

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0998-04
Bill No.: SCS for SBs 312, 49, 111, 113, 191, 206, 263, 404, 409, 418, 538, 550 & 584
Subject: Crimes and Punishment
Type: Original
Date: April 14, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue	(More than \$2,449,365)	(More than \$2,067,513)	(More then \$2,124,427)
Total Estimated Net Effect on General Revenue Fund	(More than \$2,449,365)	(More than \$2,067,513)	(More than \$2,124,427)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Criminal Record System	(\$703,297)	(\$626,191)	(\$642,179)
Highway	(\$52,493)	(\$56,814)	(\$58,242)
Total Estimated Net Effect on Other State Funds	(\$755,790)	(\$683,005)	(\$700,421)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 21 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Federal	(More than \$100,000)	(More than \$22,000,000)	(More than \$44,000,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	(More than \$100,000)	(More than \$22,000,000)	(More than \$44,000,000)

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Economic Development, Department of Mental Health, Department of Health and Senior Services, Department of Social Services, Department of Public Safety – Division of Fire Safety, – Capitol Police, – Division of Liquor Control, Department of Insurance,** and the **St. Louis Metropolitan Police Department** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Department of Conservation** assume the proposed legislation would not appear to have significant impact on MDC funds.

Officials from the **Office of Secretary of State (SOS)** assume the bill revises various crimes and criminal procedures. The bill could result in the Department of Corrections and the Missouri State Highway Patrol promulgating rules to implement the provisions of this act. These rules will 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 Committee could require as many as 30 pages in the *Code of State Regulations* and half again as many pages in the *Missouri Register*, as cost statements, fiscal notes, and the like are not repeated in the Code. The

ASSUMPTION (continued)

estimated cost of a page in the *Missouri Register* is \$23 and the estimated cost of a page in the *Code of State Regulations* is \$27. Based on these costs, the estimated cost of the proposal is \$1,845 in FY 04 and unknown in subsequent years. 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.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which would require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Department of Corrections (DOC)** assume penalty procedures are either created or enhanced in Sections 195.215, 217.360, 307.156, 565.078, 565.305, 566.025 – 566.100, 569.100, 570.020, 570.137, 577.075, 610.106 – 610.140, and 650.052 – 650.055.

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

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY02 average of \$35.52 per inmate, per day or an annual cost of \$12,965 per inmate) or through supervision provided by the Board of Probation and Parole (FY02 average of \$3.10 per offender, per day or an annual cost of \$1,132 per offender).

The DOC is unable to determine the number of people who would be convicted under the provisions of this bill and therefore the number of additional inmate beds that may be required as a consequence of passage of this proposal. Estimated construction cost for one new medium to maximum-security inmate bed is \$55,000. Utilizing this per-bed cost provides for a conservative estimate by the DOC, as facility start-up costs are not included and entire facilities and/or housing units would have to be constructed to cover the cost of housing new commitments resulting from the cumulative effect of various new legislation, if adopted as statute.

In summary, supervision by the DOC through incarceration or probation would result in additional costs. Although the exact fiscal impact is unknown, the DOC estimates that potential costs will be in excess of \$100,000 per year.

ASSUMPTION (continued)

Transferring Offenders (§§217.305, 217.341, 217.380)

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would revise procedures in information given when transferring offenders. It would require that appropriate information relating to an offender be provided to the Department of Corrections, including a certified copy of the sentence on the standardized form developed by the Office of State Courts Administrator. The proposal also adds the names and last known address of victims, victim impact statements, facts relating to the offender's home environment, and gang affiliations to the information required to be submitted to the Department of Corrections by the prosecutor. CTS would not anticipate any immediately quantifiable costs to the judiciary.

Officials from the **Office of Prosecution Services** assume the proposal will increase the workload of prosecutors, but the impact to a given office is unknown.

Custodial Interrogations (§476.054)

Officials from the **Office of Attorney General** assume costs are unknown, but likely under \$100,000) due to an increase in anticipated appeals pursuant to this section.

Oversight assumes the Office of Attorney General (AGO) could absorb the cost of the proposed legislation within existing resources. If the AGO experiences an increase that would require additional funding, the AGO could request the funding through the appropriation process.

