

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3713-06
Bill No.: Perfected SS#2 for SCS for SB 523
Subject: Crimes and Punishment; Drugs and Controlled Substances; Food; Health Care; Health and Senior Services Department
Type: Original
Date: March 4, 2020

Bill Summary: This proposal modifies provisions relating to controlled substances.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2030)
General Revenue	(Less than \$100,000 to \$195,790)	(Less than \$100,000 to \$327,980)	(Less than \$100,000 to \$458,776)	(Less than \$100,000 to \$989,870)
Total Estimated Net Effect on General Revenue	(Less than \$100,000 to \$195,790)	(Less than \$100,000 to \$327,980)	(Less than \$100,000 to \$458,776)	(Less than \$100,000 to \$989,870)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2030)
MO Vet Health and Care Fund (0606)	(\$88,000)	(\$12,000 to \$90,794)	(\$12,000 to \$84,214)	(\$12,000 to \$89,329)
Total Estimated Net Effect on Other State Funds	(\$88,000)	(\$12,000 to \$90,794)	(\$12,000 to \$84,214)	(\$12,000 to \$89,329)

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2021	FY 2022	FY 2023	Fully Implemented (FY 2030)
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 2021	FY 2022	FY 2023	Fully Implemented (FY 2030)
General Revenue	0 FTE	0 FTE	0 FTE	0 to 2 FTE
Vet Health and Care	0 FTE	0 to 1 FTE	0 to 1 FTE	0 to 1 FTE
Total Estimated Net Effect on FTE	0 FTE	0 FTE	0 to 1 FTE	0 to 3 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 2021	FY 2022	FY 2023	Fully Implemented (FY 2030)
Local Government	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown

FISCAL ANALYSIS

ASSUMPTION

§§195.015 and 195.017 - Emergency rules

Officials from the **Department of Health and Senior Services (DHSS)** state section 195.015.4 of this proposed legislation requires the Division of Regulation and Licensure (DRL), Section for Health Standards and Licensure, Bureau of Narcotics and Dangerous Drugs (BNDD) to promulgate emergency rules within 30 days of publication in the federal register each time the Drug Enforcement Administration (DEA) designates a substance as a controlled substance or reschedules or deletes a substance. The DEA makes such changes an average of 20 times annually.

It is assumed it will take a Health and Senior Services Manager (salary \$68,802) approximately 16 hours to promulgate each emergency rule change. Based on 2,080 working hours per year, this would require 0.15 FTE to assume the duties set forth in the proposed section (16 hours X 20 rule changes ÷ 2,080 hours per year = 0.15) for a total personal service annual cost of \$10,320 (\$68,802 X 0.15).

The department anticipates being able to absorb these costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

Oversight obtained information from the U.S. Department of Justice, Drug Enforcement Administration (DEA), Diversion Control Division. Oversight determined that in the past 5 years (2015 - 2019), the DEA has taken scheduling actions on substances/controlled substances 91 times (average 18.2 actions per year). Based on this information the DHSS would need 0.15 FTE (16 hours X 19 rule changes ÷ 2,080 hours = 0.15, rounded) to manage the DEA's average annual change in substance/controlled substance schedules. Oversight assumes the additional duties can be performed within DHSS' current funding/staffing levels.

§195.805 - No marketing of medical marijuana products that appeal to persons under 18 years of age

DHSS states §195.805.1 and .2 prohibits edible marijuana-infused products sold in Missouri to be designed, produced, or marketed in a manner that is designed to appeal to persons under 18 years of age. It provides for enforcement actions on the part of the DHSS. The department expects to absorb these costs in the normal ebb and flow of its operations. However, until the FY21 budget is final, the department cannot identify specific funding sources.

ASSUMPTION (continued)

Oversight does not have any information to the contrary. Oversight assumes the DHSS has sufficient staff and resources to perform the additional work required by this proposal and will reflect no fiscal impact for the DHSS for fiscal note purposes.

Oversight notes provisions of §195.805.2 provides for departmental sanctions, including administrative penalties, for any licensed or certified entity regulated by the Department of Health and Senior Services that designs, produces, or markets medical marijuana products that would appeal to persons under eighteen years of age. Administrative penalties are distributed to school districts based on the location of the entity receiving the penalty. It is unknown whether penalties will be imposed or how much in penalties may be distributed to school districts. Therefore, Oversight will present penalties to school districts as \$0 to Unknown, for fiscal note purposes.

Senate Substitute Amendment (SSA) to Senate Amendment SA) 1 - Stamping of packaging/wrapping of edible products- §195.805.3

DHSS states SSA for SA 1 has no fiscal impact.

DHSS states §195.805.4 (SA 1 added a different .3 and this section moved to .4) requires the DRL, Section for Medical Marijuana Regulation (SMMR) to promulgate new rules and regulations regarding edible marijuana-infused products as well as promulgate rules and regulations to establish a process by which a licensed or certified entity may seek approval of an edible product design, package, or label prior to the product's manufacture or sale.

