

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3880-20
Bill No.: Truly Agreed To and Finally Passed CCS for HS#2 for HCS for SS for SCS for SBs 969, 673 & 855
Subject: Crimes and Punishment
Type: Original
Date: May 30, 2002

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
General Revenue	(More than \$100,000) to Unknown	(More than \$100,000) to Unknown	(More than \$100,000) to Unknown
Criminal Records Systems	(\$54,885)	(\$63,420)	(\$65,007)
Total Estimated Net Effect on <u>All</u> State Funds	(More than \$154,885) to Unknown	(More than \$163,420) to Unknown	(More than \$165,007) 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 7 pages.

FISCAL ANALYSIS

ASSUMPTION

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

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.

Officials from the **Office of State Public Defender** assumed existing staff could provide representation in cases arising where indigent persons were charged with attempted forcible rape if physical injury results or attempted forcible sodomy if physical injury results. 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 due to the reclassification as a dangerous felony. The revised bill also creates the crimes of child enticement, a class C felony; attempting to entice, a class D felony; and enticing with prior sexual crimes, a class B felony. The Public Defender can also provide representation to indigent persons accused of having sexual contact with a nursing home resident or animal with existing staff. Last FY, the State Public Defender System provided representation in 182 rape cases and 87 sodomy cases. In addition, the State Public Defender can provide representation to indigent individuals charged with invasion of privacy in the 1st degree. 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 criminal appeals generated by this legislation can be absorbed within existing resources.

Officials from the **Department of Public Safety – Missouri State Highway Patrol (MHP)** assume Sections 43.540, 589.400, and 589.410 of the proposal allows the patrol to provide information on persons registered as sex offenders when a background check request is made pursuant to Section 43.540, RSMo.

ASSUMPTION (continued)

The MHP's Criminal Records and Identification Division (CRID) provided approximately 1.2 million background checks in 2001. If half of the checks were for the purposes in Section 43.540, then 600,000 searches would be required to be put into the sex offender registry. The technology is not currently available to conduct a synchronized search of the two databases (criminal history record and Megan's Law offenders), but will be available in the near future.

The MHP's CRID would require a full-time Computer Information Tech Specialist I position (at \$41,556 per year) to design, develop, acquire training, maintain the application and hardware, ensure security, and monitor the network infrastructure. The MHP estimates the annual cost to the Criminal Records System Fund for the requested FTE, including fringe benefits, equipment and expense, to be \$54,885 in FY 03; \$63,420 in FY 04; and \$65,007 in FY 05.

MHP assumes Sections 43.653, 43.656, and 43.659 only authorizes the MHP to create the Missouri Regional Computer Forensics Lab (RCFL). Since the legislation does not require the creation of the RCFL, there would be no fiscal impact. MHP assumes the actual creation of the lab would depend on the availability of federal funding.

Oversight assumes Sections 43.653, 43.676, and 43.659 of the proposal would have no fiscal impact on the Missouri State Highway Patrol because it does not require the creation of the Missouri Regional Computer Forensics Lab (RCFL). If the MHP desires to create the RCFL, the funding could be requested through the appropriations process.

Officials from the **Department of Corrections (DOC)** assume this bill relates to the sex offender registry and other sex crimes. Penalty provisions for several sexually-related crimes are enhanced. Crime criteria is expanded for some existing crimes, as well. New misdemeanors and felonies are created and various new levels of crimes are added.

Statute language relating to sexual offender's registration is clarified. The registration is the responsibility of the offender; however, closing this loophole in the law does increase the potential that offenders failing to perform their registration duties could now be charged with a violation and sentenced to the DOC.

Sexually violent predator (SVP) determination is required to be performed by either a psychiatrist or a psychologist, as per definition. Expense due to this mandate further increases the unknown potential cost to the DOC for this bill.

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

ASSUMPTION (continued)

If additional persons are sentenced to the custody of the DOC due to the 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).

In summary, supervision by the DOC through incarceration or probation would result in additional costs and the exact fiscal impact is unknown. The DOC estimates potential costs due to incarceration, probation and additional expenses for professionals for the SVP determination will be in excess of \$100,000 per year.

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
GENERAL REVENUE FUND			
<u>Savings</u> – Office of Attorney General (\$632.483)			
Decreased expert witness costs	Unknown	Unknown	Unknown
<u>Costs</u> – Department of Corrections			
Incarceration/probation costs	(More than <u>\$100,000</u>)	(More than <u>\$100,000</u>)	(More than <u>\$100,000</u>)
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	(More than \$100,000) to <u>Unknown</u>	(More than \$100,000) to <u>Unknown</u>	(More than \$100,000) to <u>Unknown</u>
CRIMINAL RECORDS SYSTEMS FUND			
<u>Costs</u> – Missouri State Highway Patrol (§§43.540, 589.400, & 589.410)			
Personal Service (1 FTE)	(\$35,496)	(\$43,660)	(\$44,751)
Fringe Benefits	(\$15,533)	(\$19,106)	(\$19,583)
Equipment and Expense	<u>(\$3,856)</u>	<u>(\$654)</u>	<u>(\$673)</u>
<u>Total Costs</u> – MHP	(\$54,885)	(\$63,420)	(\$65,007)
ESTIMATED NET EFFECT ON CRIMINAL RECORDS SYSTEMS FUND	<u>(\$54,885)</u>	<u>(\$63,420)</u>	<u>(\$65,007)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005

FISCAL IMPACT - Local Government

FY 2003
(10 Mo.)

FY 2004

FY 2005

\$0

\$0

\$0

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 Missouri State Highway Patrol 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 & 43.656)

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 between the ages of 17 and 21. (§217.690)

The proposal would prohibit the defendant bail during appeals if the defendant is under a sentence for statutory rape in the first degree, forcible sodomy, or statutory sodomy in the first degree. (§547.170)

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

The proposal would create the crimes of sexual contact with a resident of a skilled nursing facility, a class B misdemeanor for the first offense and a class A misdemeanor for subsequent offenses; and sexual intercourse or deviate sexual intercourse with a resident, a class A misdemeanor for the first offense and a class D felony for subsequent offenses. The provisions would not apply to an owner or employee who engages in such conduct with a resident to whom the owner or employee is married. Consent of the victim would not be a defense to a prosecution pursuant to this section. (§565.200)

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)

DESCRIPTION (continued)

BLG:LR:OD (12/01)

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 D felony. Invasion of privacy in the second degree would be a class D felony if the offender has previously pled guilty to or been found guilty of invasion of privacy. 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)

Sexual contact and sexual misconduct in the first degree would include touching through the clothing. (§§566.010 & 566.090)

The proposal would create the crime of unlawful sex with an animal, a class A misdemeanor for the first offense and a class D felony for second and subsequent offenses. (§566.111)

The proposal would create the class D 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)

This proposal would require registration as a sexual offender for felony sexual offenses or for misdemeanor sexual offenses when the victim is a minor. The proposal would also require persons required to register as sex offenders within 10 days of conviction, release from custody, or placement upon probation. Any person required to register who is not currently registered would be required to do so within 10 days of the effective date of this section. (§589.400)

The completed offender registration form would be available to entities other than members of the criminal justice system, as provided by law, through the Missouri Uniform Law Enforcement System (MULES). (§589.410)

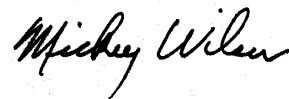
DESCRIPTION (continued)

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 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
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



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