

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4449-06
Bill No.: Perfected HCS for HB's 1831 & 1472
Subject: Abortion; Health Care; Health Care Professionals; Hospitals; Physicians
Type: Original
Date: April 16, 2008

Bill Summary: This legislation modifies the requirements for the performance of an abortion and creates the crime of coercing an abortion.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
General Revenue	(\$114,500 to Unknown)	(\$117,922 to Unknown)	(\$118,460 to Unknown)
Total Estimated Net Effect on General Revenue Fund	(\$114,500 to Unknown)	(\$117,922 to Unknown)	(\$118,460 to Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on FTE	0	0	0

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the State Courts Administrator** and the **Department of Insurance, Financial Institutions & Professional Registration** each assume the proposal would have no fiscal impact on their respective agencies.

In response to a previous version of this proposal, officials from the **Office of Administration** assume the proposal would have no fiscal impact on their agency.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which 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.

Officials from the **Office of the Attorney General (AGO)** state that implementing the proposed initiative petition would not directly affect the AGO. However, AGO assumes that because this proposal has the potential to be the subject of state and federal litigation, potential costs are unknown.

Oversight assumes, because the potential for litigation is speculative, that the AGO will not incur significant costs related to this proposal. If a fiscal impact were to result, the AGO may request additional funding through the appropriations process.

ASSUMPTION (continued)

In response to a previous version of this proposal, officials from the **Office of the State Public Defender (SPD)** state for purposes of the proposal, the SPD cannot assume existing staff will provide competent, effective representation for any new cases arising where indigent persons are charged with the proposed new crime of coercing an abortion, a class A misdemeanor.

While the number of new cases may be too few or uncertain to request additional funding for this specific proposal, the SPD will continue to request sufficient appropriations to provide competent and effective representation in all of the SPD cases.

Oversight assumes the SPD could absorb the additional caseload that may result from this proposal within existing resources. Oversight assumes any significant increase in the workload of the SPD would be reflected in future budget request.

Officials from the **Department of Corrections (DOC)** state this proposal both enhances existing crimes and creates new crimes.

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.

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 (FY07 average of \$41.21 per inmate, per day or an annual cost of \$15,040 per inmate) or through supervision provided by the Board of Probation and Parole (FY07 average of \$2.43 per offender, per day or an annual cost of \$887 per offender).

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the Department. Seven (7) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

Oversight assumes the DOC could absorb the additional caseload that may result from this proposal within existing resources. Oversight assumes any significant increase in the workload of the DOC would be reflected in future budget request.

ASSUMPTION (continued)

Officials from the **Department of Social Services** assume in accordance with Public Law 105-798 (1997) relating to abortions, Medicaid payment is only available for abortions performed when the life of the woman would be endangered if the fetus were carried to term or that the pregnancy is the result of an act of rape or incest.

The United States District Court case of the Department of Social Services vs. the Secretary of Health and Human Services states "if the State of Missouri chooses to accept federal funds pursuant to Title XIX, it must provide funding for abortions terminating pregnancies resulting from rape and incest as well as those necessary to save the life of the pregnant woman".

In fiscal year 2007, the MO HealthNet Division (MHD) reimbursed for one abortion. It is standard procedure to provide an ultrasound prior to an abortion. Therefore, there will be no fiscal impact to MHD as a result of this legislation.

Officials from the **Department of Health and Senior Services** state the following:

Section 188.027. 1:

According to section 188.027.1(2) DHSS is to provide printed materials or an informational video to the licensed physician describing the "probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from conception to full term...".

In calendar year 2006, there were 11,833 resident abortions performed in Missouri. Since the Department has no way of determining exactly how many abortions will be conducted at each facility in a given year, it is assumed extra materials will need to be produced and provided to each facility. The Department assumes pamphlets/brochures for at least two times the number of 2006 abortions ($11,833 \times 2 = 23,666$, rounded up to 24,000) will need to be printed and distributed. At an estimated cost of \$0.50 per pamphlet/brochure, \$12,000 would be needed to purchase 24,000 copies.

Section 188.027.1(3) requires DHSS to provide the physician with printed materials or an informational video describing the various methods of abortion relevant to the stage of pregnancy, as well as any medical risks associated with each method. Subdivision (5) requires information on the possibility of the procedure causing pain to the unborn child. This information will be provided in one informative sheet listing the types of abortions as well as the side effects. This will result in a cost of \$1,200 ($24,000 \times \0.05 each).

