

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0356-11
Bill No.: Truly Agreed To and Finally Passed HS for HCS for SS for SCS for SB 5
Subject: Crimes and Punishment; Criminal Procedure; Firearms and Fireworks; Courts;
 Juvenile Courts
Type: Corrected#
Date: May 30, 2003
 #Corrected to reflect revised Department of Corrections response

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue*#	\$9,294,349	\$19,146,359	\$19,720,750
Total Estimated Net Effect on General Revenue Fund*#	\$9,294,349	\$19,146,359	\$19,720,750

*Costs for additional circuit judge estimated to exceed \$100,000, beginning FY 07.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
None			
Total Estimated Net Effect on Other State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government**	\$0	\$360,250	\$360,250

****Net Revenues to Missouri Prosecuting Attorneys and Circuit Attorneys' Retirement System Fund estimated to be \$983,365, beginning FY 05.**

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Governor, Department of Higher Education, County Employees' Retirement Fund, Department of Economic Development, Department of Transportation, Department of Mental Health, Department of Health and Senior Services, Department of Social Services, Department of Public Safety – Missouri State Highway Patrol, – Division of Fire Safety, Missouri Local Government Employees Retirement System, Missouri House of Representatives, Missouri Senate, Office of Secretary of State, Linn State Technical College, Truman University, and the University of Missouri** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of Attorney General (AGO)** assumed costs could be absorbed although certain provisions may result in additional criminal appeals based on the new crimes created and the change in the definition of "dangerous felony."

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

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** assumed this proposal's intent encourages the courts to use probation whenever practical as an alternative to incarceration. Based on FY02 averages, the Department calculates an average daily cost to incarcerate an offender of \$35.52 per day. This cost includes staff, inmate healthcare, food, clothing, inmate wages, maintenance, fuel and utilities, administration, and other overhead costs. The full \$35.52 per offender per day would only be realized if the reduction in the subsequent number of inmates resulted in the actual closing of an institution or housing units within an institution. If the reduction of inmates does not result in the actual closing of an institution or housing units within an institution, the offender per day costs could be significantly lower. A decrease in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court. The community supervision cost is \$3.10 per offender, per day.

#The DOC is unable to predict the total number of court decisions the proposal will affect; however, DOC assumes a greater percentage of that number will result in probation with a smaller percentage resulting in prison commitments, thus resulting in the potential for a significant positive fiscal impact. The bill will result in fewer offenders coming to prison as alternatives to incarceration are used. The DOC believes the bill could result in savings in excess of \$9 million dollars, but the exact amount is unknown. The DOC estimates that passage of this bill has the potential to see a minimum of 1,392 fewer offenders incarcerated per year. The DOC also assumes that an unknown dollar amount of long-range savings is possible in the future by avoiding new prison construction as well as the rising costs to incarcerate offenders due to the trend of inflation. There will be some offset to the savings due to the cost of increased amounts of offenders who could potentially be supervised by probation and parole in the community.

Sentencing Provisions			
	<u>Cost</u>	<u>Days</u>	<u>Total</u>
Operating Expenses	35.52	365	12,965
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

ASSUMPTION (continued)

	End FY Population #	Average Population #	Emer Hsng Expense	Operating Expense #	Construction Expense	Total Saving w/ Inflation#
FY 2003	0	(current year which will have no costs incurred)				
FY 2004	1,392	696	0	9,023,640	0	9,294,349
FY 2005	1,392	1,392	0	18,047,280	0	19,146,359
FY 2006	1,392	1,392	0	18,047,280	0	19,720,750
FY 2007	1,392	1,392	0	18,047,280	0	20,312,373
FY 2008	1,392	1,392	0	18,047,280	0	20,921,744
FY 2009	1,392	1,392	0	18,047,280	0	21,549,396
FY 2010	1,392	1,392	0	18,047,280	0	22,195,878
FY 2011	1,392	1,392	0	18,047,280	0	22,861,754
FY 2012	1,392	1,392	0	18,047,280	0	23,547,607
FY 2013	1,392	1,392	0	18,047,280	0	24,254,035
Total Ten-Year Fiscal Impact#						203,804,245

In summary, the amount of potential savings due to enactment of this legislation is unknown, but expected to be significant.