Officials from the **Department of Public Safety – Missouri State Water Patrol (MWP)** assume they would require one FTE Corporal (at \$41,556 per year, plus fringe benefits, equipment, and expenses) to file and maintain the tapes. The tapes would be evidence, so the Corporal would be required to appear in court to maintain the chain of custody and seek destruction orders for the tapes once the disposition is final. MWP would also require storage space with file cabinets. MWP estimated the cost of the proposal to be \$93,583 in FY 04; \$73,935 in FY 05; and \$75,847 in FY 06.

Oversight has, for fiscal note purposes only, changed the starting salary for Water Patrol Corporal to correspond to the second step above minimum in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees over the last six months of FY 02 and policy of the Oversight Subcommittee of the Joint Committee on Legislative Research.

ASSUMPTION (continued)

Officials from the **Department of Public Safety – Missouri State Highway Patrol** assume all Highway Patrol road officers will have audio and video recording equipment in their patrol cars by July 1, 2003.

Officials from the **Office of Prosecution Services** assume the proposal may increase the workload of some prosecutors, but the impact on a given office is unknown. Some offices may also experience increased copying costs for discovery purposes.

30-Hour Hold Without Warrant (§544.170)

In response to a similar proposal, officials from the **Columbia Police Department** assumed the proposal could result in possible savings for not having to call in an officer or typist to finish reports prior to the jail releasing a suspect. More time would allow for the paperwork to get to the prosecutor through normal routine channels.

In response to a similar proposal, officials from the **Boone County Sheriff's Department** assumed there would be an increase in costs of approximately \$5,000 per year to their agency for the increased time that they will have to house the people arrested.

Oversight assumes there could be some increase in local jail populations as a result of this proposal. However, Oversight assumes this would be at the discretion of the political subdivisions and any fiscal impact to them should be minimal.

Victims of Sexual Offenses (§§566.025, 566.032, 566.062, 566.067, 566.083, 566.100)

Officials from the **Office of State Public Defender (SPD)** stated that national surveys show a high number of 15 and 16 year olds are sexually active. Last FY, SPD handled 727 cases identified in this legislation. SPD conservatively estimates a 40% increase in cases, or approximately new cases as a result of the proposal. SPD would require 2 FTE Attorneys (each at \$47,100 per year, plus fringe benefits, equipment and expenses), .50 FTE Paralegal/Investigators (each at \$24,132 per year, plus fringe benefits, equipment and expenses), and .5 Clerk Typist III (each at \$19,764 per year, plus fringe benefits, equipment and expenses). SPD estimates the cost of the proposal to be \$167,979 in FY 04; \$180,316 in FY 05; and \$184,925 in FY 06.

ASSUMPTION (continued)

Release of Anhydrous Ammonia (§577.075)

Officials from the **Department of Natural Resources** assume the proposed legislation would have no fiscal impact on their agency.

In responses to a similar proposal, officials from the **Department of Agriculture** assume the proposed legislation would have no fiscal impact on their agency.

Officials from the **Office of Prosecution Services** assume prosecutors could absorb the costs of the proposed legislation within existing resources.

Set Aside Convictions/ Expunge Records (§§610.120, 610.122, 610.130, 610.132, 610.134, 610.136, 610.138, 610.140)

Officials from the **Office of Attorney General** assume unknown costs is complying with the sealed record act provisions of this proposal.

In response to a similar proposal, the Office of Attorney General assumed they would be involved in litigation regarding certain sealed records pursuant to this proposal, but assumed such costs could be absorbed. Therefore, **Oversight** assumes the Office of Attorney General could absorb the costs the proposed legislation within existing resources.

Officials from the **Office of Prosecution Services** assume the expungement provisions could impact caseloads of prosecutors, but the impact on a given office is unknown. In response to a previous version of this proposal, Office of Prosecution Services assumed prosecutors could absorb the costs of the proposed legislation within existing resources.

Officials from the **Office of State Courts Administrator (CTS)** assume, because of problems interpreting the proposal, it is not possible to estimate the fiscal impact. In recent years, there have been between 60,000 and 63,000 convictions or guilty pleas that could fit the definition of the qualifying crimes. CTS does not have age-of-defendant information. Data on the numbers of cases from over ten years ago where the defendant has had no subsequent conviction is not available.

