

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4083-03
Bill No.: Perfected HCS for HB 2042
Subject: Crimes and Punishment; Sexual Offenses; Highway Patrol
Type: #Updated
Date: April 3, 2018
 # Updated response from the Department of Corrections

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

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2028)
#General Revenue	(\$808,833)	(\$795,634)	(\$961,436)	(\$2,021,408)
#Total Estimated Net Effect on General Revenue	(\$808,833)	(\$795,634)	(\$961,436)	(\$2,021,408)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2028)
Criminal Records	\$524,572	\$629,486	\$629,486	\$629,486
Total Estimated Net Effect on <u>Other</u> State Funds	\$524,572	\$629,486	\$629,486	\$629,486

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 14 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2028)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2028)
General Revenue	8 FTE	8 FTE	8 FTE	8 FTE
Total Estimated Net Effect on FTE	8 FTE	8 FTE	8 FTE	8 FTE

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 2019	FY 2020	FY 2021	Fully Implemented (FY 2028)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

#Officials from the **Department of Corrections (DOC)** state the legislation creates three new offenses: predatory, persistent or prior sex offender and deletes the sentencing for the existing offenses for persistent and predatory sex offenders. This is the same response as FN6372-01 (HB 2640) in FY 2018.

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). The penalty is life without parole for the second finding of guilt.
2. #Section 566.124 defines a prior sex offender to be a sex offender with one prior finding of guilt in chapter 566 RSMo, and a persistent sex offender to be a sex offender with two or more prior sex findings of guilt. 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 DOC estimates that in FY17 there were 76 new admissions who would have been sentenced as a predatory, persistent or prior sex offender, of which 22 were sentenced to probation. The definition of a prior finding of guilt requires that the current offense is committed after the last sentencing of the prior sex offenses. after the last sentencing of the prior sex offenses.

ASSUMPTION (continued)

**New sex offenders from HB 2640
 Admissions in FY17**

	Disposition		
	Prison	Probation	Total
Prior sex offenders	51	20	71
Persistent sex offender	3	2	5
Predatory sex offenders	2		2
Total	56	22	78

1. Predatory Sex Offenders

#The definition of a predatory sex offender in the bill includes the offenses that define a persistent and predatory sex in the current statute (566.125.1), and while there is some enhancement in the sentencing, the changes 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.

	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. For offenders sentenced as prior sex offenders, the average sentence is expected to increase from 14.2 years to 22.1 years. For those sentenced as a class A or B felony the full impact will be beyond the 10 year budget horizon. The impact includes incarceration to first release and an estimate of parolees being revoked from parole. Because of an increase in the sentence there is also an increase in field supervision, but this will be offset by no offenders being sentenced to probation. For class A and B felonies there will be no impact in the 10 year budget forecast, but the final outcome will be an increase of 541 (509+32). The overall increase after 10 years for offenders already sentenced to prison is 32.

ASSUMPTION (continued)

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

Sentenced as Felony class	Admissions FY 17 (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)	Before (4)	After (5)	Increase (6)	Before (7)	After (8)	Increase (9)					
A/ Unclassified as LWOP	31	19.4	30.0	13.6	30.0	16.4	5.8	-	-5.8	-	16.4		509	-
B as A	5	9.8	17.6	6.9	12.3	5.5	2.9	5.3	2.3	1.0	6.4	1.36	32	-
D as C	7	6.4	8.5	4.5	6.0	1.5	1.9	2.6	0.6	0.3	1.7	0.37	12	12
E as D	8	3.4	6.4	2.4	4.5	2.1	1.0	1.9	0.9	0.4	2.5	0.52	20	20
Total Prison	51	14.2	22.1	4	7	3	2	3	1	0	3		573	32
Field Supervision												1	34	34

The impact of offenders who would have been sentenced to probation begins in the first year following enactment and is an increase in the population after 10 years of 147 and a total increase of 183.

**Sex offenders sentenced as prior sex offenders
 Previously sentenced to probation in FY17**

Sentenced as Felony class	Admissions FY 17 (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)	Before (4)	After (5)	Increase (6)	Before (7)	After (8)	Increase (9)					
B as A	8	-	17.6	-	12.3	12.3	-	5.3	5.3	2.2	14.5	3.1	116	80
D as C	2	-	8.5	-	6.0	6.0	-	2.6	2.6	1.1	7.0	1.5	14	14
E as D	10	-	6.4	-	4.5	4.5	-	1.9	1.9	0.8	5.3	1.1	53	53
Total Prison	20	-	11.1	-	7.8	7.8	-	3.3	3.3	1.4	9.2	1.9	183	147
Probation	-20	5.0										5.0	-100	-100
Field Supervision													-61	-61

#Three offenders who would have been sentenced to prison are estimated to be sentenced as persistent sex offenders. The average sentence will increase from 13.9 years to 22 years and the population after 10 years will increase by 13.

