

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0072-08
Bill No.: Truly Agreed to and Finally Passed CCS for HCS for SB 39
Subject: Drugs and Controlled Substances; Department of Public Safety; County Officials;
Boards, Commissions, Committees and Councils.
Type: Original
Date: May 29, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue *	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)
Total Estimated Net Effect on General Revenue Fund *	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)

* Partially subject to appropriation

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
MoSMART Fund *	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
Total Estimated Net Effect on Other State Funds **	\$0 or UNKNOWN	\$0 or UNKNOWN	\$0 or UNKNOWN

** Subject to appropriation

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown

FISCAL ANALYSIS

ASSUMPTION

Missouri Sheriff Methamphetamine Relief Taskforce (MoSMART), (Section 650.350);

Officials from the **Office of the State Treasurer** assume this proposal would not fiscally impact their agency.

In response to a similar proposal from this year, officials from the **Shannon County Sheriff's Office** stated they have received \$87,054 in calendar years 2001 - 2002 under the current MoSMART grant program.

In response to a similar proposal from this year, officials from the **Christian County Sheriff's Office** assumed this part of the proposal would result in losses to their agency of \$47,135 annually, which is the amount that they have applied for and been approved for in 2003.

Officials from the **Department of Public Safety (DPS) – Director's Office** assume the proposal creates a team called "MoSMART" within DPS. The team is made up of five members that shall be sheriffs. The DPS shall administer MoSMART, which shall consist of conducting audits, monitoring, programmatic assistance with grants, etc.

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ASSUMPTION (continued)

In order to perform the duties required by this legislation, DPS assumes the need for four additional FTE: one Program Manager (at \$44,444 per year) who would be responsible for employees under this program as well as the general administration of the program; one Program Representative I (at \$30,204 per year) to review applications for grants, assist in general program duties, and monitor programs as needed; one Accountant I (at \$30,204 per year) to assist in the review of applications for grants, assist grantees with financial aspects of having a grant with this money, and, as required by the proposed legislation, audit the MoSMART fund at the end of each fiscal year; and one Clerk Typist III (at \$23,184 per year) to provide clerical support for the staff of MoSMART and its members.

DPS also assumes the need for rental space for an offsite facility because the Director's office no longer has adequate space for additional employees. The DPS estimates the cost for this rental space to be \$12,880 per year, plus \$20,000 per year for renovations. DPS estimates the cost to be \$265,255 in FY 04, \$242,863 in FY 05, and \$247,587 in FY 06.

In response to a similar proposal from the 2002 session, DPS estimated the number of MoSMART funds applications filed annually will exceed 27. Based on this estimate, **Oversight** assumes the DPS will require 2 FTE (1 Program Specialist and 1 Clerk Typist III) to administer the MoSMART program. Salaries have been adjusted to more closely reflect actual starting salaries. Oversight assumes the 2 FTE would be housed within existing facilities. Therefore, no additional rent, renovation, janitorial, utility, or offsite computer expenses would be incurred. Oversight also assumes the staff for DPS would not be necessary without an appropriation to the MoSMART fund and that the estimated costs of DPS would be covered by this appropriation.

Oversight assumes, based on information received from the **Cape Girardeau County Sheriff**, that the current MoSMART program will be federally funded through December 31, 2003. Therefore, Oversight assumes the DPS would incur expenses for 6 months of FY 2004 and 12 months of FY 2005 & FY 2006. Officials from the Cape Girardeau County Sheriff's office also stated that they administer the current MoSMART program with two persons.

Manufacturing a controlled substance within 2,000 feet of a school or on a school bus (Sections 195.211 - 195.218) :

Officials from the **Department of Public Safety – Missouri State Highway Patrol** assume the proposed legislation would have no fiscal impact on their agency.

ASSUMPTION (continued)

Officials from the **Office of State Courts Administrator (CTS)** state they do not expect the additional crimes to significantly impact the workload of the courts.

In response to a similar proposal from this year, officials from the **Office of Prosecution Services** assumed prosecutors could absorb the costs of the proposed legislation within existing resources.

Officials from the **Office of State Public Defender** assume existing staff could provide representation for those few cases arising where indigent persons were charged with manufacturing a controlled substance within 2,000 feet of a school. Passage of more than one bill increasing penalties on existing crimes or creating new crimes would require the State Public Defender System to request increased appropriations to cover the cumulative cost of representing indigent persons accused in the now more serious cases or in the new additional cases.

