

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

LR No.: 2008-03
Bill No.: HCS for HB 835, 90, 707, 373, 641, 510, 516, & 572
Subject: Crimes and Punishment
Type: Original
Date: March 22, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
General Revenue	(\$1,248,869 to Unknown)	(\$2,660,360 to Unknown)	(\$4,517,589 to Unknown)
Highway	(\$6,000)	\$0	\$0
School Moneys	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> State Funds	(\$1,254,869 to Unknown)	(\$2,660,360 to Unknown)	(\$4,517,589 to Unknown)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Prosecutor's Special	Unknown	Unknown	Unknown
Local Government	(Unknown)	(Unknown)	(Unknown)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 15 pages.

FISCAL ANALYSIS

ASSUMPTION

HIGHWAY FUND

Officials of the **Department of Revenue** stated that the Driver and Vehicle Services Bureau assumes that they would have to develop new conviction codes and two new action types for the license withdrawal actions that would be imposed as a result of Sections 302.020 and 302.321, arrest for stealing fuel. Officials assume any new duties can be handled with existing resources. Officials stated that the State Data Center would have costs of \$6,000 in FY 2002.

GENERAL REVENUE FUND:

Officials of the **Department of Corrections** submitted the following fiscal impact statement:

50.550 Allows for the creation of a "County Crime Reduction Fund." No impact for DOC.

50.555 Deals with the "County Crime Reduction Fund." This will not impact the DOC.

160.465 Subsections 4&5 Revises current peddling laws. Law enforcement officers may request from itinerant venders and peddlers a receipt for new or unused property from the producer, manufacturer, wholesaler or retailer. If a forged receipt were produced, the itinerant vender or peddler could be charged with forgery under 570.090 RSMo. Forgery is already a crime. This will not impact the DOC.

214.131 This deals with offenders who mutilate, disfigure, deface, injure or remove any tomb, monument or gravestone or other structure placed in any abandoned family cemetery or private burying ground, or any fence, railing, or other work for the protection or ornamentation of any such cemetery or place of burial of any human being or tomb, monument or gravestone, momento, memorial or other structure aforesaid, or of any lot within such cemetery. The crime is currently a class A misdemeanor. If the bill passes, it would be prosecuted as institutional vandalism, where the dollar amount of the damage determines the seriousness of the offense. There were no admissions to DAI or Probation openings in FY00. The impact on DOC is expected to be minimal.

217.690 This section deals with parole eligibility. Subsection 4 This deals with parole for an offender with consecutive sentences, adding new guidelines for offenders with consecutive life sentences. In the case of consecutive life sentences, the minimum for each sentence would be added together. This removes the clause for minimum term eligibility for parole in as it relates

ASSUMPTION (continued)

to consecutive sentences. In other words, offenders with consecutive sentences could theoretically serve more time in prison. Parole is not a right of an offender, but is a privilege granted at the discretion of the Board of Probation and Parole after consideration of many factors. Therefore any projections made concerning future practices or trends cannot accurately be made. Removing minimum terms certainly allows for the potential of more time to be served in prison, however it is impossible to ascertain DOC fiscal impact or the time periods of that impact. In summary, the fiscal impact for the DOC is unknown.

302.020 Deals with driving without a license. Subsection 4. Sentencing for driving without a license. This would call for 2 days in jail for a first conviction, 10 days for a second conviction and 30 days for a third. More convictions would require a year's incarceration. Driving without a license is a class A misdemeanor. A third or subsequent driving while revoked is a class D felony.

302.286 This would require suspension of a driver's license for persons convicted of not paying for gasoline at a service station and a reinstatement fee.

302.321 Deals with motor vehicles. Subsection 4 Sentencing for driving without a license. This would call for 48 hours in jail for a first conviction, 10 days in jail for a second conviction and 30 days for a third conviction. A fourth or subsequent convictions would require a year's incarceration. Driving while revoked is a class A misdemeanor. A fourth or subsequent driving while revoked is a class D felony if the person has no prior alcohol-related suspensions. A third offense is a class D felony if the person has prior alcohol offenses or suspensions.

