

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3880-10
Bill No.: HCS for SS for SCS for SBs 969, 673 & 855
Subject: Crimes and Punishment
Type: Original
Date: May 1, 2002

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON STATE FUNDS | | | |
|---|---------------------------------|---------------------------------|---------------------------------|
| FUND AFFECTED | FY 2003 | FY 2004 | FY 2005 |
| General Revenue | (Unknown) to Unknown | (Unknown) to Unknown | (Unknown) to Unknown |
| | | | |
| Total Estimated Net Effect on <u>All</u> State Funds | (Unknown) to Unknown | (Unknown) to Unknown | (Unknown) to Unknown |

| 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 8 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Social Services, Office of Administration – Division of Information Services, – Office of Information Technology, Department of Elementary and Secondary Education, Department of Mental Health, and the Department of Public Safety – Missouri State Highway Patrol** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Department of Health and Senior Services (DHSS)** assume the proposal would not be expected to significantly impact the operations of the DHSS. If the proposal were to substantially impact the DHSS programs, then the department would request funding through the legislative process.

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 Courts Administrator** assume some cases may become protracted, but would not expect a significant increase in the workload of the courts.

In response to previous versions of this proposal, officials from the **Office of State Public Defender** assumed existing staff could provide representation in cases arising where indigent persons were charged with the new and/or enhanced crimes in this proposal. 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 an unknown cost savings pursuant to Section 632.483 because the requirement that a potential sexually violent predator be evaluated by a psychiatrist or psychologist will prevent the AGO from having to hire expert witnesses for certain cases. AGO assumes that any additional costs resulting from Sections 542.261, 542.276, 565.225, 569.070, 578.600, 578.605, and 578.610 could be absorbed within existing resources.

Officials from the **Department of Public Safety – Director’s Office (DPS)** assume the proposed legislation only authorizes the Department of Public Safety to create the Missouri Regional Computer Forensics Lab. Creation of the lab will depend on state appropriations, federal funds, and other funding sources. Therefore, DPS assumes the proposal would have an unknown cost.

ASSUMPTION (continued)

Oversight assumes the proposal would have no fiscal impact on the Department of Public Safety because it does not require the creation of the Missouri Regional Computer Forensics Lab (RCFL). If the DPS desires to create the RCFL, the funding could be requested through the appropriations process.

In response to a previous version of this proposal, officials from the **Department of Corrections (DOC)** have determined the following sections would fiscally impact their department:

§556.061. Forcible rape and forcible sodomy are added to the list of dangerous felonies in this section. 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 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 1) been convicted of the offense as inchoate and were, therefore, of a lesser felony class or 2) the offender had been convicted of a sex offense other than forcible rape or forcible sodomy but had been charged under those statutes (566.030 or 566.060).

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.

§566.145. This proposed legislation criminalizes sexual intercourse or deviate sexual intercourse between correctional staff and an inmate and is punishable as a class C felony. Offender sexual contact is currently prohibited in §217.405, also punishable as a class C felony. The DOC's procedure strictly prohibits the type of criminal behavior outlined in this bill. Class C felons have an average length of stay in prison of 3.8 years. There were no admissions to DOC in FY01 for offender sexual abuse by an employee. 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.

§632.483 This section seems to be aimed at including additional sex offenses in the list of qualifying offenses for civil commitment as a sexually violent predator. If included therein, the revised section would add the following qualifying sex offenses for sexually violent predator consideration: 1) Statutory rape, second degree; 2) Statutory sodomy, second degree; and 3) Sexual misconduct, first, second and third degrees. The revised language would remove Abuse of a Child when it involves sexual contact [§568.060.1(2)] from the list of qualifying offenses.

ASSUMPTION (continued)

The fiscal impact of this section change would send between 30-40% more inmate sex offenders to the Sex Offender Assessment Unit (SOAU) staff for second-level, Sexually Violent Predator (SVP) evaluations. Since the services are now provided under a bid contract which was let with different workload assumptions in the RFP, increasing this workload number may prompt the contractor to exercise the contract provision that allows them to ask for funds for increased workload. The cost of this would be unknown.

§566.151. The new crimes created in this section would expand the unknown aspect of the cost to the DOC.

§43.653. The new crime created in this section would expand the unknown aspect of the cost to the DOC. Increased technology for battling internet crime has the potential to fiscally impact future DOC offender population (due to more arrests and resulting sentence to DOC); however, this would be addressed by normal budgetary request procedures at the time of the resulting increase.

The DOC assumed the inclusion of threats made by electronic communications, by telephone, or by posting publicly accessible computer messages in the offense of aggravated stalking and expanding the crime of causing a catastrophe to include the initiating of a computer virus and the modifying, destroying, damaging, or disabling of any computer network or program would have a \$0 or minimal impact that could be absorbed within existing resources.

The DOC also assumed the enhancements to the crime of invasion of privacy and the addition of secretly filming under or through clothing as an element of invasion of privacy would have a fiscal impact. However, DOC assumes, due to the narrow scope of these crimes, the impact would be less than \$100,000 per year.

