

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0569-26  
Bill No.: SCS for SB 556 and 311  
Subject: Crimes and Punishment; Elderly; Health Care; Health Department; Licenses-  
Miscellaneous; Medicaid; Mental Health Department; Nurses; Nursing and  
Boarding Homes; Social Services Department  
Type: Original  
Date: March 17, 2003

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**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
General Revenue	(Unknown greater than \$100,000)	(Unknown greater than \$100,000)	(Unknown greater than \$100,000)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Unknown greater than \$100,000)</b>	<b>(Unknown greater than \$100,000)</b>	<b>(Unknown greater than \$100,000)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
Elderly Home-Delivered Meals Trust Fund	Unknown	Unknown	Unknown
Nursing Facility Quality of Care Fund	Unknown	Unknown	Unknown
<b>Total Estimated Net Effect on Other State Funds</b>	<b>Unknown</b>	<b>Unknown</b>	<b>Unknown</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 15 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
Federal *	\$0	\$0	\$0
Unemployment Compensation Administration Fund	(\$13,782)	\$0	\$0
Unemployment Compensation Trust Fund	(Unknown greater than \$100,000)	(Unknown greater than \$100,000)	(Unknown greater than \$100,000)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>(Unknown greater than \$113,782)</b>	<b>(Unknown greater than \$100,000)</b>	<b>(Unknown greater than \$100,000)</b>

\*Income and expenses which are unknown but greater than \$50,000 would net to \$0.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
<b>Local Government</b>	<b>(Unknown greater than \$100,000)</b>	<b>(Unknown greater than \$100,000)</b>	<b>(Unknown greater than \$100,000)</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **State Public Defender** the **Department of Mental Health**, and the **Office of Prosecution Services** state this proposal would not fiscally impact their agency.

Officials from the **Department of Health and Senior Services (DOH)** state Section 198.067 increases the dollar amount of penalties for certain violations. This section states 75% of the penalties collected shall be deposited into the Nursing Care Quality of Care Fund and 25% of the penalties shall be deposited into the Elderly Home-Delivered Meals Trust Fund. However an estimate of the possible increase in state revenue is indeterminate since facility compliance with minimum standards is solely dependent on the operator's actions. The DOH assumes no other

ASSUMPTION (continued)

fiscal impact as a result of this proposal.

Officials from the **Secretary of State Office (SOS)** state this proposal modifies various provisions relating to the protection of the elderly and would result in the Department of Health and Senior Services promulgating more rules. These rules would be published in the *Missouri Register* and the *Code of State Regulations*. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Health and Senior Services could require as many as 30 pages in the *Code of State Regulations*. For any given rule, roughly half again as many pages are published in the *Missouri Register* as in the Code because cost statements, fiscal notes and the like are not repeated in Code. These costs are estimated. The estimated cost of a page in the *Missouri Register* is \$23. The estimated cost of a page in the Code is \$27. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded or withdrawn. The SOS estimates the cost for FY 04 only to be \$1,845 [(30 pages x \$27) + (45 pages x \$23)].

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Department of Social Services - Division of Family Services (DFS)** state Section 208.072 provides if the DFS is unable to make a determination regarding Medicaid eligibility within sixty days of the submission of a completed application, then the patient would be Medicaid eligible until the application is approved or denied. The DFS currently tracks Medicaid applications but does not have a system in place to track when a Medicaid application is complete. The DFS anticipates that a completed application is one in which all documentation necessary to complete an eligibility determination has been provided to the agency, including but not limited to medical, financial, and resource verification.

DFS estimates the fiscal impact of this proposal is unknown, less than \$100,000 for staff to make system design changes to track completed applications.

Officials from the **Department of Social Services - Division of Medical Services (DMS)** state Section 208.072 requires DFS to make a determination regarding Medicaid eligibility within 60 days of completed application. If DFS is unable to make a determination in this timeframe, the applicant would be Medicaid eligible until approved or denied. DMS states the average nursing

home rate is \$97.34 a day. If a client is found ineligible one day beyond 60 days, DMS would

ASSUMPTION (continued)

pay a minimum of 61 days of nursing care. If this happened only 17 times, DMS estimates the total fiscal impact to be unknown but greater than \$100,000 ( $\$97.34 \times 17 \text{ people} \times 61 \text{ days} = \$100,942$ ).