A check of records shows 2 admissions and 10 probation openings in FY00 for felony Driving while Revoked. The files were then linked to the sentence file, which showed there were no instances of a fourth offense, which would require at least a year in prison. If any of the above offenders were to re-offend, it would impact the DOC, so the bill would probably have some effect, but not a large one.

407.308 This section adds a new crime of theft of transportation of property service. This would be a class C felony if the value of the transportation of property services was \$750.00 or more, otherwise, it would be a class A misdemeanor.

A person could already be convicted of this crime under existing larceny statutes. This would not be expected to have any impact on the DOC.

ASSUMPTION (continued)

537.523 This section concerns civil not criminal law.

544.170 This deals with time limits for the release of persons arrested without a warrant or other process of law. Subsection 4. Any person who violates this section by refusal to release a person, or who refuses to let them consult with counsel or other persons or who transfers such person into another's custody or control or who falsely charges a person to avoid the provisions would be guilty of a class A misdemeanor.

Since this is a new crime, there is no pertinent data for comparison. The impact on the DOC is unknown, but expected to be minimal.

558.019 Subsection 7: This is new subsection. In the case of a suspended execution or imposition of sentence, the bill would allow the court to order restorative justice methods, such as restitution, offender treatment programs, community service, work release, community-based residential or non-residential programs or other programs. Subsection 8: If the above-mentioned suspension is for a misdemeanor offense, the court would be allowed to order assessment and payment of money to the county crime reduction fund. This could impact the DOC in terms of P & P staff needed to oversee the restorative justice methods. Impact is unknown.

565.042 This creates a "Commission on the Death Penalty." It requires them to examine all death penalty cases. Unknown future fiscal impact.

565.310 This section prohibits human cloning. Since this is a new crime, there is no pertinent data for comparison. The impact on the DOC is unknown.

570.010 This adds a new definition. It does not impact DOC.

570.030 This section deals with stealing. Subsection 2 & 5 Adds an additional definition. Subsection 3 This would lower the dollar amount for stealing. Currently, stealing \$750.00 or more is a class C felony, the bill would change the cutoff to \$425.00. Subsection 5 Would allow each theft over \$425.00 to be charged as a separate count. Currently, the amount is \$750.00; and

570.080 Subsection 3 This would change the felony/misdemeanor cutoff from \$150.00 to \$425.00

This portion of the bill deals with revisions of the criminal code for Felony Stealing. If the value of the stolen property were between \$150.00 and less than \$425.00, then the crime would be a class D felony. If the value of the stolen property or services were equal to or more than

ASSUMPTION (continued)

\$425.00, the crime would be a class C felony. A person stealing multiple pieces of property or services each worth over \$150.00 may be charged with separate counts of stealing. Currently there are 1,767 inmates serving time for stealing.

The felony/misdemeanor cutoff for stealing has been changed recently. It was \$150.00 and was changed to \$750.00 in August of 1998. All felonies were C felonies, regardless of the amount stolen. This would have been during FY99, so prior years were compared with FY00, giving some chance for the change to show up. For Fiscal Years 1997 and 1998, the average number of admissions for stealing was 959. For Fiscal Year 2000, the average number of new admissions was 652, a decrease of 307. The aforementioned admission numbers include both term and 120-day sentence admissions.

The number of admissions would likely increase with the proposed change in the cutoff. The new law would add an intermediate sanction, with stealing goods or services between \$150.00 and \$425.00 being a D felony, and stealing over \$425.00 being a C felony. It is estimated that about half the increase would be D's and about half C's. This would be about 143 admissions to a term sentence per fiscal year, as a higher percentage of D than C felons receive 120-day sentences. C-felons admitted to term serve an average of 19.3 months and D-felons serve an average of 15.5 months. The attached table shows the estimated increase in C and D felony term admissions and the combined total.

