

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3880-02
Bill No.: SB 969
Subject: Crimes and Punishment
Type: Original
Date: January 29, 2002

FISCAL SUMMARY

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

| 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 6 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Social Services** and the **Department of Public Safety – State Highway Patrol** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would add forcible rape and forcible sodomy to the list of dangerous felonies and increase the minimum sentence from five years to ten years. Some cases may become protracted, but CTS would not expect a significant increase in the workload of the courts.

Officials from the **Office of Prosecution Services** assume prosecutors could absorb the costs of the proposed legislation within existing resources.

Officials from the **Office of State Public Defender** assume existing staff could continue to provide representation in cases arising where indigent persons were charged with statutory rape or sodomy or child abuse. However, these cases could become more time consuming due to the fact that anyone convicted would now have to serve at least 85% of their time. Last FY, the State Public Defender System provided representation in 287 statutory rape cases, 302 statutory sodomy cases, and 168 child abuse 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 Attorney General (AGO)** assume there will be additional appeals filed under the provisions of this bill and that the costs are unknown.

Oversight assumes the AGO could experience an increase in caseload due to the proposed legislation. Oversight assumes the AGO could absorb the cost of the increased caseload within existing resources. If the AGO experiences an increase that would justify additional FTE, the AGO could request funding through the appropriation process.

Officials from the **Department of Corrections (DOC)** assume the proposal has three main areas of effect or concern for their department. To begin with, forcible rape and forcible sodomy are added to the list of dangerous felonies. Adding forcible rape and forcible sodomy to the list of dangerous felonies appears to be unnecessary because both offenses are listed as dangerous felonies in Section 556.061, section 8.

An examination of DOC offense records of inmates with a conviction for one of these two offenses but without a dangerous felony indicator indicated that the few such offenders had either

a) been convicted of the offense as inchoate and were, therefore, of a lesser felony class or b) the ASSUMPTION (continued)

offender had been convicted of a sex offense other than forcible rape or forcible sodomy but had been charged under those statutes (556.030 or 556.060).

There is no indication from DOC records that some convictions for forcible rape or forcible sodomy are not being classed as dangerous felonies and no fiscal impact is expected from this component of the bill.

Secondly, higher minimum sentences are proposed for forcible rape and forcible sodomy. The bill proposes increasing the minimum sentence from 5 to 10 years for forcible rape and forcible sodomy and from 10 to 13 years for the offenses when a deadly weapon is used.

In FY01 there were 6 new admissions for forcible rape with sentence of less than 10 years, 4 admissions for forcible rape with a deadly weapon with sentences less than 13 years, 4 admissions for forcible sodomy with sentences less than 10 years and 3 admissions for forcible sodomy with a deadly weapon with sentences less than 13 years. The impact of the increasing these sentences is estimated to be an additional two years in prison for 17 offenders per year. The total impact would not occur until the offenders had served the existing time served, estimated at 4.8 years. There would be an additional 17 offenders staying longer after the 5th year out (FY08) and a static number of 34 for every year thereafter.

Thirdly, armed criminal action (ACA) becomes a dangerous felony as the bill amends statute 558.019 section 3 to include 571.015.

In FY01 there were 360 new admissions with a conviction for ACA of which 61 were when ACA was the most serious offense. The majority of the cases when ACA was not the most serious offense, the most serious offense was a dangerous felony and the offender was already serving 85% of the sentence. There were, nevertheless, 52 offenders who were not dangerous felons but who were serving a more serious offense than ACA but the impact of serving 85% of the ACA sentence is calculated to be no more than the expected time served.

For the 61 offenders whose most serious offense was ACA the impact on time served is estimated to be an additional 20% of the sentence. In FY01 the average sentence for ACA was 6.1 years and the percent of sentence served was 60%. The impact is an additional 1.5 years in prison for these 61 offenders. The impact will begin after the existing time is served (3.7 years). There would be an additional 61 offenders staying longer after the 4th year out (FY07) and a static number of 91.5 (61 X 1.5 years) for every year thereafter.

It is estimated 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.

ASSUMPTION (continued)

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

- ▶ \$35.78 (FY 01 cost) inmate per capita costs with an inflation rate of 3% each subsequent year.

The following charts detail the estimated fiscal impact for the scope of the fiscal note (FYs 2003, 2004, and 2005), the estimated ten-year fiscal impact, and the assumptions used in determining these costs:

| New Dangerous Felonies/Increase Minimum Time Served Assumptions | | | | |
|--|--|-------------|-------------|--------------|
| | | <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 | 0 | 0 | 0 | 0 | 0 | 0 |
| FY 2004 | 0 | 0 | 0 | 0 | 0 | 0 |
| FY 2005 | 0 | 0 | 0 | 0 | 0 | 0 |
| FY 2006 | 0 | 0 | 0 | 0 | 0 | 0 |
| FY 2007 | 61 | 31 | 0 | 404,860 | 0 | 469,344 |
| FY 2008 | 109 | 85 | 0 | 1,110,100 | 0 | 1,325,517 |
| FY 2009 | 126 | 118 | 0 | 1,541,080 | 0 | 1,895,334 |
| FY 2010 | 126 | 126 | 0 | 1,645,560 | 0 | 2,084,546 |
| FY 2011 | 126 | 126 | 0 | 1,645,560 | 0 | 2,147,083 |

| | | | | | | |
|--------------------------------------|-----|-----|---|-----------|---|-------------------|
| FY 2012 | 126 | 126 | 0 | 1,645,560 | 0 | 2,211,495 |
| Total Ten-Year Fiscal Impact: | | | | | | 10,133,319 |

ASSUMPTION (continued)

The DOC is unable to determine whether or not additional capital improvements would be required in the future, dependent on population growth trends. 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, in FY03 through FY06, DOC will incur no fiscal impact for passage of this proposal. FY07 will show a resulting increase of 61 offenders to the existing population, with 109 the 2nd year of impact and 126 for every year thereafter.

| <u>FISCAL IMPACT - State Government</u> | FY 2003 (10 Mo.) | FY 2004 | FY 2005 |
|---|---------------------|------------|------------|
| | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> |

| <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

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

DESCRIPTION

The proposed legislation would include forcible rape, attempted forcible rape, and forcible sodomy as dangerous felonies. Forcible rape, attempted forcible rape, forcible sodomy, and armed criminal action would be added to the dangerous felony list, which would require a minimum prison term of eighty-five percent of the sentence to be served.

The proposal would increase the minimum sentence for forcible rape or attempted forcible rape from five years to ten years. The minimum sentence would increase to thirteen years if serious physical injury resulted or if the actor displayed a deadly weapon.

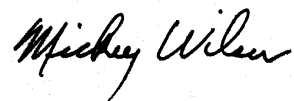
DESCRIPTION (continued)

The proposal also would include a registered juvenile sex offender in the definition of “persistent sex offender.”

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

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



Mickey Wilson, CPA
Acting Director

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