

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4552-01  
Bill No.: HB 1254  
Subject: Drugs and Controlled Substances; Crimes and Punishment; Law Enforcement  
Officers and Agencies  
Type: Original  
Date: March 2, 2018

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Bill Summary: This proposal changes the laws regarding the offense of trafficking drugs by adding fentanyl to the offense.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2025)
General Revenue	\$0	\$0	\$0	(\$167,735)
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$167,735)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2025)
<b>Total Estimated Net Effect on <u>Other</u> 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 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2025)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2025)
<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.

ESTIMATED NET EFFECT ON LOCAL FUNDS				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2025)
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Department of Public Safety - Missouri Highway Patrol**, the **Department of Mental Health**, the **Office of Prosecution Services**, and the **Springfield Police Department** each assume the proposal would not fiscally impact their respective agencies.

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** 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.

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** assumes the SPD can absorb the additional caseload that may result from this proposal.

Officials from the **Office of the State Courts Administrator** state there may be some impact, but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

Officials from the **Department of Corrections (DOC)** this bill state repeals and then rewrites sections 579.065 and 579.068, RSMo, thus adding fentanyl in the list of drugs to be charged with drug trafficking. The bill will create new felony charges of class A, B, and C for trafficking in fentanyl. This is new legislation.

Section 579.065 defines trafficking of drugs in the first degree if a person distributes, manufactures, produces or attempts said activities for certain controlled substances within certain weight amounts. It is a class B felony or a class A felony dependent on quantity of illicit drug. With this bill fentanyl is added.

Section 579.068 defines trafficking of illicit drugs in the second degree if a person possesses or attempts to purchase for certain controlled substances within in certain weight amounts. Penalties (class A, B, and C) are depending on illicit drug and quantity. Fentanyl is added with this proposed legislation.

## ASSUMPTION (continued)

### Effect of New Legislation

Fentanyl is a controlled substance, Schedule II opiate (section 195.017, RSMo). In 2016, nine-hundred and eight heroin/opioid deaths occurred in Missouri; 60% occurred with fentanyl or fentanyl analog found in toxicology testing. The illegal usage of fentanyl has been on a steep increase since 2013. Fentanyl falls under the current law that makes distribution of a controlled substance a class C felony (579.020); as noted earlier fentanyl is not included in the drug trafficking statutes, 579.065 and 579.068, RSMo. In FY17, the 343 persons were incarcerated, 835 given probationary terms, and 361 received 120-day shock term for distribution of a controlled substance (579.020); it is unknown the number distributing fentanyl.

### Estimating the Impact

The impact of FN 4552.01 to the Department of Corrections (DOC) is estimated by using the number of person charged with a distribution fentanyl and then calculating what would be the impact if all of these offenders were now charged with drug trafficking offenses under 579.065 and 579.068, RSMo. We must estimate the impact of offenders charged with drug trafficking of fentanyl and then subtract the cost avoidance of those same person no longer being charged for distribution of fentanyl.

#### a) Estimating the Percent of Drug Violations with Fentanyl

For FY17, new admissions to DOC, with drug offenses that list a known illicit drug by NCIC code, total 1,348 persons. Of these, 10.3% list synthetic narcotic (which includes fentanyl). We assume 25% of the synthetic narcotic charges have fentanyl as the illicit drug. This equates to the assumption that 2.6% of all offenses for distributions of controlled substances were for fentanyl (25% of the 10.3% of drug offenses with NCIC codes in FY17).

#### b) Calculating the Number of Offenders Charged with Distributing Fentanyl

**Table 1. Estimating the Number of Drug Offenders of Fentanyl**

FY2017	All Charged w/Distribution	Multiplier	Est. Fentanyl Offenders
Prison	343	.026	9
Probation + 120-day	<u>1196</u>	.026	<u>31</u>
Total	1539		40

This Table 1 tells us the estimate is 40 persons in FY17 (charged with distributing a controlled substance) distributed fentanyl. Of these, 9 entered prison and 31 received probation/120-day terms. These numbers will be used to estimate the impact for incarceration and probation for drug trafficking under the new bill.