Officials from the **Department of Corrections (DOC)** assume this part of the proposed legislation enhances manufacturing of a controlled substance by elevating the penalty to a class A (rather than a B) felony when the crime takes place within 2,000 feet of a school.

In FY 2002, DOC had 1,048 B felony cases of distribution, manufacturing or delivering of a controlled substance. The average sentence was 7.6 years. 588 of these cases received a 120-day sentence. The average time served was about 25% prior to release on parole or 1.9 years.

It is unknown how many of these crimes could have taken place within 2,000 feet of school. In FY '02, DOC had 27 cases of drug distribution near a school. The average sentence was 11.8 years. 19 received a 120-day sentence. Time served is about 26.2% before release to parole or 3.1 years.

The difference in sentence averages would be a little over 4 years and the differences between releases would be 1.2 years. Impact would not be experienced by DOC on these trends until the average current time of 1.9 years had been served. Impact would not be felt until the 3rd year out with an average of a little over 1 more year being served.

The DOC assume the changes to these sections, as well as the new language for Section 577.075, RSMo, would result in an unknown cost, exceeding \$100,000 annually.

ASSUMPTION (continued)

Regulation of sale of active ingredients of ephedrine, pseudoephedrine, or others (Section 195.417):

In response to similar legislation from this year, officials from the **State Public Defender**, the **State Courts Administrator**, the **Office of Prosecution Services** and the **Department of Public Safety - Missouri State Highway Patrol** assumed this proposal would not fiscally impact their agencies.

In response to similar legislation from this year, officials from the **Department of Corrections (DOC)** stated this part of the proposal, if passed into law, requires the sale of defined methamphetamine precursor drugs as "behind-the-counter" sales. Penalty provisions for violations, the component of the proposal to have potential fiscal impact for DOC, is for a class A misdemeanor.

Currently, the DOC cannot predict the number of new commitments which may result from the creation of the offenses(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost through supervision provided by the Board of Probation and Parole (FY02 average of \$3.10 per offender, per day or an annual cost of \$1,132 per offender).

In summary, supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Release or allow to escape of anhydrous ammonia (Section 577.075):

Officials from the **Department of Agriculture**, **Department of Natural Resources** and the **Department of Public Safety – Missouri State Highway Patrol** each assume this part of the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would

have no fiscal impact on the courts.

ASSUMPTION (continued)

In response to a similar proposal from this year, officials from the **Office of Prosecution Services** assumed prosecutors could absorb the costs of the proposed legislation within existing resources.

In response to a similar proposal from this year, officials from the **Office of State Public Defender** assumed existing staff could provide representation for those few cases arising where indigent persons were charged with unlawful release of anhydrous ammonia. Passage of more than one bill increasing penalties on existing crimes or creating new crimes would require the State Public Defender System to request increased appropriations to cover the cumulative cost of representing indigent persons accused in the now more serious cases or in the new additional cases.

Officials from the **Department of Corrections (DOC)** assumed the proposed legislation creates the crime of unlawful release of anhydrous ammonia and is punishable as a class B felony unless the result is serious injury or death and then it is a class A felony.

The average prison time served for a class B and A felony is 39.5 months and 92 months, respectively. Existing statute that is closest to this proposal (for review of data) is a class D felony for theft of anhydrous ammonia and those offenders serve an average of 30 months. In FY 2002, the DOC had 11 new admissions for this crime.

The DOC could not predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY02 average of \$35.52 per inmate, per day or an annual cost of \$12,965 per inmate) or through supervision provided by the Board of Probation and Parole (FY02 average of \$3.10 per offender, per day or an annual cost of \$1,132 per offender). Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually.

In summary, supervision by the DOC through incarceration or probation would result in

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additional costs and although the exact fiscal impact is unknown, it is estimated that potential costs will be in excess of \$100,000 per year.

ASSUMPTION (continued)

Surcharge of \$150 to go to crime laboratories (Sections 488.029 & 650.105):

Officials from the **Department of Public Safety - Director's Office** state this section would result in an unknown amount of revenue to distribute to the various crime laboratories.

Officials from the **Office of the State Courts Administrator (CTS)** state they have no way of estimating how many violations of chapter 195 result in a controlled substance being sent to a lab for analysis. Nor can CTS estimate how many defendants would be exempt from this surcharge, although CTS assumes the number may be substantial.

