

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0223-04  
Bill No.: Perfected SS for SCS for SB 37  
Subject: Crimes and Punishment; Judges; Sexual Offenses; Civil Penalties  
Type: Original  
Date: April 26, 2019

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Bill Summary: This proposal modifies provisions relating to victims of certain crimes.

**FISCAL SUMMARY**

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
General Revenue	(Less than \$105,239)	(Less than \$112,825)	(Less than \$119,623)	(Less than \$175,135)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(Less than \$105,239)</b>	<b>(Less than \$112,825)</b>	<b>(Less than \$119,623)</b>	<b>(Less than \$175,135)</b>

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses. This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## **FISCAL ANALYSIS**

### **ASSUMPTION**

#### **§567.050 - Prostitution**

In response to a previous version, officials from the **Office of State Public Defender (SPD)** stated they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the proposed enhanced penalties for promoting prostitution if sex trafficking is involved, then the offense would be a new class A felony. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

In FY 2018, SPD's Trial Division opened one felony promoting prostitution case.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

**Oversight** notes over the last three fiscal years, the SPD has lapsed a total of \$152 of General Revenue appropriations (\$0 out of \$36.4 million in FY 2016; \$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018). Therefore, Oversight assumes the SPD is at maximum capacity, and the increase in workload resulting from this bill cannot be absorbed within SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, Oversight assumes the cost for a new APD could approach \$100,000 per year.

**Oversight** assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing appropriation and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

Oversight notes that according to the Office of the State Courts Administrator, there was only 1 guilty plea or verdict for Section 567.050 in FY 2018.

ASSUMPTION (continued)

In response to a previous version, officials from the **Missouri Office of Prosecution Services (MOPS)** assumed the proposal will have no measurable fiscal impact on MOPS. The creation of a new crime creates additional responsibilities for county prosecutors which may, in turn, result in additional costs, which are difficult to determine.

**Oversight** notes that the **Department of Corrections (DOC)** has stated the proposal would not have a direct fiscal impact on their organization.

In response to a previous version, **Oversight** notes that the **Attorney General's Office, Department of Elementary and Secondary Education, Office of Secretary of State, State Technical College of Missouri, Joplin Police Department, Springfield Police Department, St. Louis County Department of Justice Services, St. Louis County Police Department and Boone County Sheriff's Department** stated the proposal would not have a direct fiscal impact on their organizations.

**Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

**Oversight** only reflects the responses that we have received from state agencies and political subdivisions; however, other colleges and universities, and police and sheriffs' departments were requested to respond to this proposed legislation but did not. For a general listing of political subdivisions included in our database, please refer to [www.legislativeoversight.mo.gov](http://www.legislativeoversight.mo.gov).

Senate Amendment (SA) 1:

§441.920 - Victims of certain crimes to be released from certain lease agreements

Officials from the **Department of Corrections (DOC)** assume SA 1 has no additional fiscal impact.

In response to a similar proposal (SCS for SB 60), officials from the **Springfield Police Department** and **Joplin Police Department** assumed the proposal will have no fiscal impact on their respective organizations.

In response to a similar proposal (SB 60), officials from the **St. Louis County Police Department, Boone County Sheriff's Department, and St. Louis County Department of Justice** each assumed the proposal will have no fiscal impact on their respective organizations.

**Oversight** assumes SA 1 will have no fiscal impact on state or local governments.

ASSUMPTION (continued)

Senate Amendment (SA) 2:

§565.021 - Increase in criminal penalties (2<sup>nd</sup> Degree Murder )

Officials from the **Department of Corrections (DOC)** states the bill adds the offense of manufacturing, delivering or distributing a schedule I or II controlled substance that caused or was a contributing factor in the death of a person. At present it is unknown the number of convictions of the providers of the controlled substance, but the DOC is estimating one per year will receive a prison sentence. It is also likely that the offender would be sentenced to a drug offense but the conviction will be concurrent with the murder conviction.

In FY18 the average sentence for 2<sup>nd</sup> degree murder was 21.0 years and offenders will serve 85% of their time before parole. The expected time served is 17.9 years which is beyond the 10 year budget horizon. In FY2029 the population increase is estimated to be 10.

If this impact statement has changed from statements submitted in previous years, it is because the 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 2019 fiscal notes. The new calculation estimates the increase/decrease in caseloads at each Probation and Parole district due to the proposed legislative change. For the purposes of fiscal note calculations, the DOC averaged district caseloads across the state and came up with an average caseload of 51 offender cases per officer. The new calculation assumes that an increase/decrease of 51 cases in a district would result in a change in costs/cost avoidance equal to the cost of one FTE staff person in the district. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

In instances where the proposed legislation would only affect a specific caseload, such as sex offenders, the DOC will use the average caseload figure for that specific type of offender to calculate cost increases/decreases. For instances where the proposed legislation affects a less specific caseload, DOC projects the impact based on prior year(s) actual data. When projecting the impact in those circumstances, DOC uses actual caseload dispersion data to determine the caseload impact per district, and therefore project the number of officers needed.

**ASSUMPTION** (continued)

The DOC cost of incarceration is \$17.224 per day or an annual cost of \$6,287 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.

