

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5235-05
Bill No.: Perfected SS for SCS for SB 1014
Subject: Crimes and Punishment; Sexual Offenses; Prisons and Jails; Counties; Courts; Probation and Parole; Department of Corrections
Type: Original
Date: April 14, 2010

Bill Summary: The proposal modifies provisions relating to crime.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	Unknown	Unknown	Unknown
Total Estimated Net Effect on General Revenue Fund	Unknown	Unknown	Unknown

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
County Corrections Stabilization*	\$0	\$0	\$0
Total Estimated Net Effect on Other State Funds*	\$0	\$0	\$0

*Offsetting Transfers in and Costs of an Unknown amount in FY12 and FY13, net to \$0.

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
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 2011	FY 2012	FY 2013
Local Government*	\$0	\$0	\$0

*Offsetting Revenues and Costs of an Unknown amount in FY12 and FY13, net to \$0.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Labor and Industrial Relations, Department of Public Safety – Missouri State Highway Patrol, Missouri House of Representatives, Missouri Senate,** and the **Office of the State Treasurer** assume the proposal would have no fiscal impact on their agencies.

In response to a previous version of the proposal (SCS for SB 1014, LR # 5235-02), officials from the **Office of the State Public Defender** assumed the proposal would have no fiscal impact on their agency.

Officials from the **Office of the Attorney General** and the **Department of Public Safety – Director’s Office** assume any potential costs arising from this proposal can be absorbed within existing resources.

Officials from the **Administrative Hearing Commission** anticipate that this legislation will not significantly alter its caseload. However, if other similar bills also pass, there will be fiscal impact. If there are more cases, or more complex cases, there could be a fiscal impact.

Officials from the **Office of State Courts Administrator (CTS)** state the proposed legislation creates the “County Corrections Stabilization Fund.” The general assembly will appropriate one-half of any annualized savings from the implementation of the legislation to general revenue, one-sixth shall be appropriated to the Circuit Courts, one-sixth shall be appropriated to the Department of Corrections for any costs associated with community supervision, and one-sixth shall be appropriated to the “County Corrections Stabilization Fund.”

CTS is unable, at this time, to estimate the additional revenues for the Circuit Courts.

CTS notes they are unable at this time to provide the number of class C and class D felony cases with a guilty plea this legislation would affect. This number will be calculated and forwarded as soon as possible.

ASSUMPTION (continued)

To offset additional participants in treatment courts, any court funding would be utilized to add participants to existing treatment courts and to implement new programs in jurisdictions where they currently do not exist. An expansion of the treatment court population is based on the cost to provide comprehensive program services at an estimated cost of \$3,100 per participant, per year. New treatment court programs provided by additional funding may require additional staff at CTS to assist with any program expansion.

Oversight assumes the Office of State Courts Administrator could absorb the costs of the proposed legislation within existing resources. Oversight assumes any significant increase in the workload of the CTS would be reflected in future budget requests.

Officials from the **Department of Corrections (DOC)** assume this proposal would not allow offenders who plead guilty to a class D or class C felonies as identified in this legislation to be sentenced to incarceration in the DOC.

The intent of this legislation is to reduce prison population and close a prison in the State of Missouri. Although DOC anticipates a savings from reducing the number of class C and D offenders sentenced to confinement in our institutions, it is important to note that savings could be negated by a continued increase in the offender population that is not addressed by this legislation.

The DOC offender population increased throughout the past twelve months and increased by 108 offenders since January, 2010. DOC has already exceeded the operational capacity at male prisons and is using overflow (saturation) bed-space for male offenders. DOC projects that they will be completely out of all male saturation bed-space by May, 2012, and in need of a new male prison.

DOC assumes the intent of this bill is to reduce prison population, which would potentially result in the closure of a prison. DOC institutions are funded primarily through the General Revenue Appropriation. Closure of one prison could potentially create a savings to the state. Fifty percent (50%) of the savings generated from the implementation of this bill would be reverted back to General Revenue.

This legislation requires the DOC to calculate savings using a flawed mechanism. The only way to realize savings is an overall reduction in prison population, not just a reduction in class C and D felons. If prison population continues to rise due to other factors, the savings could be substantially less to minimal and would likely not result in the closing of a prison. The reduction in prison population could, however, be enough to prevent a new prison from being needed.

ASSUMPTION (continued)

This legislation requires an increase in the reimbursement rate to counties for housing offenders. Due to an increase in this rate the overall savings to the state could be significantly reduced, especially if a prison cannot be closed.