ASSUMPTION (continued)

c) Estimating the Felony Class of Incarcerated Offenders Charged for Drug Trafficking

In order to ascertain the impact of the addition to fentanyl to these two statutes, we determine the ratio of felony classes for those charged with drug trafficking. Over the last eighteen months, new admission data show twenty-seven persons were incarcerated with class A felony for drug trafficking; 33 persons were incarcerated with class B felony; and 2 incarcerated with a class C felony for trafficking. This equates to 44% are charged with a class A felony for drug trafficking; 53% with a class B felony; and 3% with a class C felony. In paragraph b, we estimated nine persons are to be incarcerated for fentanyl distribution. These 9 offenders are used to determine the offense class under the 579.065 and 579.068, RSMo.

**Table 2 Estimating Felony Class for Nine Incarcerated Offenders for Fentanyl Trafficking**

July 2016 to Dec. 2017	No. charged	% of total	Est. Fentanyl Offenders incarcerated for Trafficking
Trafficking A	27	44%	4
Trafficking B	33	53%	5
Trafficking C	<u>2</u>	3%	<u>0</u>
Total	62		9

The weighted average sentence length for the nine persons incarcerated for fentanyl trafficking is 10.3 years, 6.5 years incarcerated and 3.8 years to parole.

d) Estimating the Felony Class for Probationers charged for Drug Trafficking

In section b), we calculated an estimate of 31 persons who disturbed fentanyl would receive probation. We will now calculate the class type of these 31 persons if they had been sentenced as drug traffickers. Using FY17 admission to probation data, 34 have class A felony probationary terms for drug trafficking, 38 have class B felony, and 1 has class C felony. For those given probationary terms, this equates to 47% given class A, 52% class B, and 1% class C.

ASSUMPTION (continued)

**Table 3. Estimating Felony Class for 31 Probationers for Fentanyl Trafficking**

FY17	No. charged	% of total	Est. Fentanyl Probationers for Drug Trafficking
Trafficking A	34	47%	15
Trafficking B	38	52%	16
Trafficking C	<u>1</u>	1%	<u>0</u>
Total	73		31

The weighted average for a probation term for drug trafficking is 4.8 years. (Class A has a 5.0 year term and class B a 4.7 year term.)

Now we can combine our calculations on incarceration and probation to arrive at the first part of the estimated impact to DOC if FN 4522-01N passes (see Table 4).

**Table 4. Estimated increase and cost for trafficking in fentanyl (person-yrs rounded).**

	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028
<b>New</b>										
Admissions	9	9	9	9	9	9	9	9	9	9
Probations	31	31	31	31	31	31	31	31	31	31
<b>Cumulative Populations</b>										
Prison	9	18	27	36	45	54	59	59	59	59
Parole							5	14	23	32
Probation	31	62	93	124	149	149	149	149	149	149
<b>Impact</b>										
Prison Population	9	18	27	36	45	54	59	59	59	59
Field Population	31	62	93	124	149	149	153	162	171	180
<b>Population Change</b>	<b>40</b>	<b>80</b>	<b>120</b>	<b>160</b>	<b>194</b>	<b>203</b>	<b>212</b>	<b>221</b>	<b>230</b>	<b>239</b>

  

	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028
<b>Estimated Cost</b>	<b>\$129,402</b>	<b>\$263,979</b>	<b>\$403,888</b>	<b>\$549,288</b>	<b>\$684,420</b>	<b>\$759,775</b>	<b>\$818,444</b>	<b>\$859,341</b>	<b>\$901,545</b>	<b>\$945,094</b>

e) Calculating the Current Cost for the 40 Offenders Charged under Distribution (579.020).

In calculating the impact of FN 4552-01N, we need to subtract the cost of the 40 offenders who will no longer be charged under the distribution offense of 579.020. For this class C felony, the sentence is 6.5 years with 3.9 years in incarcerated and 2.6 in parole (9 offenders). Probation for drug distribution class C offense is 4.6 years (31 offenders).

