

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3713-02
Bill No.: SCS for SB 523
Subject: Crimes and Punishment; Drugs and Controlled Substances; Food; Health Care; Health and Senior Services Department
Type: Original
Date: February 14, 2020

Bill Summary: This proposal modifies provisions relating to controlled substances.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2030)
General Revenue	(Less than \$561,271)	(Less than \$750,491)	(Less than \$886,778)	(Less than \$1,458,869)
Total Estimated Net Effect on General Revenue	(Less than \$561,271)	(Less than \$750,491)	(Less than \$886,778)	(Less than \$1,458,869)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2030)
Total Estimated Net Effect on Other State Funds	\$0	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2030)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2030)
General Revenue	3 FTE	3 FTE	3 FTE	3 to 5 FTE
Total Estimated Net Effect on FTE	3 FTE	3 FTE	3 FTE	3 to 5 FTE

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 2021	FY 2022	FY 2023	Fully Implemented (FY 2030)
Local Government	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown

FISCAL ANALYSIS

ASSUMPTION

§§195.015 and 195.017 - Emergency rules

Officials from the **Department of Health and Senior Services (DHSS)** state section 195.015.4 of this proposed legislation requires the Division of Regulation and Licensure (DRL), Section for Health Standards and Licensure, Bureau of Narcotics and Dangerous Drugs (BNDD) to promulgate emergency rules within 30 days of publication in the federal register each time the Drug Enforcement Administration (DEA) designates a substance as a controlled substance or reschedules or deletes a substance. The DEA makes such changes an average of 20 times annually.

It is assumed it will take a Health and Senior Services Manager (salary \$68,802) approximately 16 hours to promulgate each emergency rule change. Based on 2,080 working hours per year, this would require 0.15 FTE to assume the duties set forth in the proposed section (16 hours X 20 rule changes ÷ 2,080 hours per year = 0.15) for a total personal service annual cost of \$10,320 (\$68,802 X 0.15).

The department anticipates being able to absorb these costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

Oversight obtained information from the U.S. Department of Justice, Drug Enforcement Administration (DEA), Diversion Control Division. Oversight determined that in the past 5 years (2015 - 2019), the DEA has taken scheduling actions on substances/controlled substances 91 times (average 18.2 actions per year). Based on this information the DHSS would need 0.15 FTE (16 hours X 19 rule changes ÷ 2,080 hours = 0.15, rounded) to manage the DEA's average annual change in substance/controlled substance schedules. Oversight assumes the additional duties can be performed within DHSS' current funding/staffing levels.

§195.805 - No marketing of medical marijuana products that appeal to persons under 18 years of age

DHSS states §195.805 prohibits edible marijuana-infused products sold in Missouri to be designed, produced, or marketed in a manner that is designed to appeal to persons under 18 years of age. It provides for enforcement actions on the part of the DHSS. The department expects to absorb these costs in the normal ebb and flow of its operations.

The DHSS anticipates being able to absorb these costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

ASSUMPTION (continued)

Oversight does not have any information to the contrary. Oversight assumes the DHSS has sufficient staff and resources to perform the additional work required by this proposal and will reflect no fiscal impact for the DHSS for fiscal note purposes.

Oversight notes provisions of §195.805.3 provides for departmental sanctions, including administrative penalties, for any licensed or certified entity regulated by the Department of Health and Senior Services that designs, produces, or markets medical marijuana products that would appeal to persons under eighteen years of age. Administrative penalties are distributed to school districts based on the location of the entity receiving the penalty. It is unknown whether penalties will be imposed or how much in penalties may be distributed to school districts. Therefore, Oversight will present penalties to school districts as \$0 to Unknown, for fiscal note purposes.

§§579.065 and 579.068 - Fentanyl or carfentanyl trafficking charges

Officials from the **Department of Corrections (DOC)** state §§579.065 and 579.068 add felony classes A and B for these drugs (fentanyl or carfentanyl) if they are charged under trafficking 1st degree, depending upon quantity of drugs involved and first or subsequent offense. Similarly, it adds them to felony B and C, if the offense is charged under trafficking 2nd degree. The DOC is expecting that the average sentence length and average first releases from prison, as well as parole and probation sentences, will remain the same for these new offenders, however, the number may increase because of the addition of new drugs under this legislation.

In FY2019, there were seven new admissions under charges of 1st degree drug trafficking class A felony, with 12.5 years of average sentence, and 7.2 years average time for first release, 4 new probations with average term of 5 years. For 1st degree class B felony, there were six new admissions with an average sentence of 8.7 years and four new probations with average term of 5 years.

