

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4928-01
Bill No.: SB 1252
Subject: Courts; Crimes and Punishment; Criminal Procedure; Judges; Juries; Evidence;
Law Enforcement Officers and Agencies; Department of Public Safety
Type: Original
Date: April 2, 2002

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
General Revenue	(\$389,068 to Unknown)	(\$475,720 to Unknown)	(\$490,285 to Unknown)
Total Estimated Net Effect on <u>All</u> State Funds	(\$389,068 to Unknown)	(\$475,720 to Unknown)	(\$490,285 to Unknown)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Local Government	More than (\$108,000)	More than (\$108,000)	More than (\$108,000)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 8 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Public Defender, Missouri House of Representatives, Missouri Senate**, and the **Office of the Governor** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of Attorney General** assume the costs of the proposed legislation are unknown because it is unclear how many cases the Attorney General might be called upon to serve on the prosecutor panel to determine whether witness testimony is reliable.

Oversight assumes the 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 Corrections (DOC)** assume proposed Section 491.053, which is designed to prevent manipulation of and abuse of jail house informants by prosecutors and/or police in criminal prosecutions, could make it more difficult, costly, and/or time consuming for local prosecutors to successfully charge and prosecute inmate offenders for crimes against inmates, staff, etc. while incarcerated to a DOC facility where the witnesses who would hear “incriminating admissions” are very likely to be fellow inmates who are not co-defendants. Fiscal impact for the DOC is unknown.

Officials from the **Springfield Police Department** assume the proposal would result in additional training, which is estimated to be a minimum of \$8,000 to \$10,000 per year.

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation modifies various aspects of law as they relate to the criminal justice system. Among others, the proposal establishes three categories for a dismissal or nolle pros by the prosecuting attorney that can be requested by the defendant: no finding, actually innocent, or legally innocent. The defendant on a “no finding” by the prosecuting attorney may request a hearing before the judge assigned to the case before it was disposed of and, if the defendant presents clear and convincing evidence to the court, then the court may amend the finding accordingly. The defendant’s request for a hearing shall be made within twenty days of receiving notice of the dismissal or nolle pros, and a hearing shall be held within forty-five days of the request being filed by the court.

In FY 2001, there were 3,050 felony cases; 9,820 felony preliminaries; and 38,050 misdemeanor cases that were dismissed by the state. CTS has no way of determining how the prosecutor would classify the dismissal, nor how many defendants would subsequently petition the court for a hearing. If the number was found to be significant, this increased workload would be addressed ASSUMPTION (continued)

in future budget requests.

The legislation also imposes a \$1.00 court fee on criminal cases in which there is a plea or finding of guilt. Seventy-five cents of the fee is to be used to conduct DNA testing of individuals who are currently incarcerated, and twenty-five cents is to be used by the committee for accreditation testing and auditing of crime laboratory facilities that is established by the bill. In FY 2001, there were 24,456 felony cases disposed by guilty plea, and another 931 disposed by trial where we do not know what the number of “guilties” would be. Assuming that 100% were found guilty, which is unlikely, there would be approximately \$20,300 collected, based on an 80% collection average for criminal cases.

Officials from the **Office of Secretary of State (SOS)** assume the proposal modifies various aspects of the criminal justice system, including the formation of a “Laboratory Oversight Committee,” and sets a standard compensation level for Missouri law enforcement. The Laboratory Oversight Committee and the director of the Department of Public Safety shall have the authority to promulgate rules to implement this legislation. 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 Laboratory Oversight Committee and the director of the Department of Public Safety could require as many as 8 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 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 \$492 in FY 03 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 because it 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 **Office of Prosecution Services (OPS)** assume Section 610.105.2 will result in costs to the OPS and the local prosecutors. The OPS will require 2 file cabinets and 1/4 FTE Administrative Assistant to file the reports received from local prosecutors. The local prosecutors will incur significant costs to review cases. The costs to prosecutors will be more than \$100,000 per year.

