

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5794-01
Bill No.: HB 12
Subject: Crimes and Punishment; Children and Minors; Courts
Type: Original
Date: August 13, 2020

Bill Summary: This proposal modifies provisions relating to the certification of juveniles for trial as adults.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
General Revenue	(Unknown, Greater than \$998,806)	(Unknown, Greater than \$1,564,465)	(Unknown, Greater than \$1,580,879)	(Could exceed 1,580,879)
Total Estimated Net Effect on General Revenue	(Unknown, Greater than \$998,806)	(Unknown, Greater than \$1,564,465)	(Unknown, Greater than \$1,580,879)	(Could exceed \$1,580,879)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
Total Estimated Net Effect on Other State Funds	\$0	\$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 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
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 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
General Revenue	20 FTE	20 FTE	20 FTE	20 FTE
Total Estimated Net Effect on FTE	20 FTE	20 FTE	20 FTE	20 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 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§211.071 - Certification of juvenile for trial as adult

Officials from the **Department of Corrections (DOC)** assume the following:

The proposed legislation does not provide any new penalties or offenses, but increases the likelihood that a juvenile could be transferred to a court of general jurisdiction and sentenced there under section 571.015 and/or section 571.030. It is unknown how many juveniles will be transferred to a court of general jurisdiction; therefore, the department will have to assume an unknown fiscal impact.

Officials at the **Office of State Courts Administrator (OSCA)** state section 211.071 would have the same fiscal impact as SB 793 from the 2018 legislative session that raised the age for a juvenile.

Oversight notes SB 793 from 2018 authorized provisions relating to juvenile court proceedings and raised the age from 17 to 18. Under the act, no person under the age of 18 may be detained in an adult jail, unless the person has been certified as an adult. The provisions are effective January 1, 2021, and expanding services from age 17 to 18 shall not be effective until an appropriation sufficient to fund the expanded service is provided.

Oversight also notes OSCA submitted a new decision item (1100040) for FY 2022 to expand the service of raising the age from 17 to 18. The NDI estimated the annual costs for 34 Juvenile Officers for the multi-county circuits (\$1,507,968), staff training (\$192,184), and program reimbursements ($\$350 \times 3,863 = \$1,352,050$) plus \$10,187,476 of reimbursement for single county circuit reimbursements for a grand total of \$13,239,678.

Oversight assumes section 211.071 may have a fiscal impact to the court system and the juvenile system; however, Oversight does not believe the scope of 211.071 is as broad as SB 793 (2018). Therefore, for fiscal note purposes, Oversight will present OSCA's impact to the General Revenue Fund as \$0 to (Unknown).

Officials at the **Department of Social Services (DSS)** assume the following:

Division of Legal Services (DLS)

§211.071.1—this bill adds two new offenses, any offense under 571.030 (unlawful use of a weapon) and any offense under 571.015 (armed criminal action).

ASSUMPTION (continued)

§211.071.12—the addition of these two new offenses will be effective on January 1, 2021. The Division of Youth Services has estimated that this bill will increase the total number of youth screened for the dual jurisdiction program, as well as increase the number of youth committed to the dual jurisdiction program. If these numbers increase, the involvement of Division of Legal Services (DLS) litigation attorneys will also increase as DLS must file motions to extend custody pursuant to §211.073.4 as well as motions to petition the court for a hearing before it releases a youth pursuant to §211.073.5 as the youth is about to turn twenty-one, or pursuant to §211.073.3, because the youth is beyond the scope of DYS' treatment.

The involvement of DLS will increase in equal proportion to the number of additional DYS commitments. The number of hours required by DLS litigation per case is highly dependent on the circuit court location and if all parties will consent to orders without the attorney's appearance. Based off of DLS litigation attorney's estimations, each extension motion can be completed in an average of eight hours (including drafting time, preparation time, time communicating with the other parties, travel time, and court appearance time). Each motion to release depends on the circuit court location and if the motion is contested. These proceedings may take, on average, sixteen hours to complete (including drafting time, preparation time, time communicating with the other parties, travel time, and court appearance time). In order to accommodate the increased workload, DLS is estimating the need of one FTE Attorney.

Division of Youth Services (DYS)

Dual Jurisdiction Commitments:

Information received from the Office of State Courts Administrator indicates that in CY 19, the offenses outlined in this proposal under section 571.030 and section 571.015 would account for an additional 307 orders for certification hearings.

