

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3639-19
Bill No.: Truly Agreed To and Finally Passed HS for HCS for SS for SB 1000
Subject: Prisons and Jails; Crimes and Punishment; Criminal Procedure; Department of Corrections; Department of Public Safety
Type: Corrected#
Date: June 7, 2004
#Corrected to reflect August 28, 2006 sunset of court surcharges.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
DNA Profiling Analysis Fund#	(\$4,173 to Unknown)	(Unknown) to \$92,812	(\$1,477,854 to Unknown)
Total Estimated Net Effect on All State Funds#	(\$4,173 to Unknown)	(Unknown) to \$92,812	(\$1,477,854 to Unknown)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Social Services** and the **State Treasurer's Office** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of Attorney General** assume the costs are unknown, but anticipated to be less than \$100,000. The costs may result from advising agencies that review expungement applications and handling litigation related to those expungements.

Oversight assumes the AGO could absorb the cost of the proposed legislation within existing resources. If the AGO experiences an increase that would require additional funding, the AGO could request the funding through the appropriation process.

ASSUMPTION (continued)

Officials from the **Office of State Public Defender (SPD)** assume the proposal will change the DNA profiling system and will create new crimes. It includes anyone who has pleaded guilty to a felony. It also makes those who are currently on probation obligated to get profiled and failure to do so is a violation of probation. The exact number of cases affected is too uncertain to provide a definitive dollar amount of fiscal impact. Since the amount of impact is uncertain, the SPD cannot assume existing staff will be able to provide representation in these cases. However, once the true fiscal impact is determined, the SPD will reassess the impact of this legislation. Passage of more than one bill increasing existing penalties or creating new crimes will require increased appropriations for the SPD.

Oversight assumes the SPD could experience an increase in case load due to the proposed legislation. Oversight assumes the SPD could absorb the cost of the increased case load within existing resources.

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would make various revisions to the statutes relating to DNA analysis, expanding the list of those persons who must provide a sample. The legislation also imposes a series of surcharges on certain court cases to be deposited in the DNA analysis fund. Based on FY 03 data, CTS estimates that approximately \$1,823,424 would be deposited in the fund annually. CTS would not expect the collection of these surcharges to have a fiscal impact on the workload of the courts. Persons who have been proven innocent and whose conviction has been set aside may petition the court for expungement of their DNA-related records. CTS would not expect that the number of persons seeking expungement would be so great as to have a fiscal impact on 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 **Department of Mental Health (DMH)** assume all responsibility for procuring blood samples falls to agencies/parties other than the DMH. Therefore, there would be no cost to the DMH.

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** assume this proposal mandates that DOC (which includes the Division of Probation and Parole, or P&P) to collect DNA samples from all felony offenders which includes convictions, nolos, and guilty pleas (including SIS and SES.)

DOC has around 30,000 offenders in the Division of Adult Institutions (DAI) with day-to-day turnover of offenders. DOC has about 60,000 felons under supervision in P&P at any given time with constant changeover.

The current DNA database and tracking system would have to be modified system-wide to identify offenders who would need to be tested, notify and counsel with those offenders, schedule and ascertain availability of offenders for testing and provide that staff witness the collection at the time of the test. Evidence handling protocol would have to be enhanced. DOC's contracted inmate medical care provider does not collect samples for forensic functions, but merely for patient care purposes. It is assumed a mouth-swab could be performed by current staff. The additional staff person who has to be present at the time of testing would be absent from their current post and job duties.

Offenders in the field (as opposed to incarcerated offenders) are much more likely to fail to appear and then have to be located and physically brought to the testing site. Court action is sometimes necessary and this is a costly endeavor to the state. It is impossible to estimate the number of offenders who might abscond to avoid testing and/or payment. It is also impossible to estimate how many further incarcerations would result due to failure to comply with this proposal. This proposal does not mandate revocations for failure to comply for P&P offenders, but provides that the Board recommends it. 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 (FY03 average of \$38.10 per inmate per day, or an annual cost of \$13,907 per inmate) or through supervision provided by the Board of Probation and Parole (FY03 average of \$3.15 per offender per day, or an annual cost of \$1,150 per offender).

Incarcerated offenders can refuse to be tested. Use-of-force would be authorized to collect a sample. There will be overtime for the use-of-force and the subsequent paperwork, not to mention the additional staff accidents/workman comp claims.

In summary, the fiscal impact for DOC to implement this proposal would be unknown and the exact cost cannot be estimated.

ASSUMPTION (continued)

Officials from the **Department of Public Safety – Missouri State Highway Patrol (MHP)** assume the proposed legislation would increase current annual DNA analysis from approximately 2,200 to 28,000 (new offenders) samples. Upon implementation of the law, approximately 108,575 (backlog) adult individuals who are presently under the supervision of the Department of Corrections will qualify for collection and analysis. The MHP would provide training and collection kits to the Department of Corrections. With equipment upgrades, the Profiling Unit of the MHP's Crime Lab would be able to analyze the annual incoming offender samples and a portion of the offender backlog. It is unknown how quickly the Department of Corrections would provide the DNA samples from individuals already incarcerated or under field supervision to the MHP for analysis. MHP assumes the backlog samples would be provided by the Department of Corrections and be analyzed over a period of four years. The DNA processing cost is based on the estimated number of offenders, which was provided by the Department of Corrections in 2003, multiplied by the present cost of reagents and supplies. The equipment upgrade and additional employees are based on the estimated number of annual new offenders (not the initial backlog of 108,575) and the number of employees and the number and type of equipment needed to process these samples.

