

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4083-01  
Bill No.: HB 2042  
Subject: Crimes and Punishment; Sexual Offenses; Highway Patrol  
Type: Original  
Date: February 2, 2018

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Bill Summary: This proposal modifies provisions relating to sexual offenders.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2028)
General Revenue	(\$56,888)	(\$139,263)	(\$213,072)	(\$786,175)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(\$56,888)</b>	<b>(\$139,263)</b>	<b>(\$213,072)</b>	<b>(\$786,175)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2028)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses. This fiscal note contains 12 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>Fully Implemented (FY 2028)</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</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>Fully Implemented (FY 2028)</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</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>Fully Implemented (FY 2028)</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Department of Corrections (DOC)** state the legislation revises the offenses of persistent and predatory sexual offenders and creates the offense of prior sexual offender.

1. Section 566.123 defines a predatory sexual offense to be the offense of statutory rape 1st degree, statutory sodomy 1st degree, rape 1st degree, sodomy 1st degree, child molestation 1st degree (when sentenced as a class A or B felony), child molestation 2nd degree (when sentenced as a class A or B felony) or sexual abuse 1st degree (when sentenced as a class B felony). A predatory sex offender is an offender with two more convictions or acts that constitute a predatory sexual offense. The penalty is life without parole.
2. Section 566.124 defines a prior sex offender to be a sex offender with one prior conviction in chapter 566 or who 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. It should be noted that most serious sex offenses are unclassified felonies, but all prior and persistent sex offenders shall be sentenced without probation or parole for three years. Probation will, therefore, no longer be a sentencing option.

The effect of the legislation will be to increase the number of offenders sentenced as prior or persistent sexual offenders. The current legislation defines persistent and predatory sexual offenders based upon the prior commission of the offenses listed in the revised 566.123 RSMo. The sentencing requires a life sentence and a time served of 30 years or more.

The DOC is estimating the impact of the legislation on the offenses that are received by the DOC but this may significantly understate the actual impact, because the DOC does not receive many offenders sentenced for misdemeanor sex offenses and misdemeanors are included in the count of prior sex offenses. The DOC estimates that in FY17 there were 58 offenders who would have been sentenced as a predatory, persistent or prior sex offender, of which 11 were sentenced to probation. The definition of a prior conviction requires that the current offense is committed after the last sentencing of the prior sex offenses.

ASSUMPTION (continued)

**Prior, Persistent and Predatory sex offenses  
 Admissions in FY17**

	Disposition		
	Prison	Probation	Total
Prior sex offenders	42	11	53
Persistent sex offender	3	-	3
Predatory sex offenders	2	-	2
<b>Total</b>	<b>47</b>	<b>11</b>	<b>58</b>

1. Predatory Sex Offenders

The definition of a predatory sex offender in the bill includes the offenses that define a persistent and predatory sex offender in the current statute (566.125.1), and while there is some enhancement in the sentencing, the changes in HB 2042 are not expected to increase the number or the length of time the predatory sex offenders serve. It is already long and the impact of the proposed changes will be beyond the 10 year budget horizon. The DOC estimates that two offenders per year will be sentenced as predatory sex offenders and they will serve 30 or more years. At the end of the 10 year budget forecast the predatory sex offender population will be 20. There is no impact for the revision to laws regarding predatory sexual offenders, previously defined as persistent or predatory sexual offenders.

	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	Maximum Population
Predatory Sex Offenders	2	4	6	8	10	12	14	16	18	20	30

2. Prior and Persistent Sex Offenders

The total impact for the prior and persistent sex offenders are broken out below. Offenders sentenced for a class A felony will serve life without parole instead of 18.8 years, and those offenders sentenced for a class B felony will be sentenced as a Class A felony, estimated to be 17.6 years instead of 10 years as a class B felony. Similarly, D and E felonies will receive longer sentences. Sex offenders are required to complete the Missouri Sexual Offender Program and are estimated to serve 70% of the sentence before first release. In addition, the DOC is adding on 40% of the remaining time as parole violator time. The impact of the enhanced sentences of those offenders sentenced to prison is an increase of 312 in the prison population, but because of the long sentences many of the offenders are already serving the full impact and the difference will not occur until after the ten years of the budget forecast. After ten years the increase is 22.