For 2nd degree drug trafficking felony class A, there were five new admissions with an average sentence of 10.7 years, 6.7 years to first release and 5 new probations with 4.2 years average probation term. For class B felony, there were 30 new admissions, 9.7 years average sentence, 2.8 years to first release and 6 new probations with 4.7 years average term.

For 2nd degree drug trafficking class C felony, there were 11 new admissions with 7.2 years average sentence length, 1.3 years to first release, and 14 new probations with 3.8 years average term length.

ASSUMPTION (continued)

Estimating that the changes in the bill result in the same number of new admissions and probations, the DOC will see no new impact by this new change. However, if the DOC assumes an increase of at least 30% new admissions and probations, based on the addition of these new drugs to the list, and assuming same sentence lengths, the likely impact will be approximately 96 new prison admissions and 109 additional field population by FY2030.

In December 2019, the DOC reevaluated the calculation used for computing the Probation and Parole average daily cost of supervision and revised the cost calculation to be used for 2020 fiscal notes. For the purposes of fiscal note calculations, the DOC averaged district caseloads across the state and came up with an average caseload of 51 offender cases per officer. The new calculation assumes that an increase/decrease of 51 cases would result in a change in costs/cost avoidance equal to the cost of one FTE staff person. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

In instances where the proposed legislation would only affect a specific caseload, such as sex offenders, the DOC will use the average caseload figure for that specific type of offender to calculate cost increases/decreases. For instances where the proposed legislation affects a less specific caseload, DOC projects the impact based on prior year(s) actual data for DOC's 44 probation and parole districts.

The DOC cost of incarceration is \$17.496 per day or an annual cost of \$6,386 per offender. The DOC cost of probation or parole is determined by the number of P&P Officer II positions that would be needed to cover the new caseload.

	# to prison	Cost per year	Total Costs for prison	Change in probation & parole officers	Total costs for probation and parole	# to Probation and Parole	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	18	(\$6,386)	(\$95,790)	0	\$0	10	(\$95,790)
Year 2	35	(\$6,386)	(\$227,980)	0	\$0	20	(\$227,980)
Year 3	54	(\$6,386)	(\$358,776)	0	\$0	30	(\$358,776)
Year 4	69	(\$6,386)	(\$467,604)	0	\$0	41	(\$467,604)
Year 5	82	(\$6,386)	(\$566,818)	0	\$0	50	(\$566,818)
Year 6	87	(\$6,386)	(\$613,407)	1	(\$79,528)	62	(\$692,935)
Year 7	91	(\$6,386)	(\$654,442)	1	(\$71,083)	76	(\$725,526)
Year 8	94	(\$6,386)	(\$689,538)	1	(\$71,854)	87	(\$761,392)
Year 9	96	(\$6,386)	(\$718,293)	1	(\$72,635)	100	(\$790,928)
Year 10	96	(\$6,386)	(\$732,659)	2	(\$157,212)	109	(\$889,870)

ASSUMPTION (continued)

Oversight does not have any information to the contrary. For fiscal note purposes, Oversight will range DOC's estimated costs from \$0 (same number of new admissions) to the amount provided (30% increase in admissions and probations).

Officials from the **Department of Public Safety, Missouri State Highway Patrol (MHP)** state from January 1 - December 9, 2019, the Crime Laboratory Division qualitatively tested 937 items containing a weighable amount (>0.01 gram) of powder, liquid, or solid containing fentanyl/fentanyl derivatives. The proposed legislation would necessitate an additional, quantitative test be performed.

Due to the nature of fentanyl/fentanyl derivatives as an abused drug, it would be expected that the concentration of the drug in any given sample would be less than 10%. 412 of the 937 items tested (44%) , had a weight of less than 0.10 gram. To meet the lowest threshold of 10 milligrams in the proposed bill, at the concentrations anticipated in the samples, it is likely that multiple items from these cases will need both additional qualitative testing and quantitative testing. The MHP estimates this number to be approximately 400 items. The additional qualitative testing would take approximately 400 personnel hours per year.

The laboratory does not currently have a method in place to perform quantitative testing on fentanyl/fentanyl derivatives. It is anticipated developing and testing a method would take a full-time employee approximately 3 months or 520 personnel hours.

If the method developed was similar to MHP's current quantitative method(s), the cost for standards to generate a calibration curve would be approximately \$855. Approximately 32 samples would be run on each curve (based on the volume of internal standard the lab is able to mix in each batch when making the reagents necessary to create a calibration curve). The total estimated cost for running the method would be \$35,711 per year (\$26.71/sample x 1,337 estimated samples) .

