

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0170-03
Bill No.: HB 133
Subject: Crimes and Punishment; Criminal Procedure; Department of Corrections; Law Enforcement Officers and Agencies
Type: Original
Date: March 3, 2009

Bill Summary: The proposal modifies the requirements for minimum service of sentence for felony offenses.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	(\$758,501 to Unknown)	(\$4,154,590 to Unknown)	(\$8,327,652 to Unknown)
Total Estimated Net Effect on General Revenue Fund	(\$758,501 to Unknown)	(\$4,154,590 to Unknown)	(\$8,327,652 to Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on FTE	0	0	0

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Department of Corrections (DOC)** assume minimum mandatory prison terms would still not affect felonies for drug related offenses as set forth in chapter 195, RSMo. However, a prior commitment for a drug related offense is considered a prior prison commitment. Currently, offenders with no previous prison commitment to the DOC for a felony offense have no mandatory minimum term to complete. This bill would mandate that an offender serve 40% of his or her sentence before being released from prison. Also, this bill would increase the mandated percent of sentence served for offenders with one and two previous prison commitments from 40% and 50% respectively, to a now proposed 75%. This increase would mean that offenders with one or two prior incarcerations would be ineligible for conditional release if this bill passes.

This table shows a breakdown of the current and proposed minimum mandatory prison terms (MMPT).

Prior Prison Commitments	Current MMPT	Proposed MMPT
0	N/A	40%
1	40%	75%
2	50%	75%
3	80%	80%

The following analysis will consider three sets of current offenders by FY2008 admission MMPT: 40% MMPT, 50% MMPT, and no MMPT and will show their corresponding increases should this bill be made a statute.

ASSUMPTION (continued)

Calculated from the FY2008 first releases is the amount of additional time that would have to be served due to the newly proposed MMPTs along with the proportion of offenders that would be serving additional time. However, the impact of this additional time will not be experienced immediately. Therefore, the additional time to be served has been added to the end of the average time served for different sentence lengths.

For example, in FY2008 an offender being released on a three-year sentence with an MMPT of 40% has an average time served of 17 months. This proposal would increase that average time served to 26 months, meaning the offender would be incarcerated for an additional 7 months during the second year of incarceration and an additional 2 months during the third year for a total of 9 additional months. Details of this information can be found for the three MMPT groups in the following analyses.

0% to 40% MMPT

Following are the net gains in population by fiscal year due to the increase of time served for this component of the bill:

Fiscal Year	Increase		Fiscal Year	Increase
2010	256		2015	1,206
2011	918		2016	1,210
2012	1,104		2017	1,210
2013	1,157		2018	1,213
2014	1,196		2019	1,214

ASSUMPTION (continued)

40% to 75% MMPT

Following are the net gains in population by fiscal year due to the increase of time served for this component of the bill:

Fiscal Year	Increase	Fiscal Year	Increase
2010	1	2015	695
2011	180	2016	752
2012	375	2017	799
2013	518	2018	829
2014	629	2019	837

50% to 75% MMPT

Following are the net gains in population by fiscal year due to the increase of time served for this component of the bill:

Fiscal Year	Increase	Fiscal Year	Increase
2010	0	2015	201
2011	17	2016	217
2012	76	2017	240
2013	117	2018	267
2014	174	2019	290

ASSUMPTION (continued)

Increase in Summary

Following is the departmental net gains in population by fiscal year due to passage of this bill.

Fiscal Year	Increase	Fiscal Year	Increase
2010	257	2015	2,102
2011	1,115	2016	2,179
2012	1,555	2017	2,249
2013	1,792	2018	2,309
2014	1,999	2019	2,341

DOC estimates the increase in population will increase incrementally over the fiscal year. For cost estimates, a snapshot of the midyear average population was used to determine fiscal impact.

Assumptions used to determine cost and rounded to the nearest whole number include:

- \$15.64 (FY08 cost) inmate daily direct expenses with an inflation rate of 3% per each subsequent year.