Oversight assumes the OPS will absorb the cost of the FTE Administrative Assistant within existing resources.

ASSUMPTION (continued)

Officials from the **Department of Public Safety – Missouri State Highway Patrol (MHP)** assume their Information System Division would require one FTE Computer Information Technology Specialist I (at \$41,556 per year, plus fringe benefits, equipment and expense) to develop, implement, and maintain an application in the Missouri Uniform Law Enforcement System where witness names would be placed.

The MHP's Crime Lab Division would see a significant impact with the \$1 fee on felony convictions, as it would only generate a portion of the cost of analysis and accreditation fees. The Crime Lab's research indicates that there are approximately 17,000 felony convictions each year. The cost to develop a DNA profile is about \$42 (\$20 reagent cost and \$22 personnel cost) per sample. The Crime Lab's cost for the 17,000 felony convictions is \$714,000. The proposed legislation would generate approximately \$12,750 (17,000 x \$.75), which is a fraction of the actual cost of analysis. The cost for accreditation of the six laboratories in the MHP Crime Lab System is approximately \$8,200 each year (and \$10,000 every fifty year when an outside inspection is conducted). The proposed legislation would only generate \$4,250 (17,000 x \$.25), which is approximately ½ of the cost for accreditation of the MHP labs.

The MHP estimates the cost of the proposed legislation to be \$643,920 for 10 months of FY 03; \$789,778 in FY 04; and \$813,157 in FY 05. MHP estimates the revenue generated from the \$1 fee to be \$14,167 for 10 months of FY 03; \$17,510 in FY 04; and \$18,035 in FY 05. MHP estimates the net cost to be \$643,920 for 10 months of FY 03; \$789,778 in FY 04; and \$813,157 in FY 05.

Oversight assumes, based on information received from the Office of State Courts Administrator, that the revenue generated from the \$1 fee will be \$16,917 for 10 months of FY 03; and \$20,300 in FY 04 and FY 05. Oversight also assumes \$.75 out of every \$1.00 will be used for DNA testing of currently incarcerated individuals, as stipulated in the proposed legislation. The Department of Corrections projects the average daily prison population to be 29,819 during FY 03. Oversight assumes the DNA testing of currently incarcerated individuals will be phased in, with approximately 10,000 incarcerates tested each year. This estimate does not consider inmates whom have already been DNA tested and are already in the DNA database. Therefore, the actual cost to the MHP would be less than these estimated costs. Oversight further assumes the MHP is currently incurring the cost for accreditation of its six crime laboratories. Therefore, no additional accreditation expense would be incurred due to the proposed legislation.

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
GENERAL REVENUE FUND			
<u>Income</u> – Department of Public Safety – Laboratory Oversight Committee			
Court fee on criminal cases	\$16,917	\$20,300	\$20,300
<u>Costs</u> – Department of Public Safety – Laboratory Oversight Committee – to Missouri State Highway Patrol			
DNA Testing/Database (75%)	(\$12,688)	(\$15,225)	(\$15,225)
Accreditation/Auditing Labs (25%)	<u>(\$4,229)</u>	<u>(\$5,075)</u>	<u>(\$5,075)</u>
Total Costs – Department of Public Safety – Laboratory Oversight Committee	(\$16,917)	(\$20,300)	(\$20,300)
<u>Income</u> – Missouri State Highway Patrol			
For DNA Testing/Database	\$12,688	\$15,225	\$15,225
For Accreditation/Auditing Labs	<u>\$4,229</u>	<u>\$5,075</u>	<u>\$5,075</u>
Total Income – MHP	\$16,917	\$20,300	\$20,300
<u>Costs</u> – Missouri State Highway Patrol			
Personal Service	(\$35,496)	(\$43,660)	(\$44,751)
Fringe Benefits	(\$15,533)	(\$19,106)	(\$19,583)
Equipment and Expense	<u>(\$353,856)</u>	<u>(\$433,254)</u>	<u>(\$446,251)</u>
Total Costs – MHP	(\$404,885)	(\$496,020)	(\$510,585)
<u>Costs</u> – Department of Corrections			
Incarceration/Probation costs	(Unknown)	(Unknown)	(Unknown)
<u>Costs</u> – Office of Prosecution Services			
Equipment and expense	<u>(\$1,100)</u>	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	(\$389,068 to <u>Unknown</u>)	(\$475,720 to <u>Unknown</u>)	(\$490,285 to <u>Unknown</u>)

