

### Fiscal Estimate - 2005 Session

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>05-3109/1</b>	<b>Introduction Number</b> <b>SB-289</b>
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**Subject**  
 Penalties for and supervision of certain sex offenders

**Fiscal Effect**

**State:**

<input type="checkbox"/> No State Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Increase Existing Appropriations		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriations		
<input type="checkbox"/> Create New Appropriations		<input type="checkbox"/> Decrease Costs

**Local:**

<input checked="" type="checkbox"/> No Local Government Costs		
<input type="checkbox"/> Indeterminate		
1. <input type="checkbox"/> Increase Costs	3. <input type="checkbox"/> Increase Revenue	5. Types of Local Government Units Affected
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
2. <input type="checkbox"/> Decrease Costs	4. <input type="checkbox"/> Decrease Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
		<input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities
		<input type="checkbox"/> Counties <input type="checkbox"/> Others
		<input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts

<b>Fund Sources Affected</b>	<b>Affected Ch. 20 Appropriations</b>
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	20.410 (1) (a) and 20.410 (1) (b) or 20.410 (1) (ab)

<b>Agency/Prepared By</b> DOC/ Cathy Halpin (608) 240-5538	<b>Authorized Signature</b> Robert Margolies (608) 240-5056	<b>Date</b> 9/12/2005
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**Fiscal Estimate Narratives**  
**DOC 9/13/2005**

LRB Number <b>05-3109/1</b>	Introduction Number <b>SB-289</b>	Estimate Type <b>Original</b>
<b>Subject</b> Penalties for and supervision of certain sex offenders		

**Assumptions Used in Arriving at Fiscal Estimate**

This bill increases the penalties for certain sexual assault offenses against a person involving force or violence, or threat of force or violence and increases penalties for refusal of court-ordered, prison-based, sex offender evaluations or sex offender treatment. This bill also includes certain sex offenses under the two-strikes law and requires Courts to place certain sex offenders on lifetime supervision.

**INCREASED PENALTIES FOR SEXUAL ASSAULT OFFENSES AGAINST A PERSON INVOLVING FORCE OR VIOLENCE (VICTIM 16 OR OLDER):**

This bill changes a sexual assault offense that involves force or violence, or threat of force or violence, from a 2nd degree sexual assault to a 1st degree sexual assault offense. The penalty would increase from a Class C felony (max of 25 years confinement time and 15 years extended supervision) to a Class B felony (max of 40 years confinement time and 20 years extended supervision).

Data indicates the current average confinement time for a person convicted of 2nd degree sexual assault equals approximately 11 years for new admissions during 2004. [135 months] The average prison time for a person convicted of 1st degree sexual assault is nearly 22 years [261 months] during that same time period. Thus, it is assumed that every offender convicted of this crime could potentially serve an average additional 10.5 years in prison, before being released to extended supervision. Since this increase would be at the latter portion of an offender's sentence, the Department would not see the impact of this change immediately. For every additional year of prison confinement the Department's costs would increase \$26,085 per offender in current dollars. Conversely, if the Department contracted for these beds at the current \$51.46 rate, the annual cost of incarceration would be \$18,783. In CY04 there were 147 persons admitted to prison for 2nd-degree sexual assault. It is assumed that this data is representative of future statistics. Thus, it is estimated that 147 offenders a year will be incarcerated for an additional 10.5 years, and an additional 147 offenders will remain in prison for 10.5 additional years in every subsequent year. Annual costs would increase from \$2,761,100 [contracts] to \$3,834,500 [in state] beginning in the 12th year to \$28,991,400 [contracts] to \$40,262,200 [in state] annually by the 22nd year, for an additional 1,617 offenders who would not otherwise be incarcerated during that period.

**INCREASED PENALTIES FOR SEXUAL ASSAULT OFFENSES AGAINST A PERSON AGE 13, 14, OR 15 INVOLVING FORCE OR VIOLENCE:**

The bill changes a sexual assault of a child age 13, 14 or 15 that involves the threat or use of force or violence from a second degree sexual assault to a first degree sexual assault of a child, thus increasing the penalty from a Class C felony to a Class B felony.

Available DOC data about registered sex offenders who have been convicted of second degree sexual assault against a child indicates that approximately two-thirds of such offenders have offense patterns that include the threat or use of force or violence.

Offenders admitted to prison in CY04 with a new sentence and convicted of 1st degree sexual assault of a child have been sentenced to serve confinement time averaging approximately 175 months [14.5 years]. There were 123 offenders admitted to prison in CY04 with a new sentence and convicted of 2nd degree sexual assault of a child. These offenders

have been sentenced to serve confinement time averaging approximately 84 months [7 years]. If it is assumed that two-thirds of the offenders convicted of 2nd degree sexual assault of a child threatened or used force, the Department could expect to incarcerate an additional 82 offenders each year beginning in Year 8 for an additional 7.5 years [difference between 14.5 and 7 years] at an annual cost of approximately \$26,085 per offender in current dollars. Conversely, if the Department contracted for these beds at the current \$51.46 rate, the annual cost of incarceration would be \$18,783. Annual costs would increase from \$1,577,800 [contracts] to \$2,139,000 [in state] beginning in Year 8 to \$11,551,500 [contracts] to \$16,042,300 [in state] by Year 15 for an additional 656 offenders who would not otherwise have been incarcerated during that period.