Sections 56.807 and 488.026 – Missouri Prosecuting Attorneys and Circuit Attorneys’ Retirement Fund

Officials from the **Joint Committee on Public Employee Retirement (JCPERS)** assume the proposal changes the manner in which the Prosecuting Attorneys’ and Circuit Attorneys’ Retirement System (PACARS) is funded.

Currently, PACARS is funded through a monthly county contribution to the fund. The amending language would modify PACARS funding mechanism from county contributions to a \$4 fee assessed to criminal court cases. The State Courts Administrator’s office has anticipated annual revenue from this fee to be \$1,343,615.

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ASSUMPTION (continued)

The PACARS actuarial valuation as of July 1, 2002 indicates that the annual county contribution to the fund was \$720,501. Provisions included in this legislation would reduce monthly county contributions by approximately 50%, resulting in a savings to local government funds of approximately \$360,250.

Officials from the **Office of State Courts Administrator (CTS)** assume the legislation would assess a \$4 surcharge in all criminal cases, including traffic and ordinance violations, to be paid to the prosecuting attorneys and circuit attorneys' retirement fund. Based on FY 2002 caseload information, CTS estimates that the revenue from this surcharge would be approximately \$1,343,615.

Section 478.610 – Additional Circuit Judge in the 13th Judicial District

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would add an additional circuit court judge in the 13th judicial circuit, beginning January 1, 2007. Currently, the salary for a circuit court judge is \$108,000 per year, plus fringe benefits, for a total cost of \$177,680. Section 485.040, RSMo requires that all circuit court judges have a court reporter. At present, the salary for a court reporter is \$48,660 per year, plus fringe benefits, for a total cost of \$68,352. CTS estimates the Fiscal Year 2007 costs to total \$123,016 using FY 03 dollars.

Section 488.5026 – Inmate Security Fund

Officials from the **Office of State Courts Administrator (CTS)** assume the proposal would provide for a \$2 surcharge on all criminal cases, upon approval of the governing body of the county or city not within a county. The surcharge would also be imposed on juvenile violators of Section 211.031.1(3) (violate a state law or municipal ordinance). Monies from the fund would go to the local "Inmate Security Fund." CTS has no way of estimating the income from juvenile violators; CTS assumes it would be very low. CTS estimates the income to the fund from other criminal violations would be approximately \$672,000 in any given year.

Oversight assumes the language of the proposal is permissive. In order to enact the \$2 surcharge, the governing body would have to approve such provisions. There would be no income until such approval takes place. Therefore, Oversight assumes there would be no fiscal impact.

ASSUMPTION (continued)

Section 556.061 – Dangerous Felony to include 1st Degree Assault of Law Enforcement Officer, 1st Degree Domestic Assault, 1st Degree Elder Abuse

In response to similar legislation, officials from the **Office of State Public Defender (SPD)** assumed the proposal adds three crimes to the mandatory time served 85% of the sentence imposed by the court. Those cases are: assault of a law officer in the first degree (FY 02 cases = 23); domestic assault first degree (FY 02 cases = 92); and elder abuse in the first degree (FY 02 cases = 7). Most of these cases are currently being resolved through plea negotiations. If the legislation passes, most defendants will have little to lose by taking the case to trial. The total of these FY 02 cases is 132. Assuming 10% of them currently go to trial leaves approximately 100 that are currently being resolved by plea bargains. Of that 100, the SPD expects under this legislation that 20 more cases will go to trial because of the enhanced sentencing provision. Each of these cases will require a minimum of 60 additional work hours for a total of 1,200 hours.