ASSUMPTION (continued)

DHSS is also required to maintain a geographically indexed list of health care providers, facilities, and clinics that perform ultrasounds, including those that offer services free of charge. The list should include contact information including telephone numbers and website addresses. There will be no additional cost for this requirement as a list of providers is currently available on the DHSS website.

Section 188.027.1 (6):

At least 24 hours prior to the procedure, the treating physician is required to explain the services available through the Missouri Alternatives to Abortion Program as well as any other programs and services available to pregnant women and mothers of newborn children that are offered by state agencies. This could potentially increase the number of referrals and the amount of services provided through the Alternatives to Abortion Program.

In 2006, there were 11,833 resident abortions performed in Missouri. The cost per client per year for the Alternatives to Abortion Program in 2007 was \$806.94. Currently the program provides services only to women 200 percent of the federal poverty level or below. The Missouri Budget Project estimates that 30 percent or more of Missouri women 18 years or older are at 200 percent of the federal poverty level. Based on this assumption, 3,550 ($11,833 \times 0.30$) women would be eligible for services provided through the Alternatives to Abortion Program. Cost for services for an additional 3,550 women in the program would be \$2,864,637 ($3,550 \times \806.94).

The Department is unable to project how many of the estimated women eligible for the program would actually seek services. Therefore, the estimated fiscal impact for this portion is estimated to be a range between \$0 and \$2,864,637.

Section 188.027.1 (7):

DHSS is required to provide printed materials or an informational video explaining the legal duties and obligations of the father of the unborn child. These brochures are available through the Department of Social Services. DHSS will obtain these brochures at no cost for the distribution.

Section 188.027.2:

This section requires the physician to provide the woman with a checklist form stating that she has been presented all the information required. This checklist is to be provided by DHSS. The cost for 24,000 pre-abortion checklists is \$1,200 ($24,000 \times \0.05 each).

ASSUMPTION (continued)

Section 188.027.10:

This section requires every abortion facility to display signs that contain a statement enforcing the idea that consent to an abortion is voluntary. DHSS shall promulgate rules specifying the location of the signs. The sign requirement must be considered as a condition of licensure of abortion facilities under Chapter 197. Promulgation and enforcement of the necessary rules would not result in a significant cost to the department, and will therefore be absorbed with existing resources. DHSS is required to provide the signs to each provider. The number of providers is unknown at this time. It is estimated that a minimum of 1,000 "coercion" posters will need to be printed and distributed at a cost of \$1,000 (1,000 posters x \$1.00 each). Shipping the posters to the providers would be approximately \$2,000 (1,000 posters x \$2.00 shipping).

Section 188.027.11:

Section 188.027.11 requires the Department to make all of the information provided to the physicians available to the public through the DHSS website, as well as maintain a toll-free, twenty-four-hour hotline telephone number where a caller can obtain information concerning the agencies and services described in the legislation. Information is currently available on the DHSS website through the Abortion Public Awareness Program. DHSS would be required to establish a toll-free, twenty-four-hour hotline telephone number. The Department is in the process of researching the cost of providing this service, but at this time is not able to determine the exact cost for this service. The Department estimates the cost may be up to \$100,000 annually. If the Department later determines the cost would be significantly less, a revised fiscal note response will be submitted.

Currently, there is no FTE or funding allocated to administer the Alternatives to Abortion program. The program coordinator working with this program is responsible for the oversight of five other programs including managing the Alternatives to Abortion program. With the added responsibilities of the proposed legislation, the addition of one (1) Health Program Rep III (\$36,204) would be needed to carry out the added responsibilities of the proposed legislation as well as aid in the responsibilities of managing the Alternatives to Abortion program.