Officials from the **Department of Public Safety - Missouri State Highway Patrol (MHP)** state the MHP's Criminal Records and Identification Division is currently conducting background searches for employment purposes, thus the impact would be minimal.

MHP's Division of Drug and Crime Control assume that most investigations would be handled by local law enforcement agencies. If the MHP would conduct the investigations, the MHP would have an unknown fiscal impact.

**Oversight** assumes there will be unknown costs greater than \$100,000 to local law enforcement agencies.

Officials from the **Department of Labor and Industrial Relations (DOL)** assume the proposal provides contributing employers, who are currently charged for benefit payment because an individual was not discharged for misconduct connected with the work, will not be charged for benefit payment if the employer was required by law to discharge the individual, because the individual was placed on a disqualification list after being hired.

DOL states unemployment benefits are paid from the Unemployment Compensation Trust Fund (UCTF). The UCTF is funded by all contributing employers and by employer payments for benefit charges. Although the proposal would not change the amount of benefits paid, it no longer provides the charging mechanism for replenishing the fund. The cost of benefits would reduce the balance of the UCTF, which would contribute to future rate increases to all contributing employers if the balance reaches certain levels. The DOL states this could have a potential impact of over \$100,000 to the UCTF, however, the exact amount is unknown.

The Division of Employment Security (DES) is not able to identify current claims (that meet the proposed conditions) to estimate and project the amount of impact to the UCTF. The negative impact would also depend on the weekly benefit amounts payable, number of weeks claimed and other unknown factors.

Information Systems estimates the change to the benefit charging provisions would require 280

hours of computer programming to the nonmonetary and charging process in the existing system at \$49.22 per hour. This would be an estimated one-time start up cost of \$13,782, which would have a negative impact on Federal Funding. The DES assumes the cost for changing and printing

ASSUMPTION (continued)

notices and pamphlets would be part of the normal cost of operations.

The DES states that allowing the Department of Health and Senior Services to provide investigative information relating to the circumstances of an individual's separation could better equip the DES when investigating misconduct connected with the work, when subject employers

are not in a position to provide the information at the time of DES's investigation. The DES is not able to predict what impact this may have.

Officials from the **Department of Corrections (DOC)** state currently, the DOC cannot predict the number of new commitments which may result from the creation of the offenses(s) outlined in this proposal. The DOC received no incarceration cases in the past two years as per existing law, and only one probation supervision case was opened. 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 operational costs either through incarceration (FY 02 average of 435.52 per inmate, per day or an annual cost of \$12,965 per inmate) or through supervision provided by the Board of Probation and Parole (FY 02 average of \$3.10 per offender, per day or an annual cost of \$1,132 per offender).

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the DOC. Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, the DOC assumes the impact would be less than \$100,000 for the DOC.

FISCAL IMPACT - State Government

FY 2004  
(10 Mo.)

FY 2005

FY 2006

**GENERAL REVENUE**

Costs - Department of Social Services -  
 Division of Family Services

Programming costs	(Unknown less than \$50,000)	(Unknown less than \$50,000)	(Unknown less than \$50,000)
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FISCAL IMPACT - State Government

FY 2004  
(10 Mo.)

FY 2005

FY 2006

Costs - Department of Social Services -  
 Division of Medical Services

Program costs	(Unknown greater than \$100,000)	(Unknown greater than \$100,000)	(Unknown greater than \$100,000)
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Costs - Department of Corrections

Incarceration and probations costs	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
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**ESTIMATED NET EFFECT ON  
 GENERAL REVENUE**

<u><b>(Unknown greater than \$100,000)</b></u>	<u><b>(Unknown greater than \$100,000)</b></u>	<u><b>(Unknown greater than \$100,000)</b></u>
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**ELDERLY HOME-DELIVERED  
 MEALS TRUST**

Income - Department of Health and  
 Senior Services

Income from violations	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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**ESTIMATED NET EFFECT ON  
 ELDERLY HOME-DELIVERED  
 MEALS TRUST**

<u><b>Unknown</b></u>	<u><b>Unknown</b></u>	<u><b>Unknown</b></u>
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**NURSING FACILITY QUALITY OF  
 CARE**

Income - Department of Health and  
 Senior Services

Income from violations	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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**ESTIMATED NET EFFECT ON  
 NURSING FACILITY QUALITY OF  
 CARE**

<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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FISCAL IMPACT - State Government

