

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2161-10
Bill No.: Truly Agreed To and Finally Passed SS # 2 for SCS for HCS for HB 972
Subject: Law Enforcement Officers and Agencies
Type: Original
Date: May 26, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)
Total Estimated Net Effect on General Revenue Fund	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Transportation, Department of Public Safety – Capitol Police, – Missouri State Highway Patrol, – Missouri State Water Patrol,** and the **Department of Revenue** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Office of the Attorney General (AGO)** assume the costs of representing the state on additional appeals brought under Section 577.023, RSMo, may be absorbed within existing resources. However, to the extent that this section now provides for mandatory minimums on sentences for aggravated or chronic offenders, AGO does anticipate an increase in the number of cases appealed. If the number of new appeals under this provision exceeds 25 in any fiscal year, the AGO would anticipate the need for 1 FTE Assistant Attorney General I to handle these additional appeals.

The AGO assumes any additional litigation arising from the adult oriented business provisions could be absorbed within existing resources. However, in the event of multiple lawsuits filed relating to this legislation, the AGO may seek additional appropriations to adequately represent the state in these cases.

ASSUMPTION (continued)

Officials from the **Office of State Courts Administrator (CTS)** assume the proposal would enhance the penalties for “chronic” and “aggravated” drunk offenders and create the crime of “aggravated vehicular manslaughter.” CTS assumes some cases may become protracted, but would not anticipate a fiscal impact on the judiciary.

CTS also assumes the legislation would provide that courts may not grant suspended imposition of sentences for certain chronic/aggravated offenders. CTS does not anticipate a fiscal impact on the judiciary.

CTS assumes the proposed legislation would also establish penalties for allowing minors to possess alcohol or drugs on real property. While there may be a number of violations, CTS would not expect the degree of enforcement to be so great as to fiscally impact the courts.

CTS assumes the legislation would also increase the penalty for involuntary manslaughter when certain conditions are met (alcohol, leaving a highway), and redefine the crime of endangering the welfare of a child to include driving while intoxicated. CTS would not expect a fiscal impact on the judiciary to result from these latter provisions.

CTS further assumes the proposed legislation would regulate sexually oriented businesses and create several new related crimes. Depending on the degree of enforcement, there may be an increase in the number of cases filed in some courts. CTS would not expect a significant fiscal impact on the judiciary.

In response to a previous version of the proposal (HCS for HB 972, LR # 2161-04), officials from the **Office of Prosecution Services** assumed the proposal would not have a significant direct fiscal impact on county prosecutors.

Officials from the **Office of the Secretary of State (SOS)** assume the proposal would give the Department of Revenue and/or the Department of Corrections the authority to adopt rules to implement the provisions of this act. These rules would be published in the Missouri Register and the Code of State Regulations. These rules could require as many as 20 pages in the Code of State Regulations and half again as many pages in the Missouri Register, as cost statements, fiscal notes, and the like are not repeated in the Code. The estimated cost of a page in the Missouri Register is \$23 and the estimated cost of a page in the Code of State Regulations is \$27. Based on these costs, the estimated cost of the proposal is \$1,230 in FY 06 and unknown in subsequent years. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded, or withdrawn.

ASSUMPTION (continued)

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which would require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

In response to a previous version of the proposal (HCS for HB 972, LR # 2161-04), officials from the **Office of the State Public Defender (SPD)** assumed existing staff could provide representation for those few cases arising where indigent persons were charged chronic or aggravated drunk offenses or aggravated vehicular manslaughter. Passage of more than one bill increasing penalties on existing crimes or creating new crimes would require the SPD 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 **Department of Corrections (DOC)** assume the bill relates to drug, alcohol, and sex related crimes.

Currently, the DOC cannot predict the number of new commitments which may result from the enhancement 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.

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 (FY04 average of \$38.37 per inmate per day, or an annual cost of \$14,005 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).

At this time, the DOC is unable to determine the number of people who would be convicted under the provisions of this bill and therefore the number of additional inmate beds that may be required as a consequence of passage of this proposal. Estimated construction cost for one new medium to maximum-security inmate bed is \$55,000. Utilizing this per-bed cost provides for a conservative estimate by the DOC, as facility start-up costs are not included and entire facilities and/or housing units would have to be constructed to cover the cost of housing new commitments resulting from the cumulative effect of various new legislation, if adopted as statute.

ASSUMPTION (continued)

In summary, 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. DOC assumes the impact would be greater than \$100,000 per year for their agency.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
GENERAL REVENUE FUND			
<u>Costs – Department of Corrections</u>			
Incarceration/probation costs	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>
 <u>FISCAL IMPACT - Local Government</u>	 FY 2006 (10 Mo.)	 FY 2007	 FY 2008
	<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

Adult Cabarets and Other Sexually Oriented Businesses

The proposal restricts the operation of adult cabarets and other sexually oriented businesses. A sexually oriented business is defined as any adult cabaret or any business which generates more than 30% of its revenue from the sale of sexually oriented material. In its provisions regarding sexually oriented businesses, the proposal makes it a class A misdemeanor to: (1) Exhibit films depicting sexual activity at any sexually oriented business, unless several specific restrictions are met. Violation of this provision allows the county prosecutor or the Attorney General to enjoin the business as a public nuisance; (2) Appear in a state of nudity or depict, simulate, or perform a sex act in a sexually oriented business; (3) Appear in a semi-nude condition in a sexually oriented business, unless the person is an employee and remains at least 10 feet away from any customer, on a stage at least two feet from the floor and behind a railing no less than two feet in height; (4) Touch a customer in a sexually oriented business while in a semi-nude condition; or (5) Allow a person younger than 21 years of age to enter a sexually oriented business, except for delivery persons or repair persons. A sexually oriented business may be closed as a public nuisance if the owner of the business allows criminal activity to occur on the premises. (§§67.2540, 67.2546, 67.2552)