The 937 items already qualitatively tested plus the additional estimated 400 items that would be qualitatively tested, result in an estimated 1,337 items that would require quantitative testing on the new method. Based on quantitative methods in place currently, MHP estimates a full-time employee would be able to quantitatively analyze 40 - 50 items per month. The quantitative testing would take approximately 5,150 personnel hours per year (3 FTE at \$58,896 each, annually).

Total costs for this proposal are anticipated at approximately \$422,000 annually.

ASSUMPTION (continued)

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 crime of trafficking fentanyl, or gamma-hydroxybutyric acid, or flunitrazepam. 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.

In Fiscal Year 2019, SPD's Trial Division opened 193 Trafficking drug cases:

PCCHARGES	CASES
579.065 - Trafficking Drugs 1st Degree	55
579.068 - Trafficking Drugs 2nd Degree	138
	193

Oversight notes over the last three fiscal years, the SPD has lapsed a total of \$153 of General Revenue appropriations (\$2 out of \$28.0 million in FY 2017; \$150 out of \$42.5 million in FY 2018; and \$1 out of \$46.0 million in FY 2019). 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 resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

Oversight notes the **Missouri Office of Prosecution Services** has stated the proposal would not have a fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

Bill as a whole

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

Officials from the **Joint Committee on Administrative Rules (JCAR)** state the legislation is not anticipated to cause a fiscal impact to JCAR beyond its current appropriation.

Oversight assumes JCAR will be able to administer any rules resulting from this proposal with existing resources.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could require additional resources.

FISCAL IMPACT -
State Government

	FY 2021 (10 Mo.)	FY 2022	(FY 2023)	Fully Implemented (FY 2030)
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**GENERAL
 REVENUE FUND**

Costs - DOC

(§§579.065 and
 579.068) p. 5

Increase in incarceration costs	\$0 to (\$95,790)	\$0 to (\$227,980)	\$0 to (\$358,776)	\$0 to (\$732,659)
Personal service	\$0	\$0	\$0	\$0 to (\$84,766)
Fringe benefits	\$0	\$0	\$0	\$0 to (\$53,415)
Equipment and expense	\$0	\$0	\$0	\$0 to (\$19,031)
Total <u>Costs - DOC</u>	<u>\$0 to (\$95,790)</u>	<u>\$0 to (\$227,980)</u>	<u>\$0 to (\$358,776)</u>	<u>\$0 to (\$889,870)</u>
FTE Change - DOC	0 FTE	0 FTE	0 FTE	0 to 2 FTE

Costs - DPS, MHP

(§§579.065 and
 579.068) p. 6

Personal service	(\$147,240)	(\$178,455)	(\$180,239)	(\$193,241)
Fringe benefits	(\$131,456)	(\$159,328)	(\$160,917)	(\$172,526)
Equipment and Expense	<u>(\$86,785)</u>	<u>(\$84,728)</u>	<u>(\$86,846)</u>	<u>(\$103,232)</u>
Total <u>Costs - DPS,</u> MHP	<u>(\$365,481)</u>	<u>(\$422,511)</u>	<u>(\$428,002)</u>	<u>(\$468,999)</u>
FTE Change - DPS, MHP	3 FTE	3 FTE	3 FTE	3 FTE

FISCAL IMPACT - Small Business

This proposal may impact small business that make or sell medical marijuana products. (§195.805)

FISCAL DESCRIPTION

This act prohibits the sale of edible marijuana-infused products that are designed, produced, or marketed in a manner to appeal to persons under 18 years of age, including candies, lollipops, cotton candy, or products in the shape of a human, animal, or fruit. Each increment of an edible marijuana-infused product containing 10 or more milligrams of tetrahydrocannabinols (THC) shall be stamped with a diamond containing the letters "THC" and the number of milligrams of THC in that increment. Any medical marijuana licensed or certified entity regulated by the Department of Health and Senior Services found to have violated this act shall be subject to sanctions, including an administrative penalty. (§195.805)

This act modifies provisions relating to the trafficking of fentanyl and carfentanil. Adds felony classes A and B for these drugs if they are charged under trafficking 1st degree, depending upon quantity of drugs involved and first or subsequent offense. Similarly, it adds them to felony B and C, if the offense is charged under trafficking 2nd degree. (§§579.065 and 579.068)

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 Health and Senior Services
Department of Corrections
Department of Public Safety -
 Missouri State Highway Patrol
Joint Committee on Administrative Rules
Missouri Office of Prosecution Services
Office of State Courts Administrator
Office of Secretary of State
Office of State Public Defender
Springfield Police Department



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