

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 6342-01
Bill No.: HB 2675
Subject: Public Health; Crimes and Punishment; AIDS
Type: Original
Date: May 8, 2018

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

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2025)
General Revenue	\$15,515	\$37,981	\$58,111	\$118,812
Total Estimated Net Effect on General Revenue	\$15,515	\$37,981	\$58,111	\$118,812

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2019	FY 2020	FY 2021	Fully Implemented (FY 2025)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$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 2019	FY 2020	FY 2021	Fully Implemented (FY 2025)
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 2019	FY 2020	FY 2021	Fully Implemented (FY 2025)
Total Estimated Net Effect on FTE	0	0	0	0

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	Fully Implemented (FY 2025)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Public Safety - Missouri Highway Patrol**, the **Department of Health and Senior Services**, and the **Department of Mental Health** each assume the proposal would not have a fiscal impact on their respective agencies.

Officials from the **Department of Corrections (DOC)** state this legislation changes the former class B felony to a class B misdemeanor for exposing a person to a serious infectious or communicable disease, and if the person becomes infected then the charge is a class A misdemeanor (downgraded from a class A felony). Intent to transmit the disease must now be proven. Use of barrier methods is now evidence of lack of intent to cause harm; however, lack of use of barrier methods to prevent transmission of disease is insufficient evidence to prove intent to harm. This legislation broadens the list of communicable diseases beyond the current listed disease of HIV.

The new class A misdemeanor offense in 191.677.2 is not under the jurisdiction of the Department of Corrections. Research into FY15-FY17 data show no violations of statutes 575.155 and 575.157, RSMo.

Review of FY15-FY17 data shows during the three-year time span one person charged with a class A felony and six persons charged with a class B felony under 191.677, RSMo. For violation of 567.020, three persons were incarcerated for a class B felony and four sent to probation during the three-year time span. To estimate the impact of this legislation, the standard sentencing for violent and nonviolent offenses are used. For class B violent offenses of 191.677, the average is a 9.0 year sentence with 51.5 months till first release from prison; for the class B nonviolent offense the average sentence length is 7.7 years with 26.9 months to first release; for class B probation, the average term is 4.6 years. The estimated annual impact is four fewer persons will be charged with a class B felony: three fewer incarcerated (two persons under section 191.677 and one person under section 567.020) and one fewer given a probationary term (under section 567.020). See Tables 1, 2, 3 outline the estimated impact.

ASSUMPTION (continued)

Table 1. Estimated impact of FN6342.01 to DOC for the change of the violent class B felony to a class B misdemeanor in section 191.677. Numbers are rounded.

	FY2019	FY2020	FY20 21	FY2022	FY2023	F Y2024	FY2025	FY2026	FY2027	FY2028
New Admissions										
Current Law	2	2	2	2	2	2	2	2	2	2
After Legislation	0	0	0	0	0	0	0	0	0	0
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	0	0	0	0	0	0	0	0	0	0
Change (After Legislation - Current Law)										
Admissions	2	2	-2	2	-2	2	-2	-2	-2	-2
Probations	0	0	0	0	0	0	0	0	0	0
Cumulative Populations										
Prison	2	4	6	8	10	12	12	12	12	12
Parole							-2	-4	-6	-6
Probation										
Impact										
Prison Population	2	4	6	8	10	12	12	12	12	12
Field Population							-2	-4	-6	-6
Population Change	-2	-4	-6	-8	-10	-12	-14	-16	-18	-18
P&P Officers more/less		0	0	0	0	0	0	0	0	0

Table 2. Estimated impact of FN6342.01 to DOC for the removal of the nonviolent class B felony penalty in section 567.020. Numbers are rounded.

	FY2019	FY2020	FY20 21	FY2022	FY2023	F Y2024	FY2025	FY2026	FY2027	FY2028
New Admissions										
Current Law	1	1	1	1	1	1	1	1	1	1
After Legislation	0	0	0	0	0	0	0	0	0	0
Probation										
Current Law	1	1	1	1	1	1	1	1	1	1
After Legislation	0	0	0	0	0	0	0	0	0	0
Change (After Legislation - Current Law)										
Admissions	1	1	-1	1	-1	-1	-1	-1	-1	-1
Probations	1	1	-1	1	-1	-1	-1	-1	-1	-1
Cumulative Populations										
Prison	1	2	3	4	4	4	4	4	4	4
Parole					-1	-2	-3	-3	-3	-3
Probation	1	2	3	4	5	5	5	5	5	5
Impact										
Prison Population	1	2	3	4	4	4	4	4	4	4
Field Population	-1	-2	-3	-4	-5	-6	-7	-8	-8	-8
Population Change	-2	-4	-6	-8	-10	-11	-12	-12	-12	-12
P&P Officers more/less		0	0	0	0	0	0	0	0	0