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

Sentenced as Felony class	Admissions FY 17 (1)	Average Sentence (yrs)		Length of stay (yrs) to first release			Parole (yrs)			Parole returns (9)*42% (10)	Additional prison time served (6)+(10) (11)	Additional parole time (9)*58% (12)	Total Impact (1)*(11), (1)*(12) (13)	Impact after 10 years (14)
		Before (2)	After (3)	Before (4)	After (5)	Increase (6)	Before (7)	After (8)	Increase (9)					
A as LWOP	1	17.6	30.0	12.3	30.0	17.7	5.3	-	-5.3	-	17.7	-	18	3
B as A	2	12.0	18.0	8.4	12.6	4.2	3.6	5.4	1.8	0.8	5.0	1.0	10	10
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Prison	3	13.9	22.0	9.7	18.4	8.7	4.2	3.6	-0.6	0.5	9.2		28	13
Field Supervision												1.0	-	-

ASSUMPTION (continued)

#Two offenders who would have been sentenced to probation are expected to be sentenced as persistent sex offenders, the average sentence will be 10.3 years and the impact after 10 years is 17.

**Sex offenders sentenced as prior sex offenders
 Previously sentenced to probation in FY17**

Sentenced as Felony class	Admissions FY 17 (1)	Average Sentence (yrs)		Length of stay (yrs) to first release			Parole (yrs)			Parole returns (9)*42% (10)	Additional prison time served (6)+(10) (11)	Additional parole time (9)*50% (12)	Total Impact (1)*(11), (1)*(12) (13)	Impact after 10 years (14)
		Before (2)	After (3)	Before (4)	After (5)	Increase (6)	Before (7)	After (8)	Increase (9)					
D as B	1	-	12.0	-	8.4	8.4	-	3.6	3.6	1.5	9.9	2.1	10	10
E as C	1	-	8.5	-	6.0	6.0	-	2.6	2.6	1.1	7.0	1.5	7	7
Total Prison	2	-	10.3	-	7.2	7.2	-	3.1	3.1	1.3	8.5	1.8	17	17
Probation	-2	5.0										5.0	-10	-10
Field Supervision													-6	-6

Total Impact of HCS for HB 2042

#Overall the prison population is expected to increase by 799, but the increase is only 196 in the first ten years and the field population will decline by 87.

Impact upon prison and field population

	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028
Prison Population	22	44	68	98	128	150	169	178	187	196
Field Population	-22	-44	-68	-93	-115	-107	-101	-91	-87	-87

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.

ASSUMPTION (continued)

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.

#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 prison		# to probation & parole	Cost per year	Total cost for probation and parole	Grand Total - Prison and Probation (includes and 2% inflation)
Year 1	22	(\$6,206)	(\$113,777)		(22)	absorbed	\$0	(\$113,777)
Year 2	44	(\$6,206)	(\$278,525)		(44)	absorbed	\$0	(\$278,525)
Year 3	68	(\$6,206)	(\$439,057)		(68)	absorbed	\$0	(\$439,057)
Year 4	98	(\$6,206)	(\$645,414)		(93)	absorbed	\$0	(\$645,414)
Year 5	128	(\$6,206)	(\$859,849)		(115)	absorbed	\$0	(\$859,849)
Year 6	150	(\$6,206)	(\$1,027,789)		(107)	absorbed	\$0	(\$1,027,789)
Year 7	169	(\$6,206)	(\$1,181,135)		(101)	absorbed	\$0	(\$1,181,135)
Year 8	178	(\$6,206)	(\$1,268,916)		(91)	absorbed	\$0	(\$1,268,916)
Year 9	187	(\$6,206)	(\$1,359,736)		(87)	absorbed	\$0	(\$1,359,736)
Year 10	196	(\$6,206)	(\$1,453,682)		(87)	absorbed	\$0	(\$1,453,682)

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

In response to a previous version, officials from the **Department of Social Services**, the **Office of the State Public Defender**, and the **Department of Mental Health** each assumed 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

ASSUMPTION (continued)

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.

House Amendment 1 §§210.025 - 210.1080 - Criminal background checks;

In response to a similar proposal from this year (HB 2249) officials from the **Department of Health and Senior Services (DHSS)** stated the Child Care Development Block Grant (CCDBG) Reauthorization Act of 2014 Section 658H set out requirements for comprehensive criminal background checks. States are required to have policies and procedures in place by September 30, 2017. Missouri has been approved for a one year waiver, which expires September 30, 2018. After the one year waiver ends noncompliant states are subject to losing 5% of their total Child Care Development Fund (CCDF) monies. Missouri may be at risk of losing \$5.4 million in federal funding for child care.

