

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 6091-02  
Bill No.: HCS for HB 2350  
Subject: Crimes and Punishment; Drunk Driving/Boating; Drugs and Controlled Substances  
Type: Original  
Date: March 26, 2018

Bill Summary: This proposal changes the law regarding certain criminal offenses.

**FISCAL SUMMARY**

| <b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>  |                   |                   |                   |
|--|-------------------|-------------------|-------------------|
| FUND AFFECTED  | FY 2019           | FY 2020           | FY 2021           |
| General Revenue                                      | (\$15,515)        | (\$37,981)        | (\$58,111)        |
| <b>Total Estimated Net Effect on General Revenue</b> | <b>(\$15,515)</b> | <b>(\$37,981)</b> | <b>(\$58,111)</b> |

| <b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>       |                                     |                                     |                                     |
|--|-------------------------------------|-------------------------------------|-------------------------------------|
| FUND AFFECTED  | FY 2019                             | FY 2020                             | FY 2021                             |
| Crime Victims' Compensation Fund                       | (Could exceed \$375,000) to Unknown | (Could exceed \$375,000) to Unknown | (Could exceed \$375,000) to Unknown |
| Services to Victims' Fund                              | \$0 or (Up to \$375,000)            | \$0 or (Up to \$375,000)            | \$0 or (Up to \$375,000)            |
| State Forensic Lab Fund                                | \$0 or Up to \$750,000              | \$0 or Up to \$750,000              | \$0 or Up to \$750,000              |
| <b>Total Estimated Net Effect on Other State Funds</b> | <b>Unknown to (Unknown)</b>         | <b>Unknown to (Unknown)</b>         | <b>Unknown to (Unknown)</b>         |

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 11 pages.

| <b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>                  |                |                |                |
|---|----------------|----------------|----------------|
| <b>FUND AFFECTED</b>  | <b>FY 2019</b> | <b>FY 2020</b> | <b>FY 2021</b> |
|   |                |                |                |
|   |                |                |                |
| <b>Total Estimated Net Effect on <u>All</u> Federal Funds</b> | <b>\$0</b>     | <b>\$0</b>     | <b>\$0</b>     |

| <b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b> |                |                |                |
|---|----------------|----------------|----------------|
| <b>FUND AFFECTED</b>                                      | <b>FY 2019</b> | <b>FY 2020</b> | <b>FY 2021</b> |
|   |                |                |                |
|   |                |                |                |
| <b>Total Estimated Net Effect on FTE</b>                  | <b>0</b>       | <b>0</b>       | <b>0</b>       |

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

| <b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b> |                |                |                |
|--|----------------|----------------|----------------|
| <b>FUND AFFECTED</b>                       | <b>FY 2019</b> | <b>FY 2020</b> | <b>FY 2021</b> |
| <b>Local Government</b>                    | <b>\$0</b>     | <b>\$0</b>     | <b>\$0</b>     |

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Department of Transportation, Office of Prosecution Services, Department of Revenue, Department of Social Services, and the Department of Public Safety - Missouri Highway Patrol (MHP)** each assume the proposal would not fiscally impact their respective agencies.

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are faced with the enhanced penalties for subsequent offenses of failure to provide financial responsibility, escalates to a new Class C Misdemeanor. The definition of Dangerous Felony is expanded to include additional offenses, including DWI where any person not a passenger or two or more people or has a blood alcohol content of at least .18%. The proposed new legislation also calls for No SIS or Fines for persons causing the death of any person not a passenger or two or more people or has the blood alcohol content of at least .18% while boating or driving.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

**Oversight** assumes the SPD can absorb the additional caseload that may result from this proposal.

Officials from the **Office of the State Courts Administrator** state there may be some impact, but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

Officials from the **Department of Corrections (DOC)** state this version of the bill has added several new statutes, the majority of which modifies child placement guidelines for children in the custody of the state or juvenile courts. Statute will prohibit placing the children in homes with offenders who have violated a specific list of child sex/abuse crimes. Sexual trafficking offenses were also added to the list of child custody guidelines.