This bill requires that one half of the savings be reverted to General Revenue, one sixth to DOC, one sixth to circuit courts, and one sixth to the county corrections stabilization fund. It further states that the county corrections stabilization fund shall receive the first \$2 million of all savings. DOC states they are not able to comply with the proposal as written. Because of the way the state appropriation process works, savings could not be determined until the end of FY11, which is after the FY12 budget process is finalized. Therefore, the appropriation request can not occur until the FY13 Budget Request is submitted in October of calendar year 2012 and the funds would not be available until FY13. Also, DOC does not have the authority to transfer moneys to the county corrections stabilization fund or the circuit courts nor the ability to retain funds from one fiscal year to another. Appropriations of funds must be done by the general assembly, not the DOC.

If the remaining offender population stopped growing, the best case scenario in FY11 would be a gradual reduction in prison population on a month to month basis. A prison could not be closed in FY11. In addition, the crimes resulting in incarceration that are not included in this legislation will continue to grow which will reduce the overall savings. Therefore, the potential savings to the DOC at this time are Unknown.

In FY12, if the reduction in the prison population is such that a prison could be closed, it is unlikely the prison could be closed by the start of the fiscal year and would have to be closed at some point during FY12. Therefore, the savings to the DOC (depending on at one point during the year the prison could be closed and depending on the size of prison that is closed and on which prison is closed) for FY12 would be Unknown. Due to the higher reimbursement rate, the savings are "unknown."

In FY13, assuming a prison could be closed, the savings to the state would be Unknown (again, this number is dependent on a number of variables, such as which prison would be closed, the size of the prison, and the higher reimbursement rate).

DOC notes they adjust their budget request each year based on the prison population; this will significantly impact the amount of savings generated each fiscal year.

ASSUMPTION (continued)

If this legislation should result in the closing of a prison, the DOC has serious concerns since the legislation sunsets in 2013. It is possible that population increases may necessitate the re-opening of a prison.

The proposal would also allow offenders to be placed on electronic monitoring instead of being incarcerated in county jails in certain circumstances. The costs of electronic monitoring are substantially less than the reimbursement to counties. Therefore, some savings would be generated, but at this time the amount is Unknown.

Although DOC anticipates savings from the diversion of offenders from prison and the use of electronic monitoring program in county jails, the unknown increase of offenders not addressed by this legislation and the increased costs of reimbursement to counties could reduce the overall savings.

In response to a similar proposal from the current session (SCS for SB 787, LR # 4148-03), officials from the **Office of the Secretary of State (SOS)** assumed 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 proposal for Administrative Rules is less than \$2,500. The SOS recognizes this is a small amount and does not expect additional funding would be required to meet these costs. However, SOS also recognizes that many such bills may be passed in a given year and that collectively the costs may be in excess of what the SOS can sustain with their core budget. Any additional required funding would be handled through the budget process.

Officials from the **Boone County Sheriff's Department (BCSD)** assume the proposal would result in substantial costs. It costs \$62.50 per day per inmate to house an inmate in the Boone County Jail. To force the BCSD to house those convicted of certain C & D felonies instead of the state at a maximum reimbursement rate of only \$37.50 will create a minimum cost excess to the county of \$25.00 per day per inmate, and a more accurate figure is \$43.50 per day per inmate.

In response to a previous version of the proposal (SCS for SB 1014, LR # 5235-02), officials from **Clay County** stated Department of Corrections gains by this bill. Counties lose whether they stay under their allotted number or go over it.

ASSUMPTION (continued)

In response to a previous version of the proposal (SCS for SB 1014, LR # 5235-02), officials from the **St. Charles County** stated there are an estimated 90 offenders from St. Charles County incarcerated for a nonviolent offense with the Missouri Department of Corrections. Under the provisions of the bill, that number would be reduced by 13.5 inmates. Based on the duty to uphold the laws of the state, regardless of a Department of Corrections quota, and utilizing the range of sentences set into law, St. Charles County would anticipate being forced to house these additional inmates in the county jail. Officials estimate the cost to house 13.5 inmates at \$68.00 per day to be \$335,070 per year.