The Crime Lab would require the following additional FTE as a result of the proposed legislation:

2 Criminalists (each at \$28,044 per year) – duties would be to perform DNA sample preparation, analysis and review.

1 Laboratory Evidence Control Clerk (at \$18,732 per year) – duties would be to perform data entry, filing, and sample tracking and control.

1 Laboratory Evidence Technician (at \$22,320 per year) – duties would be to perform sample preparation, equipment maintenance and other laboratory support duties.

MHP estimates the total cost, subject to appropriations, to be \$1,523,693 in FY 05; \$1,730,612 in FY 06; and \$1,781,758 in FY 07. FY 05 costs reflect 6 months for Chapter 650 costs.

ASSUMPTION (continued)

MHP assumes the proposed legislation would result in long-range costs due to the increase current annual DNA analysis from approximately 2,200 to 28,000 (new offenders) samples. Upon implementation of the law, approximately 108,575 (backlog) adult individuals who are presently under the supervision of the Department of Corrections will qualify for collection and analysis. MHP assumes the backlog samples would be provided by the Department of Corrections and be analyzed over a period of four years. MHP estimates the long-range costs, subject to appropriations, to be \$1,627,561 in FY 08 and FY 09; \$1,302,611 in FY 10; and \$977,631 in FY 11 and beyond.

Oversight assumes any restitution payments required pursuant to §650.055.9 will be paid from the DNA Profiling Analysis Fund and disbursed by the Department of Public Safety, as administrator of the DNA Profiling Analysis Fund.

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
DNA PROFILING ANALYSIS FUND			
<u>Revenues</u> – State Treasurer’s Office			
Court fees#	\$1,519,520	\$1,823,424	\$303,904
<u>Costs</u> – Missouri State Highway Patrol			
Personal Service (4 FTE)	(\$49,784)	(\$102,058)	(\$104,609)
Fringe Benefits	(\$25,519)	(\$52,315)	(\$53,623)
Equipment and Expense	<u>(\$1,448,390)</u>	<u>(\$1,576,239)</u>	<u>(\$1,623,526)</u>
<u>Total Costs</u> – MHP	(\$1,523,693)	(\$1,730,612)	(\$1,781,758)
<u>Costs</u> – Department of Corrections			
Increased personnel costs and expenses	(Unknown)	(Unknown)	(Unknown)
<u>Costs</u> – Department of Public Safety			
Restitution	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON DNA PROFILING ANALYSIS FUND#	<u>(\$4,173 to Unknown)</u>	<u>(Unknown) to \$92,812</u>	<u>(\$1,477,854 to Unknown)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
	<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 impose a series of surcharges on certain court cases to be deposited in the DNA Profiling Analysis Fund.

#The surcharges on certain court cases to be deposited in the DNA Profiling Analysis Fund would expire on August 28, 2006.

Under this proposal, the “DNA Profiling System” is designed to assist federal, state, and local law enforcement with the identification, investigation, and prosecution of individuals, as well as the identification of missing people.

The proposal would require the DNA profiling system to support the development of forensic studies and protocols, and maintain a population statistics database for crime laboratories, in addition to the other activities it performs.

The proposal would require the DNA profiling system to collaborate with the FBI and other agencies relating to the state’s participation in the FBI’s Combined DNA Index System(CODIS).

The proposal would require the Department of Corrections, Division of Probation and Parole, an authorized designee, or a contracted third party to collect DNA samples from qualified offenders who are under the custody and control of the Department of Corrections. For qualified offenders who are under custody and control of a county jail, the DNA sample would be performed by the county jail, its authorized designee, or contracted third party.

DESCRIPTION (continued)

This proposal would require that every individual, who pleads guilty to a felony or any sexual offense pursuant to Chapter 566, RSMo, provide a sample for the purposes of DNA profiling analysis. An individual would be tested: 1) upon entering the Department of Corrections; 2) before release from a county jail, detention facility, state correctional facility, or other detention facility or institution; 3) upon being admitted to Missouri from another state pursuant to an interstate compact; or 4) while under the jurisdiction of the Department of Corrections, if the person is already under such jurisdiction.

The proposal would require a person to provide another sample for DNA profiling analysis, if his or her original sample was not adequate for any reason.

This proposal would make all DNA records and biological materials retained for the DNA profiling system closed records. The records would be considered confidential, and with limited exceptions, could not be disclosed. Anyone who properly obtain the records could only use the information for certain specified purposes.

The proposal would allow individuals to request expungement of their DNA sample and profile if the court issues a dismissal of the charges or reversal of the decision. The proposal would set out the proper procedure to be used when a person requests expungement of his or her information and such expungement is granted. With the expungement of information, the highway patrol would not be required to destroy evidence obtained from DNA samples if evidence relating to other people would be destroyed as well. The failure or delay in expunging a person's information would not be a reason to suppress evidence or change the result of his or her case. Within 30 days after the receipt of the court order, the Missouri State Highway Patrol would notify the individual that it has expunged his or her DNA sample and profile, or the basis for its determination that the person is otherwise obligated to submit a DNA sample.

An individual who is exonerated of a crime and released from incarceration because of the results of DNA profiling analysis may receive restitution in the amount of \$50 for each day of incarceration. All restitution would be paid from monies in the DNA Profiling Analysis Fund. A person who receives restitution would be prohibited from seeking any civil redress from the state.

If the results of DNA testing confirm a person's guilt, the person would be liable for reasonable costs incurred when conducting the DNA test and be sanctioned under Section 217.262, RSMo, for a frivolous lawsuit.

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 State Courts Administrator
Department of Mental Health
Department of Corrections
Department of Social Services
Department of Public Safety
 – Missouri State Highway Patrol
Office of Prosecution Services
Office of State Public Defender
State Treasurer's Office



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