

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5531-01
Bill No.: HB 1875
Subject: Crimes and Punishment; Children and Minors; Drugs and Controlled Substances
Type: Original
Date: February 19, 2018

Bill Summary: This proposal provides that a person commits the offense of endangering the welfare of a child in the first degree if she knowingly uses a narcotic drug without a prescription while pregnant.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
General Revenue	(\$706,902)	(\$800,684)	(\$834,296)
Total Estimated Net Effect on General Revenue	(\$706,902)	(\$800,684)	(\$834,296)

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

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 12 pages.

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

* Income and expenses exceed \$500,000 annually and net to \$0.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
General Revenue	9.56	9.56	9.56
Federal	6.44	6.44	6.44
Total Estimated Net Effect on FTE	16	16	16

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 2019	FY 2020	FY 2021
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§568.045 - Endangering the welfare of a child

Officials from the **Department of Social Services (DSS), Children's Division (CD), Division of Legal Services (DLS)** and the **State Technical Assistance Team (STAT)** provide the following:

This proposal amends Section 568.045, RSMo.

Subsection 2 states that a person commits the offense of endangering the welfare of a child in the first degree if the person knowingly ingests, injects, consumes, inhales, or uses narcotic drugs or controlled substances without a prescription or in contravention to a prescription while the person is pregnant, provided the person knows or reasonably should have known she was pregnant.

Subsection 4 allows a person who has violated subsection 2 to be considered for referral to a drug court unless prohibited under the provisions set forth in subsection 478.005.

210.110 Definitions

(4) "Child", any person, regardless of physical or mental condition, under eighteen years of age. This definition does not address when a child is considered a child prior to the child's birth. It could be assumed this begins at conception; however, this legislation stipulates the mother knows she is pregnant and knowingly and willfully uses drugs.

In (3) "Central registry" current law provides that a person is placed on the central registry if violations which have been substantiated through court or the person has pled guilty or has been found guilty of a crime under 568.045. This bill modifies 568.045 to require the CD to investigate and make a finding of child endangerment, if the mother knowingly uses drugs when she is pregnant, prior to the birth of the child. Currently the CD does not accept reports or referrals prior to the birth of the child.

In section 210.118, current law requires the court to order the CD to place a person on the central registry who has pled guilty to or been found guilty of crimes under 568.045. This bill modifies 568.045, according to classification, to either investigate or conduct a family assessment of a reported allegation of a violation under section 568.045.

ASSUMPTION (continued)

Section 568.045.2 of this legislation changes current law so that prenatal substance abuse is subject to prosecution, as such abuse would fall under the definition of child endangerment and criminal abuse and neglect of a child. If this legislation is passed, information pertaining to persons referred to the Children's Division for services from the Department of Health and Senior Services could potentially be used for prosecution.

This may deter clients from voluntarily participating in treatment and in services with the Children's Division, and/or inhibit the CD's ability to effectively address the related substance abuse concerns with those persons due to potential criminal implications.

This bill would require a change in policy and procedure in regard to the way CD staff responds to a drug-exposed child or family report. The new language would require those reports to be treated as Investigations instead of being treated as newborn crisis assessments (NCA) in accordance with 210.145. Since the CD currently responds to these calls as assessments rather than investigations, additional staff would be required as the caseload standard for newborn crisis assessments (NCA) is 15 cases per worker per month (180 cases annually) and investigations is 12 cases per worker per month (144 cases annually).

This legislation also creates the crime of endangering the welfare of an unborn child if the mother knowingly ingests, injects, consumes, inhales, or otherwise uses a narcotic drug or a controlled substance without a prescription or in contravention to a valid prescription while she is pregnant with an unborn child. The CD currently accepts referrals to the child abuse/neglect hotline on live children who are born drug exposed, however, not on unborn children. There will be substantial additional cost for enhancing our information system to accommodate these changes.

Current NCAs done as Investigations:

DSS, Children's Division (CD) officials state that in SFY17, the CD completed 3,193 newborn crisis assessments due to drug exposure. All assessments will now all become investigations with the need for an additional 4 workers. The 3,193 crisis assessments required 18 FTE; however, investigations requires more time and resources than assessments; therefore, the caseload will decrease from 15 to 12 cases per FTE per month (180 cases annually to 144 cases annually per FTE) resulting in the need for an **additional 4 FTE** (total of 22 FTE to perform the investigations; $3,193/22 \text{ FTE} = 145 \text{ cases/FTE annually}$).

Oversight notes the newborn crisis assessment will now be included as part of an investigation.