ASSUMPTION (continued)

**Table 5. Estimated decrease and cost avoidance of class C felony for distribution of fentanyl (person-yrs rounded).**

	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028
<b>New</b>										
Admissions	-9	-9	-9	-9	-9	-9	-9	-9	-9	-9
Probations	-31	-31	-31	-31	-31	-31	-31	-31	-31	-31
<b>Cumulative Populations</b>										
Prison	-9	-18	-27	-35	-35	-35	-35	-35	-35	-35
Parole				-1	-10	-19	-23	-23	-23	-23
Probation	-31	-62	-93	-124	-143	-143	-143	-143	-143	-143
<b>Impact</b>										
Prison Population	(9)	(18)	(27)	(35)	(35)	(35)	(35)	(35)	(35)	(35)
Field Population	(31)	(62)	(93)	(125)	(153)	(162)	(166)	(166)	(166)	(166)
Population Change	(40)	(80)	(120)	(160)	(188)	(197)	(201)	(201)	(201)	(201)

  

	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028
<b>Estimated Cost</b>	(\$129,402)	(\$263,979)	(\$403,888)	(\$545,626)	(\$627,418)	(\$663,541)	(\$688,835)	(\$702,612)	(\$716,664)	(\$730,997)

The impact of the passage of FN 4552-01N in the first three years is zero. By FY28, 24 more offenders are incarcerated and fourteen more offenders are on probation with a total increase to supervision of 38 offenders.

	# to prison	Cost per year	Total Costs for <b>prison</b>	# to probation & parole	Cost per year	Total cost for <b>probation and parole</b>	Grand Total - Prison and Probation (includes and 2% inflation)
Year 1	0	(\$6,206)	\$0	0	absorbed	\$0	\$0
Year 2	0	(\$6,206)	\$0	0	absorbed	\$0	\$0
Year 3	0	(\$6,206)	\$0	0	absorbed	\$0	\$0
Year 4	1	(\$6,206)	(\$6,586)	(1)	absorbed	\$0	(\$6,586)
Year 5	10	(\$6,206)	(\$67,176)	(4)	absorbed	\$0	(\$67,176)
Year 6	19	(\$6,206)	(\$130,187)	(13)	absorbed	\$0	(\$130,187)
Year 7	24	(\$6,206)	(\$167,735)	(13)	absorbed	\$0	(\$167,735)
Year 8	24	(\$6,206)	(\$171,090)	(4)	absorbed	\$0	(\$171,090)
Year 9	24	(\$6,206)	(\$174,512)	5	absorbed	\$0	(\$174,512)
Year 10	24	(\$6,206)	(\$178,002)	14	absorbed	\$0	(\$178,002)

ASSUMPTION (continued)

Officials from the Ashland Police Department, Branson Police Department, the Cape County Sheriff's Department, the Greene County Sheriff's Department, the Jasper County Sheriff's Department, the Platte County Sheriff's Department, and the Joplin Police Department did not respond to **Oversight's** request for fiscal impact.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021	Fully Implemented (FY 2025)
<b>GENERAL REVENUE</b>				
<u>Costs</u> - DOC - net increase in incarceration costs	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>(\$167,735)</u>
<b>ESTIMATED NET EFFECT TO GENERAL REVENUE</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>(\$167,735)</u></b>

<u>FISCAL IMPACT -</u> <u>Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021	Fully Implemented (FY 2025)
	<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

This bill adds to the offense of trafficking drugs in the first degree knowingly distributing, delivering, manufacturing, or producing or attempting to distribute, deliver, manufacture, or produce more than 10 grams but fewer than 60 grams of fentanyl or any derivative thereof, or any mixture or substance containing a detectable amount of fentanyl. If the violation involves 60 grams or more of fentanyl or any derivative thereof, or any mixture or substance containing a detectable amount of fentanyl, it is a class A felony. If it involves more than 10 grams but fewer than 60 grams, it is a class B felony.

The bill adds to the offense of trafficking drugs in the second degree knowingly possessing or having under one's control, purchasing or attempting to purchase, or bringing into the state more than 10 grams but fewer than 60 grams of fentanyl or any derivative thereof, or any mixture or substance containing a detectable amount of fentanyl. If the violation involves 60 grams or more of fentanyl or any derivative thereof, or any mixture or substance containing a detectable amount of fentanyl, it is a class B felony. If it involves more than 10 grams but fewer than 60 grams, it is a class C 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 Public Safety - Missouri Highway Patrol  
Office of Prosecution Services  
Office of the State Public Defender  
Department of Corrections  
Office of the State Courts Administrator  
Department of Mental Health

Ross Strobe



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March 2, 2018