Given SB 600 that passed during the 2020 regular legislation session effective August 28, 2020, DYS has altered the initial response to this proposal. Offenses under section 571.015 would require the court to order a hearing to determine if a child will be transferred to a court of general jurisdiction for prosecution; however, new legislation within SB 600 removes the sentencing option of an SIS or SES for the offense, armed criminal action and with that removes eligibility for the dual jurisdiction program. Therefore, of those 307 offenses, 68 were for armed criminal action and 92 of those are misdemeanors. **The division assumes the 92 misdemeanors would not result in certifications and the 68 armed criminal action offenses would not be considered for dual jurisdiction program.**

ASSUMPTION (continued)

In CY19, 41 of 87 (47%) of certification hearings held resulted in certification of the youth. Of those 41 youth certified, the division was ordered to assess 11 (27%) for entry into the dual jurisdiction program. Those assessments resulted in 8 of 11 (73%) admissions into the dual jurisdiction program.

*numbers are based on a five year average

Enactment of this proposal, results in an increase of 14 dual jurisdiction commitments annually. Given the average rate of existing annual commitments, the division anticipates the total number of dual jurisdiction commitments to grow to 22 youth per year with average lengths of stay projected to be three years.

Projection:

307 (new required hearings) - 92 (misdemeanor offenses) - 68 (armed criminal action offenses) = 147 (new possible cohort of certifications)

- $147 \times 47\%$ (certification rate) = 70 new certifications annually
- $70 \times 27\%$ (dual jurisdiction assessment ordered rate) = 19 new dual jurisdiction assessments ordered annually
- $19 \times 73\%$ (program admissions rate) = 14 youth admitted to dual jurisdiction annually under this proposal

14 (new youth admitted to DJ program under this proposal)
+ 8 (existing average rate of admittance to DJ program)
22 total youth admitted to DJ program annually

The division has historically had forty beds designated for service to dual jurisdiction youth. Twenty of those beds are occupied by dual jurisdiction youth committed under the existing law with average lengths of stay of 4 years. Given the new legislation passed in SFY19, raising the age of criminal majority to 18 effective January 1, 2021, the division anticipates that the average age of the dual jurisdiction population would increase causing the average length of stay of the new population to decrease to three years. Additionally, given budget restrictions for FY21 the division will have less capacity for secure care youth. Under this proposal, 22 total youth would be accepted and committed into the dual jurisdiction program annually, at an average length of stay of 3 years, creating a need for 57 secure beds at the peak of the cycle in SFY 23. In SFY 24, the final five dual jurisdiction youth with a four year average length of stay will exit. Fifty dual jurisdiction secure beds will be necessary thereafter.

ASSUMPTION (continued)

	FY21 (6-Months)	FY22	FY23	FY24
Existing DJ Youth +New DJ youth- anticipated DY Youth exits	20+11*-6	25+22-6	41+22-6	57+22-22-5
DJ Beds Needed	25	41	57	52

*FY21 reflects rate at 6 months due to January 1, 2021 enactment

DYS will place the need at 57 total beds to adequately serve this population under this proposal. The division currently, given recent budget restrictions has 30 operating designated beds for dual jurisdiction; therefore, would need 27 additional secure beds for dual jurisdiction youth.

The division has existing physical plant space at Hillsboro Treatment Center to respond immediately to meet a portion of the need under this proposal. The division would re-open one unfunded group (that is currently closed) at Hillsboro Treatment Center and would need to reopen two additional groups at an existing secure care facility. The ultimate and long term plan would be to evaluate the need based on the outcomes of judicial behavior and impact of the implementation of the raise the age legislation.

The division anticipates a fiscal impact of \$695,407 for FY21 (6 months) and then around \$1.17 million on-going which includes 16 FTE to reopen programs needed to accommodate these youth.

FTE Breakdown: (1) Social Services Manager (Youth Facility Manager IV); (1) Group Leader; (10) Youth Specialist II; (2) Special Education Teacher III; (1) Cook II; (1) Social Services Manager = 16 FTE.

Projections for the dual jurisdiction program are based on the current landscape of judicial and prosecuting behavior. Historically, courts use of the dual jurisdiction program has been dynamic; therefore, assessment and acceptance rates are based on five year averages. The recent passing of the raise-the-age legislation also makes projections a challenge as this legislation will produce an older cohort of youth that will most likely result in the need for additional secure bed space similar to the need for dual jurisdiction youth. The division acknowledges the situation remains unpredictable especially given the impact of the raise-the-age legislation; however, we do believe these are real scenarios that would result in the need to provide for additional secure beds for the dual jurisdiction program under this proposal.

ASSUMPTION (continued)

Oversight does not have any information contrary to that provided by DSS. Therefore, Oversight will reflect DSS's impact for fiscal note purposes.

Officials at the **State Public Defender's Office (SPD)** state these amendments to §211.071 RSMo, the certification statute that allows children's delinquency cases to be transferred to adult court for prosecution as an adult, will likely result in an increase in clients and workload for the SPD. Currently neither unlawful use of a weapon offenses, under §571.030, RSMo, or Armed Criminal Action cases under §571.015, RSMo, require a mandatory hearing for the Court to consider whether a child should be prosecuted in adult court. This change would require this mandatory hearing. A certification hearing in Juvenile Court is a complex evidentiary hearing, prior to a determination of the child's guilt or innocence. Juvenile Defense Specialist attorneys from the SPD would be responsible for any of these additional hearings that involve poor children. That responsibility requires not only the investigation of the case but also the involvement of expert witnesses on adolescent brain development to present evidence to the Court as to why the child is able to receive services in the Juvenile Court system. In addition, if the child is certified, the SPD would be responsible for an appeal of the certification finding, and if unsuccessful in that appeal, the representation in the adult court case.

