

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0107-03
Bill No.: HCS for HB Nos. 167 & 166
Subject: Crimes and Punishment; Department of Health and Senior Services; Public Health
Type: Original
Date: April 16, 2019

Bill Summary: This proposal modifies provisions regarding unlawful actions by persons knowingly infected with communicable diseases.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
General Revenue	(Less than \$117,219)	(Less than \$117,306)	(Less than \$117,507)	(Less than \$97,100)
Total Estimated Net Effect on General Revenue	(Less than \$117,219)	(Less than \$117,306)	(Less than \$117,507)	(Less than \$97,100)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$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 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
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 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
General Revenue	0 or .22 FTE			
Total Estimated Net Effect on FTE	0 or .22 FTE	0 or .22 FTE	0 or .22 FTE	0 or .22 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 2020	FY 2021	FY 2022	Fully Implemented (FY 2026)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§191.677, 575.155, and 575.157 - Persons knowingly infected with communicable diseases

Officials from the **Department of Corrections (DOC)** state this legislation changes the former class B felony to a class C felony for exposing a person to a serious infectious or communicable disease. If the person becomes infected, the charge is a class B felony (downgraded from a class A felony). This legislation also adds a class A misdemeanor for a knowingly infected person to act in a reckless manner that creates the potential for exposure.

Research into FY16 to FY18 data shows only one violation on the class D and E felonies of statutes 575.155 and 575.157, RSMo. By broadening the list of communicable diseases, the legislation allows prosecution for other known diseases such as hepatitis D and the Zika virus when transmitted to a pregnancy. These are rare diseases and are not expected to increase the number of offenses under DOC's jurisdiction. The bill allows for yet unknown diseases to be prosecuted for in the future. The impact cannot be estimated.

A review of FY16 to FY18 data shows during the three-year time span, one person was charged with a class A felony (admitted to prison) and six persons were charged with a class B felony (two admitted to prison and four to probation) under 191.677, RSMo. The estimated annual impact is two persons will be charged with a class C felony rather than a class B felony; one offender receives a prison sentence and the other a probationary term. To estimate the impact, the standard sentencing for a class B and C violent offense felonies are used. For class B violent offenses, the average sentence is 9.4 years with 5.3 years until first release. The class C violent offense averages a 6.5 year sentence with 3.0 years till first release. Probationary term for a class B felony is 4.5 years and 4.7 years for a class C felony.

The initial impact occurs in FY2024 with one less person in the adult institution population and one more person in the field population. The full impact occurs in FY2026 with three less offenders incarcerated and two in the field population.

If this impact statement has changed from statements submitted in previous years, it is because the DOC has changed the way probation and parole daily costs are calculated to more accurately reflect the way the Division of Probation and Parole is staffed across the entire state.

In December 2017, 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 2019 fiscal notes. The new calculation estimates the increase/decrease in caseloads at each Probation

ASSUMPTION (continued)

and Parole district due to the proposed legislative change. 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 in a district would result in a change in costs/cost avoidance equal to the cost of one FTE staff person in the district. An increase/decrease less 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 the increase/decrease.

The DOC cost of incarceration is \$17,224 per day or an annual cost of \$6,287 per offender. The DOC cost of probation or parole is determined by the number of Probation and Parole Officer II positions that would be needed to cover the new caseload.

DOC assumes the proposal will result in long-term cost avoidance as indicated in the chart below.

	fewer # to prison	Cost per year	Total savings for prison	# to probation & parole	Cost per year	Total cost for probation and parole	Grand Total - Prison and Probation (includes a 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	0	(\$6,287)	\$0	0	absorbed	\$0	\$0
Year 5	-1	(\$6,287)	\$6,805	1	absorbed	\$0	\$6,805
Year 6	-2	(\$6,287)	\$13,883	2	absorbed	\$0	\$13,883
Year 7	-3	(\$6,287)	\$21,241	2	absorbed	\$0	\$21,241
Year 8	-3	(\$6,287)	\$21,665	1	absorbed	\$0	\$21,665
Year 9	-3	(\$6,287)	\$22,099	0	absorbed	\$0	\$22,099
Year 10	-3	(\$6,287)	\$22,541	0	absorbed	\$0	\$22,541

Oversight notes the proposal makes numerous changes to the statutes regarding exposing another person to a serious infectious or communicable disease. The proposal reduces the severity of the crime from a class B felony to a class C felony; however it adds other language

ASSUMPTION (continued)

regarding knowingly exposing another person. Oversight is unable to estimate how these changes will impact conviction rates; therefore, Oversight will utilize estimates provided by the Department of Corrections.

