

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1222-01
Bill No.: HB 384
Subject: Crimes and Punishment; Criminal Procedure; Law Enforcement Officers and Agencies
Type: Original
Date: February 4, 2009

Bill Summary: The proposal revises various criminal offenses and procedures.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	(More than \$217,734)	(More than \$258,817)	(More than \$266,583)
Total Estimated Net Effect on General Revenue Fund	(More than \$217,734)	(More than \$258,817)	(More than \$266,583)

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 9 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
General Revenue	4	4	4
Total Estimated Net Effect on FTE	4	4	4

☒ 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	(Unknown) to Unknown	(Unknown) to Unknown	(Unknown) to Unknown

FISCAL ANALYSIS

ASSUMPTION

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

Officials from the **Office of the Attorney General** assume any potential costs arising from this proposal can be absorbed within existing resources.

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)** state the enhanced penalty provision component of this bill resulting in potential fiscal impact for DOC, is for up to a class C felony.

Currently, the DOC cannot predict the number of new commitments which may result from the expansion of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

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).

The need for capital improvements is not anticipated at this time. It must be noted that the cumulative effect of various new legislation, if passed into law, could result in the need for additional capital improvements funding if the total number of new offenders exceeds current planned capacity.

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Eighteen (18) persons would have to be incarcerated per each fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

ASSUMPTION (continued)

Officials from the **Department of Revenue (DOR)** assume Section 302.311 of the proposal would require DOR Legal Services Division attorneys to assume legal representation for the Department and appear in court for all driver's license suspension, revocation, and denial cases (primarily section 577.041 chemical refusal license revocation appeals) in all 114 Missouri counties, in lieu of local prosecutors. Part of this function is currently performed by Department attorneys.

DOR also assumes Section 302.750 would require Department attorneys to assume representation for all commercial driver license (CDL) chemical refusal revocation appeals in circuit courts located in all 114 Missouri counties. DOR officials would expect minimal impact, however, as the number of appeals under these provisions (CDL refusal) have been historically nominal.

DOR assumes the proposal would result in an ongoing obligation upon the Department to provide legal representation in lieu of local prosecuting attorneys for all succeeding fiscal years.

DOR assumes the following administrative impact:

DOR anticipates that the Transportation Unit, General Counsel's Office will require three additional FTE Legal Counsel positions (one each for the Jefferson City, Kansas City and St. Louis offices), at \$43,956 per FTE; one additional FTE Senior Office Support staff position, at \$27,564 per FTE, in the Jefferson City office; together with additional travel/per diem expense funds due to increased travel throughout the state required to cover an increased case load.

DOR estimates the fiscal impact of the proposal to be approximately \$224,000 in FY 2010 and approximately \$280,000 in subsequent fiscal years.

Oversight assumes the Department of Revenue would house the additional FTE within existing facilities. Therefore, the fiscal impact does not include rent or janitorial costs. The equipment expenses have been adjusted to reflect the Office of Administration's expense and equipment guidelines.

Officials from the **Office of Prosecution Services (OPS)** assume the proposal would have no fiscal impact on their agency. Officials assume the proposal may have a fiscal impact on county prosecuting attorneys.

ASSUMPTION (continued)

OPS assumes the proposal may have both a positive and negative fiscal impact on prosecuting attorneys. With regard to the proposed amendment to section 302.311, this will have a positive fiscal impact on prosecuting attorneys. Currently, prosecutors are mandated to represent the Department of Revenue in circuit court appeals from administrative revocations of driver's license in cases where an impaired driving suspect refused a chemical test. Prosecutors receive no compensation for this representation. By removing this mandate, prosecuting attorneys will be able to dedicate their limited resources to the representation of the State in criminal matters.

With regard to the proposed amendment to section 545.490, this will also have a potentially positive fiscal impact on prosecuting attorneys. By setting forth specific requirements that must be met before a change of venue is granted, this bill may result in fewer changes of venue being granted. This will allow prosecuting attorneys to avoid the extra expenses (i.e. travel and lodging) associated with trying criminal cases in distant courts or circuits.

The other proposed amendments in the proposal may also have positive fiscal impacts on prosecuting attorneys by removing various mandates and liabilities that they currently face. To the extent these amendments create new criminal offenses, they may also have a negative fiscal impact dependent on the number of cases that are filed.

