

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO. 3056-07
BILL NO. SCS for HS for HCS for HB 1215 & 1240
SUBJECT: Crimes and Punishment; Science and Technology.
TYPE: Updated
DATE: May 4, 2000
 # Updated to include Oversight assumptions regarding changes in the proposal.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
# General Revenue*	(Could exceed \$100,000)	(Could exceed \$100,000)	(Could exceed \$100,000)
# Merchandising Practices Fund	(\$101,739)	(\$94,807)	(\$97,236)
Total Estimated Net Effect on <u>All State Funds</u> #	(Could exceed \$201,739)	(Could exceed \$194,807)	(Could exceed \$197,236)

* Unknown costs for incarceration of offenders by DOC.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
None			
Total Estimated Net Effect on <u>All Federal Funds</u>	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Local Government	\$0	\$0	\$0

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

FISCAL ANALYSIS

ASSUMPTION

In response to a similar proposal, officials of the **Office of the State Courts Administrator (CTS)** assumed this proposal would make changes in various computer-related laws and create several new related crimes. The legislation would also change the law relating to child pornography and create a new series of offenses. There may be some increase in the number of cases filed. CTS would not expect any significant impact on the budget of the judiciary.

In response to a similar proposal, officials from the **Office of the State Public Defender** assumed that existing staff could provide representation for those 15 - 25 cases arising where the indigent persons were charged with increased penalties for computer crimes, as well as for those 5 - 10 cases arising where indigent persons were charged with the crime of indecent solicitation of a child. However, passage of more than one similar bill would require the State Public Defender System to request increased appropriations to cover the cumulative cost of representing the indigent accused in the additional cases.

Officials from the **Coordinating Board for Higher Education, Office of Prosecution Services** and the **Department of Public Safety** assume there would be no fiscal impact to their agencies as a result of this proposal.

Officials from the **Office of the Attorney General (AGO)** assumed the AGO has already seen a significant increase in consumer fraud cases over the Internet. This proposal provides Missouri with jurisdiction over cases where a Missouri citizen is a victim of a consumer scam or other crime. The AGO anticipates a need for a high tech crimes unit to investigate and prosecute cases where the Internet is used in criminal activity. AGO anticipates this unit would include the following: one (1) Assistant Attorney General IV, two (2) Assistant Attorneys General II, and two (2) Investigators. In addition there would be additional equipment and computer needs in out years as changes in technology occur. AGO assumes these costs would be paid from the Merchandising Practices Fund.

Oversight assumes this proposal would limit AGO's jurisdiction to counties of the second, third, and fourth classification for the crimes outlined in this proposal. The cost estimates proposed by AGO include an assumption that jurisdiction would cover all counties of this state. Since the largest portion of the population resides in counties of the first classification, Oversight assumes that a significant portion of cases would come from counties of the first classification. Eliminating AGO's jurisdiction for section 407.020 RSMo, crimes would in turn, reduce the number of cases to be handled by them. Therefore, Oversight assumes AGO would require (1) Assistant Attorney General II, and (1) Investigator to investigate and prosecute cases.

ASSUMPTION (continued)

In response to a similar proposal, officials from the **Office of the Cole County Prosecuting Attorney** assumed generally that the enactment of a criminal statute which criminalizes conduct heretofore otherwise legal has only a small impact on county prosecutors' overall workload. Nevertheless, the creation of new criminal statutes requires that existing prosecutor case management and case reporting systems be upgraded. The total cost of these upgrades is approximately \$250,000 per year. Some percentage of that cost is due to the enactment of new criminal statutes. The conduct outlined in the proposal is, for the most part, already prohibited by other criminal statutes. Thus the proposal would not result in increased workloads. Even though the conduct is already criminal, the fact that new statutes are being created would have the fiscal impact described above.

Due to the lack of an increased workload, **Oversight** assumes the costs to upgrade the case management/reporting systems, allocable to this proposal, would be minimal; therefore, no fiscal impact will be included in this fiscal note for the Office of the Cole County Prosecuting Attorney.

In response to a similar proposal, official from the **Office of the Boone County Prosecuting Attorney** assumed the proposed legislation will have an unknown fiscal impact on their agency.

Oversight assumes the costs, allocable to this proposal would be minimal; therefore, no fiscal impact will be included in this fiscal note for the Office of the Boone County Prosecuting Attorney.

The estimated fiscal impact is unknown to the **Department of Corrections (DOC)**, but due to the wide variance of crimes and punishments including newly created crimes and punishments, it is estimated to be significant, or in excess of \$100,000 per year. To further expound on the per diem rate noted, the average fiscal impact to house an offender for one year is \$12,998. Incarceration costs for an additional eight (8) offenders ($\$12,998 \times 8 = \$103,984$) per year would exceed \$100,000.

