

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3489H.04C
Bill No.: HCS for HB 1559
Subject: Law Enforcement Officers and Agencies; Children and Minors; Children's
Division; Department of Social Services
Type: Original
Date: January 24, 2022

Bill Summary: This proposal modifies and establishes provisions relating to the protection of children.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

***Oversight** assumes the total fiscal impact could exceed \$250,000 due to the potential for civil action and the addition of a civil penalty of \$50,000 per occurrence for any violations of §210.762. Oversight has reflected this potential to General Revenue, Other State Funds and Federal Funds.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
State Legal Expense Fund (0692)*	\$0	\$0	\$0
Other State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

*Transfer-In and expenses net to zero.

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on FTE	0	0	0

- ☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- ☐ Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Local Government	\$0 or Unknown to (Unknown)	\$0 or Unknown to (Unknown)	\$0 or Unknown to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

§§43.400, 43.401, 210.201, 210.482, 210.487, 210.762, 210.795, and 568.045 – Protection of children

Officials from the **Department of Social Services (DSS)** state DSS is unable to determine the fiscal impact of the proposed language due to ambiguity in the bill language and due to costs that could be incurred by DSS per the proposed bill, which would be outside of the control of DSS.

For instance, 210.762.1(2) includes a penalty provision where any agency or placement provider, which would include foster parents, with legal custody of a child who goes missing that fails to comply with the provisions under this subdivision shall be liable to the injured party, which includes the missing child, parent, foster parent, or legal guardian of the missing child, and the state of Missouri, in an action at law and subject to a civil penalty of fifty thousand dollars per occurrence. The bill does not define how much time an agency or placement provider is given to report a missing child. The question of whether the agency reported as soon as it was determined that the child is missing would be a question of fact to be considered by the trier of fact. If reasonableness of the timeliness of reporting is not codified, this could lead to increased legal cases being filed.

DSS states it is also unclear who would be the recipient of the civil penalty monetary award contemplated by 210.762.1(2). If private individuals would be the recipients of these civil penalties, this could lead to an increase in the amount of litigation and could have an unintended consequence of incentivizing children to run away so that the child or the child's parents could initiate civil actions against the agency or placement provider to try to claim the \$50,000 statutory damages.

Even if the statutory damages would not be payable to private individuals, 210.762.1(2) provides for the filing of a civil action in addition to the civil penalty that is imposed. The proposed bill consistently refers to an "agency or placement provider" as being the potentially liable parties for failure to abide by the terms of the law as proposed. If the terms "agency" or "placement provider" are meant to encompass the Children's Division as being a liable party, this could waive sovereign immunity. The proposed language could also subject foster parents to liability, as foster parents are considered placement providers.

Additionally, since the state of Missouri is recited as being an injured party in 210.762.1(2), it could create a conflict in defense of such actions. The DSS is defended by the Attorney General. The Attorney General would also have authority to bring actions under the proposed bill. In such situations, the state would likely need to employ private conflicts counsel.

The cost in employing such conflicts counsel and other potential costs as outlined above are unable to be quantified. Therefore, DSS estimates its fiscal impact as \$0 to (Unknown).

Oversight notes a report from U.S. Department of Health and Human Services (DHHS), Office of Inspector General (OIG): [Case Study: Missouri's Efforts To Protect Children Missing From Foster Care](#)

During the times in which the children were missing from care, Missouri frequently failed to comply with requirements that could have aided in locating them. Nearly half of the case files contained no evidence of Missouri reporting the children as missing, as required, to either local law enforcement or the National Center for Missing and Exploited Children. Additionally, for many missing children, there was no evidence that Missouri made the required notifications and contacts to seek information on the children's potential whereabouts.

For 61 percent of children (36 out of 59), there was no evidence that the case managers notified the adults in the child's life when the child went missing from care, as required by Missouri policy. The adults include the juvenile officer, court representative, and parent(s) of the child.

Oversight notes the provisions of 210.762.1(2) state any agency or placement provider with legal custody of a child who goes missing that fails to comply with the provisions under this subdivision, shall be liable to the injured party, which includes the missing child, parent, foster parent, or legal guardian of the missing child, and the state of Missouri, in an action at law and subject to a civil penalty of fifty thousand dollars per occurrence. Therefore, Oversight will reflect a \$0 (compliance of agency or placement provider) to (Unknown) (non-compliance of agency or placement provider) fiscal impact for fiscal note purposes.

Oversight notes that violations of section 210.762 could result a civil penalty of \$50,000 per occurrence. Oversight also notes per Article IX Section 7 of the Missouri Constitution fines and penalties collected by counties are distributed to school districts. Fine varies widely from year to year and are distributed to the school district where the violation occurred. Oversight will reflect a positive fiscal impact of \$0 to Unknown to local school districts. For simplicity, Oversight will not reflect the possibility that fine revenue paid to school districts may act as a subtraction in the foundation formula.