The proposed legislation requires child care staff members, which includes all regulated (licensed and license-exempt) child care providers, persons employed by the child care provider for compensation, including contract employees or self-employed individuals; individuals or volunteers whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or individuals residing in a family child care home who are age seventeen (17) and older to undergo criminal background checks and every five (5) years thereafter and an annual check of the central registry for child abuse in order to qualify for receipt of state or federal funds for providing child-care services.

DHSS estimated an additional 28,613 child care staff member will need a background check based on the capacities of regulated facilities and the staff/child ratio needed to maintain supervision. DHSS will require additional staff to implement the legislation.

Health Program Representative II (6) (\$35,640 annually, each): DHSS estimated that one Health Program Representative II (HPR II) is needed to process 4,000 background screenings and complete other additional responsibilities related to the direct processing of background screenings for regulated providers. Given the expectation, $(28,613/4,000 = 7 \text{ FTE})$, DHSS assumes 6 HPRs II will be needed.

ASSUMPTION (continued)

Health Program Representative III (1) (\$39,704 annually): The Health Program Representative III will directly supervise the HPRs II. This position will provide direct daily oversight to HPRs II, ensure timely completion of background screenings, develop and maintain policy and procedural manuals, review and process submitted appeals, approve security access, coordinate with child care supervisors, and conduct quality assurance reviews for accuracy and timely completion of background screenings.

Senior Office Support Assistant (1) (\$26,340 annually): A Senior Office Support Assistant will need to be hired whose primary duties will be to support the staff within the unit.

DHSS officials provided the response for the **Office of Administration (OA), Information Technology Services Division (ITSD)/DHSS**. ITSD stated, for fiscal note purposes, it is assumed a project team consisting of a project manager, business analyst, senior developer and developer for a project duration of six (6) months will be needed. Modifications will need to be made to an existing system that is currently being maintained by ITSD and hosted in the State Data Center (SDC). It has been assumed for this project that a system-to-system interface will not be established with Missouri State Highway Patrol (MSHP) for communication of fingerprint criminal background check data.

For section 210.233, modifications to an existing system that is currently being maintained by ITSD and hosted in the SDC is assumed necessary.

ITSD assumed that every new IT project/system will be bid out because all ITSD resources are at full capacity. The current contract rate for IT consultants is \$75 per hour. It is estimated that contract consultants will need 2,692.44 hours to complete the project. One-time costs to the General Revenue (GR) Fund are estimated to be \$201,933 (2,692.44 * \$75).

The **DHSS** estimated FY19 costs to the GR Fund, including ITSD costs, to be \$705,794; FY20 costs to be \$530,316; and FY21 costs to be \$535,917.

Oversight notes that in response to proposals from the current session in which agencies have indicated the need for additional space, officials from the **Office of Administration (OA), Division of Facilities Management, Design and Construction (FMDC)** state additional space in leased facilities for additional staff in the Cole County area is estimated at 230 sq. ft. per FTE times \$17.50 per sq. ft., or \$4,025 annually per FTE. These costs are building lease cost, fuel and utilities, and janitorial services. The assumption for the need for larger space and/or in other regions of the state, or possible new construction space, would be a higher cost per sq. ft. (estimated at \$24.50 per sq. ft.).

ASSUMPTION (continued)

Oversight notes the DHSS used a lease cost for the additional rental space needed for eight (8) new FTE of \$21 per square foot. This is an average of the lease rates for the various regions in the state. Oversight reduced the average cost to \$17.50 per square foot (which includes utilities and janitorial services), the amount provided by OA, Facilities Management, Design and Construction.

In response to a similar proposal from this year (HB 2249) officials from the **Department of Public Safety (DPS), Missouri State Highway Patrol (MHP)** stated fingerprint based criminal record checks are currently processed by the central repository pursuant to Section 210.025, RSMo. Based on Department of Health and Senior Services estimates, the MHP would be required to process 28,613 state and federal fingerprint-based criminal record checks for child care providers annually. The fees assessed for these background checks are as follows:

State fee:	\$20.00
FBI fee:	\$12.00
Applicant fingerprinting vendor fee:	<u>\$8.30</u>
Total fee per applicant:	\$40.30

Of these amounts, the state retains the \$20 state fee and \$2 of the federal charge of \$12 for a pass thru fee (\$22 total retained by the state). The \$8.30 charge is paid directly to the vendor at the time of application. All fees collected will be deposited in the Highway Patrol's Criminal Records System Fund.

Total fees added to the Highway Patrol's Criminal Records System Fund is estimated to be \$629,486 annually (\$22 * 28,613).

