

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0250-01
Bill No.: HB 166
Subject: Public Health; Crimes and Punishment; AIDS
Type: Original
Date: February 1, 2019

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 2020	FY 2021	FY 2022	Fully Implemented (FY 2028)
General Revenue	(Less than \$214,976)	(Less than \$219,675)	(Less than \$214,251)	(Less than \$190,947)
Total Estimated Net Effect on General Revenue	(Less than \$214,976)	(Less than \$219,675)	(Less than \$214,251)	(Less than \$190,947)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2028)
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 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2028)
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 2020	FY 2021	FY 2022	Fully Implemented (FY 2028)
General Revenue	0 to 1.5 FTE	0 to 1.5 FTE	0 to 1.5 FTE	0 to 1.5 FTE
Total Estimated Net Effect on FTE	0 to 1.5 FTE	0 to 1.5 FTE	0 to 1.5 FTE	0 to 1.5 FTE

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 2020	FY 2021	FY 2022	Fully Implemented (FY 2028)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

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

Officials from the **Department of Corrections (DOC)** state this proposed legislation modifies existing legislation for knowingly infecting a person with human immunodeficiency virus (HIV), Hepatitis B or C or putting a person at risk of these infections. The bill's language changes to be more inclusive of other communicable diseases transmitted by sexual contact or bodily fluids and have lifelong health consequences requiring lifelong treatment.

The new class A and B misdemeanor offenses in 191.677.2 as well as the removal of a class A misdemeanor in 575.115 are not under the jurisdiction of the DOC. Research into FY16 to FY18 data shows only one violation on the class D and E felonies of statutes 575.155 and 575.157, RSMo. This violator was given a 120-day sentence. Additionally, during this same time span, only one person was charged under 567.020-003, RSMo. Therefore, the repeal of 575.155, 575.157 and 567.020-003 is expected to have no impact on DOC.

A review of FY16 to FY18 data shows one person was charged with a class A felony (admitted to prison) and six persons were charged with a class B felony (two admitted to prison and four to probation) under 191.677, RSMo. The estimated annual impact of FN0250-01N is one less person will be admitted to prison and one less sentenced to probation. The average probationary term of the four persons admitted to probation is 4.5 years. Because of the disparate sentences of the two persons admitted to prison, the estimate of impact uses the standard response for class B violent offenses; the average sentence is 9.4 years and 5.3 years till first release. See Table 1.

The initial impact occurs in FY2020 with one less person in the adult institution population and one less person in the field population. The full impact occurs in FY2028 with seven fewer offenders incarcerated and seven fewer persons in the field population.

ASSUMPTION (continued)

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
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	1	1	1	1	1	1	1	1	1	1
After Legislation	1	1	1	1	1	1	1	1	1	1
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	-1	-2	-3	-4	-5	-6	-7	-7	-7	-7
Parole							0	-1	-2	-3
Probation	-1	-2	-3	-4	-5	-5	-5	-5	-5	-5
Impact										
Prison Population	-1	-2	-3	-4	-5	-6	-7	-7	-7	-7
Field Population	-1	-2	-3	-4	-5	-5	-5	-6	-7	-7
Population Change	-2	-4	-6	-8	-10	-11	-12	-13	-14	-14
P&P Officers + or -		0	0	0	0	0	0	0	0	0

This legislation removes the offense of endangering a corrections employee. While the department holds offenders accountable for their behaviors through conduct violations, a felony offense for these incidents further deters an offender from exhibiting such behavior. The actual impact is difficult to determine but so far in 2018, 131 conduct violations were written for offenders who caused a staff member to come into contact with feces and bodily fluids.

If this impact statement has changed from statements submitted in previous years, it is because the 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 2019 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. An increase/decrease less 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 the increase/decrease.

The DOC cost of incarceration is \$17.224 per day or an annual cost of \$6,287 per offender. The DOC cost of probation or parole is determined by the number of Probation and Parole Officer II positions that would be needed to cover the new caseload.

DOC assumes the proposal will result in long-term cost avoidance as indicated in the chart below.