ASSUMPTION (continued)

Additional NCAs to be completed on Pregnant Women:

4% of births result in Newborn Crisis Assessment (3,193 of 75,104 births annually). In 2014, there were 83,624 reported pregnancies. 4% of 83,624 would be 3,345 NCAs less the 3,193 already being done nets an additional 152 NCAs to be completed. An additional worker would be needed to complete assessments, 1 FTE.

Children Entering Foster Care:

Of the NCAs completed in 2017, 627 or 19.64% of children entered foster care. If 19.64% of the 152 NCAs completed resulted in children entering care, an additional 30 children could enter care requiring an additional 2 FTE Children's Service Workers for these foster children along with the support staff and Supervision. Also, additional funding in Children's Treatment Services (CTS), Foster Care and Residential Treatment would be required for when these children come into care (which includes placement and treatment costs). Additional funding requested is based on the 2017 General Assembly Report for additional cases. CTS is \$559 per child, Foster Care is \$4,635 per child and Residential Treatment is \$8,598 per child. It is anticipated that approximately 25% of the 30 children (8 children) will have an emergency placement for the first two weeks during which time placement options are being completed. After two weeks, the children will be moved from emergency placement into a Foster Care placement; the remaining 75% will enter directly into Foster Care. For CTS the projection includes all 30 needing services as CTS can be provided to all parents and children in care.

In total, 7 additional Children's Service Workers II (\$36,924 annually, each) will be needed for investigations, NCAs, and foster children. In addition, 1 support staff (Senior Office Support Assistant, \$26,340 annually) and 1 supervisor (Children's Services Supervisor, \$36,708 annually) will be needed.

FY19 (10 months): \$564,822 (GR \$367,134; FF \$197,688);
FY20: \$615,990 (GR \$400,393; FF \$215,596);
FY21: \$622,582 (GR \$404,678; FF \$217,904).

Oversight has, for fiscal note purposes only, changed the starting salary for Children's Services Workers II to correspond to the second step above minimum for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees for a six month period and the policy of the Oversight Subcommittee of the Joint Committee on Legislative Research.

ASSUMPTION (continued)

DSS, Division of Legal Services (DLS) officials state the Children's Division must determine, by a preponderance of evidence, whether a child was abused or neglected in each investigation. If the CD makes a finding of abuse or neglect, each individual has the right to appeal the finding to the Child Abuse and Neglect Review Board (CANRB) and ultimately to the Circuit Court pursuant to Section 210.152. Therefore, this legislation will increase the number of CANRB hearings as well as the number of de novo circuit court reviews.

DLS will defer to CD's analysis of any fiscal impact this will create due to the increased number of CANRB hearings.

Finally, the Children's Division is required to list individuals who have been convicted of a crime under section 568.045 in the central registry as a perpetrator of child abuse or neglect. DLS will defer to CD's analysis for the fiscal impact this legislation may create due to the increased number of perpetrators which will need to be listed on the central registry.

The DLS provides legal representation and counsel to the CD. If this legislation increases the number of investigations and child abuse and neglect review board hearings, it will likely increase the number of de novo reviews DLS will be required to litigate pursuant to Section 210.152.

The CD has determined that this legislation will lead to approximately 3,345 new investigations. This could lead to the potential for up to 3,345 de novo judicial reviews, which DLS will be required to litigate. Assuming that each de novo judicial review requires 40 hours of time for an attorney to litigate, this means that the impact to DLS will be an increased workload of 0-133,800 hours ($3,345 \times 40 = 133,800$). If all investigations lead to de novo judicial reviews, DLS will need approximately 64 new attorneys to complete the increased workload ($133,800 \text{ hrs.} / 2,080 \text{ hrs. per attorney} = 64.33$ attorneys).

However, it is unlikely that all investigations will lead to de novo judicial reviews. Assuming only 10% of these investigations lead to de novo judicial reviews, this will require approximately 13,380 additional hours, resulting in a need for 6 FTE additional attorneys plus 1 support staff ($133,800 \times 0.10 = 13,380 \text{ hours} / 2,080 \text{ hours per attorney} = 6.43$ attorneys).

FY19 (10 months): \$459,875 (GR \$243,734; FF \$216,141);
FY20: \$505,202 (GR \$267,757; FF \$237,445);
FY21: \$510,571 (GR \$270,603; FF \$239,968).

