

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3864-01
Bill No.: SB 706
Subject: Crimes and Punishment; Drugs and Controlled Substances; Health Care; Health Care Professionals; Health and Senior Services Department; Health, Public; Mental Health; Pharmacy
Type: Original
Date: February 10, 2020

Bill Summary: This proposal establishes a “Prescription Abuse Registry” and modifies provisions relating to ephedrine, phenylpropanolamine, and pseudoephedrine.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	(Less than \$598,153)	(Less than \$255,248)	(Less than \$258,142)
Total Estimated Net Effect on General Revenue	(Less than \$598,153)	(Less than \$255,248)	(Less than \$258,142)

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

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 10 pages.

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

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	1 FTE	1 FTE	1 FTE
Total Estimated Net Effect on FTE	1 FTE	1 FTE	1 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
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§195.950, 195.655, 195.660 and 195.665 - Prescription abuse registry

Officials from the **Department of Health and Senior Services (DHSS)** state the proposed legislation establishes a "Prescription Abuse Registry" within the DHSS. The legislation allows individuals eighteen years of age or older to be placed in the registry. For fiscal note purposes, DHSS assumes requests to be listed in the registry will be received electronically.

DHSS will require, at a minimum, one (1) FTE to implement and maintain the Prescription Abuse Registry. DHSS assumes, for fiscal note purposes, that staff will have access to the prescription abuse registry. One Health Program Representative II (\$37,070 annually) will be required to establish and maintain the registry, assist with the rule writing process, implement the provisions of the legislation, and process the applications for removal. This position will be filled in September 2020.

DHSS assumes for fiscal note purposes that the mailing costs for applications for removal from the registry, outlined in Section 195.655.1, would be minimal.

Oversight notes DHSS assumes it will need a total of 1 new FTE as a result of the provisions of this proposal. Oversight assumes the additional FTE can be housed within current DHSS locations and additional rental space and associated costs will not be required. However, if multiple proposals pass during the legislative session requiring additional FTE, cumulatively the effect of all proposals passed may result in the DHSS needing additional rental space.

Officials from the **Office of Administration (OA), Information Technology Services Division (ITSD)/DHSS** state DHSS would require the assistance of OA, ITSD to obtain the services of a contractor to build a Prescription Abuse Registry. The registry will be available to health care providers for the sole purpose of determining whether an individual is listed in the registry. When a health care provider queries the system they shall receive a response that only confirms or denies the individual's listing in the registry. No health care provider shall have access to any other personal information contained in the registry.

This project has been assumed to be an 11 month project with an expected project team of a project manager, business analyst and developer. It has been assumed that this application will be a web application hosted on an existing web server. Database space has been projected at 50 GB for the development and test environments with 100 GB for the production environment. IT environment costs have been estimated based on the FY20 State Data Center Cost Allocation Plan.

ASSUMPTION (continued)

It is assumed that every new IT project/system will be bid out because all ITSD resources are at full capacity. IT consultant contract rates are estimated at \$95 per hour. It is estimated this project will require 4,575.96 contract hours in FY21 at a total cost to General Revenue of \$434,716. Ongoing costs for FY22 and FY23 are estimated to be \$89,950 and \$91,345 respectively.

Oversight notes that an average salary for a current IT Specialist within ITSD is approximately \$54,641, which totals roughly \$85,000 per year when fringe benefits are added. Assuming that all ITSD resources are at full capacity, Oversight assumes ITSD may (instead of contracting out the programming) hire additional IT Specialists to perform the work required from this bill; however, for fiscal note purposes, Oversight will reflect the ITSD estimated cost of \$434,716 in FY21; \$89,950 in FY22; and \$92,345 in FY23.

Officials from the **Department of Corrections (DOC)** state passage of this legislation would create a new class E felony offense as specified in §195.665. A potential increase in the number of charges for class A misdemeanors could occur from specifications outlined in §579.060, but as the DOC does not supervise misdemeanors, this will have no impact on the Department.

For each new nonviolent class E felony, the DOC estimates one person will be sentenced to prison and two to probation. The average sentence for a class E felony offense is 3.4 years, of which 2.1 years will be served in prison with 1.4 years to first release. The remaining 1.3 years will be on parole. Probation sentences will be 3 years.

The cumulative impact on the Department is estimated to be 2 additional offenders in prison and 7 on field supervision by FY 2023.

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.

ASSUMPTION (continued)

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	# to probation & parole	Cost per year	Total cost for probation and parole	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	1	(\$6,386)	(\$5,322)	2	absorbed	\$0	(\$5,322)
Year 2	2	(\$6,386)	(\$13,027)	4	absorbed	\$0	(\$13,027)
Year 3	2	(\$6,386)	(\$13,288)	7	absorbed	\$0	(\$13,288)
Year 4	2	(\$6,386)	(\$13,554)	7	absorbed	\$0	(\$13,554)
Year 5	2	(\$6,386)	(\$13,825)	7	absorbed	\$0	(\$13,825)
Year 6	2	(\$6,386)	(\$14,101)	7	absorbed	\$0	(\$14,101)
Year 7	2	(\$6,386)	(\$14,383)	7	absorbed	\$0	(\$14,383)
Year 8	2	(\$6,386)	(\$14,671)	7	absorbed	\$0	(\$14,671)
Year 9	2	(\$6,386)	(\$14,964)	7	absorbed	\$0	(\$14,964)
Year 10	2	(\$6,386)	(\$15,264)	7	absorbed	\$0	(\$15,264)

Oversight does not have any information to the contrary. Oversight assumes the minimal fiscal impact incurred by the DOC will be absorbable within current funding levels.

