

Fiscal Estimate - 2005 Session

Original Updated Corrected Supplemental

LRB Number 05-3904/1	Introduction Number SB-408
Description A mandatory term of confinement and the maximum term of imprisonment for certain child sex offenses and providing penalties	
Fiscal Effect	
State:	
<input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <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 <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
Fund Sources Affected	
<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 (1)(b) OR (1)(ab)	
Affected Ch. 20 Appropriations	
Agency/Prepared By	Authorized Signature
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	Date
	11/8/2005

Fiscal Estimate Narratives
DOC 11/8/2005

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Description A mandatory term of confinement and the maximum term of imprisonment for certain child sex offenses and providing penalties					

Assumptions Used in Arriving at Fiscal Estimate

Under current law the court has broad discretion when sentencing a person convicted of first-degree sexual assault of a child, repeated acts of first-degree sexual assault of the same child, and second-degree sexual assault of a child. The court has broad discretion in determining if the person is sentenced to prison, how much time the person spends in prison, and how much time they serve in the community. The court is required to sentence a person to three and a half years initial confinement if a person convicted of first- or second-degree sexual assault has been previously convicted, and the court is required to sentence a person to life imprisonment if convicted of a second serious child sex offense under the "two-strikes" statute.

This bill would require that a person convicted of first-degree sexual assault of a child, repeated acts of first-degree sexual assault of the same child, or second-degree sexual assault of a child under 16 through a threat or use of force or violence be sentenced to prison and given an initial term of confinement of at least 25 years. The only exemption to the minimum confinement term would require four conditions be met. The bill also changes the maximum term of confinement to life imprisonment, although the offenses would remain Class B felonies.

In CY04, 160 offenders were convicted of first-degree sexual assault of a child [s.948.02(1)] or repeated acts of first-degree sexual assault of the same child [s.948.025(1)(a)] and admitted to prison and another 99 offenders were placed on probation for violating one of these two crimes. Of the 160 offenders sentenced to prison, 144 have sentences less than life imprisonment. The average confinement time for these 144 offenders is 13.25 years (160.4 months). Therefore, beginning in Year 13 the Department could expect to incarcerate an additional 144 offenders per year. The average time of supervision for the 99 offenders placed on probation is 10 years (122 months), the Department could expect those offenders currently placed on probation would instead be incarcerated starting immediately upon passage of this bill. Department of Corrections(DOC) records from the past 3 years show that only one offender may possibly qualify for the exemption indicated in this bill, based on the fact that the offender was less than 19 years of age at the time of the offense, the victim was less than 5 years younger than the offender (and older than 12), and the offense did not involve sexual intercourse by use or threat of force or violence.

The bill also 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.

In CY04 there were 123 offenders admitted to prison with a new sentence and convicted of second degree sexual assault of a child (s. 948.02(2)) and another 205 offenders were placed on probation for this violation. The average confinement time for the offenders sentenced to prison is approximately 7 years (84 months). If it is assumed that two-thirds of the offenders convicted of second degree sexual assault of a child threatened or used force, the Department could expect to incarcerate an additional 82 offenders beginning in Year 8. The average supervision time for the 205 offenders placed on probation is 5.50 years (68 months). If it is assumed that two-thirds of the probationers could be expected to be imprisoned, the Department could expect to incarcerate an additional 135 offenders per year beginning immediately upon passage of the bill.

Assuming the CY04 data indicated above is representative of future statistics, an additional 234 offenders would no longer be placed on probation, but instead would be sentenced to a minimum 25 year confinement term in prison, leading to a prison population increase of 936 by the end of the fourth year, and 5,850 over a 25-year period. Because it would take a minimum of three years to construct a new prison for the additional inmates contract beds would be required to provide housing for the additional population. The FY05 annual

contract bed cost is \$18,800 per inmate. The FY05 annual average cost of probation is \$2,031.

Admitting an additional 234 inmates per year who previously would have received probation would result in first year additional costs of approximately \$3.9 million, second year additional costs of approximately \$7.8 million for 468 inmates, and third year additional costs of approximately \$11.8 million for 702 inmates, until the population increase is annualized at 25 years with an additional cost of \$106.4 million. (There would be savings from these offenders not being on probation, therefore these totals represent the net cost of supervision).

If the assumption that an additional 82 offenders that were previously admitted with confinement terms of 7 years for second degree sexual assault of a child through threat or use of force of violence and an additional 144 inmates that were previously admitted with confinement terms of 13.25 years for first degree sexual assault of a child or repeated acts of first degree sexual assault of a child were now admitted with a minimum confinement term of 25 years, the prison population would increase by an additional 3,168 over a 25-year period.

The impact of these extended sentences would not be felt until 7 and 13 years after the enactment of this legislation. The original offenders who would have previously been reaching their extended supervision release dates would instead now be staying in prison for a minimum of 25 years. The increase to the department's institution populations due to longer sentences would also be felt incrementally. The annual cost to house these additional 3,168 inmates is \$59.5 million by Year 25.

The enactment of this legislation could result in an annualized increase in costs of approximately \$165.9 million when former probationers and shorter-term prison admissions are now required to be sentenced to a minimum of 25 years in prison assuming the additional 9,000 inmates were in contract beds and the contract bed rate remained at the current level of \$18,800 annually.

The state could instead choose to build prison beds to accommodate the total increased population of over 9,000 offenders. The FY05 annual cost to house an inmate in a DOC prison was \$26,200. Therefore the cost to house 9,000 inmates in DOC prisons would be over \$232.7 million annually. The New Lisbon Correctional Institution, with a capacity of 950 beds, was built with a construction cost of approximately \$51 million. The Department would need to construct at least nine institutions of this size to accommodate this increased population, or a lesser number of higher capacity prisons. In either case, construction costs for the 9,000 beds would likely be in excess of \$400 million. In order to construct a new prison, a minimum of three years would be needed for planning, site selection, and construction. If this bill is enacted, planning would need to begin shortly thereafter so that the first prison could be opened within four years. Additional prisons would need to be constructed more frequently as the populations increase.

SUMMARY:

Contract Bed Option

....\$3,920,100 Year 1 operating cost for 234 beds
....\$7,840,100 Year 2 operating cost for 468 beds
....\$15,680,100 Year 4 operating cost for 936 beds
....\$165,866,300 Year 25 operating cost for 9,000 beds (annualized cost)

Prison Bed Option

....\$22,621,700 Year 4 operating cost for 936 beds
....\$232,744,500 Year 25 operating cost for 9,000 beds (annualized cost)
....2,900 FTE for 9 prisons
....\$400,000,000 construction cost for 9 prisons

Long-Range Fiscal Implications

If CY04 admissions for the above mentioned crimes are indicative of future trends, the State will see an increase to the prison population of approximately 9,000 inmates over the next 25 years. The annualized cost to house all of these inmates in contract beds would be in excess of \$165.9 million. However, it would be likely that the state would determine a need to house many of these inmates in state prisons. The annualized cost to house all 9,000 inmates in state prisons would be in excess of \$232.7 million.

The prison costs above are based on the current costs of operating existing institutions. It would not be possible for the additional offenders to be absorbed into 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 require in excess of \$400 million in capital costs in current dollars. The actual costs would be greater because the financing would be done through 20-year general obligation bonds.

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.