This will require SMMR to establish a process by which a medical marijuana facility may seek pre-approval for its edible product design, package, or label. It is unknown the number of pre-approval requests that will be required from facilities. Research of other states indicates the volume of pre-approval requests is highly unpredictable; however, the volume is enough to require additional staff. Therefore, the number of staff needed is unknown up to one additional Health Program Representative II (salary of \$40,000) to provide public assistance and processing of applications for pre-approval who would be hired in July 2021.

In addition, the Medical Marijuana program has a contract for Information Technology (IT) systems in place for processing applications and tracking program activities. It is assumed a similar contract for processing facility preapproval product and packaging design applications and enhancements will be required for the activities under this legislation at a cost of \$88,000 for FY2021 and \$12,000 each year thereafter.

ASSUMPTION (continued)

DHSS anticipates costs to the Missouri Veterans Health and Care Fund of \$88,000 for FY 2021; \$12,000 to \$95,038 for FY 2022; and \$12,000 to \$88,564 for FY 2023.

Oversight notes DHSS assumes it will need a total of 0 to 1 new FTE as a result of the provisions of this proposal. Oversight assumes the additional FTE can be housed within current DHSS locations. However, if multiple proposals pass during the legislative session requiring additional FTE, cumulatively the effect of all proposals passed may result in the DHSS needing additional rental space.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a range for the costs provided by DHSS, less rental space costs, for fiscal note purposes.

§§579.065 and 579.068 - Fentanyl or carfentanyl trafficking charges

Officials from the **Department of Corrections (DOC)** state §§579.065 and 579.068 add felony classes A and B for these drugs (fentanyl or carfentanyl) if they are charged under trafficking 1st degree, depending upon quantity of drugs involved and first or subsequent offense. Similarly, it adds them to felony B and C, if the offense is charged under trafficking 2nd degree. The DOC is expecting that the average sentence length and average first releases from prison, as well as parole and probation sentences, will remain the same for these new offenders, however, the number may increase because of the addition of new drugs under this legislation.

In FY2019, there were seven new admissions under charges of 1st degree drug trafficking class A felony, with 12.5 years of average sentence, and 7.2 years average time for first release, 4 new probations with average term of 5 years. For 1st degree class B felony, there were six new admissions with an average sentence of 8.7 years and four new probations with average term of 5 years.

For 2nd degree drug trafficking felony class A, there were five new admissions with an average sentence of 10.7 years, 6.7 years to first release and 5 new probations with 4.2 years average probation term. For class B felony, there were 30 new admissions, 9.7 years average sentence, 2.8 years to first release and 6 new probations with 4.7 years average term.

For 2nd degree drug trafficking class C felony, there were 11 new admissions with 7.2 years average sentence length, 1.3 years to first release, and 14 new probations with 3.8 years average term length.

ASSUMPTION (continued)

Estimating that the changes in the bill result in the same number of new admissions and probations, the DOC will see no new impact by this new change. However, if the DOC assumes an increase of at least 30% new admissions and probations, based on the addition of these new drugs to the list, and assuming same sentence lengths, the likely impact will be approximately 96 new prison admissions and 109 additional field population by FY2030.

In December 2019, 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 2020 fiscal notes. 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 would result in a change in costs/cost avoidance equal to the cost of one FTE staff person. 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. For instances where the proposed legislation affects a less specific caseload, DOC projects the impact based on prior year(s) actual data for DOC's 44 probation and parole districts.

The DOC cost of incarceration is \$17.496 per day or an annual cost of \$6,386 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.

	# to prison	Cost per year	Total Costs for prison	Change in probation & parole officers	Total costs for probation and parole	# to Probation and Parole	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	18	(\$6,386)	(\$95,790)	0	\$0	10	(\$95,790)
Year 2	35	(\$6,386)	(\$227,980)	0	\$0	20	(\$227,980)
Year 3	54	(\$6,386)	(\$358,776)	0	\$0	30	(\$358,776)
Year 4	69	(\$6,386)	(\$467,604)	0	\$0	41	(\$467,604)
Year 5	82	(\$6,386)	(\$566,818)	0	\$0	50	(\$566,818)
Year 6	87	(\$6,386)	(\$613,407)	1	(\$79,528)	62	(\$692,935)
Year 7	91	(\$6,386)	(\$654,442)	1	(\$71,083)	76	(\$725,526)
Year 8	94	(\$6,386)	(\$689,538)	1	(\$71,854)	87	(\$761,392)
Year 9	96	(\$6,386)	(\$718,293)	1	(\$72,635)	100	(\$790,928)
Year 10	96	(\$6,386)	(\$732,659)	2	(\$157,212)	109	(\$889,870)

ASSUMPTION (continued)

Oversight does not have any information to the contrary. For fiscal note purposes, Oversight will range DOC's estimated costs from \$0 (same number of new admissions) to the amount provided (30% increase in admissions and probations).

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 new crime of trafficking fentanyl, or gamma-hydroxybutyric acid, or flunitrazepam. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

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.

