

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0687-02
Bill No.: HCS for HB 239
Subject: Drugs and Controlled Substances; Crimes and Punishment; Law Enforcement
Officers and Agencies
Type: Original
Date: February 14, 2019

Bill Summary: This proposal changes the laws regarding controlled substance offenses.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2025)
General Revenue	(Less than \$100,000)	(Less than \$100,000)	(Less than \$126,164)	(Less than \$190,238)
Total Estimated Net Effect on General Revenue	(Less than \$100,000)	(Less than \$100,000)	(Less than \$126,164)	(Less than \$190,238)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2025)
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 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2025)
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 2025)
Total Estimated Net Effect on FTE	0	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	Fully Implemented (FY 2025)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§579.015, 579.065 and 579.068 - Trafficking drugs by adding fentanyl

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.

In Fiscal Year 2018, SPD's Trial Division opened 155 cases under charge codes 579.065 and 579.068 of the 63,395 total cases opened.

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.

Officials from the **Department of Corrections (DOC)** state this bill adds fentanyl to the list of controlled substances for 1st and 2nd degree drug trafficking.

ASSUMPTION (continued)

1. 579.065 1st Degree Drug Trafficking

It is a class B felony if the amount is from 10 to 60 grams and a class A felony if it is a greater amount. HB 239 will result in some drug distribution offenses being sentenced as 1st degree drug trafficking. In FY18, 20 percent of new admissions for drug distribution were estimated to be for fentanyl, and nine new prison admissions for 1st degree drug trafficking. Applying the 20 percent expansion factor results in an expected increase of two additional new admissions who would have been sentenced to drug distribution. The average sentence will increase from 7.0 years to 9.4 years, and the percent time served from 33.5 to 42 percent. The prison population is expected to increase by 2 in FY24 and stabilize at 4 in FY25.

2. 579.068 2nd Degree Drug Trafficking

This bill adds fentanyl to the list of controlled substances if the amount is greater than 10 grams. In FY18, 23 percent of new admissions for drug possession were estimated to be for fentanyl, and there were 34 new admissions for 2nd degree drug trafficking. The impact is expected to be 5 offenders charged with 2nd degree drug trafficking instead of drug possession. The average sentence will increase from 4.3 years to 7 years, and the average time served will increase from 28.9 to 33.5 percent. The population will increase by 4 in FY22 and stabilize at 9 in FY23.

There is no impact on probation sentencing from these statute changes because the probation term will be unchanged.

The total impact of the legislation is an increase in the prison population of 13 in FY25 and an increase of 6 in the field population in FY29. The DOC notes the impact is lower than the impact estimated in the last legislative session as the number of new admissions for 1st and 2nd drug trafficking declined in FY18. In FY17, there were 56 new admissions and 43 new admissions in FY18.

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
Drug Trafficking 1st degree										
Prison Population	0	0	0	0	2	4	4	4	4	4
Field Population	0	0	0	0	-2	-4	-4	-2	0	1
Drug Trafficking 2nd degree										
Prison Population	0	0	4	9	9	9	9	9	9	9
Field Population	0	0	-4	-9	-5	0	5	5	5	5
Total										
Prison Population	0	0	4	9	11	13	13	13	13	13
Field Population	0	0	-4	-9	-7	-4	1	3	5	6
P&P Officers + or -		0	0	0	0	0	0	0	0	0

ASSUMPTION (continued)

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.

	# 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 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	4	(\$6,287)	(\$26,164)	-4	absorbed	\$0	(\$26,164)
Year 4	9	(\$6,287)	(\$60,046)	-9	absorbed	\$0	(\$60,046)
Year 5	11	(\$6,287)	(\$74,858)	-7	absorbed	\$0	(\$74,858)
Year 6	13	(\$6,287)	(\$90,238)	-4	absorbed	\$0	(\$90,238)
Year 7	13	(\$6,287)	(\$92,042)	1	absorbed	\$0	(\$92,042)
Year 8	13	(\$6,287)	(\$93,883)	3	absorbed	\$0	(\$93,883)
Year 9	13	(\$6,287)	(\$95,761)	5	absorbed	\$0	(\$95,761)
Year 10	13	(\$6,287)	(\$97,676)	6	absorbed	\$0	(\$97,676)

Oversight does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC's impact for fiscal note purposes.

Oversight notes that DOC's fiscal impact response did not change from the original (0687-01) version.

Oversight notes that the **Department of Public Safety - Missouri State Highway Patrol**, **Missouri Office of Prosecution Services** and **Office of State Courts Administrator** have each stated the proposal would not have a direct fiscal impact on their respective 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 2025)
GENERAL REVENUE FUND				
<u>Costs - SPD</u> (§579.065 and 579.068) Salaries, fringe benefits, and equipment and expense	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<u>Costs - DOC</u> (§579.065 and 579.068) Increased incarceration costs	<u>\$0</u>	<u>\$0</u>	<u>(\$26,164)</u>	<u>(\$90,238)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$126,164)</u>	<u>(Less than \$190,238)</u>
<u>FISCAL IMPACT -</u> <u>Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2025)
	<u>\$0</u>	<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 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 one gram or more of flunitrazepam; any amount of gamma-hydroxybutyric acid; or 10 milligrams but fewer than 20 milligrams of fentanyl or any derivative thereof, or any compound, mixture or substance containing a detectable amount of fentanyl, carfentanyl or their isomers or analogues. If the violation is a first offense, it is a class B felony. If the violation if a second or subsequent offense, it is a class A 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 milligrams but fewer than 20 milligrams of fentanyl or any derivative thereof, or any compound, mixture or substance containing a detectable amount of fentanyl, carfentanyl or their isomers or analogues. The offense of trafficking drugs in the second degree is a class C felony. If 20 milligrams or more of fentanyl, or any derivative thereof, or any compound, mixture, or substance containing a detectable amount of fentanyl, carfentanyl, or their optical isomers or analogues are under one's control, the offense of trafficking drugs in the second degree is a class B felony.

The offense of drug trafficking in the second degree is a class E felony for the first offense and a class C felony for any second or subsequent offense for the trafficking of less than one gram of flunitrazepam.

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 Public Safety -
Missouri State Highway Patrol
Missouri Office of Prosecution Services
Office of State Courts Administrator
State Public Defender's Office



Kyle Rieman
Director

Ross Strobe
Assistant Director

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