<u>FISCAL IMPACT - Local Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
POLITICAL SUBDIVISIONS			
<u>Costs – Local Law Enforcement</u>	More than	More than	More than
Training costs	(\$8,000)	(\$8,000)	(\$8,000)
<u>Costs – Prosecutors</u>	More than	More than	More than
Review cases	<u>(\$100,000)</u>	<u>(\$100,000)</u>	<u>(\$100,000)</u>
ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS	<u>More than (\$108,000)</u>	<u>More than (\$108,000)</u>	<u>More than (\$108,000)</u>

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 provide that the POST program incorporate into their training programs a standard protocol for interviewing witnesses when the identity of the suspect is unknown and for composing and conducting photo and line-up identifications. In any case in which the protocol was not followed, the finder of fact in a trial would be given an instruction that eyewitness evidence may be influenced by a number of factors and that subsequent improperly supervised exposure to an individual with similar characteristics to the perpetrator has resulted in the adoption by a witness of that individual as the suspect.

The proposal would provide that if a witness for the state witnessed an incriminating admission by a defendant while the witness was also incarcerated, and is not a co-defendant, such testimony would be considered unreliable and inadmissible unless the witness passes a two-step review process. First, a review panel of three prosecutors would determine whether the testimony is sufficiently corroborated to ensure reliability. Second, the judge would determine in a pre-trial proceeding whether the testimony shall be admitted.

The proposal would create a Laboratory Oversight Committee which would provide independent review of laboratory operations and analysis. The Committee would have the authority to appoint an ombudsman, issue reprimands and probations, and establish rules for laboratory personnel. A fee of \$1.00 would be assessed on each felony and finding of guilt to be allocated to the Committee.

DESCRIPTION (continued)

The proposal would provide that the Director of Public Safety promulgate a standard compensation level for Missouri law enforcement officers which would differentiate between rural and urban pay standards and between new officers and those with experience.

The proposal would require all chief law enforcement officers to maintain a monthly report of arrested individuals with information regarding name, gender, age, race, name of arresting officer and whether the charge was submitted to the prosecuting attorney. The monthly reports would be totaled and submitted to the Department of Public Safety annually. The names and other personal identifiers would not be a public record, unless they otherwise qualify.

The proposal would provide that if a prosecutor dismisses a charge or nolle prosequi a complaint, he or she, upon request, would enter a finding that the individual who was charged is either legally innocent or actually innocent, or enter no finding at all.

The proposal would abolish the rule of negative inferences as it pertains to criminal cases, and allow evidence as to whether tests were conducted which could include or exclude a defendant as the perpetrator.

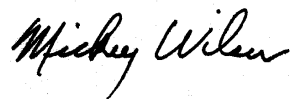
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General
Office of State Public Defender
Missouri House of Representatives
Office of the Governor
Office of State Courts Administrator
Office of Prosecution Services
Missouri Senate
Department of Corrections
Office of Secretary of State
Department of Public Safety
 – Missouri State Highway Patrol
Springfield Police Department

NOT RESPONDING

Boone County Sheriff
Cole County Sheriff
Greene County Sheriff
Jackson County Sheriff
St. Charles County Sheriff
St. Louis County Police Department
Kansas City Police Department
Jefferson City Police Department
Columbia Police Department

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Acting Director

April 2, 2002