Modifications were made to compensation of out of pocket expenses as they apply to victims of crimes (595.030). The "Crime Victim Compensation Fund" is capped at 1 million dollars (595.045). This bill makes wording corrections and adds additional stipulations to current criminal statutes. The first pertains to RSMo 303.025 which changes the penalty by deleting jail

ASSUMPTION (continued)

time/fines and replacing that penalty with a class C misdemeanor. Chapter 579 (controlled substance offenses) is added to RSMo 488.029, which allows courts to charge \$150 crime lab fees if applicable. The invasion of privacy statute is updated by adding “views” to the criminal elements of that offense.

Drug trafficking criteria is clarified by dropping the high end figure for the various drug types (i.e., 30-90 grams) and stating above a specific number (i.e., More than 30 grams). Clarification was added to the dangerous felon definition as it applies to “habitual offender” or “habitual boating offender”. Finally, the courts can require felons to pay fees to the “Crime Victims Compensation Fund”. Class E felony was excluded and has now been added, which allows for a \$46 fee.

Excluding the class C misdemeanor, which DOC does not supervise, no new criminal penalties were created.

The invasion of privacy statute (RSMo 565.252) is replaced with a new sexual conduct (RSMo 566.146) offense. This bill creates a new class D felony if a probation or parole officer or an employee of a jail, prison or correctional facility engages in sexual conduct while on duty. This is a new crime and the impact to DOC is unknown.

For a new class D felony, the department estimates three people will be sentenced to prison and five to probation. The average sentence for a nonviolent Class D offense is 5 years, of which 3 years will be served in prison while the remaining 2 years will be on parole and probation sentences will be 3 years. The cumulative impact on DOC is 9 additional offenders in prison and 21 on field supervision by FY 2023.

If this impact statement has changed from statements submitted in previous years, it is because the Department of Corrections (DOC) has changed the way probation and parole daily costs are calculated to more accurately reflect the way the Division of Probation and Parole is staffed across the entire state.

In December 2017, the DOC reevaluated the calculation used for computing the Probation and Parole average daily cost of supervision and revised the cost calculation to be used for 2018 fiscal notes. The new calculation estimates the increase/decrease in caseloads at each Probation and Parole district due to the proposed legislative change. For the purposes of fiscal note calculations, the DOC averaged district caseloads across the state and came up with an average caseload of 51 offender cases per officer. The new calculation assumes that an increase/decrease of 51 cases in a district would result in a change in costs/cost avoidance equal to the cost of one

ASSUMPTION (continued)

FTE staff person in the district. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

In instances where the proposed legislation would only affect a specific caseload, such as sex offenders, the DOC will use the average caseload figure for that specific type of offender to calculate cost increases/decreases.

The DOC cost of incarceration is \$17.003 per day or an annual cost of \$6,206 per offender. The DOC cost of probation or parole is determined by the number of P&P Officer II positions that would be needed to cover the new caseload.

The DOC would assume this legislation will result in long term cost as indicated in the chart below.

|         | # to prison | Cost per year | Total Costs for <b>prison</b> |  | # to probation & parole | Cost per year | Total cost for <b>probation and parole</b> | Grand Total - Prison and Probation (includes and 2% inflation) |
|---------|-------------|---------------|-------------------------------|--|-------------------------|---------------|--|--|
| Year 1  | 3           | (\$6,206)     | (\$15,515)                    |  | 5                       | absorbed      | \$0  | (\$15,515)   |
| Year 2  | 6           | (\$6,206)     | (\$37,981)                    |  | 10                      | absorbed      | \$0  | (\$37,981)   |
| Year 3  | 9           | (\$6,206)     | (\$58,111)                    |  | 15                      | absorbed      | \$0  | (\$58,111)   |
| Year 4  | 9           | (\$6,206)     | (\$59,273)                    |  | 18                      | absorbed      | \$0  | (\$59,273)   |
| Year 5  | 9           | (\$6,206)     | (\$60,458)                    |  | 21                      | absorbed      | \$0  | (\$60,458)   |
| Year 6  | 9           | (\$6,206)     | (\$61,667)                    |  | 21                      | absorbed      | \$0  | (\$61,667)   |
| Year 7  | 9           | (\$6,206)     | (\$62,901)                    |  | 21                      | absorbed      | \$0  | (\$62,901)   |
| Year 8  | 9           | (\$6,206)     | (\$64,159)                    |  | 21                      | absorbed      | \$0  | (\$64,159)   |
| Year 9  | 9           | (\$6,206)     | (\$65,442)                    |  | 21                      | absorbed      | \$0  | (\$65,442)   |
| Year 10 | 9           | (\$6,206)     | (\$66,751)                    |  | 21                      | absorbed      | \$0  | (\$66,751)   |