Although this legislation will not add to the SPD caseload, it will make it necessary for assistant public defenders to appear in more places at the same time. Therefore, an additional .5 attorney FTE is required for the county receiving the additional associate circuit judge.

The SPD would require 1 FTE Assistant Public Defender II (at \$47,100 per year), .25 FTE Paralegal Investigator (each at \$24,132 per year), and .15 FTE Clerk Typist III (each at \$19,764 per year). The SPD estimates the cost of the proposal to be \$93,261 in FY 04; \$94,842 in FY 05; and \$97,273 in FY 06.

Oversight assumes the Office of State Public Defender (SPD) could absorb the cost of the proposed legislation within existing resources. If the SPD experiences an increase that would require additional funding, the SPD could request the funding through the appropriation process.

<u>FISCAL IMPACT - State Government</u>	FY 2004	FY 2005	FY 2006
GENERAL REVENUE FUND			
<u>Savings</u> – Department of Corrections Reduced Incarceration/Probation#	\$9,294,349	\$19,146,359	\$19,720,750
<u>Costs</u> – Office of State Courts Administrator *	\$0	\$0	\$0
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND#	<u>\$9,294,349</u>	<u>\$19,146,359</u>	<u>\$19,720,750</u>

*** Costs for additional circuit judge estimated to exceed \$100,000, beginning FY 07.**

<u>FISCAL IMPACT - Local Government</u>	FY 2004	FY 2005	FY 2006
<u>Savings</u> – County contribution to PACARS	<u>\$0</u>	<u>\$360,250</u>	<u>\$360,250</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENT**	<u>\$0</u>	<u>\$360,250</u>	<u>\$360,250</u>

****Net Revenues to Missouri Prosecuting Attorneys and Circuit Attorneys' Retirement System Fund estimated to be \$983,365, beginning FY 05.**

FISCAL IMPACT - Small Business

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

DESCRIPTION

The proposal would impose a \$4 surcharge on all criminal cases and traffic cases to be paid to the prosecuting attorneys and circuit attorneys' retirement fund, to replace 50% of the county's funding of the prosecutors retirement fund. (§§56.807, 488.026)

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DESCRIPTION (continued)

The proposal would add alcohol treatment to programs for offenders with substance abuse. The treatment would be at least 12 months and no more than 24 months. The Department of Corrections would have the ability to determine the nature, intensity, duration and completion criteria of the programs provided. Thirty days prior to the successful completion of the program, the Board of Probation and Parole would advise the sentencing court of an offender's probationary release. (§217.362)

The board of probation and parole would not provide probation services for any class of misdemeanor except chapter 565, chapter 566, or sections 568.050, 455.085, or 455.538 class A misdemeanors. (§217.750)

Courts would be required to impose sentencing in all criminal trials after verdict or plea, except for first degree murder. The proposal would require courts to consider the Sentencing Commission guidelines. Presentence investigations would include the recommended sentence established by the Sentencing Commission, a description of the impact of the crime upon the victim, and available alternatives to incarceration, including opportunities for restorative justice. (§217.760)

The proposed legislation would increase the number of circuit judges in the thirteenth judicial circuit from three to four. (§478.610)

Upon approval of the governing body, a surcharge of \$2 would be assessed in all criminal cases to be paid into the Inmate Security Fund and utilized to develop biometric identification systems to insure that inmates could be properly identified and tracked within the jail system. (§488.5026)

The independent audit required of law enforcement agencies involved in federal forfeitures would be provided to the Department of Public Safety, as well as to the governing body of the agency. The Department would not issue funds to any law enforcement agency that fails to comply. (§513.653)

The proposed legislation would revise the definition of dangerous felony to include assault of a law enforcement officer in the first degree, domestic assault in the first degree, elder abuse in the first degree, statutory rape of a child under 12 years old, statutory sodomy of a child under 12 years old, and child abuse. (§556.061)

The proposal would change the maximum sentence for a Class D felony from 5 years to 4 years.

