

LEGISLATIVE INCARCERATION FISCAL IMPACT STATEMENT
EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY 2014

SENATE BILL NO. 6

AN ACT TO ESTABLISH THE CRIME OF COMMITTING CERTAIN ACTS OF DOMESTIC ABUSE IN THE PRESENCE OF A MINOR CHILD.

A legislative incarceration fiscal impact statement has been requested on SB6 due to the establishment of a new penalty for any person, who in the course of an act of domestic abuse, does so in the presence of a child. Any person in violation of this Act is guilty of a Class 1 misdemeanor.

Senate Bill 6 presents several unique and difficult problems in preparing an accurate incarceration fiscal impact statement.

First, although the crime of committing an act of domestic abuse in the presence of a child already exists in half a dozen states, SB 6 contains unique provisions that make the data in other states inapplicable or unreliable.

Second, in South Dakota, domestic abuse has not been a stand alone crime, but is a tag applied to other crimes, principally assaults, which are committed within a domestic relationship.

Third, although the penalty in SB 6 is NOT a mandatory minimum, it may be characterized as a "soft" mandatory minimum in that the court is instructed to impose a jail sentence unless there is good reason not to do so.

Fourth, since the crime of committing an act of domestic abuse in the presence of children is a misdemeanor lesser included offense of domestic abuse, aggravated assault, or simple assault, there is a strong possibility that prosecutors will continue to focus on the assault component and may neglect to prosecute the witnessing component.

Fifth, since many prosecutions for witnessing may only be substantiated by the testimony of children, both the prosecution and the parents may be reluctant to expose the children, already in a stressful family situation, to the additional stress of testifying in a situation that they may recognize as possibly negative toward father or mother.

Therefore, starting with the hard data of FY13 statewide domestic abuse convictions:

(A) Forty-five felony convictions; and

(B) Five hundred sixty-two misdemeanor convictions;

we proceed in a series of reasonable, but only approximate assumptions:

(1) Not all cases of domestic abuse will be witnessed by children. We use twenty percent as a reasonable assumption.

(2) That the provisions of SB 6 will be charged out much more frequently in the felony cases, where the prosecutors are motivated to stop a pattern of behavior, as opposed to misdemeanor cases, where the prosecutors are motivated to get the offender's attention before a pattern of behavior develops. We estimate one-third of felony cases and five percent of misdemeanor cases will be charged out.

(3) Based on UJS data, forty-one percent of people convicted of a Class 1 misdemeanor are sentenced to jail. However, SB 6 contains a "soft" mandatory minimum, and we therefore believe that a sentencing rate of 70% is more realistic.

(4) The average time ordered for a person sentenced to jail for a Class 1 misdemeanor is 24 days.

Based on these assumptions, we make the following calculations:

Number of convictions based on FY13 data:

Domestic Abuse Felony - 45

Domestic Abuse Class 1 Misdemeanor - 562

Assumed 20% of assaults in presence of a minor:

Domestic Abuse Felony - 9

Domestic Abuse Class 1 Misdemeanor - 112

Number of convicted violators actually prosecuted for violating SB 6 (Assumed 33.3% for felony and 5% for misdemeanor):

Domestic Abuse Felony - 3

Domestic Abuse Class 1 Misdemeanor - 6

Total convictions prosecuted under SB 6 - 9

Based on these calculations, jail cost estimates for **nine** convicted violators are:

Class 1 Misdemeanor (9 violators convicted):

The average number of people sentenced to jail after being convicted of a Class 1 misdemeanor is 41%. However, SB 6 contains a "soft" mandatory minimum and we therefore believe that a sentencing rate of 70% is more realistic.

As a result, the estimated number sentenced to jail is 7.

The average jail time ordered is 24 days.

The average jail cost per day is \$72.30.

The estimated total annual cost for 7 convicted and sentenced violators is \$12,146.

The estimated total cost for 7 convicted and sentenced violators over a 10 year period is \$121,464.

Due to the complexity of the supporting assumptions, we have applied a range of plus or minus twenty percent to the estimated annual and 10 year jail costs. As a result, annual estimated jail costs range from \$9,717 to \$14,576 and estimated jail costs over a ten year period range from \$97,171 to \$145,757.

Disclaimers:

Misdemeanor days are based on time ordered and not time served. (Time served data is currently unavailable.)

10 year projections are in today's dollars and are not adjusted for inflation.

Approved: /s/ Fred Schoenfeld

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