

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4715-02  
Bill No.: HB 2674  
Subject: Public Health; Crimes and Punishment; AIDS  
Type: Original  
Date: May 8, 2018

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Bill Summary: This proposal changes the laws regarding the unlawful actions by persons knowingly infected with communicable diseases.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 8 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials at the **Department of Corrections (DOC)** assume this legislation changes the former class B felony to a class C felony for exposing a person to a serious infectious or communicable disease, and if the person becomes infected the charge is a class B felony (downgraded from a class A felony). This legislation also adds a class A misdemeanor for a knowingly infected person to act in a reckless manner that creates the potential for exposure.

The new class A misdemeanor offense in 191.677.2 is not under the jurisdiction of the Department of Corrections (DOC). Research into FY15-FY17 data show no violations of statutes 575.155 and 575.157, RSMo. By broadening the list of communicable diseases, the legislation allows prosecution for other known diseases, such as hepatitis D and Zika virus when transmitted to a pregnancy. These are rare diseases and are not expected to increase the number of offenses under DOC's jurisdiction. The bill allows for yet unknown diseases to be prosecuted for in the future. This impact is not estimable.

Review of FY15-FY17 data shows during the three-year time span one person was charged with a class A felony and six persons were charged with a class B felony under 191.677, RSMo. To estimate the impact of FN4715.02, the standard sentencing for a class B and C violent offense felonies are used. For class B violent offenses, the average is a 9.0 year sentence with 51.5 months till first release from prison. The class C violent offense averages a 7.8 year sentence with 49.3 months till first release. The estimated impact is two persons will be charged with a class C felony rather than a class B felony.

The initial impact occurs in FY2024 with one less person in the adult institution population and one more person in the field population. The full impact occurs in FY2027 with a net decrease of 2 persons supervised by DOC: one less offender incarcerated and one less in the field population.

This legislation will also be impactful as it revises the offense of endangering a corrections employee to require that the bodily fluid thrown on a staff person has been scientifically shown to be a known means of transmission of a serious infectious or communicable disease. While the department holds offenders accountable for their behaviors through conduct violations, we believe having a felony offense for these incidents further deters an offender from exhibiting such behavior. Not all offenders who throw urine, feces, and semen on staff are known to have a communicable disease. The actual impact is difficult to determine, but during calendar year 2017, 131 conduct violations were written for offenders who caused a staff member to come into contact with feces and bodily fluids. While the number of actual prosecutions is unknown, this legislation will also require the department to have these substances tested if we want to pursue

ASSUMPTION (continued)

prosecution.

If this impact statement has changed from statements submitted in previous years, it is because the Department of Corrections (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 2017, 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 2018 fiscal notes. The new calculation estimates the increase/decrease in caseloads at each Probation and Parole district due to the proposed legislative change. 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 in a district would result in a change in costs/cost avoidance equal to the cost of one FTE staff person in the district. 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.

The DOC cost of incarceration is \$17.003 per day or an annual cost of \$6,206 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)

The DOC would assume this legislation will result in long term cost avoidance as indicated in the chart below.

	# to prison	Cost per year	Total Savings for <b>prison</b>	Change in number of Probation & Parole Officers	Probation & Parole Officer Cost per Year	Grand Total of Savings <b>Prison &amp; Probation</b>	# of Offenders to/from Probation & Parole
Year 1	0.0	(\$6,206)	\$0	0	\$0	\$0	0
Year 2	0.0	(\$6,206)	\$0	0	\$0	\$0	0
Year 3	0.0	(\$6,206)	\$0	0	\$0	\$0	0
Year 4	0.0	(\$6,206)	\$0	0	\$0	\$0	0
Year 5	0.0	(\$6,206)	\$0	0	\$0	\$0	0
Year 6	(1.0)	(\$6,206)	\$6,852	0	\$0	\$6,852	1
Year 7	(1.0)	(\$6,206)	\$6,989	0	\$0	\$6,989	1
Year 8	(1.0)	(\$6,206)	\$7,129	0	\$0	\$7,129	1
Year 9	(1.0)	(\$6,206)	\$7,271	0	\$0	\$7,271	(1)
Year 10	(1.0)	(\$6,206)	\$7,417	0	\$0	\$7,417	(1)

**Oversight** assumes the savings estimated by the Department of Corrections are not material and will not reflect the impact on the fiscal note.

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 charged with the proposed expanded definition of a communicable disease.

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.

**Oversight** assumes the SPD can absorb the additional caseload that may result from this proposal.

ASSUMPTION (continued)

Officials at the **Office of the Attorney General (AGO)** assume that any potential costs arising from this proposal can be absorbed with existing resources. The AGO may seek additional appropriations if there is a significant increase in litigation.

Officials at the **Department of Health and Senior Services**, the **Department of Mental Health** and the **Office of Prosecution Services** each assume no fiscal impact to their respective agencies from this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
	<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 modifies the laws regarding HIV, and instead applies the law to all serious infectious or communicable diseases. 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 C 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 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, unless the victim contracts a serious infectious or communicable disease in which case it is a class B felony. It shall be a class A misdemeanor for a person knowingly infected with a

FISCAL DESCRIPTION (continued)

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.

A person is not considered to act knowingly if the person takes or attempts to take practical means to prevent transmission, meaning a good faith employment of any method, device, behavior, or activity demonstrated scientifically to measurably limit or reduce the risk of transmission. This includes, but is not limited to the use of a condom, barrier protection, prophylactic medication regimen or device, or compliance with a medical treatment regimen as prescribed by a health care provider.

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.

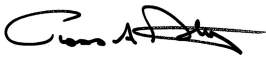
This bill makes the crimes of offense of endangering a corrections employee and offense of endangering a Department of Mental Health employee apply to prisoners who are knowingly infected with any serious infectious or communicable disease and exposes another person to the disease. Currently, the law only applies to 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

Department of Corrections  
Office of the State Public Defender  
Office of the Attorney General  
Department of Health and Senior Services  
Department of Mental Health  
Office of Prosecution Services

Ross Strobe

A handwritten signature in black ink, appearing to read "Ross Strobe", with a stylized flourish at the end.

Acting Director  
May 8, 2018