Laws Regarding Sex Crimes

The proposal requires lifetime supervision by the Board of Probation and Parole for any person convicted of certain sex offenses when the victim is younger than 14 years of age and the offender is sentenced as a prior sex offender. All offenders must be electronically monitored using a global positioning system. (§§217.735, 559.106)

The proposal clarifies the crime of sexual misconduct involving a child. A person commits the crime when a person exposes his or her genitals to a child younger than 14 years of age under circumstances in which the person knows the conduct is likely to cause affront or alarm to the child or knowingly coerces or induces a child less than 14 years of age to expose the child's genitals for the purpose of arousing or gratifying the sexual desire of any person, including the child. The proposal contains an emergency clause for this section. (§566.083)

The proposal creates the crime of tampering with electronic monitoring equipment, a class C felony. The crime is committed when a person intentionally removes or tampers with an electronic monitoring device which is required to be worn by a criminal offender, pursuant to a court order or as required by the Board of Probation and Parole. (§575.205)

DESCRIPTION (continued)

The proposal creates the crime of violating a condition of lifetime supervision, a class C felony. The crime is committed when a person knowingly violates a condition of lifetime supervision by the Board of Probation and Parole for any person convicted of certain sexual offenses. (§575.206)

Intoxication Related Offenses

Current law states that any person, except a parent or guardian, who procures for, sells, gives away, or otherwise supplies alcohol to a person under the age of 21 is guilty of a misdemeanor. The proposal prohibits any owner, occupant, or other person or legal entity with a lawful right to the use and enjoyment of any property from knowingly or recklessly allowing a person under the age of 21 to drink or knowingly or recklessly failing to stop a minor from drinking on such property, unless the person is the minor's parent or guardian. A person who violates these new provisions would be guilty of a class A misdemeanor. (§311.310)

The proposal expands the crime of involuntary manslaughter in the first degree and increases the penalty under certain circumstances. The crime is a class B felony when a person operates a motor vehicle in an intoxicated condition and with criminal negligence: (1) Causes the death of any person not a passenger in the vehicle operated by the defendant; (2) Causes the death of two or more persons; or (3) Causes the death of any person while the defendant's blood-alcohol content is greater than .18%. A second or subsequent violation causing the death of any person while the defendant's blood-alcohol content is greater than .18% would be a class A felony and the defendant would serve a minimum of 85% of his or her prison term. (§565.024)

Under this proposal, a person who operates a vehicle in violation of the statutes concerning involuntary manslaughter, assault in the second degree, diving while intoxicated, and driving with excessive blood alcohol content, while a child who is less than 17 years old is present would be guilty of endangering the welfare of a child in the second degree. Such offense would be a class A misdemeanor unless committed as part of a ritual or ceremony, in which case, it would be a class D felony. (§568.050)

DESCRIPTION (continued)

Prior, Persistent, Aggravated, and Chronic Offenders

The proposal would clarify that the penalty enhancement provisions in Section 577.023 relating to prior, persistent, aggravated, and chronic offenders should be applied consistently whether in municipal, county, and state courts. The proposal would specify that when an individual is charged under a municipal ordinance, the individual would not be entitled to suspended imposition of sentence if he/she meets the definition and classification as a prior, persistent, aggravated, or chronic offender under Section 577.023.1.

The proposal would create two new types of offenders (“aggravated offenders” and “chronic offenders”) for the purposes of applying the enhanced penalties and prison requirements of Section 577.023.

The proposal would modify the definition of a “persistent offender.” Under the provisions of the proposal, a “persistent offender” would be a person convicted of two or more intoxication-related traffic offenses. Under the current law, the prior offenses must have occurred within 10 years of the offense for which the person is being charged.

The proposal would define an “aggravated offender” as a person who has pleaded to or been found guilty of three or more intoxication-related traffic offenses or one intoxicated-related traffic offense and certain enumerated crimes (involuntary manslaughter, assault in the second degree, or assault of a law enforcement officer).

The proposal would define a “chronic offender” as a person who has pleaded guilty to or has been found guilty of four or more intoxication-related traffic offenses on two or more of separate occasions certain enumerated crimes (e.g. involuntary manslaughter or assault in the second degree); or two or intoxicated-related traffic offenses plus has been found guilty of certain enumerated crimes (e.g. involuntary manslaughter or assault in the second degree).

Any person who is found guilty of a DWI or driving with an excessive blood alcohol content (BAC) and is proven to be an aggravated offender would be guilty of a class C felony. Aggravated offenders would not be eligible for parole or probation until they serve a minimum of 60 days imprisonment.

Any person who is found guilty of a DWI or driving with an excessive blood alcohol content (BAC) and is proven to be a chronic offender would be guilty of a class B felony. Chronic offenders would not be eligible for parole or probation until they serve a minimum of two years imprisonment. (Section 577.023)

DESCRIPTION (continued)

The proposal contains an emergency clause for Section 566.083. This section would be in full force and effect upon its passage and approval.

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 the Attorney General
Office of State Courts Administrator
Department of Transportation
Department of Corrections
Department of Revenue
Department of Public Safety
– Capitol Police
– Missouri State Highway Patrol
– Missouri State Water Patrol
Office of Prosecution Services
Office of the Secretary of State
Office of the State Public Defender



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