

Fiscal Estimate - 2007 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 07-2231/1		Introduction Number AB-0209	
Description Relating to: crimes against children and providing penalties			
Fiscal Effect			
State:			
<input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate			
<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs	
Local:			
<input type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate			
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Government Units Affected <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	
Fund Sources Affected		Affected Ch. 20 Appropriations	
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS			
Agency/Prepared By	Authorized Signature	Date	
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Fiscal Estimate Narratives

DOC 5/23/2007

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Description Relating to: crimes against children and providing penalties					

Assumptions Used in Arriving at Fiscal Estimate

This bill removes some offenses from the list of offenses requiring mandatory sex offender registration; reconciles and modifies the provisions of several 2005 Wisconsin Acts relating to sexual assault of a child; adjusts the statute of limitations for prosecution of sexual assault of a child; and amends the offenses that may not be charged with repeated acts of sexual assault of the same child. The bill also creates new offenses and revises existing penalties for certain crimes against children, including physical abuse of a child, soliciting a child for prostitution and criminal neglect of a child. The bill also creates a new requirement for pre-sentence investigations and risk assessments in certain sex offense cases where the victim was under 18 at the time of offense.

Sex Offender Registry

Under current law, sex offender registration is required following a conviction for a sex offense, as that term is defined in s. 301.45(1d)(b), stats. This bill removes the mandatory requirement to register for those convicted of child enticement with intent to cause bodily or mental harm to a child or to give or sell a controlled substance or controlled substance analog to a child [s. 948.07(5) and 948.07(6)]. A court may still require the offender to register if the crime is found to be sexually motivated and if it is in the interest of public protection to require registration. There are currently 12 offenders on the sex offender registry who had ss. 948.07(5) or (6) as their offense requiring registration, with not enough data on another 28 convicted of child enticement to know if this provision would affect them. The Department cannot predict if any of these offenders would have been found to be sexually motivated under this bill.

Reconciliation of 2005 Wisconsin Acts 430, 431 and 437

This bill reconciles the numbering of all recent legislation for 1st degree sexual assault of a child and repeated acts of the same child. The prison portion of the bifurcated sentence remains a 25-year minimum term for violations of 948.02(1)(b) or (c) or 948.025(1)(b). The prison portion of the bifurcated sentence for violations of 948.02(1)(d) or 948.025(1)(c) shall be at least 5 years confinement. The bill also clarifies that mandatory minimum terms of confinement in prison for first-degree sexual assault of a child do not apply if the offender was under 18 years of age at the time of the violation.

The Department's Sex Offender Registry (SOR) indicates that 41 offenders were convicted of 1st degree sexual assault of a child during calendar year 2006 and were under 18 years of age at the time of the commission of the crime.

The bill also clarifies for an offender to be convicted of the offense of sexual contact or intercourse with a child under the age of 13 that results in great bodily harm, the great bodily harm need not result from the sexual intercourse. Although this would likely expand the potential number of offenders who could be convicted under this provision, the impact of this change cannot be estimated.

This bill also expands global position system [GPS] tracking requirements to current law requirements that include those found to have committed first-degree sexual assault of a child if the offender caused 'great bodily harm' to the child. This change would not likely have a significant impact on offenders required to have GPS tracking.

The bill also deletes a revision of the definition of sexual intercourse for purposes of the offense of 1st degree sexual assault of a child enacted last session that excluded digital penetration from the definition of sexual intercourse for all purposes except for GPS tracking of sex offenders. While the Department does not currently have figures on how many cases of sexual assault of a child involved digital penetration, it is estimated that this definitional change could have a significant impact on the Department's incarcerated population numbers.

Statutes of Limitations for Prosecution of Sexual Assault of a Child

Current law imposes time limits for commencing prosecution for most crimes. During the 2005 Legislative Session, conflicting time limits were passed. This bill eliminates the time limits for first-degree sexual assault of a child and offenses of engaging in repeated acts of first-degree sexual assault of a child and allows prosecution proceedings to start within 12 months after a DNA profile match identifying a person for a violation of first or second-degree sexual assault of a child is confirmed.

While the Department can not predict the number of DNA matches currently being made after the statute of limitations has expired, any additional convictions resulting from this change in the statute of limitations will increase the Department's offender populations.

Offenses that may be Charged with Repeated Acts of Sexual Assault of the Same Child

The bill expands the crimes that can be charged in the same action as a charge of engaging in repeated acts of sexual assault of the same child, even if the other violation occurred during the time period in which the repeated acts took place. The Department cannot estimate the number of offenders that will be impacted by this broadening of offenses associated with repeated acts of sexual assault of the same child.

Changes in Certain Statutes Involving Crimes against Children

Physical Abuse of a Child – The bill changes the offense of intentionally causing great bodily harm to a child from a Class E felony (maximum of 10 years confinement and 5 years extended supervision) to a Class C felony (maximum of 25 years confinement and 15 years extended supervision). In 2006, 3 offenders were sentenced to probation with an average community supervision length of 52 months for physical abuse of a child and another 2 offenders sentenced to prison for this offense or offenses that included this crime.