ASSUMPTION (continued)

Officials from the **Department of Public Safety – Missouri State Highway Patrol (MHP)** assume, according to the MHP's Criminal Records and Identification Division, there is no accurate way to determine the exact fiscal impact of this legislation. The fiscal impact depends on public reaction to being able to expunge criminal records.

These calculations are based on the scenario that all eligible individuals petition the court, meet the requirements and the record of the petitioner is sealed. There are approximately 400,000 individuals without an arrest in the past 10 years. Just over 50% of those arrests fall into the category of nonviolent, nonsexual, nondrug and nonweapon offenses. This means that 200,000 people have records eligible for expungement. MHP estimates 100,000 persons per year would request this process through the courts. Since there are 232 working days in a year, and a Criminal History Record Technician can process 24 per day, the Criminal Records and Identification Division would require 17 FTE: 12 FTE Criminal History Technicians (each at \$21,720 per year), 4 FTE AFIS Entry Operators (each at \$18,132 per year), and 1 FTE Fingerprint Technician (at \$21,192 per year). The FTE would also require standard office equipment, as well as one full function AFIS work station (\$120,000). 3,400 (200 square foot x 17 FTE) square foot would be necessary to accommodate the additional FTE. The cost of leasing is approximately \$15 per square foot so the cost of the building would be approximately \$51,000 per year.

The MHP's Information Systems Division (ISD) assumes data would be electronically received, with the necessary information, from the proper authority and would then electronically seal/expunge the designated record(s). This process would be automatic regardless of the sending source. Although it is assumed the electronic order would be coming from the courts, it could come from the MHP's Criminal Records and Identification Division as a result of a court order and their subsequent validation. ISD would, through programming, automatically modify the necessary Criminal History Records as being sealed/expunged. Estimates are calculated based upon the average number of hours required to complete a batch process. Cost figures are calculated based upon utilization of consulting services at the state contract prices.

280 hours for batch and MULES procedures x \$107 per hour = \$29,960. This cost would be incurred in FY 04.

ASSUMPTION (continued)

The ISD would also incur recurring costs. There would be a phonic name inquiry (QID) required for every individual wanting a criminal history record expunged, to retrieve the State Identification Number. This would be followed by an inquiry (QMH) to retrieve the specifics of their criminal history. The estimated costs at the State Data Center are \$4,300 per year, based upon 200,000 inquiries per year. ISD estimates their total costs to be \$34,260 to the Criminal Records Systems Fund.

The MHP estimates the total cost to the Criminal Records Systems Fund to be \$703,297 in FY 04; \$626,191 in FY 05; and \$642,179 in FY 06.

The MHP's Traffic Division also feels there is no accurate way to determine the exact fiscal impact of this legislation because it is based on public reaction. Based on the scenario that all eligible individuals petition the court meet the requirements and the record of the petitioner is sealed, the Traffic Division would require 2 FTE Data Entry Operators (each at \$17,568 per year). There are an estimated 100,000 records in the Traffic Arrest System and the Alcohol and Drug Offense Records System annually that meet the sealed records criteria. It is assumed that 50,000 (or 50%) of this total would actually be sealed. One FTE can process 10 court orders per hour and with 50,000 orders per year, the division would need 2 FTE, along with standard office equipment. The MHP's Traffic Division estimates the cost of the proposal to the Highway Fund to be \$52,493 in FY 04; \$56,814 in FY 05; and \$58,242 in FY 06.

In response to a similar proposal, officials from the **Department of Revenue (DOR)** assumed the requirements of this legislation will allow a court to seal or close records relating to traffic convictions. Although such records will be closed to the public, they will continue to be required to be reported to the DOR for inclusion to the driving record. DOR will be required to mark such records as closed or expunged. This legislation will create significant unknown loss of federal highway funds due to non-compliance with the commercial driver license regulations promulgated by the U.S. Secretary of Transportation and subsequent loss of federal highway funds.

DOR assumes the proposal would have a direct affect on Total State Revenue because the expungement of convictions allowed under this legislation will create a form of "masking" of traffic convictions. Masking is defined by the Federal Motor Carrier Safety Administration (FMCSA) as any method that defers, diverts or otherwise prevents a traffic violation from appearing on an individual's driving record. The FMCSA suggests that these omissions can have a potentially serious effect on safety. As such, the FMCSA has issued a final rule which prohibits such practices of masking traffic convictions. See docket numbers FMCSA-2001-9709

ASSUMPTION (continued)

and FMCSA-00-7382, published July 31, 2002, effective September 30, 2002. Specifically, section 384.226 which states as follows:

“The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.”