FY 2004 (10 Mo.)	FY 2005	FY 2006
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**FEDERAL**

Income - Department of Social Services -  
 Division of Family Services

Federal Assistance	Unknown less than \$50,000	Unknown less than \$50,000	Unknown less than \$50,000
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Costs - Department of Social Services -  
 Division of Family Services

Programming costs	<u>(Unknown less than \$50,000)</u>	<u>(Unknown less than \$50,000)</u>	<u>(Unknown less than \$50,000)</u>
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**ESTIMATED NET EFFECT ON  
 FEDERAL FUNDS**

<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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**UNEMPLOYMENT  
 COMPENSATION  
 ADMINISTRATION FUND**

Cost - Department of Labor and Industrial  
 Relations

Programming costs	<u>(\$13,782)</u>	<u>\$0</u>	<u>\$0</u>
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**ESTIMATED NET EFFECT ON  
 UNEMPLOYMENT  
 COMPENSATION FUND**

<u>(\$13,782)</u>	<u>\$0</u>	<u>\$0</u>
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**UNEMPLOYMENT  
 COMPENSATION TRUST FUND**

Costs - Department of Labor and  
 Industrial Relations

(Unknown over (Unknown over (Unknown over  
\$100,000) \$100,000) \$100,000)

**ESTIMATED NET EFFECT ON  
 UNEMPLOYMENT  
 COMPENSATION TRUST FUND**

(Unknown over (Unknown over (Unknown over  
\$100,000) \$100,000) \$100,000)

FISCAL IMPACT - Local Government

FY 2004  
 (10 Mo.)

FY 2005

FY 2006

**LOCAL GOVERNMENTS**

Costs - Local law enforcement

Training costs and additional enforcement  
 costs

(Unknown  
greater than  
\$100,000)

(Unknown  
greater than  
\$100,000)

(Unknown  
greater than  
\$100,000)

**ESTIMATED NET EFFECT ON  
 LOCAL LAW ENFORCEMENT**

(Unknown  
greater than  
\$100,000)

(Unknown  
greater than  
\$100,000)

(Unknown  
greater than  
\$100,000)

FISCAL IMPACT - Small Business

Administrative penalties may affect small businesses.

**DESCRIPTION**

This proposal modifies various provisions relating to the protection of the elderly.

The Department of Health and Senior Services (DOH) may request the past 5 years compliance history for out-of-state home health agency applicants (Section 197.416).

The DOH shall provide through their Internet website the most recent survey of every home health agency and any deficiencies. The agency's response to the survey will be posted on the website. If a survey is in dispute, the survey will not be posted until the agency's response has been resolved. The website shall also include the agency's proposed plan of correction and a link to the federal web site (Section 197.478).

CAM:LR:OD (12/02)



The DOH must maintain an employee disqualification list for home health agencies. The terms "knowingly" and "recklessly" are defined for placement on the employee disqualification list. "Abuse" and "neglect" have the same meaning as specified in Section 198.006. A person acts "knowingly" with respect to the person's conduct when a reasonable person would be aware of the nature of the person's conduct (Section 197.500).

Section 198.006, RSMo, provides definitions for long-term care facilities.

The staff of a facility shall prepare copies of records requested by the DOH within two working days or as determined by the DOH. The DOH cannot remove or disassemble any medical record during an inspection of the facility, but may observe the photocopying or make their own copies

DESCRIPTION (continued)

if the facility lacks the technology. The DOH may request from an out-of-state applicant the compliance history of all out-of-state facilities owned by the applicant from the previous five years (Section 198.022).

If a facility submits satisfactory documentation that a deficiency contained within the written report has been corrected, an on-site reinspection may not be required (Section 198.027).

Every residential care facility I or II, intermediate care facility, and skilled nursing facility must post the most recent inspection report in a conspicuous place. Operators may redact any individually identifiable health information prior to posting an inspection report (Section 198.030).

The DOH must maintain a hot-line caller log for the reporting of suspected abuse and neglect in long-term care facilities. The DOH must attempt to obtain the name and address of any person making a report after obtaining relevant information regarding the alleged abuse or neglect. The identity of the person making the report will remain confidential (Section 198.032).

