

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2231-01
Bill No.: HB 1065
Subject: Crimes and Punishment; Criminal Procedure; Courts; Sexual Offenses
Type: Original
Date: March 25, 2019

Bill Summary: This proposal modifies provisions relating to criminal offenses.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
General Revenue	Could exceed (\$115,262)	Could exceed (\$282,161)	Could exceed (\$431,706)	Could exceed (\$1,179,627)
Total Estimated Net Effect on General Revenue	Could exceed (\$115,262)	Could exceed (\$282,161)	Could exceed (\$431,706)	Could exceed (\$1,179,627)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
State Forensic Laboratory (0591)	\$0 to \$327,000	\$0 to \$327,000	\$0 to \$327,000	\$0 to \$327,000
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 to \$327,000	\$0 to \$327,000	\$0 to \$327,000	\$0 to \$327,000

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
Federal	\$0 to \$40,000	\$0 to \$40,000	\$0 to \$40,000	\$0 to \$40,000
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 to \$40,000	\$0 to \$40,000	\$0 to \$40,000	\$0 to \$40,000

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
Total Estimated Net Effect on FTE	0	0	0	0

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

ESTIMATED NET EFFECT ON LOCAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§488.029, 513.605, 556.046, 556.061, 557.036, 558.021, 558.046, 559.115, 559.117, 566.010, 566.030, 566.032, 566.060, 566.062, 566.086, 566.123, 566.124, 571.070, 575.150, and 589.414
- Criminal offenses

Officials from the **Department of Corrections (DOC)** state Section 566.123 defines a predatory sexual offense to be the offense of 1st degree statutory rape, 1st degree statutory sodomy, 1st degree rape, 1st degree sodomy, 1st degree child molestation (when sentenced as a class A or B felony), 2nd degree child molestation (when sentenced as a class A or B felony) or 1st degree sexual abuse (when sentenced as a class B felony). A predatory sex offender is an offender with two or more convictions or acts that constitute a predatory sexual offense. The penalty is life without parole. The statute replaces statutes that already defined predatory sex offender and as the current offense requires a sentence of 25 years or more there is no fiscal impact on the prison population.

Section 566.124 defines a prior sex offender to be a sex offender with one prior conviction in chapter 566 or is a registered sex offender and defines a persistent sex offender to be a sex offender with two or more prior sex convictions. The prior sex offenses include felonies and misdemeanors.

The penalty for a prior sex offender is an increase in the felony class by one step. The penalty for a persistent sex offender is an increase in the felony class by two steps. Prior or persistent sex offenders convicted of a class A felony or an unclassified felony with a maximum sentence of thirty years or more shall serve life without parole. Most sex offenders serve to conditional release so the three year minimum term will not extend the prison stay.

The DOC estimates that in FY18, there were 86 offenders who would have been sentenced as a predatory, persistent or prior sex offender, of which 62 were sentenced to prison and 24 to probation.

Offenders sentenced for a class A felony will serve life without parole instead of 18.4 years and those sentenced for a class B felony will be sentenced as a class A felony which is estimated to be 17.1 years instead of 9.5 years as a class B felony. Similarly, D and E felonies will receive longer sentences because of the enhancement of the felony class. Sex offenders are required to complete the Missouri Sexual Offender Program and are estimated to serve 70 percent of the sentence before first release. In addition, the DOC is adding on 35 percent of the remaining time

ASSUMPTION (continued)

as parole violator time. The impact of the enhanced sentences of those offenders sentenced to prison is an increase of 355 in the prison population, but because of the long sentences many of the offenders are already serving, the full impact will not occur until after the ten years of the budget forecast. After ten years, the increase is 48 because of the longer time served.

In addition to the longer time served by offenders who would have been sentenced to prison, there will be a prison population increase from the offenders who would have been sentenced to probation. In FY18, there were 24 offenders sentenced to probation who would have been sentenced as prior sexual offenders.

The total impact of the change is a population increase of 157 that begins in the first year of enactment.

