

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1016-01  
Bill No.: HB 330  
Subject: Alcohol; Crimes and Punishment; Law Enforcement Officers and Agencies  
Type: Original  
Date: February 17, 2009

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Bill Summary: The proposal gives courts the option of imposing continuous alcohol monitoring or verifiable breath alcohol testing for certain offenders who plead guilty to or are found guilty of an intoxication-related traffic offense.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	(Unknown)	(Unknown)	(Unknown)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

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

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 7 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
<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>			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

☐ 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).

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

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Department of Revenue, Department of Public Safety – Missouri State Highway Patrol, – Director’s Office**, and the **Office of the State Public Defender** assume the proposal would have no fiscal impact on their agencies.

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

Officials from the **Office of Prosecution Services** assume the proposal would have no measurable fiscal impact the Office of Prosecution Services or county prosecutors.

Officials from the **Department of Transportation (MoDOT)** assume, depending upon its interpretation, this bill could place MoDOT out of compliance with federal requirements for repeat offender laws. We have requested official interpretation from the federal government. Title 23 United States Code Section 164 outlines the required minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.

It appears that the drafter’s intention was to ensure that Missouri still met the federal repeat offender standards. For instance, for second or third time offenders, this bill adds language so that as an additional condition of probation or parole the court could consider requiring the use of continuous alcohol monitoring devices (such that these offenders will still have to serve their minimum imprisonment terms or complete the minimum amount of community service required, thereby still meeting federal requirements). Similarly, for fourth-time offenders, this bill would change the law so that they would have to serve 30 days imprisonment (which would still meet federal requirements), but would authorize the court to suspend execution for the other 30 days of the prison sentence if the offender participated in continuous alcohol monitoring.

The issue arises with chronic offenders. These are fifth-time offenders, and current state law requires these offenders to serve a minimum of 2 years’ imprisonment. The bill contains new language authorizing a court to grant probation pursuant to section 559.115 RSMo, if as a condition thereof the offender agrees to continuous alcohol monitoring for no less than 6 months or no more than 2 years. The bill does not contain any sort of language saying that probation can only be granted after a certain amount of time has already been served.

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ASSUMPTION (continued)

Section 559.115 RSMo authorizes a circuit court to grant probation to an offender any time up to 120 days after the offender has been delivered to the Department of Corrections, but not thereafter. Thus, citing to this statute suggests that a fifth-time offender could be granted probation after serving less than 2 years, and maybe even less than 10 days imprisonment, if the offender agrees to participate in continuous alcohol monitoring as outlined in the bill. This would place Missouri out of compliance with Section 164's repeat offender requirements, and could result in 3% (\$15,000,000) of Missouri's National Highway System, Surface Transportation Program and Interstate Maintenance funds being transferred for other uses (for alcohol-impaired driving countermeasures and DWI law enforcement).

**Oversight** assumes the loss of federal funds, as assumed by the Department of Transportation (MoDOT), is speculative and dependent upon other factors. Therefore, Oversight assumes no fiscal impact to MoDOT.

Officials from the **Department of Corrections (DOC)** assume this bill proposes to give courts the option of imposing continuous alcohol monitoring or verifiable breath alcohol testing for certain offenders who plead guilty to or are found guilty of an intoxication-related traffic offense. Penalty provisions in the bill do not change.

DOC assumes they would have to pay the vendor costs associated with providing the services proposed in this bill for continuous alcohol monitoring or verifiable breath alcohol testing for offenders unless the offender themselves or some other source were required to pay for it. The fiscal impact for these services is an unknown amount. This type of high supervision monitoring of offenders while under probation and parole supervision may lead to increased revocation rates of which the fiscal impact is also unknown.

If additional persons are sentenced longer to the custody of the DOC due to the provisions of this legislation resulting in additional revocations, 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, the fiscal impact to the DOC is of an unknown amount.

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
<b>GENERAL REVENUE FUND</b>			
<u>Costs – Department of Corrections</u>			
Alcohol monitoring costs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>
 <u>FISCAL IMPACT - Local Government</u>	 FY 2010 (10 Mo.)	 FY 2011	 FY 2012
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

#### 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 specifies that a court must consider requiring a persistent offender of alcohol-related offenses to abstain from consuming or using alcohol as a condition of parole or probation as demonstrated by continuous alcohol monitoring or verifiable breath alcohol testing performed at least four times daily.

The proposal allows the court to suspend execution of sentence of up to 30 days for an aggravated offender of alcohol-related offenses if he or she abstains from consuming or using alcohol as demonstrated by continuous alcohol monitoring or by verifiable breath alcohol testing performed at least six times daily for a period of from 60 to 120 days as determined by the court.

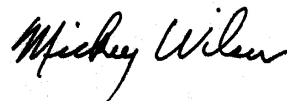
Courts may also grant probation to a chronic offender of alcohol-related offenses if as a condition of parole or probation he or she abstains from consuming or using alcohol as demonstrated by continuous alcohol monitoring or by verifiable breath alcohol testing performed at least six times daily for a period of from six months to two years as determined by the court.

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 Transportation  
Department of Corrections  
Department of Revenue  
Department of Public Safety  
    – Missouri State Highway Patrol  
    – Director's Office  
Office of Prosecution Services  
Office of the State Public Defender



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