In response to a similar proposal, officials from **Southeast Missouri State University (SEMO)** assumed the proposal would affect approximately 200 computers in the library. All other computers on campus are not for public use. SEMO estimates costs of \$100 annually per machine for software, annual upgrades, labor and maintenance to comply with the legislation.

ASSUMPTION (continued)

In response to similar legislation, officials from the **Missouri River Regional Library** assume they would need one FTE Network Assistant (\$46,000) and one FTE Library Assistant (\$21,804). They would need equipment costing approximately \$30,000 annually. They also estimate needing web site registrations, database licensing and filtering software costing approximately \$125,000 annually.

In response to similar legislation, officials from the **Daniel Boone Regional Library** assume the proposal would result in personnel costs of approximately \$150,000 annually; capital improvements of approximately \$72,000 in FY 2001; and computer software and supplies of \$43,000 in FY 2001 and approximately \$9,000 annually in subsequent fiscal years.

In response to similar legislation, officials from the **Secretary of State's Office (SOS)** state Section 181.020(4), RSMo, directs the Missouri State Library to "furnish information and counsel as to the best means of establishing and maintaining libraries, selection of materials, cataloging, and other details of library management." To that end, the State Library employs staff within the Library Development Division to carry out this function. Library Development staff provide assistance through one on one consultation and training sessions. It is estimated that questions from public library directors, trustees, and those maintaining the software on library computers would require the services of the equivalent of .5 FTE. Personnel costs for .5 FTE (\$18,240) Library Consultant are based on budget rate for the position.

SOS officials state it would not be possible to project a total cost of public libraries to install filtering software. Costs for filtering software vary widely by vendor and type, number of computer stations, and whether the software is installed on each "client" computer workstation or on a central server. The web pages of a sampling of filtering software vendors indicate approximate annual costs in the following ranges: \$150 for a site with 5 computers; \$500 to \$800 for 25 computers; and up to \$2,500 or more for a site with 125 computers. Several large library systems with many branches would have 100 or more computer stations requiring filtering software. Libraries choosing to install the filtering software on a server could also need to purchase suitable equipment for the installation. SOS officials also assume public libraries could have additional staff costs due to the legislation. Staff time required for installation and maintenance of filtering software could be significant. If all terminals have filtering software, requests from adults for access to unfiltered sites might require assistance from library staff. Requests to have sites unblocked would be processed individually, and could require individual adjustments of the software. Library staff would also have to monitor the use of the computer workstation, to ensure the filtering software is active when the workstation is used by minors. Library technical services staff would also need to spend considerable amounts of time, at least initially, checking to see that the filtering software did not block access to sites the library did not wish to block.

ASSUMPTION (continued)

Officials from the **Department of Elementary and Secondary Education (DES)** assume the proposal revises laws relating to computer crimes. It would require public schools, state colleges, universities, vocational schools, technical schools, and libraries with computers accessing the Internet to ensure the computers contain software designed to prevent minors from gaining access to material which is pornographic for minors.

DES estimates that there are 140,286 computers around Missouri school districts with Internet connectivity. 42% of districts report using filtering software on 85% of their computers. The distribution of these computers across districts is not known. Filtering software ranges in cost from \$0 to \$25. Additionally, software prices and capabilities vary according to the target age level. Given this information, DES believes the cost would be significant, i.e. in excess of \$100,000; however, DES cannot construct a specific estimate.

Oversight assumes the proposal requires any school district as defined in section 160.011 RSMo, any university or state college organized pursuant to chapters 172 through 174, RSMo, or any technical or vocational school organized pursuant to chapter 178, RSMo that provides computers accessible to its students or the public, on or before July 1, 2002, to develop policy designed to prevent minors from accessing pornographic material. The proposal does not require the use of filtering software; therefore, the costs associated with this portion of the proposal would be \$0 or minimal. Oversight has shown zero costs to local governments as a result of this proposal.

Tobacco Products

Officials of the **Department of Public Safety, Office of State Courts Administrator, Department of Corrections, Office of the State Public Defender, Office of Prosecution Services and the Attorney General's Office** stated that this proposal would have little or minimal fiscal impact to their agency.

Officials of the **Department of Revenue (DOR)** state this legislation prohibits grey market cigarettes. Normally these are cigarettes that are made for overseas markets, they are loaded on a ship *sometimes* for shipment and somehow find their way back to the US. This legislation will have no administrative impact on Department of Revenue. There could possibly be a very small increase in taxable cigarette sales if this somewhat non-taxable market is eliminated, but it would be too small to estimate.

Based on the Department of Revenue's response, **Oversight** for purposes of this fiscal note, will reflect the fiscal impact of the proposal as zero.