	# to prison	Cost per year	Total Costs for prison	# to probation & parole	Cost per year	Total cost for probation and parole	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	22	(\$6,287)	(\$115,262)	0	absorbed	\$0	(\$115,262)
Year 2	44	(\$6,287)	(\$282,161)	0	absorbed	\$0	(\$282,161)
Year 3	66	(\$6,287)	(\$431,706)	0	absorbed	\$0	(\$431,706)
Year 4	89	(\$6,287)	(\$593,792)	-1	absorbed	\$0	(\$593,792)
Year 5	125	(\$6,287)	(\$850,656)	-13	absorbed	\$0	(\$850,656)
Year 6	143	(\$6,287)	(\$992,614)	7	absorbed	\$0	(\$992,614)
Year 7	147	(\$6,287)	(\$1,040,787)	21	absorbed	\$0	(\$1,040,787)
Year 8	149	(\$6,287)	(\$1,076,046)	31	absorbed	\$0	(\$1,076,046)
Year 9	153	(\$6,287)	(\$1,127,032)	29	absorbed	\$0	(\$1,127,032)
Year 10	157	(\$6,287)	(\$1,179,627)	27	absorbed	\$0	(\$1,179,627)

Oversight does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC's impact for fiscal note purposes.

Officials from the **State Public Defender's Office (SPD)** state the proposed legislation would increase the length of trials in some sex cases because it creates a complex sentencing scheme to increase the punishments for sex offenses. Some sex trials would become more complex regarding sentencing issues. The SPD would be required to do more investigation to refute state claims and spend a longer time in trial on these cases.

ASSUMPTION (continued)

While the number of these cases 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 notes over the last three fiscal years, the SPD has lapsed a total of \$152 of General Revenue appropriations (\$0 out of \$36.4 million in FY 2016; \$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018). Therefore, Oversight assumes the SPD is at maximum capacity, and the increase in workload resulting from this bill cannot be absorbed within SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, Oversight assumes the cost for a new APD could approach \$100,000 per year.

Oversight assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing resources and, therefore, will reflect a potential additional cost of \$0 to (Unknown) per year to the General Revenue Fund.

Officials from the **Department of Public Safety - Missouri State Highway Patrol (MHP)** state if the charges are not moved from Chapter 195 to Chapter 579, it could result in a decrease in Crime Laboratory funding. Presently, if a defendant pleads or is found guilty of a Chapter 195 charge, the court assesses a \$150 surcharge against the defendant. This money is distributed to the Missouri crimes labs by the Department of Public Safety (DPS) through a Missouri Crime Lab Upgrade Program (MCLUP) grant. If the language is not changed to Chapter 579, it could result in as much as a \$327,000 reduction in funding.

Additionally, to avoid being penalized by the Sex Offender Registration and Notification Act (SORNA) and potentially lose ten percent of future grant funding, it is important Section 589.404, RSMo, defines "Sexual Conduct" in addition to "Sexual Contact".

Oversight notes the change in §488.029 is 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

ASSUMPTION (continued)

Account would lose upwards of \$300,000 without this change. Oversight assumes this change to this section will become effective August 28, 2019, and surcharges will continue to be assessed against defendants; therefore, Oversight will reflect the fiscal impact to the State Forensic Laboratory Fund as \$0 to \$327,000.

Oversight also notes the Adam Walsh Act Grant may allocate up to \$400,000 each fiscal year. The amount of the grant funding varies depending on what is applied for and what is actually allocated. Over the past seven years, the MHP has averaged \$239,126 annually. The highest amount received was \$400,000, the lowest was \$163,385, and there was one year the MHP did not apply for any funding. The MHP states it could lose ten percent of the money awarded each year the MHP is not in compliance. Therefore, the impact to federal funds will be presented as \$0 to \$40,000 for remaining (on coming into) compliance.