(§558.011)

DESCRIPTION (continued)

The minimum prison term for an offender who has one previous commitment to the Department of Corrections for a felony offense would be 40% of the sentence or until the offender attains 70 years of age and has served at least 30% of the sentence, whichever occurs first. The proposal would allow any offender serving 120 days of a Class C or D nonviolent felony to petition the court to serve the remainder of the sentence on probation or parole. The Department of Corrections would submit a report to the board of probation and parole that would evaluate the offender and recommend whether the offender shall be released. The court would abide by the recommendations unless it finds it is an abuse of discretion. If the court would suspend the imposition or execution of any sentence, the court could consider various restorative justice methods, such as restitution, community service, or work release programs. (§558.019)

Detention up to 48 hours could be a condition of probation after determination by a probation or parole officer that the offender violated a condition of continued probation or parole. (§559.026)

A court could recommend placement of an offender in a Department of Corrections 120 day program, depending on the offender and the available resources. If a private program, the offender would be responsible for the cost. Upon completion of the program, the Department would make a recommendation based on the offender's participation in the program and the court would follow the recommendations unless it determines it would be an abuse of discretion. The proposal would allow persons convicted of statutory rape in the first degree and statutory sodomy in the first degree, who have no prior convictions for either crime, to be eligible for assessment by the sexual offender treatment unit of the Department of Corrections. (§559.115)

Assault of a law enforcement officer in the first, second, and third degrees would include emergency personnel. (§§565.081, 565.082, 565.083)

The proposal would create the crime of tampering with a prescription or a prescription drug order, a class A felony. (§565.350)

Endangering the welfare of a child in the first degree would be a class C felony (currently a class D felony) unless the offense is committed as part of a ritual or ceremony, or on a second or subsequent offense, in which the crime would be a class B felony (currently a class C felony). (§568.045)

Stealing any material with a value less than \$500 with the intent to use the material to

manufacture amphetamine or methamphetamine would be a class C felony (currently a class D felony). Theft of or the attempt to steal anhydrous ammonia or liquid nitrogen would be a class B felony (currently a class C felony). (§570.030)

DESCRIPTION (continued)

Subsequent stealing-related offenses, when the person previously pled or was found guilty on two separate occasions of a stealing-related offense within 10 years of the date of the present offense would be a class D felony (currently a class C felony). (§570.040)

The proposal would revise the crime of unlawful use of weapons so it would not apply to law enforcement officers who have completed the POST-required training. (§571.030)

Current law requires the county sheriff to forward the county's sex offender registration list to the law enforcement agencies of any city, town, or village in the county. The proposed legislation would require the list to be forwarded to the law enforcement agency for any college or university located within the county. The proposal would also require sex offenders to include in their registration information whether they are enrolled in a college and to update their registration information within seven days of changing their enrollment or employment with a college within the state. (§§589.400, 589.407, 589.414)

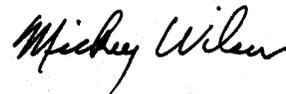
The proposed legislation would grant crime victims the right to attend all criminal proceedings of their case, even though the victim may later be called to testify. Current law allows a judge to exclude witnesses in any criminal proceeding while another witness is testifying. (§595.209)

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

Office of Attorney General
Office of the Governor
Department of Higher Education
County Employees' Retirement Fund
Office of State Courts Administrator
Department of Economic Development
Department of Transportation
Department of Mental Health
Department of Corrections
Department of Health and Senior Services
Department of Social Services
Department of Public Safety
 – Missouri State Highway Patrol
 – Division of Fire Safety
Missouri House of Representatives
Office of Prosecution Services
Missouri Senate
Office of Secretary of State
Office of State Public Defender
Joint Committee on Public Employee Retirement
Missouri Local Government Employees Retirement System
Linn State Technical College
Truman State University
University of Missouri



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