Officials from the **St. Louis County Department of Justice Services** assume it appears inmates convicted of class D felonies without two prior felony convictions will not be remanded to the custody of the state. Those inmates may be sentenced up to two years in a county jail. Inmates convicted of certain class C felonies will not be remanded to the custody of the state and may be sentenced up to three years in a County Jail. If such were to occur it would be paramount that St. Louis County would be compensated on a per diem basis from the "County Corrections Stabilization Fund" or reimbursed by the state from other means.

Despite any reimbursement to the county, the number of additional inmates to be possibly detained by St. Louis County would be of considerable concern. Additional inmates would potentially result in acute jail overcrowding. The St. Louis County Jail is currently experiencing increased jail population and is nearing capacity. It appears the state is transferring the cost to detain such prisoners from the state to the county.

The potential economic impact and cost to St. Louis County would be significant. The state currently reimburses St. Louis County \$27 per day for inmates confined and then sentenced to MDC from our facility on the class C and D felonies as indicated in the bill. The Department of Justice Services has previously determined that the cost to house a prisoner is approximately \$75 per day. For each inmate in the categories identified in the bill, the cost to incarcerate the inmate and not remand him/her to Missouri Department of Corrections would be tremendous and result in significant operational problems and inefficiencies.

Oversight assumes any annualized savings from one fiscal year will be appropriated to the specified funds the following fiscal year. Oversight assumes, since one-half of any annualized savings from the implementation of the legislation will be appropriated to general revenue, one-sixth appropriated to the Circuit Courts, one-sixth appropriated to the Department of Corrections for any costs associated with community supervision, and one-sixth appropriated to the "County Corrections Stabilization Fund," Oversight assumes the revenues in any given fiscal year will exceed the transfers out and costs incurred in the general revenue fund.

ASSUMPTION (continued)

Officials from the Office of Prosecution Services, Various Missouri Counties, Buchanan County Sheriff’s Department, Clark County Sheriff’s Department, Jackson County Sheriff’s Department, and the Platte County Sheriff’s Department did not respond to Oversight’s request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
GENERAL REVENUE FUND			
<u>Savings</u> – Department of Corrections			
Reduced inmate population	Unknown	Unknown	Unknown
<u>Transfers out</u> – From General Revenue Fund			
To County Corrections Stabilization Fund	\$0	(Unknown)	(Unknown)
To Circuit Courts	\$0	(Unknown)	(Unknown)
<u>Costs</u> – Department of Corrections			
For community supervision	\$0	(Unknown)	(Unknown)
<u>Costs</u> – Circuit Courts			
Circuit Court costs	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2011 (10 Mo.)	FY 2012	FY 2013
COUNTY CORRECTIONS STABILIZATION FUND			
<u>Transfers in</u> – From General Revenue Fund	\$0	Unknown	Unknown
<u>Costs</u> – Department of Corrections To Counties	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON COUNTY CORRECTIONS STABILIZATION FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
LOCAL GOVERNMENT			
<u>Revenues</u> – Counties From County Corrections Stabilization Fund	\$0	Unknown	Unknown
<u>Costs</u> – Counties Probation services and inmate housing	<u>\$0</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENT	<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.

FISCAL DESCRIPTION

Section 217.023 – Sentencing

Under the proposed legislation, the Department of Corrections shall not accept for commitment in its prisons any offender who pleads guilty to or is found guilty of a class D felony unless such person has been found guilty of or pleaded guilty to at least two prior felonies. Nor shall the department accept for commitment any offender who pleads guilty to or is found guilty of certain class C felonies, including passing bad checks, check kiting, forgery, and certain other offenses, unless such person has at least one prior felony. Any such offender may be: 1) directed, with the agreement of the parties and the approval of the court, to participate in a drug court, DWI court, or any other treatment court approved by the drug courts coordinating commission, 2) sentenced to county jail, or 3) placed on probation.

For the purpose of calculating the savings to the state resulting from implementation of these provisions, the Department of Corrections shall calculate a state baseline number consisting of the average of the numbers of persons in the department on the last day of each month in fiscal year 2009, who were committed to the department solely for certain class C and D felonies as described above. The department shall calculate the savings to the state each quarter by subtracting the average daily population of offenders housed in prison for such class C and D felonies during the quarter from the state baseline number. The quarterly savings to the state shall be determined by multiplying the operational costs per offender by the difference between the state baseline number and the average daily population for the quarter and then subtracting from that number the cost of probation and parole and the cost of drug, DWI, or other treatment courts for the diverted offenders. If the population of such class C and D felony offenders increases in any quarter, no calculations shall be required.