ASSUMPTION (continued)

CD also anticipates this legislation could bring more children into care. DLS also provides legal representation for the Children's Division in some juvenile court cases. DLS could also see an increased workload due to the additional number of children entering care; this could ultimately include additional termination of parental rights trials. DLS assumes the additional court cases could be absorbed with current resources.

DSS, State Technical Assistance Team (STAT) officials assume have no fiscal impact from this legislation.

In total, the DSS estimates:

FY19: \$1,179,337 (GR \$698,602; Federal \$480,735)
FY20: \$1,306,752 (GR \$773,428; Federal \$533,324); and
FY21: \$1,318,711 (GR \$780,556; Federal \$538,155).

Oversight notes, based on responses from the **Office of Administration (OA), Division of Facilities Management, Design and Construction (FMDC)** for proposals from the current session that result in an agency needing additional rental space, costs include building lease costs, fuel and utilities, and janitorial services. Therefore, Oversight will reduce DSS' estimated lease expenses for added utilities and janitorial services costs.

DSS officials provided the response for **OA, Information Technology Services Division (ITSD)/DSS**. ITSD states the proposal will require changes to the Family and Children's Electronic System (FACES). ITSD assumes that every new IT project/system will be bid out because all ITSD resources are at full capacity. The current contract rate for IT consultants is \$75 per hour. It is further assumed the changes will cost \$13,608 (181.44 hours X \$75) and costs will be split 50/50 between General Revenue and Federal Funds.

Officials from the **Department of Corrections (DOC)** state under current law, the DOC admitted during 2017 twenty persons charged with endangering a welfare a child which involved drugs, first offense (568.045, RSMo). Four persons received 120-day sentences and 6.5 years of field supervision for a new class D felony (former class C felony before Jan 1. 2017), while 16 persons received a probationary term averaging 5 years. In 2017, no one was admitted for second or subsequent endangerment of a child with use of drugs.

National data finds 5.4% of pregnant women use illicit drugs (data from 2012-2013). Missouri had 75,863 live births in 2016. Using the national data, this represents an estimate of 4,097 pregnant Missourians using illicit drugs during their pregnancy per annum. However, this proposed legislation fails to require drug testing or positive test results sent to state authorities. Thus, the results of these tests are not available for prosecution.

ASSUMPTION (continued)

Another indicator of maternal drug use during pregnancy is the incidence of neonatal abstinence syndrome (NAS) diagnosed during the newborn nursery stay. Data on NAS in Missouri newborns has recently become available. The Missouri Department of Health and Senior Services reports rising yearly rates; in 2015, the last year of available data, 985 infants born in the state were diagnosed with NAS. This puts Missouri's rate at 12.9/1,000 live births, double the calculated national average of 6/1000 live births as reported by the Center for Disease Control and Prevention.

The impact of this legislation is hard to establish since there are many factors that will determine prosecution and sentencing of this proposed legislation. The consequence of illicit drug use during pregnancy can be death of the unborn child, but it is not the primary motivation for illicit drug use; thus, this act might be considered an involuntary manslaughter, 1st degree, a class C felony. However, for this fiscal note, the DOC assumes that sentencing for maternal drug usage resulting in death of a child is an uncommon event, and estimated a yearly increase of two class A felonies for abuse of a child resulting in death, with an average incarceration of 19 years; eighty-five percent of the sentence is served while incarcerated. DOC uses 568.060.5.(2), RSMo, as a guideline. In 2017, two persons were admitted under this statute.

The impact of this legislation for non-fatal endangerment of an infant is hard to establish since many factors will determine prosecution and sentencing of this proposed law. The DOC assumes the impact will be low with ten women receiving a class D felony of first offense. Two first-time offenders receive 120-day shock incarceration, with a total average sentence of 6.5 years. Also, eight women receive 5-year probationary terms; the term length is determined by the assumption that the women would not be eligible to earn compliance credit.

The full impact in this new legislation, if enacted, will occur after FY28. In FY 28, the DOC has an increase of 26 women in incarceration and 47 in field supervision.

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.

ASSUMPTION (continued)

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.