Officials from the **Office of the State Public Defender (SPD)** assume increasing penalties on existing crimes, or creating new crimes, will require more SPD resources. While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional appropriations for this specific bill, the SPD will continue to request sufficient appropriations to provide competent and effective representation in all its cases.

Oversight assumes the Office of the State Public Defender (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.

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
GENERAL REVENUE FUND			
<u>Costs – Department of Corrections</u>			
Incarceration/probation costs	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<u>Costs – Department of Revenue (DOR)</u>			
Personal Service	(\$136,846)	(\$169,141)	(\$174,216)
Fringe Benefits	(\$66,548)	(\$82,253)	(\$84,721)
Equipment and Expense	<u>(\$14,340)</u>	<u>(\$7,423)</u>	<u>(\$7,646)</u>
<u>Total Costs – DOR</u>	<u>(\$217,734)</u>	<u>(\$258,817)</u>	<u>(\$266,583)</u>
FTE Change – DOR	4 FTE	4 FTE	4 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(More than \$217,734)</u>	<u>(More than \$258,817)</u>	<u>(More than \$266,583)</u>
Estimated Net FTE Change for General Revenue Fund	4 FTE	4 FTE	4 FTE
 <u>FISCAL IMPACT - Local Government</u>	 FY 2010 (10 Mo.)	 FY 2011	 FY 2012
LOCAL GOVERNMENT			
<u>Savings – County prosecutors</u>			
Reduced cases (302.311)	Unknown	Unknown	Unknown
Reduced travel (545.490)	Unknown	Unknown	Unknown
Reduced mandates and liabilities (various sections)	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<u>Total Savings – County prosecutors</u>	Unknown	Unknown	Unknown
<u>Costs – County prosecutors</u>			
Increased cases (various sections)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENT	<u>(Unknown) to Unknown</u>	<u>(Unknown) to Unknown</u>	<u>(Unknown) to Unknown</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 laws regarding crime. In its main provisions, the proposal:

1. Removes the provision that requires the prosecuting attorney to appear in behalf of the Director of the Department of Revenue in circuit court cases or hearings reviewing administrative decisions regarding alcohol-related traffic offenses (302.311, 302.750);
2. Creates the crime of failure to appear if the person knowingly fails to appear before any court or judicial officer as required. Failure to appear will be a class D felony if the criminal matter for which the person was released included a felony, a class A misdemeanor if the criminal matter includes a misdemeanor, or an infraction if the criminal matter includes only an infraction or the violation of a municipal ordinance (544.665);
3. Allows a change of venue petition to be ordered in any criminal proceeding if the inhabitants of the county are prejudiced against the defendant or the state has an undue influence over the inhabitants of the county and specifies the procedures for filing an application for change of venue (544.490);
4. Specifies that any person who attempts to harbor or conceal a person; attempts to warn the person; attempts to provide the person with money, transportation, weapon, disguise, or other means of aid; or attempts to prevent or obstruct anyone from performing an act that might aid in the discovery or apprehension of the person will be guilty of the crime of hindering prosecution (575.030);
5. Expands the crime of tampering with physical evidence to include attempts to alter, destroy, suppress, or conceal evidence in any potential investigation that could result in an official proceeding and specifies that tampering with physical evidence will be a class D felony if the actor intends to impair or obstruct the prosecution or defense of a felony (575.100);

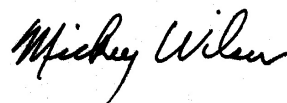
DESCRIPTION (continued)

6. Expands the crime of resisting or interfering with arrest, detention, or stop to include arrests on warrants issued for probation or parole warrants and arrests on capias warrants or bench warrants issued by federal, state, or municipal judges. Any person violating these provisions will be guilty of a class D felony (575.150);
7. Expands the crime of tampering with a judicial proceeding to include influencing the official action of a state prosecuting or circuit attorney (575.260); and
8. Repeals provisions regarding owning a hedge fence situated along the right-of-way of any public road and certain provisions regarding the payment of costs in criminal cases (299.110).

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 the Attorney General
Office of Administration
 – Administrative Hearing Commission
Office of State Courts Administrator
Department of Corrections
Department of Revenue
Department of Public Safety
 – Director's Office
 – Missouri State Highway Patrol
Office of Prosecution Services
Office of the State Public Defender



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