Oversight assumes the proceeds will be deposited into the General Revenue Fund and be earmarked and expended for the crime labs in Missouri, resulting a net zero fiscal impact for the General Revenue Fund.

Section 488.029 would increase Total State Revenues.

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
GENERAL REVENUE FUND			
<u>Income</u> - DPS - (Section 488.029 & 650.105 & Section 1) - \$150 surcharge for laboratory work on drug related offenses	Unknown	Unknown	Unknown
<u>Costs</u> - DPS - (Section 488.029 & 650.105) - Expenditure of \$150 surcharge on crime laboratories	(Unknown)	(Unknown)	(Unknown)

<u>Costs</u> – Department of Corrections - (Sections 195.211 - 195.218 & 577.075) Incarceration/probation costs	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)
<u>Transfer out</u> – to MoSMART Fund*	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>

***Subject to Appropriations.**

MoSMART FUND

<u>Transfer in</u> – from General Revenue*	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Costs</u> – Department of Public Safety**			
Personal Service (2 FTE)	(\$24,477)	(\$50,178)	(\$51,432)
Fringe Benefits	(\$9,906)	(\$20,307)	(\$20,815)
Equipment and Expense	<u>(\$22,008)</u>	<u>(\$7,275)</u>	<u>(\$7,275)</u>
<u>Total Costs</u> – DPS	(\$56,391)	(\$77,760)	(\$79,522)
<u>Costs</u> – MoSMART			
Distribution to local law enforcement agencies***	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

ESTIMATED NET EFFECT ON MoSMART FUND	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
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***Subject to Appropriations.**

****Subject to Appropriations, shall be no less than one percent and not exceed two percent of the Fund.**

*****Subject to Appropriations, shall be at least fifty percent but not more than one hundred percent of the Fund annually.**

<u>FISCAL IMPACT - Local Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
<u>Income - Law Enforcement Agencies</u>			
MoSMART funds	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>	<u>\$0 or Unknown</u>

FISCAL IMPACT - Small Business

Small businesses that sell over-the-counter medication could be impacted by this proposal.

DESCRIPTION

Section 650.350 creates the "Missouri Sheriff's Methamphetamine Relief Team" (MoSMART) housed in the Department of Public Safety. This team consists of five sheriffs who will serve a two-year term and elect a chairman.

The MoSMART Fund is created and is available on an application basis to law enforcement entities and task forces. Applications are evaluated based upon the level of funding designated for methamphetamine enforcement before 1997 and upon current need and circumstances.

Section 577.075 would create the crime of unlawful release of anhydrous ammonia, a class B felony, unless the release causes death or serious physical injury to any person, in which case it would be a class A felony.

Section 195.211 would make it a class A felony to manufacture or produce a controlled substance in a residence where a child resides or within 2,000 feet of any school or school bus. It is currently a class B felony to manufacture a controlled substance.

Sections 195.214 & 195.218 state that a person convicted of various controlled substances shall

serve his or her term without probation or parole if the court finds the defendant is a persistent drug offender.

Section 488.029 and 650.105 states that there shall be assessed and collected a surcharge of \$150 in all criminal cases for any violation of chapter 195, RSMo, in which a crime laboratory makes DESCRIPTION (continued)

analysis of a controlled substance. This money is to be distributed to state forensic laboratories.

Section 195.417 prohibits the sale of more than two packages of six grams of any over-the-counter drug having a sole active ingredient of ephedrine, pseudoephedrine, or phenylpropanolamine. It also prohibits the sale of more than three packages of any combination drug containing, as one of its active ingredients, ephedrine, pseudoephedrine, or phenylpropanolamine. These drugs must be kept behind the counter or within ten feet of a register located on a checkout counter, unless the store utilizes an anti-theft system that specifically prevents the theft of these drugs. Violation of the bill is a class A misdemeanor. This part of the proposal supersedes all local ordinances that are more restrictive than this act.

Section 1 also states the a judge may, upon a finding of guilty, order a defendant to pay for costs for testing of the substances at a private laboratory.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the State Treasurer
Department of Public Safety
Sheriff of Shannon County
Sheriff of Christian County
Sheriff of Cape Girardeau County
Department of Agriculture
Office of State Courts Administrator
Department of Natural Resources
Department of Corrections
Office of Prosecution Services
Office of State Public Defender

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A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
May 29, 2003