The following charts detail the estimated fiscal impact for the scope of the fiscal note (FYs 2010, 2011, and 2012), the estimated ten-year fiscal impact, and the assumptions used in determining these costs:

ASSUMPTION (continued)

Minimum Mandatory Prison Terms			
	<u>Cost</u>	<u>Days</u>	<u>Total</u>
Per Diem Operating Expenses	45.02	365	0
Construction (C4 or C5 \$55,000)			0
Inmate Direct Cost	15.64	365	5,709
Operating Inflation (3.0%)			1.030
Inmate Direct Inflation (10%)			1.030
Construction Inflation (3.0%)			1.030

	End FY Population	Average Population	Direct Offender Expense	Operating Expense	Construction Expense	Total Cost w/ Inflation
FY 2009	0	(current year which will have no costs incurred)				
FY 2010	257	129	736,409	0	0	\$758,501
FY 2011	1,115	686	3,916,100	0	0	\$4,154,590
FY 2012	1,555	1,335	7,620,981	0	0	\$8,327,652
FY 2013	1,792	1,674	9,556,196	0	0	\$10,755,583
FY 2014	1,999	1,896	10,823,506	0	0	\$12,547,410
FY 2015	2,102	2,051	11,708,339	0	0	\$13,980,369
FY 2016	2,179	2,141	12,222,113	0	0	\$15,031,657
FY 2017	2,249	2,214	12,638,840	0	0	\$16,010,504
FY 2018	2,309	2,279	13,009,899	0	0	\$16,974,967
FY 2019	2,341	2,325	13,272,495	0	0	\$17,837,123
Total Ten-Year Fiscal Impact:						\$116,378,356
FY08 P&P Per Diem is an average of \$2.47 or \$902 per annum						

ASSUMPTION (continued)

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender cost either through incarceration (FY08 average of \$15.64 per offender, per day or an annual cost of \$5,709 per inmate) or through supervision provided by the Board of Probation and Parole (FY08 average of \$2.47 per offender, per day or an annual cost of \$902 per offender).

In summary, supervision by the DOC through probation or incarceration would result in additional costs and although the exact fiscal impact is unknown, it is estimated that potential costs will be in excess of the indicated measurable dollar amount per year.

Officials from the **Office of the State Public Defender (SPD)** assume for the purpose of this proposed legislation, and as a result of excessive caseloads, the SPD cannot provide competent, effective representation for any new cases arising where indigent persons are charged with a felony facing serving 75% of their sentence.

SPD provides defense representation in approx 83% of the felonies filed statewide. Over 95% of those cases wind up being plea-bargained and disposed of without requiring jury trials. However, the majority of cases being jury-tried are those that carry significant jail time sentences, such as 75% mandatory time, which leave prosecutors little room to plea-bargain and defendants little incentive to plead. The impact of making every criminal offense a 75% one will be to significantly increase the number of defendants opting to take their chance with a jury because the best offer the prosecutor can make will still involve extremely high prison sentences and trial therefore carries relatively little risk.

The elimination of credit for time served while awaiting trial also poses risks. Public defender clients cannot constitutionally be treated any differently than private attorney clients without running afoul of the equal protection and due process clauses of the U.S. and MO Constitutions. Since the jail time counts against sentences ultimately imposed, the end result for public defender and private attorney clients remains comparable. If that time no longer counts against any sentence imposed, public defender clients will wind up serving up to a year or two longer than private attorney clients simply because they had a public defender.

Oversight assumes the Office of the State Public Defender (SPD) could experience increased cases as a result of the proposal. Until the increased cases as a result of the proposal are sufficient to justify additional personnel, Oversight assumes the SPD could absorb the costs of the proposed legislation within existing resources. Oversight assumes any significant increase in the workload of the SPD would be reflected in future budget requests.

ASSUMPTION (continued)

Officials from the Office of Prosecution Services did not respond to Oversight's request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
GENERAL REVENUE FUND			
<u>Costs – Department of Corrections</u>			
Incarceration costs	<u>(\$758,501 to Unknown)</u>	<u>(\$4,154,590 to Unknown)</u>	<u>(\$8,327,652 to Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$758,501 to Unknown)</u>	<u>(\$4,154,590 to Unknown)</u>	<u>(\$8,327,652 to Unknown)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
	<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

The proposed legislation changes the minimum prison term for an individual who has pled guilty to or been found guilty of a felony other than specified dangerous felonies. When an offender has no previous prison commitment for a felony offense, the offender must serve at least 40% of his or her prison sentence or until the offender reaches 70 years of age and has served at least 30% of the sentence imposed, whichever occurs first. If an offender has one or two previous prison commitments for felony offenses, the minimum prison term will be 75% of his or her sentence or until the offender reaches 70 years of age and has served at least 40% of the sentence imposed, whichever occurs first.

FISCAL DESCRIPTION (continued)

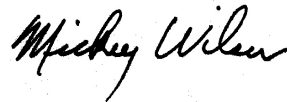
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of State Courts Administrator
Department of Corrections
Office of the State Public Defender

NOT RESPONDING

Office of Prosecution Services

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
March 3, 2009