Revisions are also proposed for the felony/misdemeanor cutoff for receiving stolen goods. The felony/misdemeanor cutoff for receiving stolen goods is \$150.00. If the law takes effect, if a person received stolen property over \$150.00, but less than \$425.00, it would be a class D felony. If the property were \$425.00 or more, then the crime would be a class C felony. Currently there are 294 inmate serving time for receiving stolen property.

Passage of the bill might lead to a small reduction in the number of admissions for receiving stolen property. Over the past four fiscal years, the average number of admissions has been 143 (term and 120-day) on this charge, all C-felonies. It is estimated that about half (72) admissions for year would be D-felons, of which higher percentages than C-felons serve a 120-day sentence. About 50% of C-felons receive a term sentence and 43% of D-felons receive a term sentence. Using these figures, it would mean 67 rather than 72 admissions to a term sentence, a reduction of 5 admissions on receipt of stolen property charges if the change occurs. Of all the term admissions per year, 46% (those with a D-felony) would be serving a lesser sentence than that currently served.

ASSUMPTION (continued)

Cumulatively, passage of this legislation is projected to increase prison admissions by 302 offenders per year. The effect on this inmate population is estimated to be 193 in FY03 and 262 per year from FY04 forward. DOC officials estimate costs for FY 2002 as \$0; for FY 2003 \$1,337,589; and \$3,238,345 in FY 2004.

570.120 This section deals with passing a bad check. No DOC fiscal impact is expected.

574.085 This section deals with institutional vandalism. Subsection 2 This changes the amount of damage in determining felony class. If the damage is less the \$500.00, the offense would be a class A misdemeanor. If the damage were more than \$500.00 and less than \$10,000.00, the offense would be a class D felony. If the damage were equal to or more than \$10,000.00 and less than \$100,000.00, the offense would be a class C felony. If the damage were at least \$100,000.00, the offense would be a class C felony with a minimum of 7 years incarceration without the possibility of probation or parole. Currently, if the damage is less than \$1000.00, the crime is a class A misdemeanor. Between one and five thousand dollars worth of damage is a class D felony and over five thousand is a class C felony.

In FY00, there were no admissions to prison for institutional vandalism and only one inmate in prison for the charge. There were two probation openings for the offense. Given the small number of offenders, the impact on the department should be minimal.

In summary, total new commitments to the DOC which may result from the creation of the offenses outlined in this proposal cannot be accurately determined. The cumulative fiscal effect of the various components of this legislation is unknown, but is expected to exceed the outlined numbers and costs estimated in this fiscal note. DOC incurs a corresponding increase in operational cost either through incarceration (FY99 average of \$35.61 per inmate, per day) or through supervision provided by the Board of Probation and Parole (average of \$2.47 per offender, per day.) Estimations in this note are very conservative as new bed space costs are not included in the estimate (only inmate per-capita costs) and the unknown cost factors cannot be determined.

Officials of the **Department of Public Safety- Missouri Highway Patrol** assume there would be no fiscal impact to their department.

Officials of the **Department of Elementary and Secondary Education** assume their would be no state or local school fiscal impact.

ASSUMPTION (continued)

Officials of the **Office of Prosecution Services** assumes that County Prosecutors could absorb the additional duties with existing staff and appropriation.