**ASSUMPTION (continued)**

**Sex offenders sentenced as prior sex offenders  
 Admitted in FY16 and will serve longer sentences**

Sentenced as Felony class	Admissions FY16 (1)	Average Sentence (yrs)			Length of stay (yrs) to first release			Parole (yrs)			Parole returns (9)*40% (10)	Additional prison time served (8)+(10) (11)	Additional parole time (9)*60% (12)	Total Impact (1)*(11), (1)*(12) (13)	Impact after 10 years (14)
		Before (2)	After (3)	Increase (6)	Before (4)	After (5)	Increase (6)	Before (7)	After (8)	Increase (9)					
A/ Unclassified as LWOP	16	18.8	30.0	13.2	30.0	16.8	5.6	-	-	-	16.8	269	-		
B as A	4	10.0	17.6	7.0	12.3	5.3	3.0	5.3	2.3	0.9	6.2	1.37	25	4	
D as C	5	6.0	7.2	4.2	5.0	0.8	1.8	2.2	0.4	0.1	1.0	0.22	5	5	
E as D	8	4.0	6.0	2.8	4.2	1.4	1.2	1.8	0.6	0.2	1.6	0.36	13	13	
<b>Total Prison</b>	<b>33</b>	<b>6.0</b>	<b>9.1</b>	<b>4.2</b>	<b>6.4</b>	<b>2.2</b>	<b>1.8</b>	<b>2.7</b>	<b>0.9</b>	<b>0.4</b>	<b>2.5</b>	<b>312</b>	<b>22</b>		

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 FY17, there were eleven offenders who would have been sentenced as prior sexual offenders who were sentenced to probation.

**Sex offenders sentenced as prior sex offenders  
 Sentenced to probation in FY17 and will serve a prison sentence**

Sentenced as Felony class	Admissions FY16 (1)	Average Sentence (yrs)			Length of stay (yrs) to first release			Parole (yrs)			Parole returns (9)*40% (10)	Additional prison time served (6)+(10) (11)	Additional parole time (9)*60% (12)	Total Impact (1)*(11), (1)*(12) (13)	Impact after 10 years (14)
		Before (2)	After (3)	Increase (6)	Before (4)	After (5)	Increase (6)	Before (7)	After (8)	Increase (9)					
A as LWOP	1	-	30.0	-	21.0	21.0	-	9.0	9.0	3.6	24.6	5.4	25	10	
B as A	3	-	17.6	-	12.3	12.3	-	5.3	5.3	2.1	14.4	3.2	43	30	
D as C	7	-	6.0	-	4.2	4.2	-	1.8	1.8	0.7	4.9	1.1	34	34	
<b>Total Prison</b>	<b>11</b>	<b>-</b>	<b>11.3</b>	<b>-</b>	<b>7.9</b>	<b>7.9</b>	<b>-</b>	<b>3.4</b>	<b>3.4</b>	<b>1.4</b>	<b>9.3</b>	<b>102</b>	<b>74</b>		

The calculation is similar and the estimated impact is an increase of 102 in the prison population, of which 74 will occur within the ten years of the budget forecast.

Finally, there is the impact from the three offenders who would have been sentenced as persistent sexual offenders and will be sentenced to two felony classes higher. The impact is an increase in the prison population of 15, of which 9 will occur in the first ten years.

**Sex offenders sentenced as persistent sex offenders  
 Admitted in FY17 and will serve longer sentences**

Sentenced as Felony class	Admissions FY16 (1)	Average Sentence (yrs)			Length of stay (yrs) to first release			Parole (yrs)			Parole returns (9)*40% (10)	Additional prison time served (8)+(10) (11)	Additional parole time (9)*60% (12)	Total Impact (1)*(11), (1)*(12) (13)	Impact after 10 years (14)
		Before (2)	After (3)	Increase (6)	Before (4)	After (5)	Increase (6)	Before (7)	After (8)	Increase (9)					
B as A	1	12.0	18.8	6.4	13.2	4.8	3.6	5.6	2.0	0.8	5.6	-	6	-	
D as B	2	4.5	10.0	3.2	7.0	3.9	1.4	3.0	1.7	0.7	4.5	1.0	9	9	
<b>Total Prison</b>	<b>3</b>	<b>7.0</b>	<b>12.9</b>	<b>4.9</b>	<b>9.1</b>	<b>4.2</b>	<b>2.1</b>	<b>3.9</b>	<b>1.8</b>	<b>0.7</b>	<b>4.9</b>	<b>15</b>	<b>9</b>		

ASSUMPTION (continued)

The timing of the impact begins in the first year of enactment when offenders who would have been sentenced to probation are incarcerated. For the offenders who would have received a prison sentence, the impact begins when the time that would have been served to release is completed.