ALLOWING THE EXPUNGEMENT OF TRAFFIC CONVICTIONS WILL CREATE A SUBSTANTIAL NONCOMPLIANCE ISSUE WHICH JEOPARDIZES FEDERAL HIGHWAY FUNDS. NONCOMPLIANCE WITH THE REQUIREMENTS OF THIS RULE WILL RESULT IN A LOSS OF 5% OF FEDERAL-AID HIGHWAY FUNDS FOR THE FIRST YEAR OF NON-COMPLIANCE AND 10% LOSS OF FEDERAL-AID HIGHWAY FUNDS FOR THE SECOND AND SUBSEQUENT YEARS OF NON-COMPLIANCE.

Officials from the **Department of Transportation (MoDOT)** assume the proposal expands authority of courts to set aside past convictions and expunge criminal records. In December 1999, the 106th Congress enacted, and the President signed into law, PL 106-159, the Motor Carrier Safety improvement Act of 1999. Section 202 of that Act amended Title 49 of the United States Code, Section 31311, relating to the commercial drivers license driving record requirements, a state must comply in order to avoid federal withholding of federal highway funds. Subdivisions (18) and (19) were added to this section.

Pursuant to Subdivision (18), the State shall maintain, as part of its driver information system, a record of each violation of a state or motor vehicle traffic control law while operating a motor vehicle (except a parking violation) for each individual who holds a commercial driver's license. The record shall be available upon request to the individual, the Secretary, employers, prospective employers, state licensing and law enforcement agencies, and their authorized agents.

Pursuant to Subdivision (19), the State shall (A) record in the driving record of an individual who has a commercial drivers' license issued by the state; and (B) make available to all authorized persons and governmental entities having access to such record, all information that State receives under paragraph (9) with respect to the individual and every violation by the individual involving a motor vehicle (including a commercial motor vehicle) of a state or local law on

traffic control (except parking violation), not later than 10 days after the date of receipt of such information or the date of such violation, as the case may be. The State may not allow information regarding such violations to be withheld or masked in any way from the record of an individual possessing a commercial driver's license.

ASSUMPTION (continued)

Section 610.134 of this legislation does not: (1) authorize the state to maintain, pursuant to subdivision (18), a record of each state or motor vehicle traffic violation (such as speeding, improper passing, careless and imprudent driving) and then make available to the driver, the driver's employer or prospective employers or the secretary of the U.S. DOT these violations; and (2) comply with the provisions in subdivision (19) that prohibits traffic violations from being masked in any way from the record of an individual possessing a commercial driver's license.

Any violation of these two subdivisions would appear to put the state in non-compliance with federal law that according to 49 U.S.C. 31311(a), would subject Missouri to the penalties in 49U.S.C. 31314. Section 31314 provides that for the first year that a state is in non-compliance with federal commercial motor vehicle masking requirements, the Secretary of U.S. DOT shall withhold 5 percent of funds apportioned to the state under sections 104(b)(1)(NHS funds, 104(b)(3) (STP funds) and 104(b)(5)(Interstate Maintenance), of Title 23 of the United States Code. For the second year and subsequent years of non-compliance, 10 percent of the above funds will be withheld.

Federal funds will be withheld on the first day of the fiscal year following the first year of non-compliance. If this proposal becomes law on August 28, 2003, the first federal distribution affected will be the federal year 2005, which begins October 1, 2004. The FY02 total for the NHS, IM and STP funds was \$436 million. Therefore the negative fiscal impact for FY05 would be \$22 million (\$436 X 5 percent) and the negative fiscal impact for FY06 would be \$44 million (\$436 X 10 percent).

If Missouri continues to be in non-compliance with the federal commercial motor vehicle masking requirements, the funds transferred can only be spent on highway safety projects, such as eliminating roadside hazards or drunk driving enforcement and cannot be spent on new construction.

DNA Profiling System (§§650.050, 650.052, 650.055)

Officials from the **Office of Prosecution Services** deferred to local prosecutors. The **Jackson County Prosecuting Attorney's Office** assume the impact on prosecutors for the first three years would be negligible.

