

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0777-08
Bill No.: HCS for SS No. 2 for SCS for SB 194
Subject: Crimes and Punishment; Aircraft and Airports; Department of Corrections;
Prisons and Jails; Department of Mental Health; Entertainment, Sports and
Amusements
Type: Original
Date: April 15, 2019

Bill Summary: This proposal establishes the offenses of unlawful use of unmanned aircraft and modifies the offense of possession of unlawful items in a prison or jail.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
General Revenue	\$0 to (Unknown could exceed\$100,000)	\$0 to (Unknown could exceed \$100,000)	\$0 to (Unknown could exceed \$100,000)
Total Estimated Net Effect on General Revenue	\$0 to (Unknown could exceed\$100,000)	\$0 to (Unknown could exceed \$100,000)	\$0 to (Unknown could exceed \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 pages.

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

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on FTE	0	0	0

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

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§221.111 and 569.157 - Two-way telecommunications device & unmanned aircraft near a correctional center

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 proposed new crimes relating to the unlawful use of an unmanned aircraft near a correctional center. These new crimes range from a new class A misdemeanor to a class B felony. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

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.

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.

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

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS. The creation of a new crime creates additional responsibilities for county prosecutors which may, in turn, result in additional costs, which are difficult to determine.

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** state §221.111 modifies the offense of possession of unlawful items in a prison or jail to include any two-way telecommunications device or its components, which would be a class E felony offense. In addition, this proposal creates a class A misdemeanor offense for any person who is not an offender, possesses a two-way communication device or its component parts, and is not intending to conceal, deliver or deposit for another but refuses to comply with orders to surrender the device. The DOC states there may be some impact, but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

Oversight contacted the DOC regarding the number of conduct violations that involved cell phones over the past six years. The six-year average had approximately 30 violations annually. Currently, the violation is a minor violation-confiscation, and the offender spends up to 20 days in disciplinary segregation and loss of privileges. With the passage of this bill, courts would make the determination as to any extra time imposed on the offender's sentence. If the court decides the sentence will run concurrently with the sentence the offender is already serving, the offender's time in prison or on parole would not be extended. However, if the offender now must serve additional time at the end of his or her scheduled sentence, this would (at some point depending on when the prisoner would have been released if not for this new charge) increase the prison population and result in additional costs for DOC. Based on this information, Oversight assumes the impact to the General Revenue Fund will be \$0 to (Unknown) depending on the decision of the courts.

Oversight notes the case *State of Missouri v Williams* demonstrates a scenario in which a conviction under this proposal could incur greater than expected state costs. In *Williams*, the defendant's contraband cell phone conviction resulted in enhanced sentencing under Missouri's "prior and persistent" penalty laws (prior to the appellate court ultimately overturning the conviction). According to Section 558.016, an offender must be guilty of multiple felonies to be eligible for "prior and persistent" sentencing. As possession of a contraband cell phone currently is a misdemeanor, such a conviction on its own would not push an incarcerated offender into prior and persistent status.

This proposal will elevate possession of a contraband cell phone from a misdemeanor to a felony. As incarcerated offenders are more likely to be eligible for "prior and persistent" sentencing provisions, any proposal resulting in more incarcerated offender felony convictions may ultimately carry a greater state financial burden than suggested by the underlying penalty of the crime itself.

In 2011, the state of Michigan passed SB 551 which prohibits a prisoner from possessing or using a cell phone or other wireless communication device in a correctional facility or on the grounds of a correctional facility. A violation of the act is a felony punishable by up to five years

ASSUMPTION (continued)

imprisonment, a maximum fine of \$1,000, or both. Oversight contacted the Michigan Department of Corrections to determine the number of violations since the passage of the bill.

The state of Michigan's Correctional Facilities Administration (CFA), Operations Division indicated it has only been tracking the contraband data since March 2017 and, since then, there have been 94 incidents involving cell phones. If an offender is found with a cell phone, they are written a Class I Major Misconduct Report for Possession of Dangerous Contraband. The structure of the disciplinary process is one of progressive sanctions, with the maximum sanction reserved for only the most serious or persistent violators. A record of the offender's prior misconduct history is provided to the hearing officer to assist in determining an appropriate sanction such as the following:

- Detention, not to exceed 10 days for each violation or 20 days for all violations;
- Toplock, not to exceed 30 days for each violation, but not combined with a detention sentence;
- Loss of privileges, not to exceed 30 days for each violation or 60 days for all violations; or
- Restitution and/or disgorgement of funds/ill-gotten gains.

