

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1115-01
Bill No.: SB 245
Subject: Department of Corrections; Courts; Crimes and Punishment; Criminal Procedure;
Prisons and Jails; Probation and Parole; Judges
Type: Original
Date: February 6, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
General Revenue Fund	Could exceed \$100,000	Could exceed \$100,000	Could exceed \$100,000
Total Estimated Net Effect on <u>All</u> State Funds	Could exceed \$100,000	Could exceed \$100,000	Could exceed \$100,000

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 6 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Prosecution Services** and the **Department of Public Safety - Missouri National Guard** assume this proposal would have no fiscal impact to their agencies.

Officials from the **Department of Public Safety - Missouri State Highway Patrol (MHP)** assume the proposed legislation would have no fiscal impact on their agency. The MHP assumes there would be an economic impact on small businesses because more offender treatment programs would be needed to handle the increase in cases.

Officials from the **Department of Public Safety - Missouri State Water Patrol (MWP)** assume the proposal would require the MWP to obtain a yearly independent audit of the federal seizure funds. The MWP received an estimate from a CPA firm, which started at \$1,500 for an independent audit. This fee includes approximately 6 transactions and the reporting. The cost of the independent audit would deplete the agency's limited funds.

Oversight assumes the proposal does not add any new audit requirements. Therefore, Oversight has reflected no fiscal impact to MWP as a result of this proposal.

Officials from the **Office of the State Public Defender (SPD)** assume that existing staff could provide representation for the armed criminal action charges that have been elevated to greater penalties. However, restitution hearings would require additional staff. This fiscal note assumes a minimum of 104 restitution hearings to determine the amount due to a victim of a crime. Each hearing would take a minimum of 40 hours of attorney time to prepare and conduct the hearing. SPD would request 2.0 FTE Assistant Public Defenders (\$33,360) plus fringe benefits, equipment, and operating expenses to carry out the provisions of this proposal.

Oversight assumes the proposal does not require additional restitution hearings. Therefore, Oversight has reflected no fiscal impact to the SPD as a result of this proposal.

Officials from the **State Courts Administrator (CTS)** assume the provision requiring judges to make written findings stating the reasons for any deviation from the recommended sentence in Chapter 195 would cause an increased workload for judges, depending on how often the sentence deviates. However, CTS officials would not anticipate a significant impact on the workload of the judiciary.

Officials from the **Office of Attorney General (AGO)** would anticipate that the proposal would result in additional appeals work for its Criminal Appeals Unit. For this additional work, the AGO would request four additional AAG I's and one Legal Secretary.

ASSUMPTION (continued)

AGO officials assume that, in 60% of all appellate briefs (in which the State is typically the respondent), the defendant would raise the issue of whether the court's sentence was appropriate in light of the Sentencing Commission's recommendations. Given the number of appeals filed by defendants in 1998 (857), the sentence would be raised as a point on appeal in 514 cases, assuming the number filed remains constant.

While many of these would simply contain an additional point on appeal, AGO officials also project that a small number of new appeals (25) would be filed as a result of this proposal.

Based on the above, AGO officials estimate they would request four new AAG I's and a Legal Secretary to handle additional appeals and points on appeal.

Oversight assumes for purposes of this fiscal note that the majority of judges would choose to follow the recommendations of the sentencing advisory commission. If the recommendations were followed, the sentences could be reduced. If sentences were reduced, Oversight assumes the likelihood that an appeal would be filed would be reduced. If in those cases in which the sentencing recommendations were not followed, and a more severe penalty was imposed, an additional point on appeal could be raised, Oversight assumes the appeals process could become slightly more protracted, but the impact should not be significantly different than the existing appeals load. Oversight assumes the number of cases in which the sentencing recommendations were followed resulting in fewer appeals would offset those cases in which the sentencing recommendations were not followed resulting in more protracted appeals. Therefore, Oversight would not anticipate any significant impact on the AGO. If, however, as a direct result of this proposal, the AGO would experience an increase in the number of appeals, Oversight assumes this could be addressed through the normal budget process.

Officials from the **Department of Corrections (DOC)** stated that the proposal's intent appears to be that the courts utilize probation whenever practical as an alternative to incarceration.

