

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3694-01
Bill No.: HB 1450
Subject: Drugs and Controlled Substances; Crimes and Punishment; Law Enforcement
Officers and Agencies
Type: Original
Date: January 10, 2020

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

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 \$750,488)	(Less than \$886,778)	(Less than \$1,448,507)
Total Estimated Net Effect on General Revenue	(Less than \$561,271)	(Less than \$750,488)	(Less than \$886,778)	(Less than \$1,448,507)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2030)
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 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	5 FTE
Total Estimated Net Effect on FTE	3 FTE	3 FTE	3 FTE	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	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§579.065 and 579.068 - Substance offenses

Officials from the **Department of Public Safety - Missouri State Highway Patrol (MHP)** state from January 1 to 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%. Four hundred and twelve of the 937 items tested, 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 three months or 520 personnel hours.

If the method developed was similar to our current quantitative method(s), the cost for standards to generate a curve would be approximately \$855. Approximately 32 samples would be able to be run on each curve. The total estimated cost for running the method would be (\$26.71/sample x 1337 samples) \$35,711 per year.

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, the 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).

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

Officials from the **Department of Corrections (DOC)** state §579.065 (1) removes the upper weight limits of various drugs, and adds one gram or more of flunitrazepam for the first

ASSUMPTION (continued)

offense, Any amount of gamma-hydroxybutyric acid for the first offense, and more than ten milligrams of fentanyl in the 1st degree drug trafficking offense. The trafficking of all these drugs as a 1st degree offense is a class B felony.

However, trafficking these drugs in larger quantities, as per weights specified by this bill, is a class A felony. Similarly, trafficking one gram or more of flunitrazepam for a second or subsequent offense, any amount of gamma-hydroxybutyric acid for a second or subsequent offense, or twenty milligrams or more of fentanyl is also a class A felony.

Section 579.068 establishes the drug trafficking offenses in 2nd degree. This section also removes the upper weight limits of various drugs, and adds more than ten milligrams of fentanyl in the 2nd degree drug trafficking offense. The trafficking of all these drugs as a 2nd degree offense is a class C felony, and is a class B felony for larger quantities. Trafficking of less than one gram of flunitrazepam, in the 2nd degree, is a class C felony. It is a class B felony for a repeated offense.

Flunitrazepam is not approved by the FDA and is illegal. The effects of overdosing is known and may be increased with the use of opioids. Gamma-Hydroxybutyric is an approved Schedule 1 drug that is used to treat narcolepsy. Both drugs have illegal street uses but the impact of changing the felony class is considered to have little impact upon on the DOC. Very few offenders receive prison sentences for possession unless the offenders have multiple convictions. Offenders sentenced to probation will serve the same time on probation (three years after earning compliance credits).

The bill adds felony classes A and B for these drugs (flunitrazepam, fentanyl and gamma-hydroxybutyric acid) 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.

We are expecting that the average sentence length and average first releases from the prison as well as parole and probation sentences will remain the same for these new offenders, however their 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 average sentence of 8.7 years and four new probations with average term of 5 years.

ASSUMPTION (continued)

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.

Estimating that the changes in the bill result in an increase of at least 30% new admissions and probations, based on the addition of three new drugs to the list, and assuming the same sentence lengths, the likely impact will be approximately 96 new prison admissions and 109 additional field population by FY2030.

Change in prison admissions and probation openings with legislation

	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030
Drug Trafficking 1st Degree Class A										
Prison Population	2	4	6	8	11	13	15	17	19	19
Field Population	1	2	4	5	6	6	6	6	6	8
Drug Trafficking 1st Degree Class B										
Prison Population	2	4	5	7	7	7	7	7	7	7
Field Population	1	2	4	5	8	10	11	13	14	14
Drug Trafficking 2nd Degree Class A										
Prison Population	2	3	5	6	8	9	11	12	12	12
Field Population	2	3	5	6	6	6	6	6	8	9
Drug Trafficking 2nd Degree Class B										
Prison Population	9	18	27	36	45	47	47	47	47	47
Field Population	2	4	5	7	8	16	25	34	43	49
Drug Trafficking 2nd Degree Class C										
Prison Population	3	7	10	11	11	11	11	11	11	11
Field Population	4	8	13	18	21	25	28	29	29	29
Cumulative Impact										
Prison Population	18	35	54	69	82	87	91	94	96	96
Field Population	10	20	30	41	50	62	76	87	100	109
Population Change	28	55	84	110	132	149	167	181	196	205