Soliciting a Child for Prostitution - Under current law it is a Class D felony to intentionally solicit or cause any child to practice prostitution. This bill modifies the offense prohibiting 'soliciting or causing any child to engage in an act of prostitution'. Both the existing and the bill's penalty is a Class D felony. In 2006 2 offenders were sentenced to prison for this offense, with an average confinement time of 103 months.

Neglect of a Child - Under current law, any person who is responsible for a child's welfare who, through his or her actions or failure to take action, intentionally contributes to the neglect of a child is guilty of a Class A misdemeanor (maximum 9 months confinement) or, if death is a consequence, a Class D felony (maximum of 15 years of confinement and 10 years of extended supervision). This bill adds two new felony offenses under this section. If the neglect results in bodily harm the offense is a Class H felony (maximum of 3 years confinement and 3 years extended supervision) and if the neglect results in great bodily harm the offense is a Class F felony (maximum of 7.5 years confinement and 5 years extended supervision). In 2006 there were 185 offenders sentenced to probation for an average term of 18 months for criminal neglect of a child and another 18 offenders sentenced to probation for offenses that included this crime with an average term of 31 months. Another 8 offenders were sentenced to prison for criminal neglect of a child or for offenses that included this crime.

Neglect of a Child—Child Care Worker - Under current law, a person responsible for a child's welfare while the child is being transported in a child care vehicle may not leave the child unattended at any time from the time the child is placed in the care of that person to the time the child is placed in the care of another person responsible for the child's welfare. A person who violates this provision is guilty of a Class A misdemeanor (maximum 9 months confinement) or, if death is a consequence, a Class G felony (maximum of 5 years of confinement and 5 years of extended supervision).

This bill adds two new felony offenses under this section. If the neglect results in bodily harm the offense is a Class I felony (maximum of 1.5 years confinement and 2 years extended supervision) and if the neglect results in great bodily harm the offense is a Class H felony (maximum of 3 years confinement and 3 years extended supervision). No offenders were sentenced for this offense in 2006.

Summary on Penalty Provisions - The Department is unable to predict how many offenders will be impacted by these changes in sentencing provisions. While it is assumed that these changes will increase the Department's populations it is not possible to provide a fiscal impact related to these changes.

The FY06 annual cost for an inmate in DOC institutions is approximately \$27,600 and \$2,000 for community supervision. However when there is excess capacity in DOC facilities, the incremental costs (i.e. food, health care and clothing) of housing a small number of inmates is approximately \$4,500, based on FY06 per capita rates. When there is no excess capacity in DOC facilities, as is currently the case, the Department

uses contract beds at a rate of \$18,800 annually per person.

Pre-sentence Investigations & Risk Assessments

This bill requires that if a person is convicted of a felony that requires him or her to register in the sex offender registry and if the victim was under 18 years of age at the time of the offense, the court must order the Department to conduct a pre-sentence investigation report to assess the offender's risk to commit another sex-related crime against a minor, unless the court finds the report will not materially benefit the court or the Department.

During 2006, 608 offenders were sentenced to prison for a felony conviction of a sex offense requiring registration with the Sex Offender Registry. Another 545 offenders were placed on probation for a felony conviction requiring registration. Approximately 76% of sex offenders incarcerated or on parole, probation or extended supervision required to be registered with SOR during CY2006 had indicators that their victim was under 18 years of age at the time of the crime.

Assuming the same number of offenders will be convicted each year [1,153], and assuming that the Department would be assigned to produce pre-sentence investigations on the 76% with indicators that the victim was under 18, the Department would be required to produce approximately 876 pre-sentence investigations annually for this population. A statewide poll of the Department's eight regions indicates courts order pre-sentence investigations on approximately 80-85% of sex offenders, today, with the percentages increasing to 90-95% when the victim of the crime is a child. Thus, if the Department's pre-sentence investigation workload increases 5-10% annually [from 90-95% to 100%], the Department will produce 44 to 88 more pre-sentences than already being completed [5%-10% of 876]. The Department would require from 0.50 FTE Probation & Parole Agent for the increased number of pre-sentence investigations ordered by the courts.

In addition, this legislation requires the Department to provide additional information to the courts that assesses the offender's likelihood of committing another sex offense with a victim under the age of 18. The Department is currently hiring LTE Psychologists at \$80/hour to complete and score actuarial tools such as the Rapid Risk Assessment Sex Offender Recidivism [RRASOR], STATIC-99 and the Minnesota Sex Offender Screening Tool – Revised [MnSOST-R]. These actuarial tools are used to assess whether or not the offender is a sexually violent person during the s. 980 procedures. If the Department were to hire LTEs to complete these actuarial tools (not specific to child victims) for 876 sex offenders annually, and assuming each set of actuarial tools takes the LTE an average of 6 hours [file review, scoring, interpretation, written assessment to the court, and testimony in court to defend the risk assessment findings] the Department would require \$420,500 annually.

Long-Range Fiscal Implications