COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1504-01
Bill No.: Perfected HB 407
Subject: Department of Corrections; Courts; Crimes and Punishment
Type: Original
Date: March 19, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue	$908,197	$2,155,169	$2,494,252
Total Estimated Net Effect on General Revenue Fund	**$908,197**	**$2,155,169**	**$2,494,252**

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 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
None			
Total Estimated Net Effect on All Federal Funds	**$0**	**$0**	**$0**

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

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Public Defender** assume the proposed legislation would have no fiscal impact on their agency.

Officials from the **Office of Prosecution Services** assume the proposed legislation would have no fiscal impact on prosecutors.

Officials from the **Department of Mental Health (DMH)** assume the proposed legislation would have no fiscal impact on their agency. The proposed legislation addresses the institutional treatment for drug and alcohol (substance) abuse offenders within Department of Corrections (DOC) facilities by the DOC. The DMH is not directly involved in providing treatment in these programs. However, the DMH assists in developing treatment standards for the DOC.

ASSUMPTION (continued)

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would change the long-term substance abuse treatment program by adding alcohol and changing the duration of the program, and revise the rules relating to shock probation. This legislation would provide more long-term sentencing options; by opening the program to alcohol-related offenses, the program will be used more. This will likely result in more trials, but CTS has no way of determining what the actual cost might be until they see how frequently the new options are employed. Any significant fiscal impact will be reflected in future budget requests.

Officials from the **Department of Corrections (DOC)** assume the proposed legislation changes the intensive long-term treatment program by adding a minimum duration of the program and also revises criteria relating to 120-day release from prison.

12 Month Minimum Treatment Program:

Proposed language in this bill relates to the existing DOC institutional drug treatment program and clarifies that the minimum time served in the program is 12 months with a maximum time of 24 months. The DOC would now determine the nature of the program as per suited to each individual offender's needs. Treating an offender for a lesser amount of time has a positive fiscal impact for the DOC. This clarification also brings the agency into compliance with Federal guidelines for funds through an existing substance abuse treatment grant.

Offenders released from the current long-term program to probation in FY02 served an average of 16 months. Considering the change in law, this would be reduced by 4 months. In FY02, there were 252 offenders who were released to probation after successfully completing the drug program. The positive impact of 4 months less time served per offender would begin in FY04. (252 X 4 months/12 months = 84 offenders per year). The following charts detail the impact of the 12 month minimum treatment program:

ASSUMPTION (continued)

DOC Treatment Program – 12 month minimum			
	Cost	**Days**	**Total**
Operating Expenses	35.52	365	12,965 (positive savings)
Construction (C4 or C5 $55,000)			0
P&P Supervision Costs	-3.10	365	-1,132 (negative expense)
Operating Inflation (3.0%)			1.030
Emer. Hsng. Inflation (10%)			1.100
P&P Inflation (3.0%)			1.030

The amount in the total cost with inflation reflected below is a savings.

	End FY Population	Average Population	Supervision Expense	Operating Expense	Construction Expense	Total Cost w/ Inflation
FY 2003	0	(current year which will have no costs incurred)				
FY 2004	(84)	-42	47,523	(544,530)	0	(508,591)
FY 2005	(84)	-84	95,046	(1,089,060)	0	(1,040,378)
FY 2006	(84)	-84	95,046	(1,089,060)	0	(1,063,539)
FY 2007	(84)	-84	95,046	(1,089,060)	0	(1,086,590)
FY 2008	(84)	-84	95,046	(1,089,060)	0	(1,109,446)
FY 2009	(84)	-84	95,046	(1,089,060)	0	(1,132,015)
FY 2010	(84)	-84	95,046	(1,089,060)	0	(1,154,189)
FY 2011	(84)	-84	95,046	(1,089,060)	0	(1,175,849)
FY 2012	(84)	-84	95,046	(1,089,060)	0	(1,196,863)
FY 2013	(84)	-84	95,046	(1,089,060)	0	(1,217,081)
Total Ten-Year Fiscal Impact:						(10,684,541)

ASSUMPTION (continued)

DOC Treatment segue to Probation:

This bill provides for an offender who has successfully completed a 120-day program in the DOC institutional treatment program to be placed on probation. This will provide for a positive DOC fiscal impact as it allows for offenders to be released who were denied by the courts in the past even though they had successfully completed their 120-day sentence, therefore remaining incarcerated. Currently with DOC treatment program graduates, the number of offenders required to stay incarcerated exceeds the number released to probation.