	# 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 a 2% inflation)
Year 1	-1	(\$6,287)	\$5,239	-1	absorbed	\$0	\$5,239
Year 2	-2	(\$6,287)	\$12,825	-2	absorbed	\$0	\$12,825
Year 3	-3	(\$6,287)	\$19,623	-3	absorbed	\$0	\$19,623
Year 4	-4	(\$6,287)	\$26,687	-4	absorbed	\$0	\$26,687
Year 5	-5	(\$6,287)	\$34,026	-5	absorbed	\$0	\$34,026
Year 6	-6	(\$6,287)	\$41,648	-5	absorbed	\$0	\$41,648
Year 7	-7	(\$6,287)	\$49,561	-5	absorbed	\$0	\$49,561
Year 8	-7	(\$6,287)	\$50,553	-6	absorbed	\$0	\$50,553
Year 9	-7	(\$6,287)	\$51,564	-7	absorbed	\$0	\$51,564
Year 10	-7	(\$6,287)	\$52,595	-7	absorbed	\$0	\$52,595

Officials from the **Department of Health and Senior Services (DHSS)** state this bill makes it unlawful for any individual with a serious infectious or communicable disease to knowingly infect another. A serious infectious or communicable disease is defined in the proposed legislation as a "non-airborne disease spread from person to person, and determined to have significant, long-term implications on physical health or life activities." Depending on the legal interpretation of that definition, other common conditions could be considered for prosecution thereby increasing the number of record requests received by the DHSS.

The proposed legislation would criminalize the transmission of additional diseases and increase the number of requests for records from attorneys, law enforcement officers, or others investigating potential cases. The DHSS receives a number of requests for HIV/AIDS.

ASSUMPTION (continued)

Currently, these are the only criminalized diseases for disease transmission. The DHSS assumes the number of requests would increase with the passage of this bill. For every request received, the Bureau of Reportable Disease Informatics (BRDI) staff must search, prep, review, compile the information, and send it to the Office of General Counsel (OGC).

The estimates used in this fiscal note are based upon the ratio of 2017 requests for HIV/AIDS records under Section 191.677, RSMo, divided by the number of new HIV/AIDS cases in 2017 (21 requests / 507 new HIV/AIDS diagnoses = .04142). This ratio was then applied to the 2017 numbers of other selected reportable conditions. The DHSS anticipates Hepatitis B and C and Syphilis (early latent, secondary, and primary) would be the most likely to generate requests as they have similar risk factors and transmission methods to those for HIV/AIDS. It is assumed these conditions would fall under the definition in the proposed statute. Based on the experience of other states passing similar legislation, the DHSS estimates that zero requests will be received for two of the conditions (chlamydia and gonorrhea).

Condition	2017 New Cases	Expected Record Requests
Chlamydia	32,684	0
Gonorrhea	13,086	0
Hepatitis C (chronic and acute)	4,947	205
Syphilis (early latent, secondary, and primary)	931	39
Hepatitis B (chronic and acute)	442	18
Total for selection	52,090	262

The estimated average amount of BRDI staff time for a basic record request, without court appearance, is two hours. The estimated staff time to handle anticipated requests for only the conditions listed in the table above would be 524 hours (262 requests x 2 hours). With additional staff time needed for possible court appearances, as determined by OGC, the Division of Community and Public Health would require 0.5 Health Program Representative III at an annual salary of \$42,665 to process and respond to the increase in requests for records.

ASSUMPTION (continued)

The Office of the Director states the proposed legislation does not include requirements for the department to release records to requesting entities. Releasing these records maybe in violation of HIPAA laws; however, this does not prevent the requests from occurring. The attorney within the department will still have the responsibility to review and respond to each of these requests on a case-by-case basis in addition to other duties such as filing motions to quash, redaction of protected information, court appearances and depositions.

The OGC spends approximately eight hours to process a records request. This equates to 2,096 hours if 262 requests are received, as discussed previously (262 requests x 8 hours = 2,096). The Office of the Director would require one Attorney at an annual salary of \$64,500.

The DHSS states additional staff would be required to review and respond to requests even without a statutory duty to provide records.

