

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1066S.03C
Bill No.: SCS for HB 530 and HCS for HB 292
Subject: Courts; Crimes and Punishment; Criminal Procedure; Drugs and Controlled Substances; Evidence; Judges
Type: Original
Date: April 26, 2021

Bill Summary: This proposal modifies provisions relating to criminal offenses.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2022	FY 2023	FY 2024	Fully Implemented (FY 2026)
General Revenue	\$0	\$0	\$0	\$16,791
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0	\$16,791

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2022	FY 2023	FY 2024	Fully Implemented (FY 2026)
State Forensic Laboratory Fund (0591)	\$0 to \$300,000	\$0 to \$300,000	\$0 to \$300,000	\$0 to \$300,000
Total Estimated Net Effect on Other State Funds	\$0 to \$300,000	\$0 to \$300,000	\$0 to \$300,000	\$0 to \$300,000

Oversight notes the change in \$488.029 is necessary to prevent a significant loss to the State Forensic Lab Account. Since violations have all been moved to Chapter 579 (from Chapter 195 - effective January 1, 2017). These are not new monies, but monies that may not continue to be collected unless this correction is made.

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2022	FY 2023	FY 2024	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 2022	FY 2023	FY 2024	Fully Implemented (FY 2026)
Total Estimated Net Effect on FTE	0	0	0	\$0

- ☐ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- ☒ Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS				
FUND AFFECTED	FY 2022	FY 2023	FY 2024	Fully Implemented (FY 2026)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§191.677, 545.940, 575.155, and 575.157 - Persons knowingly infected with communicable diseases

Officials from the **Department of Corrections (DOC)** state the proposed legislation intends to broaden 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.

The bill reclassifies penalties for offenses under section 191.677 by changing a class B felony to a class D felony and changing a class A felony to a class C felony.

Given the bill does not propose changes to criminal penalties in sections 575.155 and 575.157, but introduces restrictions on conditions required to determine an act as an offense while broadening the scope of relevant diseases, DOC estimates minimal to no impact from the changes proposed in these sections.

Under section 191.677, from FY 2016 through FY 2020, there was one new court commitment to prison for a class A felony and there were three new court commitments to prison for class B felonies. During this same period, there were seven people sentenced to probation for class B felonies under section 191.677. Given only one offender has received a sentence for a class A felony under this section from FY 2016 through FY 2020, DOC estimates of impact is limited to offenders sentenced for a class B felony under section 191.677. Under the proposed legislation, offenders who would have been sentenced with a class B felony would be sentenced with a class D felony.

DOC estimates of operational impact assumes the department receives three offenders sentenced with a class B felony under section 191.677 each fiscal year. One of these offenders is assumed to be sentenced to prison and two sentenced to probation. Of the new commitments to prison under this section from FY 2016 through FY 2020, the average sentence length was 9.2 years. Offenders serving a prison term for a class B felony under this section who were released during this same period served, on average, 3.0 years to first release. The department estimates that the average sentence length for a class D felony is 5 years, and the average time to first release is 1.7 years. Probation terms are assumed to be 3 years for all nonviolent felonies.

The estimated combined cumulative operational impact on the department, by changing the felony class from B to D under section 191.677, is estimated to be two fewer offenders in prison and two fewer offenders under supervision in the field by FY 2030.

Change in prison admissions and probation openings with legislation

	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031
New Admissions										
Current Law	1	1	1	1	1	1	1	1	1	1
After Legislation	1	1	1	1	1	1	1	1	1	1
Probation										
Current Law	2	2	2	2	2	2	2	2	2	2
After Legislation	2	2	2	2	2	2	2	2	2	2
Change (After Legislation - Current Law)										
Admissions	0	0	0	0	0	0	0	0	0	0
Probations	0	0	0	0	0	0	0	0	0	0
Cumulative Populations										
Prison			0	-1	-2	-2	-2	-2	-2	-2
Parole			0	1	2	1	0	-1	-2	-2
Probation										
Impact										
Prison Population			0	-1	-2	-2	-2	-2	-2	-2
Field Population			0	1	2	1	0	-1	-2	-2
Population Change						-1	-2	-3	-4	-4