Officials of the **Office of State Public Defender** stated that this proposal creates mandatory jail times for driving while revoked, and driving without a license. Officials stated that last fiscal year the SPD provided representation in 6,298 DWR cases and 311 driving without a license cases. If jail time is now required for these offenses, particularly the first and second offense, fewer and fewer clients will plead and more attorney time will be required to handle the case to completion. Currently, first and second offenses typically receive probation and no jail time. If of the approximately 6,500 cases, 3500 do not now plea, and they each require an additional 3 hours of attorney time, that is an additional 10,500 attorney hours. 2080 is a standard work year. 10,500 hours divided by 2080 hours is an additional 5 attorneys. This assumption does not address the additional crimes created by this proposed legislation. For the purpose of this legislation, the Office of State Public Defender has assumed that existing staff could provide representation for cases arising where indigent persons were charged with cloning, stealing greater than \$50, theft of transportation services, and leaving without paying for fuel. Officials estimate that they would need 5 FTE- Assistant Public Defenders, 1 FTE- Paralegal Investigator, 1FTE- Secretary, office space, equipment and expense. Officials estimate costs for 10 months of FY 2002 at \$971,279; FY 2003 at \$1,167,348 and in FY 2004 at \$1,201,201.

COUNTY CRIME REDUCTION FUND: Sections- 50.550, 50.555, and 558.019

Officials of the **Office of State Courts Administrator** stated this proposal does not specify who would be responsible for receiving and accounting for what would be in most cases installment payments. Since the Sheriff and Prosecutor would be the beneficiaries of the fund, officials assume one or the other of these offices would provide these services, and not the Court Clerks. If this assumption is correct there would be no fiscal impact to the state. However, if the Court Clerks are required to provide this service, there would be a state cost in direct proportion to the volume of transactions. Officials stated that traffic cases are usually misdemeanors, and if as an alternative to a traffic conviction, a defendant can get a suspended sentence for payment into the crime reduction fund, the potential volume could be in the hundreds of thousands of cases. Officials stated if cases that would otherwise have resulted in a conviction are shifted to a suspended imposition or execution of sentence, it is likely to result in the loss of revenue from fines to schools, crime victims' compensation, law enforcement training, and other earmarked funds.

ASSUMPTION (continued)

The **Callaway County Circuit Clerk** stated that if the contribution to the Crime Reduction Fund is in addition to the court cost and fine then there would be no loss of income to any fund, however, if the contribution is in lieu of the court cost and fine then there would be a loss of revenue to the county, schools, crime victim compensation fund, law enforcement training fund, Prosecutor training fund, sheriff's retirement, court automation fund, etc.. Officials assume that both court cost and fines would be assessed.

Oversight assumes that fiscal impact would depend upon several factors. 1) The County Commission would need to establish the Crime Reduction Fund, as allowed by this proposal; 2) and the amount of fiscal impact would depend on the number of cases the Court would suspend and require payment into the Crime Reduction Fund.

Oversight assumes that to the extent there is a reduction in fines on the local level, Schools would receive more money in state aid due to the school aid formula. Therefore, the loss of fine revenues would be subsidized by the State's General Revenue Fund.

DEATH PENALTY COMMISSION: SECTION 565.042

In response to identical legislation the following agencies and departments stated:

Officials of the **Office of Administration- Division of Budget and Planning** assume that General Revenue will provide the funding for the Death Penalty Commission.

OA further assumes that the Commission would be staffed by an Executive Director (\$51,252) and a Clerk IV (\$26,460) in addition to the necessary expense and equipment for each position. Officials assume that the nine members will meet in Jefferson City four times during FY 2002 and FY 2003, and twice during FY 2004 which will add travel and hearing-related expenses.

Officials assume that the Commission will contract for a study to analyze data as outlined in the proposal. OA assumes the cost of the study would be similar to that incurred for the sentencing study, or about \$130,000. OA officials estimated costs of 2.0 FTE, fringe benefits, equipment and expense at (\$277,590) for 10 months of FY 2002; (\$155,423) in FY 2003; and (\$78,049) in FY 2004. Oversight would note that the Commission would be required to submit its reports and findings by January 1, 2004 or 6 months of FY 2004.

Oversight for purposes of this fiscal note will show costs for 10 months of FY 2002, because the proposal states that the Commission shall be appointed and staffed on or before December 1, 2001, which would be 7 months of FY 2002.