The savings shall be distributed in the following manner: One-half shall revert to the general revenue fund. Subject to appropriations, one-sixth shall be retained by the Department of Corrections for community supervision costs, one-sixth shall be distributed to the circuit courts, and one-sixth shall be distributed to the “County Corrections Stabilization Fund,” which is created under this act to be used by counties to fund the housing of inmates who are serving sentences on such class C and D felonies. This fund shall receive the first \$2 million dollars of savings toward its share of the distribution. The money in the fund shall not revert back to the general revenue fund.

The department shall provide the prosecuting or circuit attorney, on a monthly basis, with a list of the persons incarcerated in the department from such county, including the risk assessment and parole release guidelines used by the Board of Probation and Parole for each individual, the list of offenses committed by each person, and the person's conditional and board release date.

FISCAL DESCRIPTION (continued)

The provisions of this section shall expire August 28, 2013, except that the resulting savings during the year ending on August 28, 2013, shall be distributed after such date.

Section 217.1000 – Criminal Justice Review Commission

The “Criminal Justice Review Commission” is created to study the effects of these provisions and make recommendations for any proposed changes prior to August 28, 2013. The commission shall make annual reports to the Governor, Speaker of the House, and President pro tem of the Senate.

Section 558.011 – Sentencing

Currently, in the case of class C and D felonies, the court has discretion to imprison a person for a term not to exceed one year in the county jail. Under this act, the court may imprison a person for a term not to exceed two years in the county jail for class D felonies and three years for class C felonies. Currently, if the court imposes a sentence of more than one year, the person shall be committed to the Department of Corrections for a term of not less than two years but not exceeding the maximum authorized term. Under this act, if the court imposes a sentence of imprisonment in the department, it shall make a finding that the person has at least one prior felony for the class C felonies listed above in Section 217.023 and at least two prior felonies for class D felonies.

Section 559.015 – Release to Drug, DWI, or Treatment Court

The Board of Probation and Parole may select nonviolent offenders for release upon their admission to a drug, DWI, or treatment court upon agreement with the drug court commissioner or judge. Any such offender shall be subject to the jurisdiction of such court as of if original probation. The provisions of this section shall expire August 28, 2013.

Section 559.100 – Circuit Court Jurisdiction

Under this act, the circuit court shall retain jurisdiction over any person sentenced to a term of confinement in a county jail for the duration of the sentence or the term of probation granted under law. The provisions in this section shall expire August 28, 2013.

FISCAL DESCRIPTION (continued)

Section 566.067 – Child Molestation

Currently, the crime of child molestation in the first degree is a class A felony if the person has previously committed a sexual offense under Chapter 566. Under this act, the penalty for such offense shall be the same when the person has committed a previous sexual offense in another jurisdiction equivalent to one under Chapter 566.

Sections 595.036, 595.037, 595.060, 621.275 (SA 1) – Crime Victims’ Compensation Fund

The proposal modifies the process for appealing a decision of the Department of Public Safety regarding a Crime Victims’ Compensation Fund claim. Currently, an aggrieved person files a petition with the division of workers’ compensation to have a decision heard de novo by an administrative law judge. Any party aggrieved by the decision of the administrative law judge may file a petition with the Labor and Industrial Relations Commission to appeal such decision. Finally, any party aggrieved by the commission’s decision may appeal to the court of appeals.

Under this act, an aggrieved person may file a petition with the director of the Department of Public Safety to have the original decision of the department staff heard de novo. Any party aggrieved by the decision of the director may file a petition with the Administrative Hearing Commission. The decision of the Administrative Hearing Commission can then be appealed to circuit court.

The provisions in Sections 221.105, 558.011, and 559.100 shall expire August 28, 2013.

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
 – Administrative Hearing Commission
Office of State Courts Administrator
Department of Corrections
Department of Labor and Industrial Relations
Department of Public Safety
 – Missouri State Highway Patrol
 – Director's Office
Missouri House of Representatives
Missouri Senate
Office of the Secretary of State
Office of the State Treasurer
Boone County Sheriff's Department
St. Louis County Department of Justice Services
St. Charles County
Clay County

NOT RESPONDING

Office of Prosecution Services, Various Missouri Counties, Buchanan County Sheriff's Department, Clark County Sheriff's Department, Jackson County Sheriff's Department, and the Platte County Sheriff's Department



Mickey Wilson, CPA
Director
April 14, 2010