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ASSUMPTION (continued)

Officials from the **Department of Public Safety – Missouri State Highway Patrol (MHP)** assume the proposed legislation would revise the DNA profiling system to include all types of pleas and convictions and all felony offenses. It makes these records closed records with certain exceptions and restricts use. This fiscal note reflects information the MHP received from the Department of Corrections (DOC) regarding the number of individuals currently under the supervision of the DOC who will become eligible for DNA collection. This information was not available in previous versions of proposed legislation on the DNA profiling system.

According to the MHP's Criminal Laboratory Division, the proposed legislation would increase current annual collections from 2,000 to at least 28,000 after the initial start-up. In the first year, it is expected that approximately 74,000 new individuals currently under supervision of the Department of Corrections (DOC) will become eligible for DNA collection. In addition, 28,000 new individuals not currently under supervision of the DOC will have new DNA to be collected. The initial 74,000 would be divided over a period of three years, with 23,096 done in the first year and 25,548 done in second and third years. This would be in addition to the 28,000 new collections that are expected. The total DNA collections done for the first year would be 51,096 (23,096 already in custody + 28,000 new). In years two and three, 53,548 collections would be done (25,548 already in custody + 28,000 new). This would require new equipment and 2 FTE Criminalists (each at \$27,444 per year) and 3 FTE Lab Evidence Technicians (each at \$21,720 per year). The Criminalists would be responsible for analyzing samples. The Lab Evidence Technicians would be responsible for performing collections. These FTE would have to maintain certain accreditation requirements such as proficiency tests, training, and membership in scientific organizations. They would require standard office equipment as well as some specialized equipment that is needed for the duties they perform, including 3 new cars for the FTE to travel to locations and collect samples. At this time, there is no accurate way to determine the amount of total "suspended imposition of sentence" cases and misdemeanors, so that cost is unknown to the MHP. However, based on the number of felony convictions, the MHP estimates the cost of the proposal to be \$2,094,455 in FY 04; \$1,721,444 in FY 05; and \$1,772,141 in FY 06. The MHP assumes the majority of the felonies included in the proposed legislation would not be highway related. Although there may be some that are highway related, MHP believes the impact on the Highway Fund would be minimal, and assumes all fiscal impact to the General Revenue Fund.

The proposed legislation could have a direct effect on Total State Revenue.

FISCAL IMPACT - State GovernmentFY 2004
(10 Mo.)

FY 2005

FY 2006

GENERAL REVENUE FUNDCosts – Department of CorrectionsIncarceration/probation costs (various
sections)(More than
\$100,000)(More than
\$100,000)(More than
\$100,000)Costs – Department of Public Safety –
Missouri State Water Patrol (MSWP)
(\$476.054)

Personal Service (1 FTE)

(\$30,760)

(\$37,835)

(\$38,781)

Fringe Benefits

(\$12,449)

(\$15,312)

(\$15,695)

Equipment and Expense

(\$43,722)

(\$12,606)

(\$12,985)

Total Costs – MSWP

(\$86,931)

(\$65,753)

(\$67,461)

Costs – Office of State Public Defender
(\$566)

Personal Service (2.75 FTE)

(\$104,363)

(\$128,366)

(\$131,576)

Fringe Benefits

(\$42,236)

(\$51,950)

(\$53,249)

Equipment and Expense

(\$21,380)

\$0

\$0

Total Costs – SPD

(\$167,979)

(\$180,316)

(\$184,825)

Costs – Office of State Courts
Administrator

Sealing records (§610)

(Unknown)

(Unknown)

(Unknown)

Costs – Missouri State Highway Patrol
(\$650)

Personal Service (5 FTE)

(\$102,541)

(\$126,125)

(\$129,279)

Fringe Benefits

(\$51,670)

(\$63,554)

(\$65,144)

Equipment and Expense

(\$1,940,244)

(\$1,531,765)

(\$1,577,718)

Total Costs – MHP

(\$2,094,455)

(\$1,721,444)

(\$1,772,141)

**ESTIMATED NET EFFECT ON
GENERAL REVENUE FUND****(More than
\$2,449,365)****(More than
\$2,0676,513)****(More than
\$2,124,427)**