ASSUMPTION (continued)

	# to prison	Cost per year	Total Costs for prison	Change in probation & parole officers	Total cost for probation and parole	# to Probation and Parole	Grand Total - Prison and Probation (includes a 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	(\$70,320)	62	(\$683,728)
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	(\$790,929)
Year 10	96	(\$6,386)	(\$732,659)	2	(\$146,849)	109	(\$879,507)

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 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.

ASSUMPTION (continued)

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

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 2019, SPD's Trial Division opened 193 drug cases of the 62,002 total cases opened.

Statute	Description	Number of Cases
579.065	Trafficking Drugs 1 st Degree	55
579.068	Trafficking Drugs 2 nd Degree	138
	Total Cases	193

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 with 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.

ASSUMPTION (continued)

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 **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS.

Oversight notes the **Office of State Courts Administrator** has stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for this agency.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023	Fully Implemented (FY 2030)
GENERAL REVENUE				
<u>Costs - MHP</u> (§§579.065 and 579.068) p. 3				
Personal Service	(\$147,240)	(\$178,455)	(\$180,239)	(\$193,241)
Fringe Benefits	(\$131,456)	(\$159,325)	(\$160,917)	(\$172,526)
Expense and Equipment	<u>(\$86,785)</u>	<u>(\$84,728)</u>	<u>(\$86,846)</u>	<u>(\$103,232)</u>
<u>Total Costs - MHP</u>	<u>(\$365,481)</u>	<u>(\$422,508)</u>	<u>(\$428,002)</u>	<u>(\$468,999)</u>
FTE Change - MHP	3 FTE	3 FTE	3 FTE	3 FTE
<u>Costs - DOC - increase incarceration costs p. 3-7</u>	(\$95,790)	(\$227,980)	(\$358,776)	(\$732,659)
Personal Service	\$0	\$0	\$0	(\$84,766)
Fringe Benefits	\$0	\$0	\$0	(\$53,415)
Expense and Equipment	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>(\$8,668)</u>
<u>Total Costs - DOC</u>	<u>(\$95,790)</u>	<u>(\$227,980)</u>	<u>(\$358,776)</u>	<u>(\$879,508)</u>
FTE Change - DOC	0 FTE	0 FTE	0 FTE	2 FTE

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023	Fully Implemented (FY 2030)
GENERAL REVENUE FUND (continued)				

<u>Costs - SPD</u> (§§579.065 and 579.068) Salaries, fringe benefits, and equipment and expense p. 7-8	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
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ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Less than \$561,271)</u>	<u>(Less than \$750,488)</u>	<u>(Less than \$886,778)</u>	<u>(Less than \$1,448,507)</u>
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Estimated Net FTE Change for the General Revenue Fund	3 FTE	3 FTE	3 FTE	5 FTE
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<u>FISCAL IMPACT -</u> <u>Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023	Fully Implemented (FY 2030)
	<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 10 milligrams of fentanyl or any derivative thereof, or any mixture or

FISCAL DESCRIPTION (continued)

substance containing a detectable amount of fentanyl. If the violation involves 20 milligrams or more of fentanyl or any derivative thereof, or any mixture or substance containing 20 milligrams or more of fentanyl, it is a class A felony. If it involves more than 10 milligrams, it is a class B felony. Additionally, one gram or more of flunitrazepam (Rohypnol) or any amount of gamma-hydroxybutyric acid (GHB) is a class B felony for the first offense and a class A felony for the second or subsequent offense.

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 of fentanyl or any derivative thereof, or any mixture or substance containing a detectable amount of fentanyl. If the violation involves 20 milligrams or more of fentanyl or any derivative thereof, or any mixture or substance containing 20 milligrams or more of fentanyl, it is a class B felony. If it involves more than 10 milligrams, it is a class C felony. Additionally, the offense is a class C felony for the first offense and class B felony for the second or subsequent offense for the trafficking of less than one gram of flunitrazepam (Rohypnol).

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



Julie Morff
Director
January 10, 2020



Ross Strope
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January 10, 2020