DOC states section 569.157 requires the department to post a warning sign, no smaller than 11x14" at each of DOC's 22 institutions. These signs will be purchased from Missouri Vocational Enterprises (MVE) at a cost of \$65 each for a total cost of \$1,430 (\$65 x 22). The DOC will absorb these costs; therefore, the DOC anticipates no fiscal impact.

Oversight notes this proposal also creates an offense of unlawful use of unmanned aircraft near a correctional center. In section 217.010, 'correctional center' is defined as "any premises or institution where incarceration, evaluation, care, treatment, or rehabilitation is provided to persons who are under the department's authority." Oversight notes this may inadvertently include persons under the authority of DOC's Probation and Parole Division that are not in prison and may be in premises receiving an evaluation, care, or treatment (such as a doctor's office or clinic), which could create an overly broad scope for this new offense. The DOC states their response above is based on the interpretation of the statutory definition of a correctional center as a DOC operated facility for the housing of incarcerated offenders. Oversight will defer to DOC's interpretation and utilize their no impact response.

Oversight notes that the **Department of Economic Development - Public Service Commission, Department of Natural Resources, Department of Mental Health, Department of Public Safety - (Fire Safety and Missouri State Highway Patrol), Department of Transportation, Office of State Courts Administrator, St. Louis County Police Department, Springfield Police Department, St. Louis County Department of Justice Services and Metropolitan St. Louis Sewer District** have each stated the proposal would not have a direct fiscal impact on their organization.

ASSUMPTION (continued)

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
GENERAL REVENUE FUND			
<u>Costs - SPD (§§221.111 and 569.157)</u>			
Salaries, fringe benefits, and equipment and expense	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<u>Costs - DOC (§221.111)</u>			
Increased incarceration costs for possessing two-way telecommunications device or component parts thereof	<u>\$0 to</u> (Unknown)	<u>\$0 to</u> (Unknown)	<u>\$0 to</u> (Unknown)
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>\$0 to</u> (Unknown) <u>could exceed</u> <u>\$100,000</u>	<u>\$0 to</u> (Unknown) <u>could exceed</u> <u>\$100,000</u>	<u>\$0 to</u> (Unknown) <u>could exceed</u> <u>\$100,000</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

§221.111

Currently, it is unlawful to possess, deliver, deposit, or conceal certain items in a prison or jail. This bill adds two-way telecommunications devices and their component parts to the list of prohibited items.

FISCAL DESCRIPTION (continued)

This bill provides that the prohibition on telecommunications devices does not apply to law enforcement officers lawfully engaged in their duties or any person who is authorized to use such a device in the facility. However, the bill prohibits any such person from knowingly delivering, attempting to deliver, or depositing a two-way telecommunications device or its component parts to any inmate, prisoner, or detainee. The bill specifies persons to whom the provisions of the bill do not apply.

§569.157

This act creates the offenses of unlawful use of an unmanned aircraft near a correctional center and unlawful use of an unmanned aircraft near a mental health hospital. These offenses are committed if someone purposely operates an unmanned aircraft within a vertical distance of 300 feet of the correctional center or mental health hospital or a horizontal distance of the property line of the correctional center or mental health hospital. These offenses are also committed if a person purposely uses an unmanned aircraft to deliver a controlled substance or object that may be used to harm an offender or patient or harm an employee of a correctional center or mental health hospital.

The term "correctional center" is defined to include all state correctional centers, private jails, and local jails. Additionally, "mental health hospital" is defined to include any facility operated by the Department of Mental Health to provide inpatient evaluation, treatment, or care to persons suffering from a mental disorder, mental illness, or mental abnormality.

This act shall not apply to certain individuals acting in the course their of their official duties or to public utilities or rural electric cooperatives under certain circumstances, as is described in this act.

Under this act, every correctional center and mental health hospital shall post an eleven by fourteen inch sign warning of the provisions of this act.

Violations of the act shall be punished as a class B felony if the person operating the unmanned aircraft was delivering an article that may be used to harm an offender or patient or harm an employee of the correctional center or mental health hospital. If the use of the unmanned aircraft was to facilitate an escape from the correctional center or mental health hospital, then it shall be punished as a class C felony. Finally, if the person operating the unmanned aircraft was delivering a controlled substance, then it shall be punished as a class D felony.

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
Department of Economic Development -
 Public Service Commission
Department of Natural Resources
Department of Mental Health
Department of Public Safety -
 Fire Safety
 Missouri State Highway Patrol
Department of Transportation
Missouri Office of Prosecution Services
Office of State Courts Administrator
State Public Defender's Office
St. Louis County Police Department
Springfield Police Department
St. Louis County Department of Justice Services
Metropolitan St. Louis Sewer District



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