Section 488.029 - \$150 surcharge on certain criminal cases:

Officials from the **MHP** state these changes are necessary to prevent a significant loss to the State Forensic Lab Account. Since violations have all been moved to Chapter 579 (from chapter 195 - effective January 1, 2017), essentially by letter of the statute, a surcharge would not be applied for any violation under chapter 195 because no violations exist. Consequently, the Forensic Lab Account would lose upwards of \$300,000 without this fix.

ASSUMPTION (continued)

Since the MHP has continued to collect this funding, **Oversight** will assume this change will not fiscally impact the state.

Section 595.030 - Crime Victims' Compensation Fund

Officials from the **Department of Public Safety - Office of the Director** assume the proposal will not create a fiscal impact to their department.

**Oversight** assumes the changes to this section could increase the claims made against the Crime Victims' Compensation Fund; therefore, Oversight will assume an unknown loss to the fund.

Section 595.045 - State Forensic Lab Account

In response to a similar proposal from this year (HB 1301), officials from the **Department of Public Safety - Office of the Director (DPS)** stated while assisting the state crime labs with additional funds, this increase affects the Crime Victims Compensation Fund (0681), and particularly the Service to Victims Fund (0592) which is used for State Services to Victim Funds (SSVF) grant awards.

In response to a similar proposal from 2017 (HB 743), **DPS** stated the current deduction (\$250,000) is taken from county funds only. The Department of Revenue deposits all of these certain county funds to the Crime Lab Fund (0591) at the beginning of the fiscal until the \$250,000 requirement is met, which takes most of county funds deposited the first month of the fiscal year (July). They then proceed to their normal split for depositing these court fees, which is 50/50 between fund 0681 and fund 0592. Increasing the required state lab funds to \$1,000,000 could mean that deposits don't register in these funds, for the county portion, until the 2nd quarter, probably November, of the fiscal year.

In response to a similar proposal from 2017 (HB 743), the **MHP** stated pursuant to 595.045, RSMo, \$250,000 is deposited annually from the Crime Victim's Compensation Fund into the State Forensic Laboratory Fund to provide financial assistance to crime laboratories in the State of Missouri. The State Forensic Laboratory Fund is administered by the Department of Public Safety, who distributes it to participating laboratories via annual grants. Currently, the Highway Patrol's share of this grant is \$117,222 per year. This legislation changes the amount deposited into the State Forensic Laboratory Fund from at least \$250,000 to no more than \$1,000,000 annually.

ASSUMPTION (continued)

This would have a positive impact on the Patrol laboratory operations and could increase our share as much as \$468,888 if the higher range of \$1,000,000 is transferred.

If this bill were to pass, the Patrol would request increased spending authority through the annual legislative budget process to be able to spend the additional monies and to be able to benefit from the extra funding.