The DOC further assumed the crime of cloning a human being would have a fiscal impact of less than \$100,000 per year due to the narrow scope of the crime.

Oversight assumes, due to the narrow scope of the newly created or enhanced crimes, the incarceration/probation costs to the DOC would be less than \$100,000 per year.

FISCAL IMPACT - State Government FY 2003 FY 2004 FY 2005

GENERAL REVENUE FUND

Savings – Office of Attorney General
 (§632.483)

| | | | |
|--------------------------------|---------|---------|---------|
| Decreased expert witness costs | Unknown | Unknown | Unknown |
|--------------------------------|---------|---------|---------|

Costs – Department of Corrections

| | | | |
|-------------------------------|--------------------------|--------------------------|--------------------------|
| Incarceration/probation costs | (Less than \$100,000) | (Less than \$100,000) | (Less than \$100,000) |
|-------------------------------|--------------------------|--------------------------|--------------------------|

| | | | |
|--------------------------------------|------------------|------------------|------------------|
| Sexually violent predator (§632.483) | <u>(Unknown)</u> | <u>(Unknown)</u> | <u>(Unknown)</u> |
|--------------------------------------|------------------|------------------|------------------|

| | | | |
|--------------------------|------------------|------------------|------------------|
| <u>Total costs</u> – DOC | <u>(Unknown)</u> | <u>(Unknown)</u> | <u>(Unknown)</u> |
|--------------------------|------------------|------------------|------------------|

| | | | |
|---|--|--|--|
| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | (Unknown) to <u>Unknown</u> | (Unknown) to <u>Unknown</u> | (Unknown) to <u>Unknown</u> |
|---|--|--|--|

FISCAL IMPACT - Local Government FY 2003 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 make information in the sexual offense registry available upon a request from a youth service agency or provider. (§43.540)

The proposal would authorize the Department of Public Safety to create the Missouri Regional Computer Forensics Laboratory (RCFL). The RCFL would combine local, state, and federal resources to research and combat computer and Internet-related crimes. (§43.653)

The proposed legislation would require the board of probation and parole to consider information listed on the juvenile sex offenders registry if the offender being considered for parole is less than twenty-one years old. (§217.690)

DESCRIPTION (continued)

This proposal would define technological crime and would authorize the Attorney General to use all powers provided by law to investigate technological crimes, as defined in the proposal, including the ability to apply for search warrants and subpoena witnesses and other evidentiary materials. (§§542.261, 542.276, 578.600, 578.605, & 578.610)

The proposal would include attempted forcible rape and attempted forcible sodomy in the definition of dangerous felonies to Missouri statutes. (§556.061)

The proposal would enhance the offense of aggravated stalking to include credible threats made by electronic communications, by telephone, or by posted messages publicly accessible via a computer. (§565.225)

This proposed legislation would create the new crime of invasion of privacy in the first degree by adding the element of distribution or transmission of photographs or film to the existing crime of invasion of privacy. The existing crime of invasion of privacy, a class A misdemeanor, would be a second degree offense. Invasion of privacy in the first degree would be a class C felony. The proposal also adds secretly filming under or through clothing for the purpose of viewing the body or undergarments as an element of invasion of privacy. (§§565.252 & 565.253)

The proposed legislation would create the crimes of cloning a human being, using public facilities for the purpose of cloning a human being, and cloning a human being while making use of public funds or public facilities. A violation would be a class B felony. (§565.305)

The proposal would create the class C felony of sexual contact with an inmate. A person who is an employee of or assigned to work in any correctional facility who has sexual intercourse or deviate sexual intercourse with an inmate or resident of the facility would be guilty of the crime. The victim's consent would not be an affirmative defense. (§566.145)

The proposal would create the crime of enticement of a child, a class C felony unless the person has previously pled or been found guilty of enticement of a child or certain other offenses, in which case it would be a class B felony. Attempting to entice a child would be a class D felony. (§566.151)

The proposal would expand the crime of causing a catastrophe to include the initiating of a computer virus and the modifying, destroying, damaging, or disabling of any computer network or program. (§569.070)

DESCRIPTION (continued)

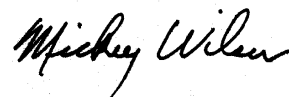
Current law requires either the Department of Corrections or the Department of Mental Health to inform the Attorney General and the appropriate multidisciplinary team of certain identifying information and provide them with documentation of treatment history and institutional adjustment for individuals who meet the criteria of sexually violent predators. This proposal would add the requirement that a psychiatrist or psychologist determine whether the person meets the definition of a sexually violent predator. (§632.483)

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.

SOURCES OF INFORMATION

Department of Social Services
Office of State Courts Administrator
Office of Prosecution Services
Office of Administration
 – Division of Information Services
 – Office of Information Technology
Department of Public Safety
 – Missouri State Highway Patrol
 – Director's Office
Department of Mental Health
Department of Health and Senior Services
Department of Elementary and Secondary Education
Office of State Public Defender
Office of Attorney General
Department of Corrections



Mickey Wilson, CPA
Acting Director

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