ASSUMPTION (continued)

ADMINISTRATIVE HANDLING FEE: Section 570.120

Officials of the **Office of Prosecution Services and the Boone County Prosecutor's Office** stated that this proposal would tie the collection of administrative fees to criminal charges filed rather than "bad checks" processed. At this time, the administrative fee is charged based on the number of checks that are "turned over" for collection and processed by the office, therefore, to estimate the increase is unknown. Officials stated that the collection of administrative fees pursuant to this bill might be increased, but, the costs of collecting the fees pursuant to this proposal would be significantly higher.

Oversight assumes the process that Prosecutors use to collect bad checks is not dealt with by this proposal. Oversight assumes this proposal increases the administrative handling fees that can be collected by Prosecutors when taking action to collect bad checks, therefore, Oversight will show fiscal impact as a positive unknown to County Prosecutors/ Circuit Attorneys Special Fund.

Officials of the **Office of Attorney General and State Courts Administrator** assume there would be no fiscal impact to their offices.

DRIVING WITHOUT A LICENSE OR WITH A REVOKED LICENSE: Sections 302.020 and 302.321

Officials from the **Department of Revenue (DOR), Missouri Highway Patrol (MHP), and Office of State Courts Administrator** assume the proposal would not administratively or fiscally impact their agency.

Officials from the **Metropolitan Police Department - City of St. Louis** assume the proposal would not administratively or fiscally impact their agency.

Oversight assumes local jails could incur unknown costs due to these mandatory, increased incarcerations. Oversight will show cost to local governments as unknown.

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2000
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STATE SCHOOL MONEYS FUND

<u>Income</u> to School Moneys Fund from State's General Revenue Fund	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
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<u>Cost</u> to School Moneys Fund for transfer to certain local school district	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>
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Estimated Net Effect to State School Moneys Fund	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
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CITY AND COUNTIES

<u>Income</u> to Prosecutor's Special Fund from increase in administrative handling fees. (Section 570.120) *	Unknown	Unknown	Unknown
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***Oversight assumes the revenue generated by an increase in fees, on a statewide basis, is indeterminable and is shown as unknown. Oversight expects the annual increase in fees to exceed \$100,000.**

<u>Cost</u> to Political Subdivisions from mandatory incarcerations (Sections 302.020 and 302.321)	(Unknown)	(Unknown)	(Unknown)
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DESCRIPTION (continued)

substitute revises the penalties as follows: if damages are less than \$500, institutional vandalism is a class A misdemeanor; if damages are more than \$500, it is a class D felony; and if damages are more than \$10,000, it is a class C felony. In addition, if damages are more than \$100,000, incarceration of 7 years without probation or parole is required. In all cases of institutional vandalism, the offender must pay restitution for damages to property. The substitute also gives the right of civil action for damages or losses to owners of property adjacent to cemeteries and to caretakers of abandoned family cemeteries. Currently, only those who incur bodily injury or damage to personal property have a right to civil relief (Sections 214.131, 537.523, and 574.085);

(4) Allows minimum terms for parole eligibility for offenders with consecutive life sentences to exceed the minimum term for parole eligibility for an ordinary life sentence (Section 217.690);

(5) Establishes minimum periods of incarceration for operating a vehicle or motorcycle upon any state highway without a valid driver's license. The minimums are 48 hours for a first conviction, 10 days for a second conviction, 30 days for a third conviction, and one year for a fourth or subsequent conviction. Currently, the crime is a class A misdemeanor for a first or second conviction, which is punishable with either a \$1,000 fine for one year's imprisonment. For 3 or more convictions, the crime is a class D felony, which is punishable with up to 5 year's imprisonment or a fine of \$5,000. These sentences will remain in effect in conjunction with the new incarceration requirement. The substitute also changes the penalty for driving with a revoked license. The substitute eliminates the provision that allows persons in violation to avoid imprisonment if community service is a condition of parole or probation. As a result, driving with a revoked license is punishable with a minimum of 48 hours of incarceration for a first conviction, 10 days for a second conviction, 30 days for a third conviction, and a minimum of one year for 4 or more convictions (Sections 302.020 and 302.321);