MHP also stated for FY 2017, this \$250,000 was distributed as follows:

|                                       |                  |
|---------------------------------------|------------------|
| Missouri Highway Patrol crime labs    | \$117,222        |
| St. Louis Metropolitan P.D. crime lab | \$ 39,444        |
| Kansas City P.D. crime lab            | \$ 39,444        |
| St. Louis County                      | \$ 39,444        |
| St. Charles County                    | <u>\$ 14,444</u> |
| Total                                 | \$250,000        |

Increasing the distribution to \$1,000,000, and using the same ratios would result in distributions of:

|                                       |                  |
|---------------------------------------|------------------|
| Missouri Highway Patrol crime labs    | \$ 468,888       |
| St. Louis Metropolitan P.D. crime lab | \$ 157,777       |
| Kansas City P.D. crime lab            | \$ 157,777       |
| St. Louis County                      | \$ 157,777       |
| St. Charles County                    | <u>\$ 57,777</u> |
| Total                                 | \$1,000,000      |

For simplicity in the fiscal note, **Oversight** will not reflect the potential additional \$750,000 in funds being distributed out of the State Forensic Lab Fund to the various crime labs.

In response to a similar proposal from this year (HB 1301), officials from then **Office of Administration - Budget and Planning (B&P)** stated the proposed legislation increases the \$250,000 transfer from the Crime Victims' Compensation Fund to the State Forensic Laboratory Fund to a minimum of \$250,000, but no more than \$1,000,000. In FY17, \$250,000 was transferred in the first two months of the fiscal year. This will not impact Total State Revenue. It will allow Department of Public Safety to provide more financial assistance for crime laboratory expenses. Less financial assistance would be available to the victims; however, claims have dropped in recent years due to decreasing medical claims and a decrease in eligible crimes.

ASSUMPTION (continued)

The proposed legislation allows funeral homes or relatives of a deceased victim to claim compensation from the Crime Victims' Compensation Fund. This will not impact Total State Revenue.

**Oversight** notes the current balances in the impacted funds as of February 28, 2018 were:

|   |             |
|---|-------------|
| Crime Victims' Compensation Fund (0681) | \$7,880,484 |
| State Forensic Laboratory Fund (0591)   | \$ 705,020  |
| Service to Victims Fund (0592)          | \$1,034,933 |

As the proceeds are split evenly between the Crime Victims' Compensation Fund and the Services to Victims Fund (per §595.045.4(2)), **Oversight** will reflect the additional Up to \$750,000 being transferred evenly (\$375,000) from both funds into the State Forensic Lab Fund.

| <u>FISCAL IMPACT - State Government</u>   | FY 2019<br>(10 Mo.)      | FY 2020                  | FY 2021                  |
|---|--------------------------|--------------------------|--------------------------|
| <b>GENERAL REVENUE</b>  |                          |                          |                          |
| <u>Costs - DOC - increased incarceration costs for knowingly possessing, manufacturing, transporting, repairing, or selling a bump stock or trigger crank</u> | <u>(\$15,515)</u>        | <u>(\$37,981)</u>        | <u>(\$58,111)</u>        |
| <b>ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND</b>   | <b><u>(\$15,515)</u></b> | <b><u>(\$37,981)</u></b> | <b><u>(\$58,111)</u></b> |