The DOH may revoke a license if the operator refused to allow the DOH access to residents and employees, the operator or anyone involved in the operation has ever knowingly acted or knowingly failed to perform any duty that materially or adversely affected the health, safety, welfare, or property of a resident, or the operator or anyone involved in the operation has ever been convicted of a felony relating to the management of a facility. The DOH shall not have access to information that is not necessary to carry out the duties of Section 198.006 to Section 198.186, RSMo (Section 198.036).

The DOH shall impose sanctions that are commensurate with the seriousness of the violation found to have occurred. For Class I, II, and III violations, the remedies specified in this section may be imposed (Section 198.066).

Section 198.067 states that the maximum amount of civil penalties shall be twenty-five thousand dollars. The range of fines are: Class I: \$1,000 to \$10,000; Class II: \$250 to \$1,000; and Class III: \$50 to \$250.

When the DOH imposes a Class I fine, the fine shall be incurred immediately, regardless of any subsequent correction. Class II and III fines shall be imposed if the violation remains uncorrected at the time of re-inspection (Section 198.067).

The civil monetary penalties shall be distributed as follows: 25% to the Elderly Home-Delivered

DESCRIPTION (continued)

Meals Trust Fund, 25% to the Nursing Facility Quality Care Fund to be used for the sole purpose of supporting quality care improvement projects within the Office of State Ombudsman for Long-Term Care Facility Residents, and 50% to the Nursing Facility Quality Care Fund to assist qualified nursing facilities to improve the quality of service to the residents (Section 198.067).

The DOH shall not impose a fine for self-reporting Class II and Class III violations so long as the violation is corrected within a specified amount of time and there is no reoccurrence of the particular violation for twelve months. Civil penalties shall remain the sole liability of the operator and cannot be sold, transferred, or assigned to any successor (Section 198.067).

Certain mandated reporters, including physician assistants, nurse practitioners and medical residents, must immediately report suspected abuse and neglect of eligible adults or persons sixty years of age and older to the DOH. Any administrator of a facility that knowingly conceals an act of abuse or neglect that results in death or serious physical injury will be guilty of a Class D felony. The terms "knowingly" and "recklessly" are defined for placement on the employee disqualification list. A person acts "knowingly" with respect to the person's conduct when a reasonable person would be aware of the nature of the person's conduct (Section 198.070).

The staff of a residential care facility I and II, intermediate care facility, or a skilled nursing facility shall attempt to contact the resident's immediate family or responsible party and shall contact the attending physician and shall notify the local coroner or medical examiner immediately upon the death of a resident and prior to transferring the deceased to a funeral home

(Section 198.071).

Nursing assistants must complete the training program within four months of employment. The training program can be offered at any facility licensed or approved by the DOH (Section 198.082).

The DOH must promulgate rules for the determination, selection or removal of qualified receivers. The DOH must also maintain a list of qualified receivers that have submitted a written request for a receivership of a facility. When a petition is filed, the Director of the DOH must select the first name on the list and notify the person of their selection, the name of the facility, and the grounds for receivership. Names from the list will be chosen in consecutive order for each additional petition filed (Section 198.105).

Nursing home districts are prohibited from evicting, harassing, or retaliating against a resident or employee because of any reported violations made by the resident, resident's family, or employee

DESCRIPTION (continued)

of the facility. Residents and employees of a facility may obtain information regarding their rights and protections from the DOH's telephone referral and information line (Section 198.301).

The DOH may reduce the frequency of inspections to once a year if the facility is found to be in substantial compliance. Substantial compliance will be based on previous inspection reports, the facility's history of compliance, the number and severity of complaints received about the facility, and the facility having no changes in ownership, operator, or Director of Nursing. Any employee of the DOH who knowingly discloses the time of an unannounced inspection will be guilty of a Class A misdemeanor and will be immediately terminated (Section 198.526).

The DOH shall provide through their website the most recent survey of every long-term care facility and any deficiencies. The facility's response to the survey will be posted on the Internet website. If a survey is in dispute, the survey will not be posted until the facility's response has been reviewed. The website shall also include the facility's proposed plan of correction and a link to the federal web site (Section 198.528).

If the Division of Family Services is unable to make a determination regarding Medicaid eligibility within sixty days of the submission of a completed application for medical assistance for nursing facility services, then the patient will be Medicaid eligible until the application is approved or denied. However, the benefits shall not commence prior to the date of application (Section 208.072).