During FY01 and 02, there were 279 offenders who graduated and were not released and 148 offenders who failed the program but were later released to probation. Annually, that is a net difference of 66 offenders. Offenders who fail the program serve an average of 24.5 months before being released to parole and offenders who are released to probation stay an average of 4 months. The net impact of DOC now determining the decision on release to probation is 113 offenders per annum. (66 X 20.5 months/12months = 113 offenders per year). This positive effect would be immediate upon passage of the bill. The following charts detail the impact of the treatment segue to probation:

DOC Treatment Program – Treatment segue to Probation			
	Cost	Days	Total
Operating Expenses	35.52	365	12,965 (positive savings)
Construction (C4 or C5 $55,000)			0
P&P Supervision Costs	-3.10	365	-1,132 (negative expense)
Operating Inflation (3.0%)			1.030
Emer. Hsng. Inflation (10%)			1.100
P&P Inflation (3.0%)		1.030	

ASSUMPTION (continued)

The amount in the total cost with inflation reflected below is a savings.

	End FY Population	Average Population	Supervision Expense	Operating Expense	Construction Expense	Total Cost w/ Inflation
FY 2003	0	(current year which will have no costs incurred)				
FY 2004	(66)	-33	37,340	(427,845)	0	(399,606)
FY 2005	(113)	-90	101,835	(1,166,850)	0	(1,114,691)
FY 2006	(113)	-113	127,860	(1,465,045)	0	(1,430,713)
FY 2007	(113)	-113	127,860	(1,465,045)	0	(1,461,721)
FY 2008	(113)	-113	127,860	(1,465,045)	0	(1,492,469)
FY 2009	(113)	-113	127,860	(1,465,045)	0	(1,522,829)
FY 2010	(113)	-113	127,860	(1,465,045)	0	(1,552,658)
FY 2011	(113)	-113	127,860	(1,465,045)	0	(1,581,796)
FY 2012	(113)	-113	127,860	(1,465,045)	0	(1,610,064)
FY 2013	(113)	-113	127,860	(1,465,045)	0	(1,637,262)
Total Ten-Year Fiscal Impact:						(13,803,809)

Sex Offenders:

Changes made to the sex offender language should not affect the DOC fiscally as the Sex Offender Assessment Unit (SOAU) already assesses many offenders with sex assault offenses. This proposal would bring DOC's current practice consistent with statute.

Prior Commitments:

Passage of this bill also changes law in that offenders who had completed a 120-day incarceration would no longer be considered to have a prior commitment for the purpose of minimum prison term as per §558.019, RSMo. Changing this criteria has a positive fiscal impact for the DOC as currently most 120-day incarcerations are counted as a prior commitment and if offenders are returned to DOC with a new sentence, the fact that they have a prior commitment would then cause them to serve a minimum of 40% of the newly imposed sentence.

ASSUMPTION (continued)

New statutes of 1994 mandated a minimum prison term when prior commitments existed. In FY02 this minimum mandatory sentence accounted for 16% of new prison admissions compared to 8% in FY98. Excluding the 120 day sentences from the criteria as a prior commitment will immediately impact the number of offenders entering DOC's system with 40% minimum mandatory sentences. This comprises 7.8% of new admissions.

Although the average time served by all first release offenders is greater than the 40% minimum, there is a difference of about 5.3 months between the average time served by offenders with no minimum time served and those with a 40% minimum as they have been viewed as a higher risk offender when being considered for parole. Using FY02 data, the immediate impact due to passage of this bill would be 48 offenders who would serve 5.3 months less before their first release.

Over time, fewer offenders with 40% minimums also means fewer offenders with a 50% minimum and eventually fewer offenders with 80% minimums. Although the reduction in time served will be greater because the time served requirement of the higher minimums is greater, the time taken for the reduction to move from 40% to 80% will be considerable and is probably beyond the 10-year scope of this fiscal note. The 40% minimum impact is expected to occur after 3 years of the offenders serving their current sentence and will affect about 21 inmates per year. The following charts detail the impact of the 120-day not a prior:

DOC Treatment Program – 120-day not a Prior			
	Cost	**Days**	**Total**
Operating Expenses	35.52	365	12,965 (positive savings)
Construction (C4 or C5 $55,000)			0
P&P Supervision Costs	-3.10	365	-1,132 (negative expense)
Operating Inflation (3.0%)			1.030
Emer. Hsng. Inflation (10%)			1.100
P&P Inflation (3.0%)		1.030	

ASSUMPTION (continued)

The amount in the total cost with inflation reflected below is a savings.

