

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1657-04
Bill No.: SCS for SB 293
Subject: Crimes and Punishment; Liability; Railroads; Telecommunications; Utilities;
Water Resources and Water Districts
Type: #Updated
Date: May 1, 2019
#To reflect revised responses from the Department of Corrections and the State Public Defender

Bill Summary: This proposal creates new criminal offenses involving critical infrastructure facilities.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2025)
#General Revenue	(Could exceed \$349,544)	(Could exceed \$493,684)	(Could exceed \$622,837)	(Could exceed \$722,012)
#Total Estimated Net Effect on General Revenue	(Could exceed \$349,544)	(Could exceed \$493,684)	(Could exceed \$622,837)	(Could exceed \$722,012)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2025)
Total Estimated Net Effect on <u>Other</u> 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 2020	FY 2021	FY 2022	Fully Implemented (FY 2025)
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 2020	FY 2021	FY 2022	Fully Implemented (FY 2025)
#General Revenue	3	3	3	3
Total Estimated Net Effect on FTE	3	3	3	3

☒ 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 2025)
#Local Government	Unknown or (Unknown)	Unknown or (Unknown)	Unknown or (Unknown)	Unknown or (Unknown)

FISCAL ANALYSIS

ASSUMPTION

§569.086 - Critical infrastructure facilities

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** state they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the proposed new crime of unlawful trespass on a critical infrastructure facility - a new class B misdemeanor. If the intent was to damage, the offense is a new class A misdemeanor. If there is damage, the offense would be a new class C felony. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

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.

Oversight notes that according to the Office of the State Courts Administrator, there was 1,281 guilty pleas or verdicts for Section 569.140 (Trespass - 1st degree) and 9 guilty pleas or verdicts for Section 569.145 (Trespass on Real Property Marked as Required) in FY18. Both of these offenses are class B misdemeanors.

ASSUMPTION (continued)

#The SPD obtained information stating there were more than 10,000 incidents in Missouri each year where telecommunication and/or utility lines were disrupted and, this act would now become a new class C felony as infrastructure destruction; therefore, the SPD is revising its response. The SPD assumes that at least 10 percent of these incidents would be caused by indigent persons such as landscapers, hourly construction workers, and other who would qualify for public defender services. Therefore, approximately 1,000 new class C felony cases would require at least an additional three (3) public defenders.

#**Oversight** inquired SPD and MOPS regarding the number of online Missouri one-call system (MOCS) dig up tickets and if that could contribute to additional cost for C class felonies from this proposal. SPD stated if a minimum of 10% are indigent, then at least an additional three attorneys will be needed by SPD for this proposal. Three additional Assistant Public Defender II (at \$52,100 per year) will cost the state approximately \$243,000 per year in personal service and fringe benefit costs. If you include expense and equipment costs such as travel, training, furniture, equipment, and supplies, Oversight assumes the cost for three new APDs could approach \$250,000 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 (Could exceed \$250,000) to the General Revenue Fund.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume 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 the following dig-up tickets were reported in the following years to the online Missouri one-call system (MOCS), not including water or sewer: 2016 - 9,702; 2017 - 10,348 and 2018 - 10,477. Excavators are required to file these tickets if they damage an underground facility, which could indicate an annual estimated number of class C felonies created by this proposal. These would cover buried electrical, gas, telephone, fiber and broadband. Oversight assumes this could additionally increase the number of potential felonies and would, therefore, increase the cost of DOC's and SPD's estimates above.

#**Oversight** notes that the **Department of Public Safety (Missouri State Highway Patrol and State Emergency Management Agency), Office of State Courts Administrator, and Metropolitan St. Louis Sewer District** have each stated the proposal would not have a direct fiscal impact on their organizations.

ASSUMPTION (continued)

#Originally, **Department of Corrections (DOC)** stated the proposal would not have a direct fiscal impact on their organization. However, upon further review, this version removes “willful” from the language in this section.

#Officials from the **DOC** now state the proposed legislation creates new criminal offenses involving critical infrastructure facilities.

#Although the intent of the legislation is to protect important structures from terrorist attack or other intentional damage, the wording removes knowingly from the definition of damage and sets no value on property damage. The offense can, therefore, be applied to accidental damage. In addition, because there is no value limit on the damage, the offenses could be applied to misdemeanor property damage. Both of these omissions could expand the number of offenders under this section in comparison to property damage under current statutes. Felony property damage requires knowingly causing \$750 damage or more. Most property damage is less than \$750 and is a misdemeanor. In FY18, OSCA reports 1,072 misdemeanors. If these offenses were against a critical infrastructure then the penalty would be a class C felony.

#Most property damage is likely to be residential and how much is critical infrastructure is an unknown. In FY18, there were 30 prison admissions and 140 probations for felony property, which means 18 percent received a prison sentence. Estimating how many offenders who would have been sentenced to prison for the misdemeanor is also an unknown but is likely to be less than 18 percent. Despite the unknowns, some estimate is required because there is a significant likelihood that many offenders could be sentenced under this section.

#The Effect of the New Legislation

Assuming that 10 percent of all property damage is on critical infrastructure and of those 15 percent are sentenced to prison to serve a sentence of 5.9 years (average sentence for a nonviolent class felony) and serve 40 percent before parole, the impact would be an additional 68 offenders in prison by FY23.