	# to prison	Cost per year	Total Costs for <b>prison</b>	# to probation & parole	Cost per year	Total cost for <b>probation and parole</b>	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	1.0	(\$6,287)	(\$5,239)	0	absorbed	\$0	(\$5,239)
Year 2	2.0	(\$6,287)	(\$12,825)	0	absorbed	\$0	(\$12,825)
Year 3	3.0	(\$6,287)	(\$19,623)	0	absorbed	\$0	(\$19,623)
Year 4	4.0	(\$6,287)	(\$26,687)	0	absorbed	\$0	(\$26,687)
Year 5	5.0	(\$6,287)	(\$34,026)	0	absorbed	\$0	(\$34,026)
Year 6	6.0	(\$6,287)	(\$41,648)	0	absorbed	\$0	(\$41,648)
Year 7	7.0	(\$6,287)	(\$49,561)	0	absorbed	\$0	(\$49,561)
Year 8	8.0	(\$6,287)	(\$57,774)	0	absorbed	\$0	(\$57,774)
Year 9	9.0	(\$6,287)	(\$66,296)	0	absorbed	\$0	(\$66,296)
Year 10	10.0	(\$6,287)	(\$75,135)	0	absorbed	\$0	(\$75,135)

**Oversight** does not have any information to the contrary. Therefore, Oversight will reflect the impact provided by DOC in the fiscal note.

**Oversight** notes, in response to SB 6, the DOC indicated 1,367 Missouri deaths from drug overdoses were reported during 2017. Oversight determined this is the most recent data available from the Centers for Disease Control and Prevention (CDC).

In response to a similar proposal (SB 223), officials from the **Office of State Public Defender (SPD)** stated they cannot assume that existing staff will provide effective representation for any indigent clients faced with the enhanced penalties for knowingly manufacturing, delivering, or distributing a defined controlled substance and such act causes the death of another person. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

According to the “Missouri Project” (RubinBrown, June 2014), a non-capital homicide case requires 106.6 hours of attorney time (not including travel and in-court time). A felony drug case requires 47.6 hours (not including travel and in-court time). Therefore, for every death occurring

ASSUMPTION (continued)

from the distribution, delivering or manufacturing of a controlled substance and additional 59 hours of attorney time is required ( $106.6 - 47.6 = 59.0$ ). For every 7 deaths occurring, 7 cases would be elevated from an A felony to a murder case, requiring an additional 413 attorney hours.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

**Oversight** notes over the last three fiscal years, the SPD has lapsed a total of \$152 of General Revenue appropriations (\$0 out of \$36.4 million in FY 2016; \$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018). Therefore, Oversight assumes the SPD is at maximum capacity and the increase in workload resulting from this bill cannot be absorbed within SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, Oversight assumes the cost for a new APD could approach \$100,000 per year.

**Oversight** assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

In response to a similar proposal (SB 223), **Oversight** notes that the **Missouri Office of Prosecution Services** stated the proposal would not have a measurable fiscal impact on their organization. However, the creation of a new crime creates additional responsibilities for county prosecutors which may in turn result in additional costs which are difficult to determine.

Bill as a Whole

**Oversight** notes that the **Department of Higher Education, Department of Health and Senior Services, Department of Mental Health, Department of Labor and Industrial Relations, Department of Public Safety - (Capitol Police and Missouri State Highway Patrol), Department of Social Services, Office of Administration, and Office of State Courts Administrator** have stated the proposal would not have a direct fiscal impact on their organizations. 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 - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2029)
<b>GENERAL REVENUE FUND</b>				
<u>Costs - SPD</u> (§567.050) and (§565.021 - SA 2) Salaries, fringe benefits, and equipment and expense	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<u>Costs - DOC</u> (§565.021) (SA 2) Increase in incarceration costs	<u>(\$5,239)</u>	<u>(\$12,825)</u>	<u>(\$19,623)</u>	<u>(\$75,135)</u>
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>(Less than \$105,239)</u></b>	<b><u>(Less than \$112,825)</u></b>	<b><u>(Less than \$119,623)</u></b>	<b><u>(Less than \$175,135)</u></b>
<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2029)
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT - Small Business

Certain small business landlords could be impacted by this proposal.



## FISCAL DESCRIPTION

### §567.050

This act modifies the offense of promoting prostitution in the first degree. A person may be found guilty of such offense if he or she owns, manages, or operates an interactive computer service with the intent to promote or facilitate the prostitution of another. Such offense shall be a Class A felony if the person, in addition to operating an interactive computer service with the intent to promote prostitution while using a facility affecting commerce, acts in reckless disregard of the fact that such conduct contributed to the offense of trafficking for the purposes of sexual exploitation. A person injured by such actions may recover civil damages and restitution.

### §565.021

This act provides that the offense of murder in the second degree is committed when a person knowingly and unlawfully manufactures, delivers, or distributes a Schedule I or II controlled substance, excluding marijuana for medical use, and thereafter the controlled substance is the proximate cause of the death of another person who uses or consumes it. It shall not be a defense that the defendant did not directly deliver or distribute the controlled substance to the decedent.

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

Attorney General's Office  
Department of Elementary and Secondary Education  
Department of Corrections  
Department of Health and Senior Services  
Department of Higher Education  
Department of Labor and Industrial Relations  
Department of Mental Health  
Department of Public Safety -  
    Capitol Police  
    Missouri State Highway Patrol  
Department of Social Services  
Missouri Office of Prosecution Services  
Office of Administration  
Office of State Courts Administrator  
Office of Secretary of State

SOURCES OF INFORMATION (continued)

State Public Defender's Office  
Joplin Police Department  
Springfield Police Department  
St. Louis County Department of Justice Services  
St. Louis County Police Department  
Boone County Sheriff's Department  
State Technical College of Missouri



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