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 knowingly disclosing information in the prescription abuse registry, a new Class E 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 \$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.

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.

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.

Bill as a whole

Officials from the **Office of Attorney General (AGO)** assume any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the AGO for fiscal note purposes.

Oversight notes the **Missouri Office of Prosecution Services** has stated the proposal would not have a measurable fiscal impact on their organization. The creation of additional responsibilities for county prosecutors may result in additional costs which are difficult to determine at the present time. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

Officials from the **OA, Administrative Hearing Commission** anticipate this legislation will not significantly alter its caseload. However, if similar bills pass resulting in more cases, there could be a fiscal impact.

Officials from the **OA, General Services Division (GS)** assumes that no state employee or agency would violate the proposal. Therefore, it is assumed that no successful claims will be made from the Legal Expense Fund and the proposal would thus have no fiscal impact upon OA, GS. However, should that assumption prove incorrect, significant costs could be incurred by the Legal Expense Fund.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect no impact as provided by the OA, AHC and OA, GS for fiscal note purposes.

ASSUMPTION (continued)

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.

Oversight notes the **Department of Commerce and Insurance, the Department of Public Safety, Missouri State Highway Patrol, the Office of State Courts Administrator, the Adair County Health Department and the Columbia/Boone County Department of Public Health and Human Services** 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 **Cooper County Public Health Center** state they may incur unknown costs and losses as a result of this proposal.

Oversight notes the Cooper County Public Health Center did not provide a detailed response for their statement of unknown costs and losses. Oversight assumes, based on other local public health agency responses, that costs/losses experienced by the Cooper County Public Health Center will likely be minimal and, therefore, absorbable within current funding levels.

Officials from the **Office of 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 Secretary of State's office 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 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, we also recognize 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 our office can sustain with our 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.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other local public health agencies were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
GENERAL REVENUE FUND			
<u>Costs - DHSS (§§195.650, 195.655, 195.660, and 195.665)</u>			
Personal service	(\$30,892)	(\$37,441)	(\$37,815)
Fringe benefits	(\$19,859)	(\$22,034)	(\$22,158)
Equipment and expense	(\$12,302)	(\$6,183)	(\$6,339)
Total <u>Costs - DHSS</u>	<u>(\$63,053)</u>	<u>(\$65,658)</u>	<u>(\$66,312)</u>
FTE Change - DHSS	1 FTE	1 FTE	1 FTE
 <u>Costs - OA, ITSD (§§195.650, 195.655, 195.660, and 195.665) - Consultant costs for prescription abuse registry development and on-going costs</u>			
	(\$435,100)	(\$89,590)	(\$91,830)
 <u>Costs - SPD (§195.665 & §579.060) - Personal service, fringe benefits and equipment and expense</u>			
	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
 ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND			
	<u>(Less than \$598,153)</u>	<u>(Less than \$255,248)</u>	<u>(Less than \$258,142)</u>
 Estimated Net FTE Change on the General Revenue Fund			
	1 FTE	1 FTE	1 FTE
 <u>FISCAL IMPACT - Local Government</u>			
	FY 2021 (10 Mo.)	FY 2022	FY 2023
	<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

This bill establishes a prescription abuse registry. The Department of Health and Senior Services shall, by January 1, 2022, establish and maintain a prescription abuse registry. Individuals aged 18 years or older may request to be listed in the registry. Individuals may request to be removed as specified in the act after 5 years from the date such individual was listed in the registry.

Information contained in the registry shall be confidential. The Department shall enable health care providers to access the registry for the sole purpose of determining whether an individual is listed in the registry and shall only provide a response that confirms or denies the individual's presence in the registry. No department, agency, instrumentality, political subdivision, state or federal law enforcement agency, or any individual other than a health care provider shall have access to the registry.

Any person who knowingly and unlawfully accesses or discloses information in the registry and any person authorized to have access who knowingly uses or discloses such information in violation of the provisions of this act shall be guilty of a Class E felony. Additionally, this act provides a private cause of action for persons whose data has been disclosed to an unauthorized person. Recovery under this cause of action shall include liquidated damages of \$2,500 and compensatory economic and non-economic damages, attorney's fees, and court costs. Punitive damages are available for intentional and malicious unauthorized disclosure. (§§195.650, 195.655, 195.660 and 195.665)

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

Missouri Attorney General's Office
Department of Commerce and Insurance
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 Administration -
 Administrative Hearing Commission
 General Services Division
 Information Technology Services Division/DHSS

SOURCES OF INFORMATION (continued)

Office of State Courts Administrator
Office of Secretary of State
Office of State Public Defender
Adair County Health Department
Columbia/Boone County Department of Public Health and Human Services
Cooper County Public Health Center



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February 10, 2020



Ross Strobe
Assistant Director
February 10, 2020