ASSUMPTION (continued)

Table 3. Total impact of FY6342.01 to DOC. Numbers are rounded

	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028
Prison	-3	-6	-9	-12	-14	-16	-17	-17	-17	-17
Field	-1	-2	-3	-4	-5	-6	-9	-12	-14	-14
Pop. Change	-4	-8	-12	-16	-20	-23	-26	-28	-30	-30
P&P Officers +/-	0	0	0	0	0	0	0	0	0	0

The initial impact is three fewer persons incarcerated and one less in field supervision. The full impact occurs in FY2027, with 17 fewer persons incarcerated and 14 fewer persons under field supervision per year.

This legislation also has the potential to be impactful in that it removes the offense of endangering a corrections employee. 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. 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. The number of actual prosecutions is unknown. Other potential impact to DOC, such as increase staff turnover or staff shortages because of rescinding the consequences of putting correctional officers at risk of infection cannot be calculated.

"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.

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

	fewer # 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 and 2% inflation)
Year 1	3	(\$6,206)	\$15,515		(3)	absorbed	\$0	\$15,515
Year 2	6	(\$6,206)	\$37,981		(4)	absorbed	\$0	\$37,981
Year 3	9	(\$6,206)	\$58,111		(5)	absorbed	\$0	\$58,111
Year 4	12	(\$6,206)	\$79,030		(6)	absorbed	\$0	\$79,030
Year 5	14	(\$6,206)	\$94,046		(9)	absorbed	\$0	\$94,046
Year 6	16	(\$6,206)	\$109,631		(12)	absorbed	\$0	\$109,631
Year 7	17	(\$6,206)	\$118,812		(14)	absorbed	\$0	\$118,812
Year 8	17	(\$6,206)	\$121,189		(14)	absorbed	\$0	\$121,189
Year 9	17	(\$6,206)	\$123,612		(14)	absorbed	\$0	\$123,612
Year 10	17	(\$6,206)	\$126,085		(14)	absorbed	\$0	\$126,085

Officials from the **Office of Prosecution Services (OPS)** assume the proposal would not have a measurable fiscal impact on their agency. The creation of a new crime creates additional responsibilities for county prosecutors which may, in turn, result in additional costs which are difficult to determine.

For the purpose of this proposed legislation, officials from 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.

ASSUMPTION (continued)

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

Officials from the **Office of the State Courts Administrator** state there may be some impact, but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021	Fully Implemented (FY 2025)
GENERAL REVENUE				
Savings - DOC - fewer prisoners due to change in class	<u>\$15,515</u>	<u>\$37,981</u>	<u>\$58,111</u>	<u>\$118,812</u>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>\$15,515</u>	<u>\$37,981</u>	<u>\$58,111</u>	<u>\$118,812</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021	Fully Implemented (FY 2025)
	<u>\$0</u>	<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 that is transmitted from person to person and determined to have significant, long-term implications on physical health or life activities.

It shall be a class B misdemeanor for a person knowingly infected with a serious infectious or communicable disease to, with the specific purpose of transmitting a serious infectious or communicable disease, expose another person to that disease through an activity that has substantial risk of disease transmission, as determined by the Centers for Disease Control and Prevention or other epidemiological evidence unless disease transmission occurs in which case it is a class A misdemeanor.

A person is not considered to act purposefully 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. Failure to take practical measures to prevent transmission is insufficient on its own to establish that the person acted with purpose to transmit the disease.

This bill removes enhanced penalties for those performing the act of prostitution who are infected with HIV. This bill removes the offenses of endangering a corrections employee and of endangering a Department of Mental Health employee by exposing said employees 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 Public Safety - Missouri Highway Patrol
Office of Prosecution Services
Office of the State Public Defender
Department of Corrections
Office of the State Courts Administrator
Office of the Attorney General
Department of Health and Senior Services
Department of Mental Health

Ross Strope

A handwritten signature in black ink, appearing to read "Ross Strope".

Acting Director
May 8, 2018