Officials from the **Department of Health and Senior Services (DHSS)** state this bill makes it unlawful for any individual with a serious infectious or communicable disease to knowingly infect another. A serious infectious or communicable disease is defined in the proposed legislation as a "non-airborne disease spread from person to person that is fatal or causes disabling long-term consequences in the absence of lifelong treatment and management." Depending on the legal interpretation of that definition, other conditions could be considered for prosecution thereby increasing the number of record requests received by the DHSS.

The proposed legislation would criminalize the transmission of additional diseases and increase the number of requests for records from attorneys, law enforcement officers, or others investigating potential cases. The DHSS receives a number of such requests for HIV/AIDS. Currently, these are the only criminalized diseases for disease transmission. The DHSS assumes the number of requests would increase with the passage of this bill. For every request received, the Bureau of Reportable Disease Informatics (BRDI) staff must search, prep, review, compile the information, and send it to the Office of General Counsel (OGC).

The estimates used in this fiscal note are based upon the ratio of 2017 requests for HIV/AIDS records under §191.677, RSMo, divided by the number of new HIV/AIDS cases in 2017 (21 requests / 507 new HIV/AIDS diagnoses = .04142). This ratio was then applied to the 2017 numbers of other selected reportable conditions. The DHSS anticipates Hepatitis B and Syphilis (early latent, secondary, and primary) would be the most likely to generate requests as they have the potential to most closely align with the bill's definition of a "serious infectious or communicable disease". Previous estimates were based on the inclusion of additional conditions which DHSS has not determined do not meet the bill's criteria of requiring "lifelong treatment and management".

Condition	2017 New Cases	Expected Record Requests
Syphilis (early latent, secondary, and primary)	931	39
Hepatitis B (chronic and acute)	442	18
Total for selection	1,373	57

ASSUMPTION (continued)

The estimated average amount of BRDI staff time for a basic record request, without court appearance, is two hours. The estimated staff time to handle anticipated requests for only the conditions listed in the table above would be 114 hours (57 requests x 2 hours). A Health and Senior Services Manager (\$65,874) would be responsible for processing and responding to the additional records requests. The cost in staff time would be approximately \$3,610 ($\$31.67 * 114$ hours). The salary listed for this position reflects the average annual salary in this position with DHSS as of December 1, 2018.

The department anticipates being able to absorb these costs. However, until the FY20 budget is final, DHSS cannot identify specific funding sources.

The Office of the Director states §191.677.3 does not include requirements for the department to release records to requesting entities. Releasing these records may be in violation of HIPAA laws; however, this does not prevent the requests from occurring. The attorney within the department will still have the responsibility to review and respond to each of these requests on a case-by-case basis in addition to other duties such as filing motions to quash, redaction of protected information, court appearances and depositions.

DHSS assumes this proposed legislation will create an increase of 57 requests using the same assumptions as the Division of Community and Public Health. The estimated average amount of the Office of General Counsel's staff time for a record request is eight hours. Thus, the estimated staff time to handle anticipated requests for only the conditions listed in the table above would be 456 hours ($57 \text{ requests} * 8 \text{ hours}$). These additional hours will require an additional .22 FTE for an attorney at an annual salary of \$64,500.

The DHSS states additional staff would be required to review and respond to requests even without a statutory duty to provide records.