It is difficult to determine the exact amount of resources that would be necessary to handle these additional cases. Missouri Court statistics for FY 2018 show that in Missouri Juvenile Courts, there were 275 cases referred for weapons violations; 4,100 cases for assault (many of these would not qualify to have an armed criminal action charge attached); and 213 cases for robbery. Some of these cases are already in the mandatory certification hearing category. Others, such as the weapons offenses or assault 2nd and robbery 2nd, which could now be associated with an armed criminal action charge, could require certification hearings. State Public Defender currently has nine attorneys who are Juvenile Defense Specialists. Those attorneys handle certification hearings in the City of St. Louis, St. Louis County, Jefferson County, Franklin County, St. Charles County, and Jackson County. If certification hearings increased significantly, there would need to be additional attorneys trained as Juvenile Defense Specialists to represent children in other counties facing certification hearings. If a significant number of additional cases were certified then additional attorneys would be necessary to handle those certification appeals and adult cases. It is impossible to know how many cases this bill could affect, but our expectation is that three additional attorneys (one for each stage) could be necessary. In addition, the typical costs if expert witness testimony is presented for these certification hearings is \$3,000 per hearing. It is impossible to know how many cases would require that type of evidence at this time.

ASSUMPTION (continued)

Oversight does not have any information contrary to that provided by SPD. Therefore, Oversight will reflect SPD's impact for fiscal note purposes.

Officials at the **Office of the Attorney General** and the **Office of Prosecution Services** each assume no fiscal impact to their respective agencies from this proposal. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
GENERAL REVENUE FUND				
<u>Costs - SPD</u> (\$211.071)				
Personal Services	(\$154,718)	(\$187,518)	(\$189,393)	Could exceed... (\$189,393)
Fringe Benefits	(\$80,182)	(\$96,835)	(\$97,457)	(\$97,457)
Equipment	(\$11,750)	(\$14,453)	(\$14,814)	(\$14,814)
<u>Total Costs - SPD</u>	(\$246,650)	(\$298,806)	(\$301,664)	(\$301,664)
FTE Change - SPD	3 FTE	3 FTE	3 FTE	3 FTE
 <u>Costs - DSS</u> (\$211.071)				
Personal Services	(\$326,755)	(\$660,044)	(\$666,645)	Could exceed... (\$666,645)
Fringe Benefits	(\$206,435)	(\$415,041)	(\$417,233)	(\$417,233)
Equipment	(\$16,074)	\$0	\$0	\$0
One-Time				
Facility Expenses	(\$109,929)	\$0	\$0	\$0
On-going				
expenses for				
Residential	(\$29,000)	(\$59,450)	(\$60,937)	(\$60,937)
On-going				
expenses per FTE	(\$63,963)	(\$131,124)	(\$134,400)	(\$134,400)
<u>Total Costs - DSS</u>	(\$752,156)	(\$1,265,659)	(\$1,279,215)	(\$1,279,215)
FTE Change - DSS	17 FTE	17 FTE	17 FTE	17 FTE

FISCAL IMPACT -
 State Government

	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
GENERAL REVENUE FUND (continued)				

<u>Costs - OSCA</u> (\$211.071)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
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Costs - DOC (\$211.071) increased incarceration costs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	(Unknown, Greater than <u>\$998,806</u>)	(Unknown, Greater than <u>\$1,564,465</u>)	(Unknown, Greater than <u>\$1,580,879</u>)	(Could exceed <u>\$1,580,879</u>)
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Estimated Net FTE Change for General Revenue	20 FTE	20 FTE	20 FTE	20 FTE
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FISCAL IMPACT -
 Local Government

	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2024)
	<u>\$0</u>	<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

This act modifies provisions relating to criminal offenses.

CERTIFICATION OF A JUVENILE (Section 211.071)

Under this act, beginning January 1, 2021, if a person is charged with any offense under §571.030 and any offense under §571.015, and is between the ages of 12 and 18, then a mandatory hearing is conducted to determine if the case shall proceed in a juvenile court or a court of general jurisdiction.

This proposal contains an emergency clause.

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

SOURCES OF INFORMATION

Attorney General's Office
Department of Corrections
Department of Social Services
Missouri Office of Prosecution Services
Office of State Courts Administrator
State Public Defender's Office



Julie Morff
Director
August 13, 2020



Ross Strobe
Assistant Director
August 13, 2020