CRIMINAL RECORDS SYSTEMS FUND	FY 2004 (10 Mo.)	FY 2005	FY 2006
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Costs – Missouri State Highway Patrol
(\$610)

Personal Service (17 FTE)	(\$302,683)	(\$372,299)	(\$381,607)
Fringe Benefits	(\$152,522)	(\$187,601)	(\$192,292)
Equipment and Expense	<u>(\$248,092)</u>	<u>(\$66,291)</u>	<u>(\$68,280)</u>
<u>Total Costs – MHP</u>	<u>(\$703,297)</u>	<u>(\$626,191)</u>	<u>(\$642,179)</u>

**ESTIMATED NET EFFECT ON
CRIMINAL RECORDS SYSTEMS
FUND**

<u>(\$703,297)</u>	<u>(\$626,191)</u>	<u>(\$642,179)</u>
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HIGHWAY FUND

Costs – Missouri State Highway Patrol
(\$610)

Personal Service (2 FTE)	(\$30,012)	(\$36,915)	(\$37,838)
Fringe Benefits	(\$15,123)	(\$18,601)	(\$19,067)
Equipment and Expense	<u>(\$7,358)</u>	<u>(\$1,298)</u>	<u>(\$1,337)</u>
<u>Total Costs – MHP</u>	<u>(\$52,493)</u>	<u>(\$56,814)</u>	<u>(\$58,242)</u>

**ESTIMATED NET EFFECT ON
HIGHWAY FUNDS**

<u>(\$52,493)</u>	<u>(\$56,814)</u>	<u>(\$58,242)</u>
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FEDERAL FUNDS

Loss – Department of Transportation
Federal funds withheld

\$0	(\$22,000,000)	(\$44,000,000)
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Loss – Department of Revenue
Administrative Sanctions

More than <u>(\$100,000)</u>	More than <u>(\$100,000)</u>	More than <u>(\$100,000)</u>
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**ESTIMATED NET EFFECT ON
FEDERAL FUNDS**

<u>(More than \$100,000)</u>	<u>(More than \$22,000,000)</u>	<u>(More than \$44,000,000)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
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POLITICAL SUBDIVISIONS

<u>Costs – County Prosecuting Attorneys</u>			
Increased caseload (various sections)	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

The proposed legislation would make it a class A felony to manufacture a controlled substance near schools by unlawfully manufacturing a controlled substance within 2,000 feet of any school or school bus. It is currently a class B felony to manufacture a controlled substance. (§195.215)

The proposed legislation would require that appropriate information relating to an offender be provided to the Department of Corrections, including a certified copy of the sentence on a standardized form developed by the Office of the State Courts Administrator. The proposal would add the names and last known address of victims, victim impact statements, facts relating the offender's home environment, and gang affiliations to the information required to be submitted to the Department of Corrections by the prosecutor. The proposal would also require that the information provided to the Department of Corrections by the sheriff regarding the offender's physical and mental health while in jail include records on medication, care, and treatment provided to the offender while in jail. The Sheriff would be required to provide certification of all applicable jail time credit. Violation hearings for offenders who have violated any published rule or regulation of the correctional facility related to conduct would not be contested cases under Chapter 536, RSMo, and hearings would not be subject to the rules of evidence. Decision of these cases would be final and unappealable. (§§217.305, 217.341, 217.380)

The proposed legislation would expand the crime of delivering any controlled substances to prisons to include city or county jails. (§217.360)

BLG:LR:OD (12/02)

DESCRIPTION (continued)

The proposed legislation would make it illegal to install fake air bags in automobiles. A person convicted of this offense would be guilty of a class D felony, punishable by a \$5,000 fine, one year in jail or both. (§307.156)

The proposed legislation would require any statement of a defendant accused of a felony made during a custodial interrogation to be presumed inadmissible as evidence in a criminal proceeding unless: (1) the interrogation is electronically recorded; (2) prior to the statement, but during the recording, the accused was read his or her Miranda rights and those rights were knowingly waived; (3) the recording device was accurate and unaltered; (4) all voices on the recording are identified; and (5) the defendant's attorney is provided with a copy of all recordings no later than 20 days before the date of the proceeding. (§476.054)