	End FY Population	Average Population	Supervision Expense	Operating Expense	Construction Expense	Total Cost w/ Inflation
FY 2003	0	(current year which will have no costs incurred)				
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	(21)	-11	12,447	(142,615)	0	(142,291)
FY 2008	(21)	-21	23,762	(272,265)	0	(277,361)
FY 2009	(21)	-21	23,762	(272,265)	0	(283,003)
FY 2010	(21)	-21	23,762	(272,265)	0	(288,546)
FY 2011	(21)	-21	23,762	(272,265)	0	(293,961)
FY 2012	(21)	-21	23,762	(272,265)	0	(299,215)
FY 2013	(21)	-21	23,762	(272,265)	0	(304,269)
Total Ten-Year Fiscal Impact:						(1,888,646)

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.

The DOC used the following assumptions to determine cost and rounded to the nearest whole number:

- $35.52 (FY02 cost) inmate per capita costs with an inflation rate of 3% per each subsequent year.

- $3.10 (FY02 cost) average daily probation costs with an inflation rate of 3% per each subsequent year.

The following charts summarize the positive fiscal impact to the DOC:

ASSUMPTION (continued)

DOC Treatment Program – Summary			
	Cost	**Days**	**Total**
Operating Expenses	35.52	365	12,965 (positive savings)
Construction (C4 or C5 $55,000)			0
P&P Supervision Costs	-3.10	365	-1,132 (negative expense)
Operating Inflation (3.0%)			1.030
Emer. Hsng. Inflation (10%)			1.100
P&P Inflation (3.0%)		1.030	

The amount in the total cost with inflation reflected below is a savings.

	End FY Population	Average Population	Supervision Expense	Operating Expense	Construction Expense	Total Cost w/ Inflation
FY 2003	0	(current year which will have no costs incurred)				
FY 2004	(150)	-75	84,863	(972,375)	0	(908,197)
FY 2005	(197)	-174	196,881	(2,255,910)	0	(2,155,069)
FY 2006	(197)	-197	222,906	(2,554,105)	0	(2,494,252)
FY 2007	(218)	-208	235,352	(2,696,720)	0	(2,690,603)
FY 2008	(218)	-218	246,667	(2,826,370)	0	(2,879,278)
FY 2009	(218)	-218	246,667	(2,826,370)	0	(2,937,848)
FY 2010	(218)	-218	246,667	(2,826,370)	0	(2,995,394)
FY 2011	(218)	-218	246,667	(2,826,370)	0	(3,051,608)
FY 2012	(218)	-218	246,667	(2,826,370)	0	(3,106,144)
FY 2013	(218)	-218	246,667	(2,826,370)	0	(3,158,614)
Total Ten-Year Fiscal Impact:						(26,377,007)

ASSUMPTION (continued)

If additional persons are released from the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding decrease in operational cost either through incarceration (FY02 average of $35.52 per inmate, per day or an annual cost of $12,965 per inmate) or through supervision provided by the Board of Probation and Parole (FY02 average of $3.10 per offender, per day or an annual cost of $1,132 per offender).

In summary, decrease of supervision by the DOC through incarceration or probation would result in less expenditure by DOC and although the exact fiscal impact is unknown, it is estimated that potential savings will be in excess of the indicated measurable dollar amount per year. The estimated savings per fiscal year is indicated in the above Chart Summary.

FISCAL IMPACT - State Government	FY 2004 (10 Mo.)	FY 2005	FY 2006
GENERAL REVENUE FUND			
Savings – Department of Corrections Decreased Incarceration/Probation	$908,197	$2,155,169	$2,494,252
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	**$908,197**	**$2,155,169**	**$2,494,252**

FISCAL IMPACT - Local Government	FY 2004 (10 Mo.)	FY 2005	FY 2006
	$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 add alcohol treatment programs to the long-term substance abuse treatment programs to which offenders may be sentenced in lieu of incarceration. The term of sentences for offenders admitted in these programs would be at least 12 months and no more than 24 months.

The proposal would further require prior notification by the Division of Probation and Parole to the sentencing court of an offender's completion of a substance abuse program. At that point, the court would determine whether the offender should be placed on probation or have his or her sentence executed.

The proposal would also allow courts to place offenders with the Department of Corrections in the department's 120-day program. When the department has determined that an offender has successfully completed a program, the offender would be released on probation. If the department would determine that an offender is not successful in the 120-day program, the department would notify the sentencing court, and the court would determine the future of the offender.

In the case of sex offenders, only the court could make the determination regarding probation. The court would be authorized to request information and recommendations from the department regarding the potential of sex offenders to reoffend when determining probation.

The participation and completion of a 120-day program would not be considered time served in determining the length of an offender's sentence.

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 State Courts Administrator
Department of Mental Health
Department of Corrections
Office of Prosecution Services
Office of State Public Defender

Mickey Wilson

Mickey Wilson, CPA
Director
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