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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/08/07

SPONSOR Grubestic LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Additional Sex Offender Crimes & Penalties SB 439

ANALYST Wilson

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Conflicts with SB 452 and SB 450

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$0.1	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Corrections Department (CD)  
 Public Defender Department (PDD)  
 Second Judicial District Attorney's Office (SJDAO)  
 Sentencing Commission (SC)

### SUMMARY

#### Synopsis of Bill

Senate Bill 439 creates a new crime of aggravated criminal sexual penetration (CSP) that includes CSP perpetrated on a child under nine years of age or with an intent to kill or with a depraved mind regardless of human life.

Whoever commits aggravated CSP is guilty of a first-degree felony, punishable by life imprisonment and a fine not to exceed \$17,500. The new offense of aggravated CSP is added to the appropriate lists of predicate offenses that are found in the Sex Offender Registration and Notification Act.

The bill also amends the definition of CSP in the second degree by removing the requirement that the perpetrator be in a position of authority over the child. As a result, CSP committed on a child between the ages of 13 and 18 by the use of force or coercion is raised from a third degree felony to a second degree felony.

This bill also amends the parole authority statute, making anyone who was sentenced to life imprisonment, including those convicted of aggravated CSP, ineligible for parole until they have served 30 years of their sentence.

When sentencing a sex offender, the district court is currently required to include a provision in the judgment that requires the offender to serve an indeterminate period of not less than five years and not in excess of 20 years of supervised parole. The bill allows the court to extend the indeterminate period up to the natural life of the sex offender for the offenses of aggravated CSP, CSP in the first or second degree, criminal sexual contact of a minor in the second or third degree, or sexual exploitation of children by prostitution in the first or second degree.

The bill also changes the state's burden of proof, when arguing that a sex offender should remain on parole after the initial five-year period, from "proving to a reasonable certainty" to "proving by clear and convincing evidence" that the sex offender should remain on parole.

## **FISCAL IMPLICATIONS**

The SC states that in the past, agencies have reported that it is difficult to accurately predict how many individuals will be convicted of this new crime and that a few such convictions each year could have an immediate impact on agency budgets.

Perhaps the impact on agency budgets will not be as severe as initially thought. Persons sentenced for the automatic 30 year life term will not impact the prison system until those individuals surpass the current population. So, if most persons get 18 year sentences they will get 30 years under this bill and the impact will begin when the first offender exceeds 18 years less earned time. Also, paroled individuals will not impact the system until they are released and serve the parole term they will have served prior to this statute. The effect is similar to the prison term. Because they 'may' extend the term to life on parole the impact will need to be assessed. It is difficult to predict how district judges may sentence in the future. There may be two impacts – one on prisons and one on parole --both on the CD.

The CD states that their understanding of this bill is that it is going to effect only the "worst of the worst" sex offenders, and that it is anticipated that only a very few individuals will be convicted of this new crime of aggravated criminal sexual penetration. However, it is very difficult to accurately predict just how many individuals will be convicted of this new crime. Even only a modest five or ten of such convictions each year could have a moderate to substantial negative fiscal impact on the CD's budget because the conviction for this crime carries an automatic life sentence which is 30 full years of imprisonment before becoming eligible for parole. Those individuals receiving life sentences increase the prison population

because they are not eligible to earn any “good time” during their 30 year incarceration period.

The negative fiscal impact is exacerbated by the fact that those convicted of this new crime and the other enumerated crimes may also be required in certain circumstances to serve parole terms lasting the remainder of their natural lives, which could dramatically increase parole caseloads and ultimately parole supervision costs for the CD’s Probation and Parole Division. Parole supervision costs for sex offenders already tend to be higher because such offenders require Intensive Supervision. As discussed above, the bill also expands certain other sex offenses and makes individuals convicted of those crimes subject to lengthy parole periods.

Significantly, there is no appropriation in the bill to offset any of the increased prison population costs and parole supervision costs. Any revenues created by this bill such as the increased parole supervision fees paid by those sex offenders who remain on parole for extended periods will not be sufficient to offset the increased prison and parole supervision costs associated with this bill.

The contract/private prison annual cost of incarcerating an inmate is \$23,867 per year for males. The cost per client to house a female inmate at a privately operated facility is \$21,651 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a /private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,467 per year. The cost per client in Intensive Supervision programs is \$3,383 per year. The cost per client in department-operated Community Corrections programs is \$3,503 per year. The cost per client in privately-operated Community Corrections programs is \$7,917 per year. T cost per client per year for male and female residential Community Corrections programs is \$39,401.

Additionally, there is a potential for increased caseloads impacting the prosecution and defense, because there is more at risk for the defendant. There is evidence of this in the case processing literature – more serious and difficult cases take longer to resolve. The impact on the judicial system will begin as soon as the first case was filed under the new law.

### **SIGNIFICANT ISSUES**

The PDD predicts that adding CSP committed “with a depraved mind regardless of human life” to the crime of aggravated CSP will very likely result in substantial litigation determined to tie down both exactly what this term means in this instance and what mental state is required to be proven to secure the increased penalty. The last several decades have seen a great deal of this type of criminal litigation over the crime of “depraved mind murder,” and such will almost certainly follow the passage of this bill.

Due to the increased penalties brought by this bill for certain crimes, there will likely be an increase in trial and appeal workload for the PDD, the courts, the DAs and the Office Attorney General, since these offenders will be considerably less likely to take plea offers to life imprisonment.

### **ADMINISTRATIVE IMPLICATIONS**

There may be an administrative impact on the courts as the result of an increase in the amount of time necessary to dispose of cases.

CD believes this bill could have a minimal to moderate negative administrative impact on them by requiring what will probably be the current level of CD staff to provide services to more and more inmates and parolees.

**CONFLICT**

SB 439 conflicts with SB 452, Sexual Predator Civil Commitment Act and SB 450, Sex Offender Definitions & Registration.

DW/csd