The DOC was unable to forecast the total number of court decisions the proposal would affect, however DOC assumes a greater percentage of that number would result in probation and a smaller percentage would result in prison commitment. Based on FY99 averages, incarceration cost is \$35.61 per inmate, per day, and supervision cost is \$2.47 per offender, per day. DOC officials stated the fiscal impact is unknown, but would anticipate savings resulting from fewer prison commitments.

Oversight assumes the unknown savings could exceed \$100,000.

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
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GENERAL REVENUE FUND

Savings - Department of Corrections
(DOC)

Fewer prison commitments	Could exceed \$100,000	Could exceed \$100,000	Could exceed \$100,000
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ESTIMATED NET EFFECT TO GENERAL REVENUE FUND	Could exceed <u>\$100,000</u>	Could exceed <u>\$100,000</u>	Could exceed <u>\$100,000</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
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\$0	\$0	\$0
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FISCAL IMPACT - Small Business

The proposal could result in a fiscal impact on small businesses due to the need of more offender treatment programs to handle the increase in cases.

DESCRIPTION

This proposal would revise numerous sentencing provisions. It would allow judicial discretion in determining whether the prior and persistent drug sentencing provisions should apply, or whether the court should instead order seizure of any assets directly related to the commission of the offense and an approved treatment program.

The proposal requires probation and parole, prior to sentencing, to provide the judge with a report on the available alternatives to incarceration in all felony cases in which the recommended sentence established by the sentencing advisory commission includes probation but the recommendation of the prosecuting attorney does not include probation.

Courts shall impose sentencing in all criminal trials after verdict or plea, except for first degree murder. This proposal would require courts to consider the sentencing commission guidelines. Pre-sentence investigations would include the recommended sentence established by the sentencing commission, a description of the impact of the crime upon the victim, and available alternatives to incarceration, including opportunities for restorative justice. The maximum penalty for a class D felony would be reduced from five to four years; the maximum penalty for a

DESCRIPTION (continued)

class C felony would be increased from seven to eight years. Extended sentencing terms for persistent offenders would be deleted.

In all cases involving violations of Chapter 195, RSMo, the court would have discretion to deviate from recommended guidelines, but would be required to enter written findings for any deviation for statistical purposes only. The findings shall be sent to the sentencing commission and made part of the offender's probation and parole record. Failure to enter written findings in these cases, when the sentence ordered is in excess of the guidelines, would authorize but not require the Board to adjust the sentence to bring it into compliance with the guidelines. If the court suspends the imposition or execution of any sentence, the court could consider various restorative justice methods, such as restitution, community service, or work release programs. Detention would be a condition of probation, instituted by order of court or at the discretion of the board of probation or parole.

The proposal would allow persons convicted of statutory rape in the first degree and statutory sodomy in the first degree, who have no prior convictions for either crime, to be eligible for assessment by the sexual offender treatment unit of the Department of Corrections. The crimes of pharmacy robbery in the 1st degree and pharmacy robbery in the 2nd degree would be repealed.

The proposal would make it a class D felony to plead guilty or be found guilty of stealing if the person has previously pled guilty or been found guilty of stealing on 2 separate occasions. This is currently a class C felony.

Armed criminal action would be limited to firearms, knives over 4 inches, and explosives, instead of dangerous instrument or deadly weapon. The first offense would be a class C felony; second offense committed at a different time, a class B felony; and third offense, committed at different times, a class A felony. Defendants convicted of armed criminal action could be eligible for parole, probation, conditional release or suspended imposition or execution of sentence. This proposal would retain the minimum sentence requirements for armed criminal action.

The independent audit required of law enforcement agencies involved in federal forfeitures would be provided to the Department of Public Safety (DPS), as well as to the governing body of the agency. DPS would not issue funds to any law enforcement agency that failed to comply.

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

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

Department of Public Safety

- Missouri State Highway Patrol
- Missouri State Water Patrol
- Missouri National Guard

Office of the State Public Defender

Office of Prosecution Services

Office of State Courts Administrator

Department of Corrections

Office of the Attorney General



Jeanne Jarrett, CPA
Director

February 6, 2001