Projected costs include a 2% inflation factor. The DOC would assume this legislation will result in the following long term costs:

	# to prison	Cost per year	Total Costs for prison	# to probation & parole	Cost per year	Total cost for probation and parole	Grand Total - Prison and Probation (includes and 2% inflation)
Year 1	4	(\$6,206)	(\$20,687)	8	absorbed	\$0	(\$20,687)
Year 2	8	(\$6,206)	(\$50,641)	16	absorbed	\$0	(\$50,641)
Year 3	12	(\$6,206)	(\$77,481)	24	absorbed	\$0	(\$77,481)
Year 4	14	(\$6,206)	(\$92,202)	34	absorbed	\$0	(\$92,202)
Year 5	16	(\$6,206)	(\$107,481)	44	absorbed	\$0	(\$107,481)
Year 6	18	(\$6,206)	(\$123,335)	46	absorbed	\$0	(\$123,335)
Year 7	20	(\$6,206)	(\$139,779)	47	absorbed	\$0	(\$139,779)
Year 8	22	(\$6,206)	(\$156,832)	47	absorbed	\$0	(\$156,832)
Year 9	24	(\$6,206)	(\$174,512)	47	absorbed	\$0	(\$174,512)
Year 10	26	(\$6,206)	(\$192,835)	47	absorbed	\$0	(\$192,835)

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** cannot assume that existing staff will provide competent, effective representation for any new cases where indigent persons are charged with the proposed new crime of endangering the welfare of a child in the first degree if she knowingly uses a narcotic drug with out a prescription while pregnant - a new Class B felony. If the child dies, the offense is escalated to a new Class A felony.

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.

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

ASSUMPTION (continued)

Officials from the **Department of Public Safety, Missouri State Highway Patrol, the Missouri Office of Prosecution Services** and the **OA, Administrative Hearing Commission** each assume the proposal would not fiscally impact their respective agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
GENERAL REVENUE FUND			
<u>Costs - DSS (\$568.045)</u>			
Personal service	(\$287,041)	(\$347,894)	(\$351,373)
Fringe benefits	(\$171,202)	(\$206,457)	(\$207,491)
Equipment & expense	(\$133,439)	(\$90,417)	(\$92,676)
Increase in child treatment service costs	<u>(\$87,729)</u>	<u>(\$105,275)</u>	<u>(\$105,275)</u>
Total <u>Costs - DSS</u>	<u>(\$679,411)</u>	<u>(\$750,043)</u>	<u>(\$756,815)</u>
FTE Change - DSS	9.56 FTE	9.56 FTE	9.56 FTE
 <u>Costs - OA, ITSD (\$568.045)</u>			
FACES system changes	(\$6,804)	\$0	\$0
 <u>Costs - DOC (\$568.045)</u>			
Increase in incarceration and parole costs	<u>(\$20,687)</u>	<u>(\$50,641)</u>	<u>(\$77,481)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(\$706,902)</u>	<u>(\$800,684)</u>	<u>(\$834,296)</u>
Estimated Net FTE Change on the General Revenue Fund	9.56 FTE	9.56 FTE	9.56 FTE
 FEDERAL FUNDS			
<u>Income - DSS (\$568.045)</u>			
Increase in program reimbursements	\$469,529	\$519,668	\$524,279
 <u>Income - OA, ITSD (\$568.045)</u>			
Reimbursement for FACES system changes	\$6,804	\$0	\$0

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
FEDERAL FUNDS (continued)			
<u>Costs - DSS (\$568.045)</u>			
Personal service	(\$196,629)	(\$238,314)	(\$240,697)
Fringe benefits	(\$116,293)	(\$140,254)	(\$140,962)
Equipment & expense	(\$89,704)	(\$60,816)	(\$62,336)
Increase in child treatment service costs	(\$66,903)	(\$80,284)	(\$80,284)
Total <u>Costs - DSS</u>	<u>(\$469,529)</u>	<u>(\$519,668)</u>	<u>(\$524,279)</u>
FTE Change - DSS	6.44 FTE	6.44 FTE	6.44 FTE
 <u>Costs - OA, ITSD (\$568.045)</u>			
FACES system changes	(\$6,804)	\$0	\$0
 ESTIMATED NET EFFECT ON FEDERAL FUNDS			
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
 Estimated Net FTE Change on Federal Funds			
	6.44 FTE	6.44 FTE	6.44 FTE
 <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 adds to the offense of endangering the welfare of a child in the first degree the knowing ingestion, injection, consumption, inhalation, or other usage of a narcotic drug or controlled substance without a prescription or in contravention to a valid prescription while the person is pregnant and knows or reasonably should have known she is pregnant.

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

SOURCES OF INFORMATION

Department of Corrections
Department of Public Safety -
 Missouri State Highway Patrol
Department of Social Services -
 Children's Division
 Division of Legal Services
 State Technical Assistance Team
Missouri Office of Prosecution Services
Office of State Courts Administrator
Office of State Public Defender

Ross Strope



Acting Director
February 19, 2018