| <u>FISCAL IMPACT - State Government</u><br>(continued)   | FY 2019<br>(10 Mo.)                                       | FY 2020   | FY 2021   |
|--|---|---|---|
| <b>CRIME VICTIMS COMPENSATION</b>  |   |   |   |
| <u>Revenue</u> - §595.045.8 - fee increase from pleas of guilty or finding of guilt for class E felonies | Unknown   | Unknown   | Unknown   |
| <u>Costs</u> - §595.030 & §595.045 - potential increase in claims  | (Unknown)   | (Unknown)   | (Unknown)   |
| <u>Transfer Out</u> - §595.045.3 increase in annual transfer to the State Forensic Lab Fund (0591)       | \$0 or (Up to<br><u>\$375,000</u> )                       | <u>\$0 or (Up to<br/>\$375,000)</u>                       | <u>\$0 or (Up to<br/>\$375,000)</u>                       |
| <b>ESTIMATED NET EFFECT TO THE CRIME VICTIMS COMPENSATION FUND</b>                                       | <b><u>(Could exceed<br/>\$375,000) to<br/>Unknown</u></b> | <b><u>(Could exceed<br/>\$375,000) to<br/>Unknown</u></b> | <b><u>(Could exceed<br/>\$375,000) to<br/>Unknown</u></b> |
| <b>SERVICES TO VICTIMS' FUND</b>   |   |   |   |
| <u>Transfer Out</u> - §595.045.3 - increase in annual transfer to the State Forensic Lab Fund (0591)     | \$0 or (Up to<br><u>\$375,000</u> )                       | <u>\$0 or (Up to<br/>\$375,000)</u>                       | <u>\$0 or (Up to<br/>\$375,000)</u>                       |
| <b>ESTIMATED NET EFFECT TO THE SERVICES TO VICTIMS' FUND</b>   | <b><u>\$0 or (Up to<br/>\$375,000)</u></b>                | <b><u>\$0 or (Up to<br/>\$375,000)</u></b>                | <b><u>\$0 or (Up to<br/>\$375,000)</u></b>                |
| <b>STATE FORENSIC LAB FUND</b>   |   |   |   |
| <u>Transfer In</u> - §595.045.3 - increase in annual transfer from \$250,000 to \$1,000,000              | \$0 or Up to<br><u>\$750,000</u>                          | <u>\$0 or Up to<br/>\$750,000</u>                         | <u>\$0 or Up to<br/>\$750,000</u>                         |
| <b>ESTIMATED NET EFFECT TO THE CRIME VICTIMS COMPENSATION FUND</b>                                       | <b><u>\$0 or Up to<br/>\$750,000</u></b>                  | <b><u>\$0 or Up to<br/>\$750,000</u></b>                  | <b><u>\$0 or Up to<br/>\$750,000</u></b>                  |

| <u>FISCAL IMPACT - Local Government</u> | FY 2019<br>(10 Mo.) | FY 2020    | FY 2021    |
|---|---------------------|------------|------------|
|   | <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

This bill cleans up some provisions in the criminal statutes. The bill also adds to the definition of "dangerous felony," intoxication-related traffic offenses and intoxication-related boating offenses under certain circumstances specified in the bill. It also specifies circumstances under which a person found guilty of the offense of driving while intoxicated shall not be granted a suspended imposition of sentence or be sentenced to pay a fine in lieu of a term of imprisonment. It specifies that boating while intoxicated and boating with excessive blood alcohol content are class B felonies if a person acts with criminal negligence to cause the death of any person while the defendant has a blood alcohol content of at least .18 by weight of alcohol in the defendant's blood.

The bill also creates the offense of sexual conduct in the course of public duty, which is a class D felony. A person commits the offense of sexual conduct in the course of public duty if he or she is a probation or parole officer, a police officer, or an employee of, or assigned to work in, any jail, prison, or correctional facility and engages in sexual conduct with a witness, arrestee, detainee, or inmate while on duty.

The bill also removes the upper end of the weight ranges for the offense of trafficking drugs in the first degree and the offense of trafficking drugs in the second degree.

The bill specifies that a child taken into the custody of the state or a child under the jurisdiction of the juvenile court shall not be reunited with a parent or placed in a home in which a parent or any person residing in the home has been found guilty of sexual trafficking of a child in the first degree.

Additionally, in any court proceeding relating to child custody, the court shall not award custody or unsupervised visitation, or visitation to a parent not granted custody, of a child to a parent if such parent or any person residing with such parent has been found guilty of or has pled guilty to

FISCAL DESCRIPTION (continued)

sexual trafficking of a child in the first degree.

Currently, no case may be awarded victim compensation if police records show a report was not issued within 48 hours. This bill repeals that provision and allows victims of domestic violence, sexual offenses, and stalking to provide sworn statements in lieu of official records.

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 Revenue  
Department of Transportation  
Department of Public Safety  
Missouri Highway Patrol  
Office of the State Courts Administrator  
Office of Prosecution Services  
Office of the State Public Defender  
Department of Corrections

Ross Strope



Acting Director  
March 26, 2018