

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0413-01  
Bill No.: SB 93  
Subject: Crimes and Punishment; Drugs and Controlled Substances; Department of Corrections; Probation and Parole  
Type: Original  
Date: January 28, 2019

Bill Summary: This proposal increases penalties for the distribution of heroin.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2028)
General Revenue	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)	Up to (\$2,015,218)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(Less than \$100,000)</b>	<b>(Less than \$100,000)</b>	<b>(Less than \$100,000)</b>	<b>Up to (\$2,015,218)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2028)
<b>Total Estimated Net Effect on Other State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses. This fiscal note contains 7 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>				
<b>FUND AFFECTED</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>Fully Implemented (FY 2028)</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>				
<b>FUND AFFECTED</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>Fully Implemented (FY 2028)</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>				
<b>FUND AFFECTED</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>Fully Implemented (FY 2028)</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**FISCAL ANALYSIS**

**ASSUMPTION**

**§§556.061 and 579.020 - Distribution of heroin**

Officials from the **Department of Corrections (DOC)** state the bill proposes to make delivery of a controlled substance that contains heroin a class B felony and a dangerous felony. Since January 2017, distribution of a controlled substance is a class C felony. In FY18 there were 62 new admissions for the distribution of heroin (15 percent of new admissions for drug distribution). The average sentence was seven years, and the percent of sentence served before first release was 33.5 percent. If the sentence is enhanced to a class B felony, the average sentence would be expected to increase to 8.9 years (the average sentence of those sentenced when the offense was a class B) and the offenders would serve 85 percent before first release. The impact includes an estimate of 35 percent of the remaining sentence after the first release for the incarceration of parole returns.

**New admissions in FY18 for the distribution of heroin**

Drug Distribution Admissions	Estimated Heroin percent	Estimated Heroin Admissions	Avg. Sentence (yrs)		Percent Time Served	Time to 1st Release	
			Class C Yrs	Class B Yrs		Class C Yrs	Dangerous Felony (85%)
413	15%	62	7.0	8.9	33.5%	2.3	7.6

The full impact is estimated to be an increase in the prison population of 260 in FY28 and a reduction in the parole population of 143 because more of the sentence is served in prison. The impact will begin after the offenders serving the current sentence would be released (FY23).

	# remaining in prison	Cost per year	Total Costs for <b>prison</b>	# not on probation & parole	Cost per year	Total cost for <b>probation and parole</b>	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	0	(\$6,287)	\$0	0	absorbed	\$0	\$0
Year 2	0	(\$6,287)	\$0	0	absorbed	\$0	\$0
Year 3	0	(\$6,287)	\$0	0	absorbed	\$0	\$0
Year 4	6	(\$6,287)	(\$40,031)	-6	absorbed	\$0	(\$40,031)
Year 5	68	(\$6,287)	(\$462,757)	-68	absorbed	\$0	(\$462,757)
Year 6	130	(\$6,287)	(\$902,376)	-130	absorbed	\$0	(\$902,376)
Year 7	192	(\$6,287)	(\$1,359,395)	-192	absorbed	\$0	(\$1,359,395)
Year 8	254	(\$6,287)	(\$1,834,334)	-192	absorbed	\$0	(\$1,834,334)
Year 9	260	(\$6,287)	(\$1,915,218)	-143	absorbed	\$0	(\$1,915,218)
Year 10	260	(\$6,287)	(\$1,953,522)	-143	absorbed	\$0	(\$1,953,522)

**Oversight** does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC's impact for fiscal note purposes.

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** state they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the enhanced penalties for distribution of heroin, now a class B felony. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

In FY 2018, SPD's Trial Division opened 1,165 cases where the charge was delivery of a controlled substance of the 63,395 total cases opened.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

**Oversight** notes over the last three fiscal years, the SPD has lapsed a total of \$152 of General Revenue appropriations (\$0 out of \$36.4 million in FY 2016; \$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018). Therefore, Oversight assumes the SPD is at maximum capacity, and the increase in workload resulting from this bill cannot be absorbed within SPD's current resources.

ASSUMPTION (continued)

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, Oversight assumes the cost for a new APD could approach \$100,000 per year.

According to “The Missouri Project” (RubinBrown, June 2014), the number of hours that should be spent on an A/B felony case is 54.3. This number takes into account time for travel and in-court appearances. In contrast, the number of hours that should be spent on a C/D/E felony case is 28.5, for a difference of 25.8 additional hours ( $54.3 - 28.5 = 25.8$ ) per case. For purposes of this fiscal note, if just five percent of the 1,165 cases in FY18 were elevated to a class A/B felony, this would equate to 58 cases ( $1,165 \text{ cases} \times .05$ ). Therefore, the SPD could spend an additional 1,496 hours (rounded down) on these cases annually ( $58 \text{ cases} \times 25.8 \text{ hours}$ ).

**Oversight** assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

**Oversight** notes that the **Missouri Office of Prosecution Services** and **Office of State Courts Administrator** have stated the proposal would not have a direct fiscal impact on their respective organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2028)
<b>GENERAL REVENUE FUND</b>				
<u>Costs - DOC</u> (\$579.020)				
Incarceration costs	\$0	\$0	\$0	(\$1,915,218)
<u>Costs - SPD</u> (\$579.020)				
Salaries, fringe benefits, and equipment and expense	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>(Less than \$100,000)</u></b>	<b><u>(Less than \$100,000)</u></b>	<b><u>(Less than \$100,000)</u></b>	<b><u>Up to (\$2,015,218)</u></b>
<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2028)
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

Under current law, the distribution of heroin is not distinguished from the distribution of most other controlled substances, and is a class C felony. This act provides that the distribution of any substance containing a detectable amount of heroin is a class B felony.

This act provides that the distribution of heroin is a dangerous felony as defined by statute. Any offender who has been found guilty of a dangerous felony and is committed to the Department of Corrections shall be required to serve a minimum prison term of eighty-five percent of the sentence imposed by the court or until the offender attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first.

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

Department of Corrections  
Missouri Office of Prosecution Services  
Office of State Courts Administrator  
State Public Defender's Office



Kyle Rieman  
Director  
January 28, 2019

Ross Strobe  
Assistant Director  
January 28, 2019