House Amendment 1 to House Amendment 1 §566.147 - Sexual Offenders residing near schools;

In response to a similar proposal from this year (HB 1743), officials from the **Jasper County Sheriff's Department, Springfield Police Department, Joplin Police Department, Office of the State Public Defender, Office of Prosecution Services, Office of the State Courts Administrator, Department of Corrections, and the Department of Public Safety - Missouri Highway Patrol** each assume the proposal would not fiscally impact their respective agencies.

ASSUMPTION (continued)

HSA 1 for House Amendment 2 - §589.414 - Electronic Monitoring while relocating;

Oversight notes the amendment states “such person shall be responsible for all costs associated with electronic monitoring.” Therefore, Oversight assumes this amendment would not have a fiscal impact on local law enforcement.

<u>FISCAL IMPACT - State</u>				Fully
<u>Government</u>	FY 2019	FY 2020	FY 2021	Implemented
	(10 Mo.)			(FY 2028)
#GENERAL REVENUE				
<u>Costs - DHSS (HA1)</u>				
Personal Service	(\$233,237)	(\$282,683)	(\$285,510)	(\$306,105)
Fringe Benefits	(\$141,191)	(\$170,261)	(\$171,100)	(\$183,442)
Equip. & Expense	(\$118,695)	(\$64,165)	(\$65,769)	(\$78,179)
IT costs	<u>(\$201,933)</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>Total Costs - DHSS</u>	(\$695,056)	(\$517,109)	(\$522,379)	(\$567,726)
FTE Change DHSS	8 FTE	8 FTE	8 FTE	8 FTE
 <u>#Costs - DOC - increase</u>				
in number of prisoners	<u>(\$113,777)</u>	<u>(\$278,525)</u>	<u>(\$439,057)</u>	<u>(\$1,453,682)</u>
 #ESTIMATED NET EFFECT TO GENERAL REVENUE	 <u>(\$808,833)</u>	 <u>(\$795,634)</u>	 <u>(\$961,436)</u>	 <u>(\$2,021,408)</u>
 Estimated Net FTE Change to GR	 8 FTE	 8 FTE	 8 FTE	 8 FTE

<u>FISCAL IMPACT - State</u> <u>Government</u> (continued)	FY 2019 (10 Mo.)	FY 2020	FY 2021	Fully Implemented (FY 2028)
---	---------------------	---------	---------	-----------------------------------

**CRIMINAL
 RECORDS SYSTEM
 FUND (#0671)**

Income - DPS (§210.025)

Increase in background check fees (HA 1)	<u>\$524,572</u>	<u>\$629,486</u>	<u>\$629,486</u>	<u>\$629,486</u>
---	------------------	------------------	------------------	------------------

**ESTIMATED NET
 EFFECT ON
 CRIMINAL
 RECORDS SYSTEM**

	<u>\$524,572</u>	<u>\$629,486</u>	<u>\$629,486</u>	<u>\$629,486</u>
--	------------------	------------------	------------------	------------------

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

FISCAL IMPACT - Small Business

This proposal would have a direct fiscal impact on small business child care providers. Applicant child care staff members, individuals or volunteers whose activities involve the care or supervision of children and individuals in a family child care home age 17 or older will be required to undergo a criminal background check. Costs are to be paid for by the applicant but child care providers may pay the background check fee. In addition, prospective staff members may begin work for a provider, pending completion of the background check, but must be supervised at all times by another child care staff member who has received a qualifying background check. This may increase child care provider costs.

FISCAL DESCRIPTION

This bill modifies provisions relating to sexual offenders.

This bill also states that in order to qualify for the receipt of state or federal funds for providing child-care services, the following persons must submit to a criminal background check before being granted a registration and every five years thereafter and to an annual check of the central registry for child abuse: (1) An applicant child care provider; (2) Persons employed by the applicant child care provider for compensation; (3) Individuals or volunteers whose activities involve the care or supervision of children for the applicant child care provider or unsupervised access to children who are cared for by the applicant child care provider; or (4) Individuals residing in the applicant's family child care home who are 17 years or older (Section 210.025, RSMo).

The proposal requires all licensed child care facilities to report annually to the Department of Health and Senior Services information regarding liability insurance coverage (§210.233)

Prior to the employment or presence of a child care staff member in a family child care home, group child care home, child care center, or license-exempt child care facility, the child care provider must request the results of a criminal background check for such child care staff members. The cost of the background check will be the responsibility of the staff member, but may be paid by the child care provider (Section 210.1080).

Prior to the employment or presence of a child care staff member in a family child care home, group child care home, child care center, or license-exempt child care facility, the child care provider must request the results of a criminal background check for such child care staff members. The cost of the background check will be the responsibility of the staff member, but may be paid by the child care provider (Section 210.1080).

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

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
Department of Health and Senior Services
Jasper County Sheriff's Department
Springfield Police Department
Joplin Police Department

Ross Strobe



Acting Director
April 3, 2018