The proposed legislation would set out the requirements for a peace officer to obtain a warrant via the telephone. The proposal would allow the prosecuting attorney to give voice authorization to the applicant to affix his or her signature to the application. After the prosecutor's signature is affixed, the applicant would contact a judge who could take an oral statement under oath that is recorded. The proposal would also set out the forms for the application and affidavit for a telephonic search warrant. (§§542.276, 578.160)

The proposed legislation would authorize a thirty hour hold for all persons arrested without a warrant. (§544.170)

The proposed legislation would change the minimum age of the defendant for the crime for murder in the first degree from sixteen to eighteen. (§565.020)

The proposed legislation would create the crime of assault while on the property of an emergency room or trauma center. The crime is defined as knowingly causing physical injury, causing physical injury by means of a deadly weapon, or recklessly engaging in conduct that would create a grave risk of serious physical injury to another person performing his or her official duties when the act occurs in an emergency room, trauma center, or in a vehicle that is providing service to an emergency room or trauma center. Assault while on the property of an emergency room or trauma center would be a class D felony. (§565.078)

DESCRIPTION (continued)

The proposed legislation would create the crime of endangerment of corrections personnel, a class D felony. The proposal would make it a class B felony to put an employee of the Department of Corrections, or a person assigned to work in a jail, prison, or correctional facility in danger of contracting HIV, Hepatitis B, or Hepatitis C through the endangerment of corrections personnel. The proposal would also make it a class A misdemeanor to cause or attempt to cause an employee of the Department of Corrections, or a person assigned to work in a jail, prison, or correctional facility to come into contact with an unidentified substance. (§§454.085, 454.092)

The proposed legislation would prohibit human cloning. Section 565.305 would define “cloning” as the production of a precise genetic copy of a molecule or chromosomes. “Human cloning” would be defined as the creation of or attempt to create a human being by transferring the nucleus from a human cell from whatever source into an oocyte from which the nucleus has been removed. Any individual knowingly engaging or participating in human cloning or using public funds and public facilities for purposes of human cloning would be guilty of a Class B felony. (§565.305)

The proposed legislation would increase the relevant age of a victim in sexual offense crimes from fourteen to sixteen in the following crimes: first degree statutory rape, first degree statutory sodomy, first degree child molestation, sexual abuse as a Class B felony, and sexual misconduct involving a child. The proposal would increase the age of a victim from twelve to fourteen in first degree statutory rape and sodomy cases when a minimum ten year sentence is imposed. This proposal would also increase the age of a victim from fourteen to sixteen when allowing a prosecutor to show evidence of similar offenses by the defendant if the offenses were against victims under the age of 16. (§§566.025, 566.032, 566.062, 566.067, 566.083, 566.100)

The proposed legislation would expand the crime of first degree property damage to include knowingly damaging a motor vehicle while breaking into the vehicle for the purpose of stealing therein, or if the damage occurs during the stealing. Such actions would constitute a class C felony unless it is the second or subsequent such offense, in which case it would be a class B felony. (§569.100)

The proposal would create the crime of stealing if a person is in possession of property possessed pursuant to a short-term rental contract and that person does not return the property at the end of the lease or if the person does return the property but does not pay the lease or rental charge agreed to. The crime would be a class C felony. (§§570.020, 570.030)

DESCRIPTION (continued)

The proposed legislation would make it a Class C felony for any person who knowingly obtains, possesses or uses personal identifying information without the consent of the person and having the intent to obtain anything of value or to avoid legal consequences. The proposal would define “identifying information.” The proposal would also make it a Class C felony for a person to sell, transfer or purchase identifying information with the intent to commit financial identity fraud, or to assist another person in committing financial identity fraud. (§§570.137, 570.138)

The proposed legislation would create the crime of motor vehicle theft if a person appropriates a motor vehicle of another with the purpose to deprive him or her of it, without consent or by means of deceit or coercion. Motor vehicle theft would be a Class C felony. The proposal would create the crime of carjacking when a person obtains unauthorized possession or control of a motor vehicle from another individual in actual possession by intimidation, force, or threat of force. Carjacking would be a Class B felony. This proposal would create the crime of unauthorized use of a vehicle if a person knowingly takes, operates, exercises control over, rides in, or otherwise uses a vehicle without the consent of the owner or has custody of the vehicle pursuant to an agreement with the owner of the vehicle and uses the vehicle in gross deviation from the agreed purpose. Violation of this provision would be a Class A misdemeanor. The proposal would also create the crime of tampering with a motor vehicle if a person knows that he or she does not have the consent of the owner and takes, operated, or otherwise uses a motor vehicle. The crime of tampering would be a Class B misdemeanor. A second violation of this provision would be a Class A misdemeanor. Third and subsequent violations would be a Class D felony. (§§570.400, 570.505, 570.410, 570.415)

