

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2226-01
Bill No.: HB 992
Subject: Drugs and Controlled Substances; Crimes and Punishment
Type: Original
Date: April 8, 2013

Bill Summary: This proposal changes the laws regarding the sale and possession of controlled substances.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	(\$270,000)	(\$20,700)	(\$20,700)
Total Estimated Net Effect on General Revenue Fund	(\$270,000)	(\$20,700)	(\$20,700)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on FTE	0	0	0

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** state it would be a violation of state and federal laws, Title 28 CFR 50.12 (b), Title 28 CFR 20.33 (7)(d), Article IV, National Crime Prevention and Privacy Compact and CJIS Security Policy, to access the Missouri Uniform Law Enforcement System (MULES) for noncriminal purposes without fingerprints. If there was a change in state and federal law to allow this search, an interface would need to be created between MULES, Interstate Identification Index (III), and any electronic tracking database. If this were allowable under current law, the first year's cost would be approximately \$270,000. However, because this cannot be done under current law, the Patrol is unable to provide any kind of fiscal impact.

MULES is considered a closed criminal justice network which is available only to law enforcement/criminal justice agencies and personnel. Therefore, MULES would not be available to a pharmacy or pharmacist. The purpose of the interface would be to check if the purchaser has a felony drug conviction or plea. The search of the Missouri criminal history database for a noncriminal justice purpose requires the submission of fingerprints to positively identify the applicant pursuant to Section 610.120, RSMo. If a response for out-of-state felony convictions is also required, fingerprints would need to be taken to produce a positive match of the applicant. The FBI NCIC is also a closed criminal justice network which is only available to law enforcement agencies and would not be available to pharmacies.

Officials from the **Department of Corrections (DOC)** state lowering the number of grams of precursor drugs or products for illegal possession may increase the number of offenders who are charged. Penalty provisions, the component of the bill to have potential fiscal impact for DOC, is for up to a class D felony. Currently, the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase of direct offender costs either through incarceration (FY 2012 average of \$17.059 per offender, per day, or an annual cost of \$6,227 per inmate) or through supervision provided by the Board of Probation and Parole (FY 2012 average of \$4.960 per offender, per day, or an annual cost of \$1,810 per offender).

ASSUMPTION (continued)

The following factors contribute to DOC's minimal assumption:

- DOC assumes the narrow scope of the crime will not encompass a large number of offenders;
- The low felony status of the crime enhances the possibility of plea-bargaining or imposition of a probation sentence;
- the probability exists that offenders would be charged with a similar but more serious offense or that sentences may run concurrent to one another.

In summary, supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

For the purpose of this proposed legislation, officials at the **Office of State Public Defender (SPD)** cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are faced with the enhanced penalties for possession of a controlled substance.

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.

Officials from the **Department of Health and Senior Services, Department of Insurance, Financial Institutions and Professional Registration, Office of the State Courts Administrator** and **Office of Prosecution Services** each assume the proposal would not fiscally impact their respective agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
GENERAL REVENUE			
<u>Costs - Missouri Highway Patrol</u>			
System costs to implement the interface between MULES and the electronic tracking system as well as annual maintenance	<u>(\$270,000)</u>	<u>(\$20,700)</u>	<u>(\$20,700)</u>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>(\$270,000)</u>	<u>(\$20,700)</u>	<u>(\$20,700)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small business pharmacies may be impacted by this legislation.

FISCAL DESCRIPTION

This bill changes the laws regarding the sale and possession of controlled substances. In its main provisions, the bill:

- (1) Lowers, from 24 to 15 grams, the amount of any methamphetamine precursor drug or combination of methamphetamine precursor drugs in which the possession of is a class D felony;
- (2) Lowers, from 9 to 3.5 grams, the amount of any drug product containing ephedrine, phenylpropanolamine, or pseudoephedrine that can be sold to the same person within a 30-day period without regard to the number of transactions;

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FISCAL DESCRIPTION (continued)

(3) Prohibits a pharmacist, intern pharmacist, or registered pharmacy technician from selling, dispensing, or otherwise providing and a person from purchasing, receiving, or otherwise acquiring any number of packages of any drug product containing ephedrine, phenylpropanolamine, or pseudoephedrine in any total amount greater than 21 grams within any 12-month period without regard to the number of transactions;

(4) Specifies that the monthly and annual purchase limits contained in these provisions must include any quantities of the products that are purchased in other states where the other state is utilizing the same electronic tracking system utilized in Missouri;

(5) Specifies that each licensed pharmacy and pharmacist has the discretion to, in good faith, refuse to sell, dispense, or otherwise provide any individual with any methamphetamine precursor drug and will not be subject to criminal or civil liability in choosing to do so;

(6) Requires any person who has been found guilty or pled guilty or nolo contendere to any felony drug crime to obtain a prescription to purchase, receive, or otherwise acquire any drug or drug product containing any amount of ephedrine, phenylpropanolamine, or pseudoephedrine; and

(7) Requires the Department of Public Safety to implement a method of coordination between the Missouri Uniform Law Enforcement System within the State Highway Patrol and any electronic tracking system that tracks purchases of controlled substances to protect the privacy interests of persons purchasing controlled substances.

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 Public Safety
Office of the State Courts Administrator
Office of Prosecution Services
Office of the State Public Defender
Department of Corrections
Department of Health and Senior Services
Department of Insurance, Financial Institutions and Professional Registration



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