**Total Impact of HB 2042**

Overall, the prison population is expected to increase by 429 due to this legislation, of which the increase is 106 in the first ten years. The field population decline in the first ten years will be the converse of the prison population increase.

**Impact of Prior and Persistent Sex Offenses**

	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028
<b>Admissions</b>										
<b>Prior Sex Offenders</b>										
Prison sentences- will serve longer	33	33	33	33	33	33	33	33	33	33
Previously served probation	11	11	11	11	11	11	11	11	11	11
<b>Persistent Sex Offenders</b>										
Prison sentences- will serve longer	3	3	3	3	3	3	3	3	3	3
Previously probation										
Probation	-11	-11	-11	-11	-11	-11	-11	-11	-11	-11
<b>Change in Prison and Field Population (admissions * increased length of stay)</b>										
<b>Prior Sex Offenders</b>										
Prison sentences- will serve longer	-	-	-	-	13	13	18	18	18	22
Previously served probation	11	22	33	44	54	58	62	66	70	74
<b>Persistent Sex offenders</b>										
Prison sentences- will serve longer	-	-	-	-	2	4	6	8	9	9
Previously served probation	-	-	-	-	-	-	-	-	-	-
Probation (5 years)	-11	-22	-33	-44	-55	-55	-55	-55	-55	-55
Parole					-15	-17	-24	-26	-27	-31
<b>Total prison</b>	<b>11</b>	<b>22</b>	<b>33</b>	<b>44</b>	<b>70</b>	<b>76</b>	<b>87</b>	<b>93</b>	<b>98</b>	<b>106</b>
<b>Field supervision</b>	<b>-11</b>	<b>-22</b>	<b>-33</b>	<b>-44</b>	<b>-70</b>	<b>-76</b>	<b>-87</b>	<b>-93</b>	<b>-98</b>	<b>-106</b>
<b>P&amp;P Officers+ or -</b>		<b>0</b>								

**Revision to the rules regarding sex offender registration, 589.400 RSMo**

The legislation proposes the introduction of a registration based upon a risk assessment and classifying the offender as tier I, II or III. A tier I offender will be required to register for 15 years, tier II 25 years and tier III for life. Tier I offenses are mainly misdemeanor offenses and most offenders that the DOC supervises will be tier II or III. The bill also proposes to revise the reporting frequency of registered sex offenders. At present sex offenders are required to report to

ASSUMPTION (continued)

the chief law enforcement officer semi-annually, except for persistent or predatory sex offenders or with sex offenses against juveniles when the reporting period is every 90 days. Tier I offenders will be allowed to report annually but the number of offenses that require reporting every 90 days is increased.

The DOC receives many sex offenders who fail to correctly register. In FY17, there were 89 new admissions and 111 probation openings, but because of the long time even the lowest risk sex offenders will be required to register, it is not expected that the proposal will affect the number of offenders returned in the next ten years.

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 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.

ASSUMPTION (continued)

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	11	(\$6,206)	(\$56,888)	(11)	absorbed	\$0	(\$56,888)
Year 2	22	(\$6,206)	(\$139,263)	(22)	absorbed	\$0	(\$139,263)
Year 3	33	(\$6,206)	(\$213,072)	(33)	absorbed	\$0	(\$213,072)
Year 4	44	(\$6,206)	(\$289,778)	(44)	absorbed	\$0	(\$289,778)
Year 5	70	(\$6,206)	(\$470,230)	(70)	absorbed	\$0	(\$470,230)
Year 6	76	(\$6,206)	(\$520,746)	(76)	absorbed	\$0	(\$520,746)
Year 7	87	(\$6,206)	(\$608,040)	(87)	absorbed	\$0	(\$608,040)
Year 8	93	(\$6,206)	(\$662,973)	(93)	absorbed	\$0	(\$662,973)
Year 9	98	(\$6,206)	(\$712,589)	(98)	absorbed	\$0	(\$712,589)
Year 10	106	(\$6,206)	(\$786,175)	(106)	absorbed	\$0	(\$786,175)

Officials from the **Department of Public Safety - Missouri Highway Patrol**, the **Department of Social Services**, the **Office of Prosecution Services**, the **Office of the State Public Defender**, and the **Department of Mental Health** each assume the proposal would not fiscally impact their respective agencies.