Officials from the **Attorney General's Office (AGO)** states the AGO is unclear if the term "agency" in section 210.762.1(2) refers to an agency under the control of the Children's Division. If this term "agency" refers to a state entity, then the AGO assumes this section would result in a negative unknown impact on the state Legal Expense Fund.

Oversight does not have any information contrary. Therefore, Oversight will reflect AGO's potential unknown impact for fiscal note purposes to the state Legal Expense Fund. Oversight notes the Legal Expense Fund is funded by the General Revenue Fund as well as other state

funds. Oversight notes this possible litigation exposure as described by AGO could also apply to federal funds as well as local political subdivisions.

Officials from the **Department of Elementary and Secondary Education**, the **Department of Health and Senior Services**, the **Department of Corrections**, the **Department of Public Safety - Missouri Highway Patrol**, the **Missouri Office of Prosecution Services**, the **Office of the State Public Defender**, the **Kansas City Police Department**, the **Springfield Police Department**, the **St. Joseph Police Department**, the **St. Louis County Police Department**, and the **Phelps County Sheriff's Department** assume the proposal will have no fiscal impact on their organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these entities.

Officials from the **Office of Administration** and the **Office of the State Courts Administrator** did not respond to **Oversight's** request for fiscal impact for this proposal.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other police and sheriff's departments were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in Oversight's database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE FUND			
<u>Cost – DSS (§210.762) Potential civil penalty for non-compliance</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Transfer Out – to the State Legal Expense Fund – OA (§210.762) Potential increase in litigation</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
OTHER STATE FUNDS			
<u>Cost - (§210.762) Potential increase in litigation to various state agencies</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON OTHER STATE FUNDS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
STATE LEGAL EXPENSE FUND (0692)			
<u>Transfer In – from General Revenue and Other State and Federal Funds</u>	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Cost – OA (§210.762) Potential increase in litigation</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON THE STATE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FEDERAL FUNDS			
Cost - (\$210.762) Potential increase in litigation to various state agencies	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
LOCAL POLITICAL SUBDIVISIONS			
<u>Revenue</u> – School districts (\$210.762) Potential fine revenue	<u>\$0 or</u> <u>Unknown</u>	<u>\$0 or</u> <u>Unknown</u>	<u>\$0 or</u> <u>Unknown</u>
<u>Cost</u> - (\$210.762) Potential increase in litigation	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	<u>\$0 or</u> <u>Unknown to</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>Unknown to</u> <u>(Unknown)</u>	<u>\$0 or</u> <u>Unknown to</u> <u>(Unknown)</u>

FISCAL IMPACT – Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill changes the age a person is considered a child, as it pertains to the provisions in the bill, to anyone under the age of 18 instead of 17. A missing child can also include a person still in foster care regardless of their age.

The bill requires law enforcement agencies to take a missing child report from any member of the family support team, as defined in this bill, and provide a copy of the report to the agency or placement provider with legal custody of the missing child.

An agency or placement provider with legal custody of a child is required to ensure a missing child report is filed once it has determined that a child in its custody is missing. The agency or placement provider shall maintain all missing child reports for any child under its legal custody. Within 72 hours of a missing child report being filed for a child placed in an authorized agency

or foster care or within 72 hours of an authorized agency or foster care being notified that a child under its custody is missing, whichever event first occurs, the family support team, as defined in this bill, shall hold a meeting to discuss the whereabouts of the missing child and to discuss the initial decision regarding the custody and placement of the missing child once the child is found.

This bill also requires case workers to notify a juvenile officer if a child under their supervision goes missing or is suspected to be on the run. Once notified, the juvenile officer shall file with the court a notice in the child's case file that states the child is missing and include any other relevant information, which shall include the missing child report. If the missing child is found, the juvenile officer shall file with the court a notice in the child's case file that the child has been found and include any other relevant information.

There is a penalty provision for any agency or placement provider with legal custody of a child who goes missing but fails to comply with the provisions in this bill. Failure to comply with the provisions in this bill will cause the agency or placement provider to be liable to any injured party, which includes the missing child, parent, foster parent, or legal guardian of the missing child, and the state of Missouri, and subject to a civil penalty of \$50,000.

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

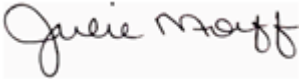
Attorney General's Office
Department of Elementary and Secondary Education
Department of Health and Senior Services
Department of Corrections
Department of Public Safety
Department of Social Services
Missouri Office of Prosecution Services
Office of the State Public Defender
Kansas City Police Department
Springfield Police Department
St. Joseph Police Department
St. Louis County Police Department
Phelps County Sheriff's Department

NOT RESPONDING

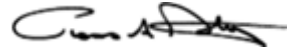
Office of Administration

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Office of the State Courts Administrator

A handwritten signature in cursive script, appearing to read "Julie Morff".

Julie Morff
Director
January 24, 2022

A handwritten signature in cursive script, appearing to read "Ross Strobe".

Ross Strobe
Assistant Director
January 24, 2022