FISCAL IMPACT - State Government FY 2001 FY 2002 FY 2003

	(10 Mo.)		
GENERAL REVENUE FUND			
<u>Cost - Department of Corrections (DOC) #</u>	(Could	(Could	(Could
Per diem costs	exceed	exceed	exceed
	\$100,000)	\$100,000)	\$100,000)

MERCHANDISING PRACTICES FUND

<u>Cost - Office of Attorney General #</u>			
Salaries	(\$51,458)	(\$63,294)	(\$64,876)
Fringe benefits	(15,823)	(19,463)	(19,949)
Equipment and Expense	(34,458)	(12,050)	(12,411)
Total	<u>(\$101,739)</u>	<u>(\$94,807)</u>	<u>(\$97,236)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2001	FY 2002	FY 2003
	(10 Mo.)		
	0	0	0

FISCAL IMPACT - Small Business

No direct fiscal impact on small businesses would be expected due to this proposal.

DESCRIPTION

This proposal makes changes to provisions concerning computer crimes and tobacco products. The proposal:

- (1) Amends the current statute providing civil remedies for victims of computer crime by adding owners or lessees of computers or computer equipment to those who may utilize the statute. Currently, only owners or lessees of computer systems, networks, programs, or services may use the statute. The proposal also amends the current statute to allow for the recovery of expenses incurred to block future access by the perpetrators of computer invasion of privacy or unlawful computer communications (537.525);

DESCRIPTION (continued)

(2) Establishes the jurisdiction and venue for crimes committed through use of a computer as any county in which any act was performed in furtherance of the crime, or any county in which the accused had control of materials or objects used in furtherance of the crime, or any county in which computers or computer equipment used in furtherance of the crime are located, or any county from which, in which, or through which access to a computer or computer network was made (541.033);

(3) Amends current law to allow law enforcement to obtain warrants to search for and seize child pornography for other than evidentiary purposes without first holding an adversarial hearing to determine whether the matter is obscene (542.281);

(4) Expands the harassment statute to include electronic and in-person communications, and increases the penalty for communicating a threat to commit a felony from a class A misdemeanor to a class D felony (565.090);

(5) Clarifies that the offense of aggravated stalking includes credible threats made by electronic communications, in person, or by posted messages publicly accessible via a computer (565.225);

(6) Creates the class C felony crime of invasion of privacy in the first degree when nude photographs or images made without the subject's consent are distributed or made accessible by computer. The proposal amends the current invasion of privacy statute, which does not require the distribution or transmission of images, to make it a crime in the second degree (565.253);

(7) Extends the duty to computer providers, installers or repair persons, and Internet service providers to report to law enforcement if they know of or see images depicting child pornography. Currently, this duty is only imposed on film and print processors. The proposal also raises the age of children that the statute applies to from 17 to 18 (568.110);

(8) Expands the crime of causing catastrophe to include the sending of a computer virus and altering a computer program that controls a public service (569.070);

(9) Amends the definitions section of the child pornography laws to include the creation and sending of child pornography via computers (573.010). The proposal also amends the crime of promoting child pornography in the first and second degree to include the creation of child pornography with the intent to electronically transfer it (573.025, 573.035);

(10) Amends the crime of possession of child pornography (573.037);

DESCRIPTION (continued)

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(11) Repeals current computer crime statutes (569.093-569.099) and replaces them with additional crimes (407.020);

(12) Requires that school districts, technical and vocational schools, universities or state colleges, and libraries that provide computers accessible to students or the public, on or before July 1, 2002, to develop policy designed to prevent minors from accessing pornographic material;

(13) Allows any city, town, or county to enact and enforce an ordinance prohibiting public nudity, or any live electronic transmission via Internet of any live public nudity (573.017);

(14) Creates the crime of sexual exploitation of a minor (573.023).

This legislation is not federally mandated, would not duplicate any other program, and could require additional capital improvements or rental space.

Tobacco Products

This act prohibits a tax stamp from being affixed to any package of cigarettes unless certain federal requirements are met. No stamp shall be affixed to any package that is labeled as not intended for sale inside the United States or has a label that has been altered. A violation is a Class D felony, and is also deemed a deceptive act or practice. The Department of Revenue may revoke a wholesale license of a person in violation of these provisions, and may seize the items involved. The proposal also makes it a class A misdemeanor to knowingly sell cigarettes to persons aged eighteen or less through use of the Internet.

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

Department of Corrections

RV:LR:OD:005 (9-94)

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Office of State Public Defender
Department of Public Safety
Office of the Attorney General
Office of State Courts Administrator
Department of Revenue
Department of Elementary and Secondary Education
Cole County Prosecuting Attorney
Boone County Prosecuting Attorney
Southeast Missouri State University
Office of Secretary of State
Missouri River Regional Library
Daniel Boone Regional Library
Coordinating Board for Higher Education



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