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 **Attorney General's Office (AGO)** assume that any potential costs arising from this proposal could be absorbed with existing resources. The AGO may seek additional appropriations if there is a significant increase in litigation.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021	Fully Implemented (FY 2028)
<b>GENERAL REVENUE</b>				
<u>Costs - increase in number of prisoners</u>	<u>(\$56,888)</u>	<u>(\$139,263)</u>	<u>(\$213,072)</u>	<u>(\$786,175)</u>
<b>ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND</b>	<b><u>(\$56,888)</u></b>	<b><u>(\$139,263)</u></b>	<b><u>(\$213,072)</u></b>	<b><u>(\$786,175)</u></b>

<u>FISCAL IMPACT -</u> <u>Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021	Fully Implemented (FY 2028)
	<b><u>\$0</u></b>	<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

This bill defines the terms "predatory sexual offender" and "persistent sexual offender."

The bill provides that if an offender is determined by the court 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

FISCAL DESCRIPTION (continued)

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.

Currently, individuals who are required to register with the Missouri Sexual Offender Registry must register within three days of adjudication, release from incarceration, placement on probation, or, for juveniles, within three days of adjudication or release from commitment to the Division of Youth Services, the Department of Mental Health, or other placement. This bill amends the requirement for registry to be within three business days. Furthermore, registration requirements are lifetime requirements, subject to some exceptions. The bill sets out and defines different tiers for offenses, which carry different reporting and registration requirements. The different tier registration requirements include registration duration and provisions for registration for duration reduction. The bill also specifies which individuals are exempt from the registration requirements.

Individuals on the sex offender registry may file a petition for removal, according to the procedure in the bill, in the circuit in which the qualifying offense was committed, and individuals who were required to register in Missouri because of an offense committed in another state must file for removal based on the laws of the jurisdiction in which the offense was adjudicated. Once the petition for removal is granted in the other jurisdiction, the judgment can be registered in Missouri, in the county in which the individual is required to register, by following the procedures specified in the bill.

The bill specifies what information a petition for removal or exemption must include and when a petition for removal or exemption shall be dismissed without prejudice. The person seeking removal or exemption from the registry must provide the appropriate prosecuting attorney with notice of the petition so the prosecuting attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons the petition should be denied. The prosecuting attorney shall have access to all applicable records concerning the petitioner, and the prosecuting attorney must make reasonable efforts to inform the victim of the crime for which the offender was required to register and of the petition and dates and times of any hearings or proceedings in connection with the petition. The court shall not enter an order directing the removal of the petitioner's name from the Sexual Offender Registry unless the court finds the petitioner qualifies according to the provisions specified in the bill.

FISCAL DESCRIPTION (continued)

If the petition is denied because the petitioner has been adjudicated or has charges pending for additional nonsexual felony offenses within one year from the date the petitioner was required to register, or because the petitioner has been adjudicated or has charges pending for any additional sexual offense that would require registration, then the petitioner may not file another petition until a certain length of time has passed as specified by the petitioner's particular tier. If the original petition is denied for other reasons, the petitioner may not file another petition for at least five years from the date the original petition was denied. The court shall not deny the petition unless the petition violated the requirements specified in the bill or the prosecuting attorney provided evidence demonstrating the petition should be denied. Individuals who are required to register but who have committed certain specified offenses are exempt from the public notification requirements if they satisfy specified elements. Juveniles required to register shall be exempt from public notification.

Individuals who are released from a correctional facility, mental health institution, private jail, or any other private facility recognized or contracted with the Department of Corrections shall be informed of his or her duty to register, and the official in charge shall complete the initial registration notification at least seven days before an offender's release. The official shall also forward the offender's registration within three business days of the offender's release to the State Highway Patrol and the chief law enforcement official where the offender is expected to reside.

The bill specifies requirements for registration, including a photograph of the offender, updated at regular intervals as specified in the bill.

The State Highway Patrol shall maintain all required registration information in digitized form. When the Highway Patrol receives changes to an offender's registration information, the Highway Patrol must immediately notify all other jurisdictions in which the offender is registered or required to register. The offender is required to appear in person before the chief law enforcement officer where the offender resides to update any changes in specific information. There are reporting requirements for offenders depending on the tier of their offense.

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 Public Safety - Missouri Highway Patrol  
Office of Prosecution Services  
Office of the State Public Defender  
Department of Corrections  
Office of the State Courts Administrator  
Attorney General's Office  
Department of Mental Health  
Department of Social Services

Ross Strope

A handwritten signature in black ink, appearing to read "Ross Strope", with a stylized flourish at the end.

Acting Director  
February 2, 2018