Oversight notes that the **Department of Health and Senior Services, Department of Social Services, Missouri Office of Prosecution Services, Office of State Courts Administrator, Joplin Police Department, Springfield Police Department, St. Louis County Police Department** and **St. Louis County Department of Justice Services** have stated the proposal would not have a direct 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 agencies.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other police and sheriffs' departments were requested to respond to this proposed legislation but did not. For a general listing of political subdivisions included in our database, please refer to www.legislativeoversight.mo.gov.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2029)
GENERAL REVENUE FUND				
<u>Costs - DOC</u> (\$566.123)				
Increased incarceration costs	(\$115,262)	(\$282,161)	(\$431,706)	(\$1,179,627)
<u>Costs - SPD</u> (§§566.123 and 575.150)				
	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND				
	<u>Could exceed</u> <u>(\$115,262)</u>	<u>Could exceed</u> <u>(\$282,161)</u>	<u>Could exceed</u> <u>(\$431,706)</u>	<u>Could exceed</u> <u>(\$1,179,627)</u>
STATE FORENSIC LABORATORY FUND (0591)				
<u>Revenue - MHP</u> (\$488.029)				
Court-assessed surcharge	<u>\$0 to \$327,000</u>	<u>\$0 to \$327,000</u>	<u>\$0 to \$327,000</u>	<u>\$0 to \$327,000</u>
ESTIMATED NET EFFECT ON STATE FORENSIC LABORATORY FUND				
	<u>\$0 to \$327,000</u>	<u>\$0 to \$327,000</u>	<u>\$0 to \$327,000</u>	<u>\$0 to \$327,000</u>

<u>FISCAL IMPACT -</u> <u>State Government</u> (continued)	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2029)
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FEDERAL FUNDS

<u>Loss Avoidance -</u> MHP (\$589,414) Continuation of Adam Walsh Act Grant funds - if now in compliance	<u>\$0 to \$40,000</u>	<u>\$0 to \$40,000</u>	<u>\$0 to \$40,000</u>	<u>\$0 to \$40,000</u>
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ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0 to \$40,000</u>	<u>\$0 to \$40,000</u>	<u>\$0 to \$40,000</u>	<u>\$0 to \$40,000</u>
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<u>FISCAL IMPACT -</u> <u>Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2029)
	<u>\$0</u>	<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 specifies that a court shall be obligated to charge the jury with respect to an included offense only if it is established by proof of the same or less than all the elements required to establish the commission of the offense charged, there is a rational basis in the evidence for a verdict acquitting the person of the offense charged and convicting the person of the included offense, and either party requests the court to charge the jury with respect to a specific included offense.

Failure of the defendant or defendant's counsel to request the court to charge the jury with respect to a specific included offense shall not be a basis for plain-error review on direct appeal or

FISCAL DESCRIPTION (continued)

post-conviction relief. It shall be the trial court's duty to determine if a rational basis in the evidence for a verdict exists.

The bill changes the definition of "dangerous felony" under Section 556.061, RSMo.

The bill also provides that if an offender is determined to be a predatory sexual offender, the offender shall be sentenced to life without eligibility for probation or parole. Predatory sexual offenders shall not receive final discharge from parole or be furloughed by the Department of Corrections or any of its divisions. The bill specifies a two-stage process by which a second trial stage shall be held after the conviction of an offender to determine whether that offender is a predatory sexual offender.

The bill also creates a process for determining whether an offender is a prior or persistent sexual offender and creates provisions regarding the sentencing of prior and persistent sexual offenders, including the provisions that an offender determined to be a prior sexual offender shall be sentenced to the authorized term of imprisonment one class step higher than the offense for which the offender was found guilty, and that an offender determined to be a persistent sexual offender shall be sentenced to the authorized term of imprisonment two class steps higher for which the offender was found guilty.

The bill changes the offense of resisting or interfering with an arrest, detention, or stop to the offense of resisting, interfering with, or escaping or attempting to escape from detention or custody, and specifies that a person commits such offense when the person, while being held in custody after a stop or detention or after an arrest has been made, escapes or attempts to escape from custody. The offense is a class E felony unless a person is escaping or attempting to escape by means of a deadly weapon or dangerous instrument or by holding any person hostage, in which case the offense is a class A felony. Resisting an arrest, detention, or stop for a misdemeanor or an infraction under some circumstances, specified in the bill, is a class A misdemeanor.

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 Health and Senior Services
Department of Corrections
Department of Public Safety -
 Missouri State Highway Patrol
Department of Social Services
Missouri Office of Prosecution Services
Office of State Courts Administrator
State Public Defender's Office
Joplin Police Department
Springfield Police Department
St. Louis County Police Department
St. Louis County Department of Justice Services



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March 25, 2019

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March 25, 2019