#### INCREASED PENALTIES FOR REFUSAL OF COURT-ORDERED, PRISON-BASED, SEX OFFENDER EVALUATIONS OR SEX OFFENDER TREATMENT):

Under this bill, a court may order a sex offender sentenced to a state prison to cooperate with a treatment evaluation and participate in any recommended sex offender treatment. A person who refuses the order may be charged with a Class E felony. The court would be required to impose a mandatory term of confinement of 10 years consecutive to any other sentence. The court cannot place the offender on probation for this offense.

During CY04, 85 sex offenders who were released from prison had refused sex offender evaluations or sex offender treatment. If the Department assumes 85 serious sex offenders per year continue to refuse, each of the 85 would serve 10 additional years prison time at an annual cost of \$26,085 per offender in current dollars or \$18,783 at the current contract bed rate. Costs would increase for the next 10 years as more persons are convicted of this offense. Annual costs would increase from \$1,596,600 [contract] to \$2,217,225 [in state] the first year to \$15,965,500 [contract] to \$21,172,300 [in state] by the tenth year for an additional 850 offenders who would not otherwise be incarcerated over that period. Because the additional prison time would likely occur after the initial prison term, the impact of this provision may not occur immediately.

However, if it is assumed that a 10 year mandatory minimum term of confinement persuades some sex offenders to not refuse sex offender evaluations and treatment then the aforementioned population increase will be lower than previously indicated. If this occurs, the Department's costs for sex offender evaluation and treatment will increase in order to serve those who otherwise would refuse treatment. While the Department does not budget sex offender treatment in prison on a per offender basis, the Department spent approximately \$1,057,000 on sex offender treatment during FY05.

#### TWO STRIKES:

Under current law, a district attorney can choose to prosecute certain sex offenses against a child under the two strikes law. This would result in a term of life imprisonment with no possibility of early release. Under this bill, this same authority is provided in the case of certain sex offenses against adults. Since the Department is not able to predict how often this will occur, it is not possible to estimate this provision's fiscal impact.

#### MANDATORY LIFETIME SUPERVISION:

Under current law, offenders convicted of a serious sex offense or found not guilty of a serious sex offense by reason of mental disease or defect, may be ordered confined or placed on probation by the court. In addition, the court may place the person on lifetime supervision. Current law also allows an offender who is placed on lifetime supervision to petition the court, and the court to allow the offender to be released from the lifetime provision after 15 years.

This bill requires Courts to place certain offenders on lifetime supervision with no possibility of release from supervision. During CY04 there were 183 offenders admitted to prison with a serious sex offense that courts would have been required to place on lifetime supervision. Using gender- and race-based life expectancy statistics provided by the National Center for Health Statistics for each of the 183 offenders, the Department would supervise these offenders an average of 191 additional months [16 years] before the offender dies. The additional supervision time ranges from 0 months [statistically the offender will die before the offender is discharged from supervision] to 571 additional months [47.5 years].

The Department's FY05 cost of community supervision was approximately \$2,031 per offender. If the Department were to assume that 183 lifetime offenders were added annually, the Department would require an additional 81.0 FTE by the 16th year to supervise this additional population. Nevertheless, this change would impact the Department incrementally, and the impact would not be experienced for several years [after the newly sentenced offenders would have normally been discharged from the Department's supervision].

In summary, prison populations could increase a total of 3,123 sex offenders who would not otherwise be incarcerated over the next several years. This increase will occur gradually, with costs increasing to \$56,508,400 [contract] or \$78,476,800 [in state] annually when the full impact of the 3,123 offenders is reached. Offenders on lifetime supervision could increase by 2,928 at its peak, with additional annual costs at that point of \$5,856,000.

### **Long-Range Fiscal Implications**

Growth of prison population by 3,123--\$56,508,400 [contract] or \$78,500,800 [in state] per year

Growth of lifetime supervision populations by 2,928--\$5,856,000 per year

The prison costs above are based on the current costs of operating existing institutions. It is extremely unlikely that the additional offenders could be absorbed in current institutions. As a result, the Department would either have to build additional prison space or contract out for placement of these offenders.

Constructing additional bed space would likely require \$165 million in capital costs in current dollars, or approximately \$13.5 million in annual debt service payments.

The cost of contracting in the future is also unknown, as the Department's current contract for out-of-state beds expires at the end of 2005. Therefore, it is unlikely the current rate of \$51.46 can be maintained in the future.