Oversight notes the DHSS assumes the need for .22 FTE as a result of the provisions of this proposal. DHSS' states this assumption depends on the legal interpretation of a serious infectious or communicable disease. Therefore, Oversight will range the fiscal impact to DHSS from \$0 (DHSS may be able to handle additional responsibilities of this bill with existing resources - depending upon the interpretation as well as the fact that DHSS assumed no fiscal impact to their department for similar proposal (HB 2675) in 2018 as well as language requiring DHSS to assist the prosecutor or circuit attorney in preparing the case is removed in this bill) to DHSS' estimated need for .22 FTE. Oversight assumes the potential additional FTE can be housed within current DHSS locations and will not reflect costs for rent, utilities or janitorial. However, if multiple proposals pass during the legislative session requiring additional FTE, the effect of all proposals passed may result in DHSS needing additional rental space. Oversight notes part-time employees are not paid the same fringe benefit rate as a full-time employee.

ASSUMPTION (continued)

Therefore, Oversight adjusted the amount of fringe benefits paid for the 0.22 FTE to include FICA and Medicare only at a rate of 7.65 percent.

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 expanded definition of a communicable disease. 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 one case under charge code 191.677.

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 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 **Attorney General's Office, Department of Mental Health, Department of Public Safety - Missouri State Highway Patrol, Missouri Office of Prosecution Services and Office of State Courts Administrator** 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 agencies.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2026)
GENERAL REVENUE FUND				
Savings - DOC (§§191.677, 575.155, 575.157) p. 4				
Decreased incarceration costs	\$0	\$0	\$0	\$21,241
Costs - DHSS (§§191.677, 575.155, 575.157) p. 6				
Personal service	\$0 or..... (\$11,825)	\$0 or..... (\$14,332)	\$0 or..... (\$14,475)	\$0 or..... (\$15,063)
Fringe benefits	(\$905)	(\$1,096)	(\$1,107)	(\$1,152)
Equipment and expense	(\$4,489)	(\$1,878)	(\$1,925)	(\$2,126)
Total Costs - DHSS	\$0 or (\$17,219)	\$0 or (\$17,306)	\$0 or (\$17,507)	\$0 or (\$18,341)
FTE Change -DHSS	0 or .22 FTE	0 or .22 FTE	0 or .22 FTE	0 or .22 FTE
Costs - SPD (§§191.677, 575.155, 575.157) p. 7				
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>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Less than \$117,219)</u>	<u>(Less than \$117,306)</u>	<u>(Less than \$117,507)</u>	<u>(Less than \$97,100)</u>
Estimated Net FTE Change on General Revenue	0 or .22 FTE	0 or .22 FTE	0 or .22 FTE	0 or .22 FTE

<u>FISCAL IMPACT -</u> <u>Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2026)
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal may have an impact on small medical providers if the number of records requested increases.

FISCAL DESCRIPTION

This bill modifies the laws regarding HIV, and applies the law to all serious infectious or communicable diseases. A serious infectious or communicable disease is a non-airborne disease spread from person to person that is fatal or causes disabling long-term consequences in the absence of lifelong treatment and management.

It shall be a class C felony for a person knowingly infected with a serious infectious or communicable disease to be a blood, organ, sperm, or tissue donor, except as deemed necessary for medical research or deemed medically appropriate by a licensed physician; or to knowingly expose another person to a serious infectious or communicable disease through an activity that creates a substantial risk of transmission as determined by competent medical or epidemiological evidence, unless the victim contracts a serious infectious or communicable disease in which case it is a class B felony. It shall be a class A misdemeanor for a person knowingly infected with a serious infectious or communicable disease to act in a reckless manner by exposing another person to a serious infectious or communicable disease through an activity that creates a substantial risk of transmission as determined by competent medical or epidemiological evidence.

It is an affirmative defense if the person exposed to the serious infectious or communicable disease knew that the infected person was infected and consented to the exposure with such knowledge.

This bill makes the crimes of offense of endangering a corrections employee and offense of endangering a Department of Mental Health employee apply to prisoners who are knowingly infected with any serious infectious or communicable disease and exposes another person to the disease. Currently, the law only applies to HIV, Hepatitis B or Hepatitis C.

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

Attorney General's Office
Department of Corrections
Department of Health and Senior Services
Department of Mental Health
Department of Public Safety -
 Missouri State Highway Patrol
Missouri Office of Prosecution Services
Office of State Courts Administrator
State Public Defender's Office



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