	# 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 2% inflation)
Year 1	0	(\$7,756)	\$0	0	absorbed	\$0	\$0
Year 2	0	(\$7,756)	\$0	0	absorbed	\$0	\$0
Year 3	0	(\$7,756)	\$0	0	absorbed	\$0	\$0
Year 4	(1)	(\$7,756)	\$8,231	1	absorbed	\$0	\$8,231
Year 5	(2)	(\$7,756)	\$16,791	2	absorbed	\$0	\$16,791
Year 6	(2)	(\$7,756)	\$17,127	1	absorbed	\$0	\$17,127
Year 7	(2)	(\$7,756)	\$17,469	0	absorbed	\$0	\$17,469
Year 8	(2)	(\$7,756)	\$17,818	(1)	absorbed	\$0	\$17,818
Year 9	(2)	(\$7,756)	\$18,175	(2)	absorbed	\$0	\$18,175
Year 10	(2)	(\$7,756)	\$18,538	(2)	absorbed	\$0	\$18,538

If this impact statement has changed from statements submitted in previous years, it is because the Department of Corrections 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 the DOC average district caseload across the state which is 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 48 probation and parole districts.

The DOC cost of incarceration is \$21.251 per day or an annual cost of \$7,756 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.

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

Officials from the **Department of Health and Senior Services (DHSS)** state §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 or nonrespiratory 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 add the criminalization of 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

The estimated average amount of BRDI staff time for a basic record request without court appearance is two 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 Public Health Program Manager (\$71,265) currently employed by DHSS would be responsible for processing and responding to the additional records requests. The cost in staff time would be approximately \$3,015 (\$34.26 hourly rate x 88 hours). 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, 2021.

The department anticipates being able to absorb these costs. However, until the FY22 budget is final, the department cannot identify specific funding sources.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect DHSS's no impact for fiscal note purposes.

For the purpose of the proposed legislation, and as a result of excessive caseloads, the **Missouri State Public Defender (SPD)** cannot assume existing staff will be able to provide competent, effective representation for any new cases where indigent persons are charged with the proposed new crime(s) concerning communicable diseases as prohibited by sections 191.677, 545.940, 575.155, and 575.157. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards. While the number of new cases may be too few or uncertain to request additional funding for this specific bill, the Missouri State Public Defender will continue to request sufficient appropriations to provide competent and effective representation in all cases where the right to counsel attaches.

Oversight assumes the SPD will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the SPD for fiscal note purposes.

§455.010 – Stalking

In response to similar legislation from 2021 (HCS HB 292), officials from the **St. Joseph Police Department** and the **St. Louis County Police Department** each assumed the proposal will have no fiscal impact on their respective organizations.

In response to a previous version (HB 292), officials from the **Crestwood Police Department**, the **Ellisville Police Department**, and the **Springfield Police Department** each assumed the proposal will have no 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.

In response to similar legislation from 2021 (HCS HB 292), officials from the **Office of the State Public Defender** stated for the purpose of the proposed legislation, and as a result of excessive caseloads, the SPD cannot assume existing staff will be able to provide competent, effective representation for any new cases where indigent persons are charged with the proposed new crime(s) concerning stalking under Section 455.010 RSMo. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards. While the number of new cases may be too few or uncertain to request additional funding for this specific bill, the Missouri State Public Defender will continue to request sufficient appropriations to provide competent and effective representation in all cases where the right to counsel attaches.

Oversight assumes the SPD will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the SPD for fiscal note purposes.

§§488.029 and 556.046 – Criminal offenses

Officials from the **Department of Public Safety - Missouri State Highway Patrol (MHP)** assume no impact. If the language is not changed from Chapter 195 to Chapter 579, it could result in a significant negative impact.

Oversight notes the change in §488.029 is necessary to prevent a significant loss to the State Forensic Lab Account. Since violations have all been moved to Chapter 579 (from Chapter 195 - effective January 1, 2017), essentially by letter of the statute, a surcharge would not be applied for any violation under chapter 195 because no violations exist. Consequently, the Forensic Lab Account would lose upwards of \$300,000 without this change. Oversight assumes this change to this section will become effective August 28, 2021, and surcharges will continue to be assessed against defendants; therefore, Oversight will reflect the fiscal impact to the State Forensic Laboratory Fund as \$0 to \$300,000.