The proposed legislation would expand the crime of peace disturbance to include unreasonably and knowingly disturbing or alarming another person or persons by permitting the continued barking of a dog under ones ownership or control. (§574.010)

This proposal would make it a class A misdemeanor to violate the lawful order of a law enforcement officer at the scene of an accident or emergency. The provisions would not apply to emergency personnel when in the performance of their duties. (§574.110)

The proposed legislation would create the crime of unlawful release of anhydrous ammonia, a class B felony, unless the release causes death or serious physical injury to any person, in which case it would be a class A felony. (§577.075)

DESCRIPTION (continued)

The proposed legislation would allow the sealing of court records when the court imposes a suspended sentence and the person successfully completes any court-ordered probation. Once the records are sealed or closed, the arrest, charges, conviction or guilty plea cannot be used for impeachment purposes. A person would not be guilty of perjury if, in a later case, the person failed to disclose the existence of the sealed record. (§§610.106, 610.110)

The proposed legislation would authorize courts to set aside criminal convictions and to expunge criminal records under certain circumstances. Current law allows courts to expunge arrest records if there was no probable cause for the arrest, no charges will be filed, and the subject of the arrest has no criminal convictions. This act adds the additional restriction that the subject not have suspended impositions of sentence (SISs) on his record and that there are no pending investigations regarding the arrest. The proposal would also allow expungement, however, based only upon a finding that no criminal charges have been filed against the subject for 10 years after the arrest. The proposal contains the Missouri Rehabilitation and Sealed Records Act which would authorize a court to set aside a person's criminal convictions and seal a person's criminal record if such person: 1. Has had no more than 1 felony or 2 misdemeanors; 2. Has not been convicted for 10 consecutive years following service of his or her most recent sentence; 3. Has no convictions for violent felonies or a sex-related offense; 4. Has no A or B felony convictions for a drug-distribution offense; 5. Has no convictions on his or her commercial drivers license (CDL) involving a BAC of .04 or higher; and 6. Is at least 25. The proposal would criminalize knowing use or release of records sealed pursuant to the act. Failure to seal or knowingly releasing such records would be a class B misdemeanor and knowing use of the records for financial gain would be a class D felony. (§§610.120, 610.122, 610.130, 610.132, 610.134, 610.136, 610.138, 610.140)

The proposed legislation would remove the option to appeal a determination of whether a person is a sexually violent predator. The proposal would also add that any final judgement made in civil commitments of sexually violent predators could be appealed. (§§632.495, 632.505)

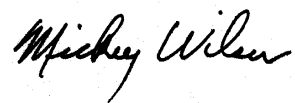
Currently, individuals who are convicted in Missouri of a violent felony offense or of a sex offense are required to submit a biological sample for DNA analysis. This bill would require individuals convicted of any felony offense to submit a sample for DNA analysis and would add individuals who plead guilty and nolo contendere to the list of those required to submit a sample. The proposal would also make DNA records closed records under the Sunshine Law. It would allow the records to be released to listed individuals and would specify purposes for which the records can be used. (§§650.050, 650.052, 650.055)

DESCRIPTION (continued)

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

SOURCES OF INFORMATION

Office of Attorney General
Department of Agriculture
Office of State Courts Administrator
Department of Economic Development
Department of Transportation
Department of Mental Health
Department of Natural Resources
Department of Corrections
Department of Health and Senior Services
Department of Revenue
Department of Social Services
Department of Public Safety
 – Division of Fire Safety
 – Capitol Police
 – Missouri State Water Patrol
 – Division of Liquor Control
 – Missouri State Highway Patrol
Department of Insurance
Department of Conservation
Office of Prosecution Services
Office of Secretary of State
Office of State Public Defender
St. Louis Metropolitan Police Department
Columbia Police Department
Boone County Sheriff



Mickey Wilson, CPA

L.R. No. 0998-04

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