The patient care expenditure component of the nursing facility Medicaid per diem rate will include salaries and supplies for physical, occupational, speech and inhalation therapy. The provisions of subsection 2 shall not prohibit the Department of Social Services' rule-making authority regarding the nursing home reimbursement formula. The provisions of subsection 2 will terminate on August 28, 2008. The prospective rate of a facility may be reduced if the facility's cost report is found to be fraudulent or inaccurate (Section 208.159).

The DOH must promptly contact appropriate law enforcement agencies if they are unable to substantiate that abuse occurred due to the lack of cooperation of the operator and employees of the facility (Section 565.186).

Financial exploitation of an elderly or disabled person is a Class A misdemeanor if the property is less than \$50, a Class D felony if the property is greater than \$50 but less than \$500, a Class C felony if the property is greater than \$500 but less than \$1000, and a Class B felony if the property is \$1,000 or more (Section 570.145).

#### DESCRIPTION(continued)

Any person who purposely files a false report of abuse or neglect will be guilty of a Class A misdemeanor. Any person having a prior conviction of filing a false report of abuse or neglect will be guilty of a Class D felony (Section 630.165).

Statements made by persons sixty and older or disabled to the DOH or law enforcement shall only be admissible into evidence in administrative or civil actions brought by the DOH or in criminal proceedings if the statement is made by affidavit in the specified format, the court finds the statement to be sufficiently reliable and the affiant was competent at the time the statement was given, and the person who recorded the statement is available to testify. Statements shall not be admissible unless the prosecuting attorney or the DOH notifies the accused in advance of the intention to offer the statement into evidence (Section 660.264).

If the DOH is conducting an investigation but is unable to access an eligible adult, the court may grant a warrant or other order to enter the premises, require production of information, and enjoin interference with an investigation (Section 660.270).

Certain mandated reporters, including physician assistants, nurse practitioners and medical residents, must immediately report suspected abuse and neglect of an in-home services client to the DOH. If the client's physician makes a report of suspected abuse or neglect, the DOH shall continuously contact the physician regarding the progress of the investigation. The DOH must

also notify the client's case manager when a report of abuse or neglect is made. If an in-home service provider fails to report abuse or neglect, the DOH may impose a fine of \$1,000 per violation against the provider. The terms "knowingly" and "recklessly" are defined for placement on the employee disqualification list. A person acts "knowingly" with respect to the person's conduct when a reasonable person would be aware of the nature of the person's conduct (Section 660.300).

Once a report is received, the Department of Social Services shall immediately begin an investigation and contact the appropriate law enforcement agencies (Section 660.305).

The DOH is required to give written notice of any proposed action, such as suspension, probation, and termination, to in-home service providers. In-home service providers must be given administrative appeal rights (Section 660.310).

Any employer, who must discharge an employee that was placed on the employee disqualification list after the date of hire, will not be charged with unemployment insurance benefits (Section 660.315).

#### DESCRIPTION (continued)

Prior to any contact with patients and residents, criminal background checks must be conducted on all full-time, part-time, or temporary employees that are hired or contracted for an employment agency. Providers must request a nationwide criminal FBI background check for out-of-state applicants who have not resided in Missouri for five consecutive years and have no employment history with a licensed Missouri facility during that five year period. The total cost to the provider of any background check shall not exceed five dollars and shall be paid to the state. State funding and the obligation of a provider to obtain a nationwide criminal background check shall be subject to appropriations (Section 660.317).

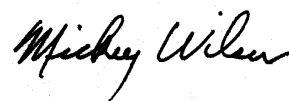
Upon request, the DOH must provide the Division of Employment Security with copies of the investigative reports that led to the placement of the employee on the employee disqualification list (Section 660.320).

The DOH is prohibited from disclosing any personally identifiable medical, social, personal, or financial records of an eligible adult, except by court order. The DOH, the Department of Mental Health, the Department of Social Services, the Attorney General, appropriate law enforcement, and the eligible adult can access these records for examination or copying without a court order (Section 660.321).

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 Labor and Industrial Relations  
Department of Health and Senior Services  
Department of Social Services  
Department of Mental Health  
Office of Prosecution Services  
Secretary of State  
Department of Public Safety -  
Missouri State Highway Patrol  
State Public Defender  
Department of Corrections

A handwritten signature in black ink, appearing to read "Mickey Wilson". The signature is written in a cursive, flowing style.

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**MICKEY WILSON, CPA  
DIRECTOR  
MARCH 17, 2003**