

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4378-01
Bill No.: HB 1691
Subject: Department of Health and Senior Services; Public Health; Prisons and Jails;
Crimes and Punishment
Type: Original
Date: February 28, 2020

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 2021	FY 2022	FY 2023
General Revenue	(Less than \$123,886)	(Less than \$123,077)	(Less than \$123,321)
Total Estimated Net Effect on General Revenue	(Less than \$123,886)	(Less than \$123,077)	(Less than \$123,321)

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

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 9 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	0 or .22 FTE	0 or .22 FTE	0 or .22 FTE
Total Estimated Net Effect on 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 2021	FY 2022	FY 2023
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

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

Officials from the **Department of Health and Senior Services (DHSS)** state section 191.677 of the proposed legislation states that it is unlawful for any individual with a serious infectious disease to knowingly expose another. "Serious infectious or communicable disease" is defined in the proposed legislation as a "nonairborne 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, conditions apart from HIV/AIDS could be considered for prosecution, increasing the number of records requests received by the DHSS.

The proposed legislation would criminalize the transmission of additional diseases which will increase the number of requests for records from attorneys, law enforcement officers, or others investigating potential cases. Currently, DHSS receives a number of such requests for HIV/AIDS, the only disease that is criminalized in regards to disease transmission under state law. DHSS, therefore, assumes that the number of requests would increase. For every request received, the Bureau of Reportable Disease Informatics (BRDI) staff must search, pull, prep, and review the records. Once this is completed, the BRDI staff compiles the information and sends it to the Office of General Counsel (OGC).

The estimates used in this fiscal note are based upon the ratio of 2018 requests for HIV/AIDS records under Section 191.677, RSMo, divided by the number of new HIV/AIDS cases in 2018 (11 requests/456 new HIV/AIDS diagnoses = .02412). This ratio was then applied to the 2018 numbers of other selected reportable conditions. The Department anticipates that 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."

Condition	2018 New Cases	Expected Record Requests
Syphilis (early latent, secondary, and primary)	1,352	33
Hepatitis B (chronic and acute)	468	11
Total for Selection	1,820	44

ASSUMPTION (continued)

The estimated average amount of BRDI staff time for a basic record request without court appearance is 2 hours. Thus, the estimated staff time to handle anticipated requests for only the conditions listed in the table above would be 88 hours (44 estimated additional requests x 2 hours per request). A Health and Senior Services Manager (\$68,321) currently employed by DHSS would be responsible for processing and responding to the additional records requests. The salary listed for this position reflects the average annual salary of staff in this position within the Division of Community and Public Health as of January 1, 2020.

The department anticipates being able to absorb these costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

Office of General Counsel

Section 191.677.3 of the proposed legislation eliminates the duty on DHSS to turn over records. However, this does not stop the department receiving record requests and subpoenas from law enforcement officials who are investigating potential crimes. Depending on what is considered a serious infectious or communicable disease, this new language potentially expands the scope of diseases and may result in additional record requests and subpoenas from prosecuting attorneys and circuit attorneys.

DHSS assumes an increase of 44 requests from this fiscal note using DCPH's submitted methodology. Assuming each new request would require eight hours of an attorney's time, .17 FTE of an attorney will be needed (44 new requests X 8 hours attorney time = 352 hours; 352 required hours / 2,080 hours (one FTE) = .17 FTE required). The attorney would be needed to assist in reviewing records from BRDI. The department anticipates being able to absorb these costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

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 Fiscal Year 2019, SPD's Trial Division opened 1 case under charge code 191.677 of the 62,002 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 \$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.

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 proposal modifies provisions regarding unlawful actions by persons knowingly infected with communicable diseases. The bill broadens the scope of sections 191.677, 575.155, and 575.157 by making them applicable to serious infectious or communicable diseases beyond the previously proscribed HIV, hepatitis B, and hepatitis C.

ASSUMPTION (continued)

The term "serious infectious or communicable disease" is not defined in the proposed language; therefore, the department does not know how the courts would define a qualifying infection or disease. It is unknown what bodily fluids are scientifically shown to be a known means of transmission of a serious infectious or communicable disease. Therefore, the department is unable to estimate a fiscal impact to this legislation.

Oversight does not have any information contrary to that provided by DOC. Oversight will assume this proposal could impact DOC's in several ways; therefore, Oversight will range the impact to DOC from a positive unknown (reduction in penalty for these offenses from a B felony to a D felony (or from an A felony to a C felony if the victim contracts the disease)) to a negative unknown for expanding the number of diseases that qualify for this crime from HIV to all "serious infectious or communicable diseases."

Officials from the **Department of Mental Health (DMH)** state the proposal would not have a direct fiscal impact on their organization. The DMH notes under this bill, the offense of endangering a corrections or department of mental health employee, visitor, or other individual in correctional centers, jails, or department of mental health secure facilities by exposing them to "blood, seminal fluid, urine, feces, or saliva" is changed to specify that the fluid must be "a bodily fluid that has been scientifically shown to be a known means of transmission of a serious infectious or communicable disease".

The original intent of sections 575.155 and 575.157 was that no prisoner or committed individual throw bodily fluids for any purpose on employees, visitors, or any individual in correctional centers, jails, or department of mental health secure facilities, regardless of the reason, and regardless of the result. The populations of these facilities are much more likely to engage in this conduct and would make it much more difficult to charge an offender.

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

Oversight notes the **Attorney General's Office**, the **Department of Public Safety - Missouri State Highway Patrol**, and the **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 - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
GENERAL REVENUE FUND			
<u>Cost or Savings</u> - DOC (§§191.677, 575.155, 575.157) incarceration costs	(Unknown) or Unknown	(Unknown) or Unknown	(Unknown) or Unknown
<u>Cost</u> - DHSS (§§191.677, 575.155, 575.157)	\$0 or...	\$0 or...	\$0 or...
Personal Services	(\$11,689)	(\$14,167)	(\$14,309)
Fringe Benefits	(\$5,898)	(\$6,721)	(\$6,768)
Equipment and Expense	(\$6,299)	(\$2,189)	(\$2,244)
<u>Total Cost</u> - DHSS	(\$23,886)	(\$23,077)	(\$23,321)
FTE Change - DHSS	0 or .22 FTE	0 or .22 FTE	0 or .22 FTE
<u>Cost</u> - SPD (§§191.677, 575.155, 575.157) 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>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Less than \$123,886)</u>	<u>(Less than \$123,077)</u>	<u>(Less than \$123,321)</u>
Estimated Net FTE Change on General Revenue	0 or .22 FTE	0 or .22 FTE	0 or .22 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

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 Human Immunodeficiency Virus (HIV), and applies the law to all serious infectious or communicable diseases instead of only HIV. 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 D 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. If the victim contracts a serious infectious or communicable disease, it is a class C 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.

When alleging a violation of the law against exposing another person to a communicable disease, the prosecuting attorney or grand jury must use a pseudonym to protect the victim of the crime.

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 exposing the victim 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 Health and Senior Services
Department of Mental Health
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



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