708,379 |
| FY 2004 | 276 | 265 | 0 | 3,460,900 | 0 | 3,671,669 |
| FY 2005 | 276 | 276 | 0 | 3,604,560 | 0 | 3,938,800 |
| FY 2006 | 276 | 276 | 0 | 3,604,560 | 0 | 4,056,964 |
| FY 2007 | 276 | 276 | 0 | 3,604,560 | 0 | 4,178,673 |
| FY 2008 | 276 | 276 | 0 | 3,604,560 | 0 | 4,304,033 |
| FY 2009 | 276 | 276 | 0 | 3,604,560 | 0 | 4,433,154 |
| FY 2010 | 276 | 276 | 0 | 3,604,560 | 0 | 4,566,149 |
| FY 2011 | 276 | 276 | 0 | 3,604,560 | 0 | 4,703,133 |
| FY 2012 | 276 | 276 | 0 | 3,604,560 | 0 | 4,844,227 |
| Total Ten-Year Fiscal Impact: | | | | | | 40,405,181 |

DOC Net Impact

The net fiscal impact to the Department of Corrections is unknown.

#Department of Corrections included an assumption that there would be a reduction in the dollar amount limit for stealing from \$750 to \$425 that is not included in this proposal.

| <u>FISCAL IMPACT - State Government</u> | FY 2003 (10 Mo.) | FY 2004 | FY 2005 |
|--|-----------------------------------|-----------------------------------|-----------------------------------|
| GENERAL REVENUE FUND | | | |
| <u>Savings</u> – Department of Corrections Fewer prison commitments | Could exceed \$100,000 | Could exceed \$100,000 | Could exceed \$100,000 |
| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND# | Could exceed \$100,000 | Could exceed \$100,000 | Could exceed \$100,000 |
| <u>FISCAL IMPACT - Local Government</u> | FY 2003 (10 Mo.) | FY 2004 | FY 2005 |
| | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> |

FISCAL IMPACT - Small Business

This proposal could have a direct fiscal impact on pawnbroker businesses in the state.

DESCRIPTION

The proposed legislation would raise the felony limit for numerous other crimes involving theft from \$150 to \$500. The other criminal statutes affected are: making a false statement to receive health care payment; sale of any species of wildlife; tampering with computer data; tampering with computer equipment; tampering with computer users; determination of value; receiving stolen property; alternation or removal of item numbers with intent to deprive rightful owner; passing bad checks; fraudulently stopping payment on an instrument; fraudulent use of a credit or debit device; library theft; theft of cable television service; failure to return rented personal property; unlawful receipt of food stamps or ATP cards; unlawful conversion of food stamps or ATP cards; unlawful transfer of food stamps or ATP cards; and perjury, committed when obtaining public assistance.

DESCRIPTION (continued)

The proposal would change the value of the property appropriated from \$750 to \$500 for stealing to be classified a class C felony. Theft of property or services with a value which exceeds \$500 could be charged in separate counts. Currently the value of the property must exceed \$750.

This proposal would allow a law enforcement officer to seize property in the possession of a pawnbroker if the law enforcement officer receives a report from a claimant that the property has been misappropriated and the property is reasonably identifiable as the property of the claimant. If the pawnbroker believes the property is not misappropriated they would then be entitled to file a cause of action in small claims court. The prevailing party would be entitled to court costs and attorney's fees.

The proposal would authorize pawnshops to report certain information about pawnshop transactions to appropriate law enforcement authorities. The proposal would authorize the creation of a database that would be accessible by law enforcement in their investigation of alleged property crimes. Any person who fraudulently accesses the database would be guilty of a class C felony.

The proposal would require itinerant vendors and peddlers to make available to law enforcement officers, within 72 hours of request, receipts for new and unused property being sold. "New and unused property" would be defined as property that has not been used and is still in its original packaging. Production of a forged receipt would result in prosecution. Possession, use, transfer, or reproduction of a sales receipt, tag, or universal price code would be admissible as evidence of intent to steal.

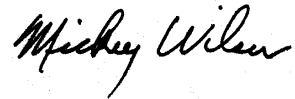
The definition of forgery would be expanded to include the making or altering of receipts and universal product codes, and the knowing use or transfer of forged receipts and universal product codes.

Prosecuting and circuit attorneys would be permitted to collect the face amount of a dishonored check and a service fee from the issuer. The proposal would allow a written demand for payment of a check or draft to be sent by regular mail, supported by an affidavit of service by mailing.

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

SOURCES OF INFORMATION

Office of State Courts Administrator
Office of Attorney General
Department of Public Safety
 – Missouri State Highway Patrol
Office of State Public Defender
Office of Prosecution Services
Department of Corrections



Mickey Wilson, CPA
Acting Director

April 17, 2002