Current management of the Alternatives to Abortion program includes: contract development and compliance monitoring; managing the fiscal integrity of the program including monitoring the monthly invoices to assure completeness and correctness with delivery of services billed; monitoring data collection and the operation of the Alternatives to Abortion electronic data system along with deciding upon modifications required of the database to increase efficiency; monitoring of the database contractor; working with the Information and Referral Line contractor and monitoring that contract to assure proper implementation and operation of the line for

ASSUMPTION (continued)

customer satisfaction; working with the media development contractor to develop and maintain a media campaign to satisfy the requirements of Section 188.335, RSMo. which established the Alternatives to Abortion Public Awareness program; assure compliance of the contractors to the contract deliverables to at least annual, and more as indicated, monitoring site visits; collecting data for and assisting with the evaluation of the annual customer satisfaction surveys of clients served by the program; providing information and reports as indicated to the General Assembly, department and division on the operation, outcomes, and fiscal status of the Alternatives to Abortion Program; developing the annual program evaluation and monthly program report; managing and approving the day-to-day requests of the Alternatives to Abortion contractors and subcontractors for "other" services as indicated in the contract; and developing and providing training for the contractors and subcontractors to improve their skills in implementing the Alternatives to Abortion program.

Additional requirements of this proposed legislation would require additional duties including: performing research for the procurement or development of pamphlets or videos to be provided to health care providers for distribution to the woman before the abortion is performed; develop and provide printed materials for distribution on the possibility of the abortion causing pain to the fetus; assuring that the persons conducting ultrasounds provide ultrasounds of quality consistent with standard medical practice in the community; develop and provide a list of public and private agencies available to assist a woman in carrying her child to term and to assist her carrying her dependent child to term or placing them for adoption; develop, provide for distribution and assure compliance with provisions of the statute concerning the posting of the coercion posters; provide for the availability and distribution of brochures with information on the legal duties and support obligations of the father of the child; develop and provide for distribution of and assure compliance with the provisions of the statute concerning the use of the pre-abortion checklist; assist with the promulgation of all necessary rules, forms, and other materials to implement this proposed legislation by November 26, 2008; and monitor the compliance of physician's offices with the requirements of this proposed statute.

The total fiscal impact for the Department of Health and Senior Services is (\$159,6400 to \$2,546,838) for FY 2009, (\$173,715 to \$3,124,291) for FY 2010, and (\$175,926 to \$3,215,019) for FY 2011.

Oversight assumes, an unknown cost for the various services provided by the Alternative to Abortion Program.

Officials from the **Office of Prosecution Services (OPS)** have not responded to Oversight's request for fiscal information.

SEC:LR:OD (12/06)

FISCAL DESCRIPTION

The proposed legislation modifies the informed consent requirements for an abortion by adding new requirements to be obtained at least twenty-four hours prior to an abortion. Some of the new requirements include presenting to the pregnant woman various new printed materials and videos, to be developed by the Department of Health and Senior Services by November 26, 2008, detailing the risks of an abortion and the physiological characteristics of an unborn child at two-week gestational increments. The woman must also be provided with the gestational age of the unborn child at the time the abortion is to be performed and must be given an opportunity to view an active ultrasound of the unborn child and hear the heartbeat of the unborn child, if the heartbeat is audible. Prior to an abortion being performed past twenty-two weeks gestational age, the woman must be provided information regarding the possibility of the abortion causing pain to the unborn child. In addition to the written informed consent, the legislation requires the physician to discuss the medical assistance and counseling resources available, advise the woman of the father's liability for child support, and provide information about the Alternatives to Abortion Program.

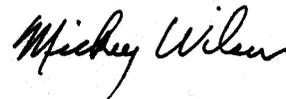
This legislation also creates the crime of knowingly coercing a woman to seek or obtain an abortion. Such coercion includes committing or threatening to do the following: abusing or stalking of the woman, committing an offense against the woman or her family; filing for dissolution of marriage, refusing to pay child support or provide financial support; taking the unborn child once born or her other children; changing the woman's house or existing residence; discharging the woman from her employment; or revoking a scholarship awarded to the woman. A violation of coercing an abortion may range from a Class A felony to a Class A misdemeanor, depending on the prescribed circumstances. This legislation also creates the crime of knowingly performing, inducing or assisting in an abortion on a woman who is a victim of coerced abortion. The elements of the crime are specified in the act and a violation of such crime constitutes a Class C felony.

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 Administration
Department of Insurance, Financial Institutions & Professional Registration
Department of Corrections
Department of Health and Senior Services
Department of Social Services
Office of the Secretary of State
Office of the State Public Defender
Office of the State Courts Administrator

Not Responding: Office of Prosecution Services



Mickey Wilson, CPA
Director
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