Bill as a Whole

Officials from the **Attorney General's Office**, the **Department of Mental Health**, the **Department of Social Services**, the **Missouri Office of Prosecution Services**, the **Office of the State Courts Administrator**, and the **Kansas City Police Department** each assume the proposal will have no 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.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other police and sheriff's departments were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024	Fully Implemented (FY 2026)
GENERAL REVENUE FUND				
<u>Savings – DOC</u> (§§191.677 and 545.940) Decreased incarceration costs	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$16,791</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$16,791</u>
STATE FORENSIC LABORATORY FUND (0591)				
<u>Loss Avoidance - Revenue - MHP</u> (§488.029) Court- assessed surcharge	<u>\$0 to \$300,000</u>	<u>\$0 to \$300,000</u>	<u>\$0 to \$300,000</u>	<u>\$0 to \$300,000</u>
ESTIMATED NET EFFECT ON STATE FORENSIC LABORATORY FUND	<u>\$0 to \$300,000</u>	<u>\$0 to \$300,000</u>	<u>\$0 to \$300,000</u>	<u>\$0 to \$300,000</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024	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

PERSONS KNOWINGLY INFECTED WITH COMMUNICABLE DISEASES (Sections 191.677, 545.940, 575.155, and 575.157)

Under current law, it is illegal for a person knowingly infected with HIV to donate blood, organs, tissue, or sperm, unless for medical research, as well as illegal for such person to act recklessly in exposing another person to HIV without their knowledge and consent.

This act modifies those provisions to make it unlawful for a person knowingly infected with a serious infectious or communicable disease to: (1) donate blood, organs, tissue, or sperm, unless for medical research or as deemed medically appropriate by a licensed physician; (2) knowingly expose another person to the disease through an activity that creates a substantial risk of transmission; or (3) act in a reckless manner by exposing another person to the disease through an activity that creates a substantial risk of disease transmission. A "serious infectious or communicable disease" is defined as a non-airborne or nonrespiratory disease spread from person to person that is fatal or causes disabling long-term consequences in the absence of lifelong treatment and management. The penalty for donation of blood, organs, tissue, or sperm while knowingly infected with the disease or knowingly exposing another person to the disease shall be a Class D felony, rather than the current Class B felony, and a Class C felony, rather than the current Class A felony, if the victim contracts the disease. The penalty for recklessly exposing another person is a Class A misdemeanor.

It shall be an affirmative defense to this offense if the person exposed to the disease knew that the infected person was infected with the disease at the time of the exposure and consented to the exposure.

This act specifies the actions to be taken during a judicial proceeding to protect the identifying information of the victim and the defendant from public release, except as otherwise specified. Additionally, this act changes similar provisions involving exposure of persons in correctional centers, jails, or certain mental health facilities to HIV or hepatitis B or C to exposure to a serious infectious or communicable disease.

CRIMINAL OFFENSES (Sections 488.029 and 556.046)

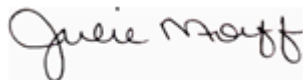
This bill specifies that a court shall be obligated to charge the jury with respect to an included offense only if it is established by evidence of the same or less than all the elements required to establish the commission of the offense charged, there is a rational basis in the evidence for a verdict acquitting the person of the offense charged and convicting the person of the included offense, and either party requests the court to charge the jury with respect to a specific included offense.

Failure of the defendant or defendant's counsel to request the court to charge the jury with respect to a specific included offense shall not be a basis for plain-error review on direct appeal or post-conviction relief. It shall be the trial court's duty to determine if a rational basis in the evidence for a verdict exists.

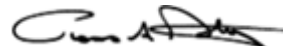
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office
Department of Corrections
Department of Health and Senior Services
Department of Mental Health
Department of Public Safety
Department of Social Services
Missouri Office of Prosecution Services
Office of the State Courts Administrator
Office of the State Public Defender
Crestwood Police Department
Ellisville Police Department
Kansas City Police Department
Springfield Police Department
St. Joseph Police Department
St. Louis County Police Department



Julie Morff
Director
April 26, 2021



Ross Strobe
Assistant Director
April 26, 2021