#Sentenced: Prison 19 (serve 2.4 years in prison and 3.9 years on parole)
Probation 106 (serve 3 years)

ASSUMPTION (continued)

#

Change in prison admissions with the proposed legislation

	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
New Admissions										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	19	19	19	19	19	19	19	19	19	19
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	106	106	106	106	106	106	106	106	106	106
Change (After Legislation - Current Law)										
Admissions	19	19	19	19	19	19	19	19	19	19
Probations	106	106	106	106	106	106	106	106	106	106
Cumulative Populations										
Prison	19	38	57	68	68	68	68	68	68	68
Parole	0	0	0	8	27	44	44	44	44	44
Probation	106	212	318	318	318	318	318	318	318	318
Impact										
Prison Population	19	38	57	68	68	68	68	68	68	68
Field Population	106	212	318	326	345	362	362	362	362	362
Population Change	125	250	375	394	413	430	430	430	430	430
P&P Officers + or -	0	0	0	0	0	0	0	0	0	0

#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 prison	# to probation & parole	Cost per year	Total cost for probation and parole	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	19	(\$6,287)	(\$99,544)	106	absorbed	\$0	(\$99,544)
Year 2	38	(\$6,287)	(\$243,684)	212	absorbed	\$0	(\$243,684)
Year 3	57	(\$6,287)	(\$372,837)	318	absorbed	\$0	(\$372,837)
Year 4	68	(\$6,287)	(\$453,683)	326	absorbed	\$0	(\$453,683)
Year 5	68	(\$6,287)	(\$462,757)	345	absorbed	\$0	(\$462,757)
Year 6	68	(\$6,287)	(\$472,012)	362	absorbed	\$0	(\$472,012)
Year 7	68	(\$6,287)	(\$481,452)	362	absorbed	\$0	(\$481,452)
Year 8	68	(\$6,287)	(\$491,082)	362	absorbed	\$0	(\$491,082)
Year 9	68	(\$6,287)	(\$500,903)	362	absorbed	\$0	(\$500,903)
Year 10	68	(\$6,287)	(\$510,921)	362	absorbed	\$0	(\$510,921)

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

In response to a previous version, **Oversight** notes the **City Utilities of Springfield Missouri** stated the proposal would not have a direct fiscal impact on their organization.

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 utilities, water districts, sewer districts, solid waste districts and levee districts 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.

ASSUMPTION (continued)

Oversight assumes that if there are fines assessed from these provisions, the fine revenue would be paid to the local school districts. For simplicity, Oversight will not reflect the possibility that fine revenue paid to school districts may act as a subtraction in the foundation formula the following year.

#Oversight assumes, based on the revised number of cases from DOC & SPD, that the local prosecutors could incur additional expenses as well. Therefore, Oversight will reflect an unknown amount of expense to prosecutors.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2025)
GENERAL REVENUE FUND				
<u>#Costs - SPD</u> (\$569.086)				
Salaries, fringe benefits, and equipment and expense	(Could exceed \$250,000)	(Could exceed \$250,000)	(Could exceed \$250,000)	(Could exceed \$250,000)
FTE Change - SPD	3 FTE	3 FTE	3 FTE	3 FTE
<u>#Costs - DOC</u> (\$569.086)				
Increased incarceration costs	(\$99,544)	(\$243,684)	(\$372,837)	(\$472,012)
#ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Could exceed \$349,544)</u>	<u>(Could exceed \$493,684)</u>	<u>(Could exceed \$622,837)</u>	<u>(Could exceed \$722,012)</u>
<u>#Estimated Net FTE</u> Change on the General Revenue Fund	3 FTE	3 FTE	3 FTE	3 FTE

FISCAL IMPACT -
Local Government

	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2025)
LOCAL POLITICAL SUBDIVISIONS				

Fine Revenue -
 school districts -
 from violations of
 Section 569.086

\$0 or Unknown \$0 or Unknown \$0 or Unknown \$0 or Unknown

#Costs - County
 prosecutors

(Unknown) (Unknown) (Unknown) (Unknown)

**#ESTIMATED
 NET EFFECT TO
 LOCAL
 POLITICAL
 SUBDIVISIONS**

Unknown or **Unknown or** **Unknown or** **Unknown or**
(Unknown) **(Unknown)** **(Unknown)** **(Unknown)**

FISCAL IMPACT - Small Business

This proposal may impact small businesses with “critical infrastructure” facilities.

FISCAL DESCRIPTION

This act creates new provisions of law relating to criminal offenses involving critical infrastructure facilities, as such term is defined in the act.

A person commits the offense of trespass on a critical infrastructure facility if he or she unlawfully trespasses or enters property containing a critical infrastructure facility without permission. The offense of trespass on a critical infrastructure facility is a Class B misdemeanor. If it is determined that the intent of the trespasser is to damage, destroy, vandalize, deface, tamper with equipment, or impede or inhibit operations of the facility, the person shall be guilty of a Class A misdemeanor.

A person commits the offense of damage of a critical infrastructure facility if he or she damages, destroys, vandalizes, defaces, or tampers with equipment in a critical infrastructure facility. The offense of damage of a critical infrastructure facility is a Class C felony.

FISCAL DESCRIPTION (continued)

If an organization is found to be a conspirator with persons who have committed any of the offenses set forth in the act, the organization shall be punished by a fine that is ten times the amount of the fine attached to the offense.

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 Corrections
Department of Public Safety -
 Missouri State Highway Patrol
 State Emergency Management Agency
Missouri Office of Prosecution Services
Office of State Courts Administrator
State Public Defender's Office
City Utilities of Springfield Missouri
Metropolitan St. Louis Sewer District



Kyle Rieman
Director
May 1, 2019

Ross Strobe
Assistant Director
May 1, 2019