(6) Requires that persons convicted of stealing for leaving without paying for motor fuel, in addition to any other criminal penalties imposed, have their drivers' licenses suspended. The suspensions will be imposed as follows: 60 days, with hardship license eligibility after the first 30 days, for a first violation; 90 days, with hardship license eligibility after the first 30 days, for a second violation; 180 days, with hardship license eligibility after the first 90 days, for the third violation or any subsequent violations (Section 302.286);

(7) Creates the crime of theft of services, which is a class C felony if the value of the services is \$750 or more and a class A misdemeanor for services less than \$750. An offender commits the crime if he or she contracts with a transportation of property provider and, after the property has been delivered, fails to make payment on the contract. Intent to avoid payment may be

DESCRIPTION (continued)

presumed if the offender does not make the required payment in the time specified or does not make payment within 30 days if no time was specified (Section 407.308);

(8) Permits law enforcement officials to detain a person for 32 hours without charging a crime if the person has been arrested for first degree assault or robbery, forcible rape or sodomy, or distribution or manufacture of drugs. Currently, a person who is arrested for these offenses must be released within 20 hours unless charged with a crime (Section 544.170);

(9) Creates a commission on the death penalty, which is created to study all aspects of the death penalty in Missouri. The substitute designates the members of the commission and directs it to hold public hearings. The commission's findings, which must include recommendations for corrective amendments to the statutes and court rules, are to be available to the Governor, the Legislature, and the Supreme Court by January 1, 2004 (Section 565.042);

(10) Prohibits human cloning or attempted human cloning. The substitute makes human cloning a felony punishable by imprisonment for no more than 10 years and a fine of no more than \$10 million (Section 565.310);

(11) Allows to be admissible as evidence of intent to steal the possession, use, transfer, or reproduction of a sales receipt, tag, or universal price code (Section 570.030);

(12) Makes stealing a class A misdemeanor if the property or services are worth less than \$425 and a class C felony if the value is \$425 or more. Currently, stealing is a class A misdemeanor for property valued less than \$750 and a class C felony for property worth \$750 or more (Section 570.030);

(13) Makes receiving stolen property a class A misdemeanor if the property is valued at less than \$150 and a class D felony if it is worth at least \$150 but not more than \$425. The substitute makes receiving stolen property a class C felony if the property is valued at \$425 or more or if the person receiving the property is a dealer in goods of the type in question. Currently, receiving stolen property worth less than \$150 is a class A misdemeanor and a class C felony for property worth \$150 or more (Section 570.080);

(14) Expands the definition of forgery to include the making of receipts and universal product codes and the knowing use or transfer of forged receipts and universal product codes (Section 570.090);

DESCRIPTION (continued)

(15) Makes several changes to the crime of passing bad checks. The substitute allows the prosecuting attorney to charge, in addition to any other costs and fees, an administrative handling cost of \$25 per bad check. If the bad check is for \$100 or more, an additional fee of 10% of the check may be assessed, not to exceed \$50. Currently, prosecutors may recover administrative handling costs of \$5 for checks less than \$10; \$10 for checks of \$10, but less than \$100; and \$25 for checks of \$100 or more. The substitute also requires the prosecutor to collect from the issuer of a bad check a reasonable service charge to turn over to the recipient of the bad check. Currently, this is a discretionary duty. If a check is dishonored but not referred to the prosecutor, the substitute allows the recipient to collect from the issuer the face amount of the check, a reasonable service charge not to exceed \$30, and an amount equal to the charge by the bank for the return of each check (Section 570.120).

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
Department of Revenue
Department of Elementary and Secondary Education
Office of State Public Defender
Office of Prosecution Services
Office of State Courts Administrator
Office of Administration
Department of Public Safety
Department of Corrections
Callaway County Circuit Clerk



Jeanne Jarrett, CPA
Director
March 22, 2001