Oversight notes the DHSS assumes the need for 1.5 FTE as a result of the provisions of this proposal. DHSS' states this assumption depends on the legal interpretation of a serious infectious or communicable disease. Therefore, Oversight will range the fiscal impact to DHSS from \$0 (DHSS may be able to handle additional responsibilities of this bill with existing resources - depending upon the interpretation as well as the fact that DHSS assumed no fiscal impact to their department for similar proposal (HB 2675) in 2018 as well as language requiring DHSS to assist the prosecutor or circuit attorney in preparing the case is removed in this bill) to DHSS' estimated need for 1.5 FTE. Oversight assumes the potential additional FTE can be housed within current DHSS locations and will not reflect costs for rent, utilities or janitorial. However, if multiple proposals pass during the legislative session requiring additional FTE, the effect of all proposals passed may result in DHSS needing additional rental space.

Oversight assumes the DHSS' estimate of equipment costs for the FTEs could be overstated. If DHSS is able to utilize desks, file cabinets, chairs, etc., the estimate for equipment for FY20 could be reduced by approximately \$9,000. Additionally, part-time employees are not paid the same fringe benefit rate as a full-time employee. Therefore, Oversight adjusted the amount of fringe benefits paid for the 0.5 FTE to include FICA and Medicare only at a rate of 7.65 percent.

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** state they 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. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

ASSUMPTION (continued)

In FY 2018, SPD's Trial Division opened one case under charge code 191.677 and four cases under charge code 567.020.

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 notes over the last three fiscal years, the SPD has lapsed a total of \$152 of General Revenue appropriations (\$0 out of \$36.4 million in FY 2016; \$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018). Therefore, **Oversight** assumes the SPD is at maximum capacity, and the increase in workload resulting from this bill cannot be absorbed within SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, **Oversight** assumes the cost for a new APD could approach \$100,000 per year.

Oversight assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

Oversight notes that the **Attorney General's Office, Department of Mental Health, Department of Public Safety - Missouri State Highway Patrol, Missouri Office of Prosecution Services and Office of State Courts Administrator** have stated the proposal would not have a direct fiscal impact on their 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 notes the proposal makes numerous changes to the statutes regarding exposing another person to a serious infectious or communicable disease. The proposal reduces the severity of the crime from a felony to a misdemeanor; however it removes the other requirement such as the infected person knew of the infection before engaging in dangerous activities. Oversight is unable to estimate how these changes will impact conviction rates; therefore, Oversight will utilize estimates provided by the Department of Corrections.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2028)
GENERAL REVENUE FUND				
<u>Savings - DOC</u> (\$191.677)				
Decreased incarceration costs	\$5,239	\$12,825	\$19,623	\$51,564
<u>Costs - DHSS</u> (\$191.677)				
Personal service	\$0 to.... (\$71,527)	\$0 to.... (\$86,691)	\$0 to.... (\$87,558)	\$0 to.... (\$92,944)
Fringe benefits	(\$28,248)	(\$34,110)	(\$34,325)	(\$35,661)
Equipment and expense	(\$20,440)	(\$11,699)	(\$11,991)	(\$13,906)
Total <u>Costs - DHSS</u>	<u>\$0 to (\$120,215)</u>	<u>\$0 to (\$132,500)</u>	<u>\$0 to (\$133,874)</u>	<u>\$0 to (\$142,511)</u>
FTE Change - DHSS	0 to 1.5 FTE	0 to 1.5 FTE	0 to 1.5 FTE	0 to 1.5 FTE
<u>Costs - SPD</u> (\$191.677)				
Salaries, fringe benefits, and equipment and expense	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Less than \$214,976)</u>	<u>(Less than \$219,675)</u>	<u>(Less than \$214,251)</u>	<u>(Less than \$190,947)</u>
Estimated Net FTE Change on the General Revenue Fund	0 to 1.5 FTE	0 to 1.5 FTE	0 to 1.5 FTE	0 to 1.5 FTE

FISCAL IMPACT -
Local Government

FY 2020
(10 Mo.)

FY 2021

FY 2022

Fully
Implemented
(FY 2028)

\$0

\$0

\$0

\$0

FISCAL IMPACT - Small Business

This proposal may have an impact on small medical providers if the number of records requested increases.

FISCAL DESCRIPTION

This bill modifies the laws regarding Human Immunodeficiency Virus (HIV), and applies the law to all serious infectious or communicable diseases, instead of only HIV. 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. If disease transmission occurs, 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.

FISCAL DESCRIPTION (continued)

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 -
 Missouri State Highway Patrol
Missouri Office of Prosecution Services
State Public Defender's Office
Office of State Courts Administrator



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