In Fiscal Year 2019, SPD's Trial Division opened 193 Trafficking drug cases:

PCCHARGES	CASES
579.065 - Trafficking Drugs 1st Degree	55
579.068 - Trafficking Drugs 2nd Degree	138
	193

Oversight notes over the last three fiscal years, the SPD has lapsed a total of \$153 of General Revenue appropriations (\$2 out of \$28.0 million in FY 2017; \$150 out of \$42.5 million in FY 2018; and \$1 out of \$46.0 million in FY 2019). 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.

ASSUMPTION (continued)

Oversight notes the **Department of Public Safety, Missouri State Highway Patrol** and the **Missouri Office of Prosecution Services** have stated the proposal would not have a 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 organizations.

Bill as a whole

Oversight notes the **Department of Commerce and Insurance, the Office of State Courts Administrator, the City of Kansas City** and the **St. Louis County Department of Justice Services** 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 organizations.

Oversight notes, in response to previous versions of this proposal, the **Springfield Police Department** stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

Officials from the **Joint Committee on Administrative Rules (JCAR)** state the legislation is not anticipated to cause a fiscal impact to JCAR beyond its current appropriation.

Oversight assumes JCAR will be able to administer any rules resulting from this proposal with existing resources.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could require additional resources.

ASSUMPTION (continued)

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other cities, counties, sheriffs' departments and police departments were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

<u>FISCAL IMPACT -</u> State Government	FY 2021 (10 Mo.)	FY 2022	(FY 2023)	Fully Implemented (FY 2030)
GENERAL REVENUE FUND				
<u>Costs - DOC</u> (§§579.065 and 579.068) p. 6				
Increase in incarceration costs	\$0 to (\$95,790)	\$0 to (\$227,980)	\$0 to (\$358,776)	\$0 to (\$732,659)
Personal service	\$0	\$0	\$0	\$0 to (\$84,766)
Fringe benefits	\$0	\$0	\$0	\$0 to (\$53,415)
Equipment and expense	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0 to (\$19,031)</u>
Total <u>Costs - DOC</u>	<u>\$0 to (\$95,790)</u>	<u>\$0 to (\$227,980)</u>	<u>\$0 to (\$358,776)</u>	<u>\$0 to (\$889,870)</u>
FTE Change - DOC	0 FTE	0 FTE	0 FTE	0 to 2 FTE
 <u>Costs - SPD</u> (§§579.065 and 579.068) - Personal service, fringe benefits and equipment and expense p. 7				
	<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 \$100,000 to \$195,790)</u>	<u>(Less than \$100,000 to \$327,980)</u>	<u>(Less than \$100,000 to \$458,776)</u>	<u>(Less than \$100,000 to \$989,870)</u>
Estimated Net FTE Change on the General Revenue Fund	0 FTE	0 FTE	0 FTE	0 to 2 FTE

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2021 (10 Mo.)	FY 2022	(FY 2023)	Fully Implemented (FY 2030)
MO VET HEALTH AND CARE FUND (0606)				
<u>Costs - DHSS</u>				
(\$195.805) p. 4 &5	\$0 to...	\$0 to...	\$0 to...	\$0 to...
Personal service	\$0	(\$40,400)	(\$40,804)	(\$43,747)
Fringe benefits	\$0	(\$24,937)	(\$25,071)	(\$26,048)
Equipment and expense	<u>\$0</u>	<u>(\$13,457)</u>	<u>(\$6,339)</u>	<u>(\$7,534)</u>
Total <u>Costs - DHSS</u>	<u>\$0</u>	<u>(\$78,794)</u>	<u>(\$72,214)</u>	<u>(\$77,329)</u>
FTE Change - DHSS	0 FTE	0 to 1 FTE	0 to 1 FTE	0 to 1 FTE
<u>Costs - DHSS</u>				
(\$195.805) - IT contract costs p. 4	<u>(\$88,000)</u>	<u>(\$12,000)</u>	<u>(\$12,000)</u>	<u>(\$12,000)</u>
ESTIMATED NET EFFECT ON THE MO VET HEALTH AND CARE FUND				
	<u>(\$88,000)</u>	<u>(\$12,000 to \$90,794)</u>	<u>(\$12,000 to \$84,214)</u>	<u>(\$12,000 to \$89,329)</u>
 <u>FISCAL IMPACT -</u> <u>Local Government</u>				
	FY 2021 (10 Mo.)	FY 2022	FY 2023	Fully Implemented (FY 2030)
SCHOOL DISTRICTS				
<u>Income - School Districts (\$195.805)</u>				
- Penalty income p.4	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
ESTIMATED NET EFFECT ON SCHOOL DISTRICTS				
	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>

FISCAL IMPACT - Small Business

This proposal may impact small business that make or sell medical marijuana products.
(§195.805)

FISCAL DESCRIPTION

This act modifies several provisions relating to controlled substances, including: (1) the schedules of controlled substances; (2) prescriptions for pseudoephedrine and related drugs; (3) medical marijuana edibles; and (3) drug trafficking.

SCHEDULES OF CONTROLLED SUBSTANCES (§§ 195.015 and 195.017)

Under this act, if a substance is designated, rescheduled, or deleted as a controlled substance under federal law, the Department of Health and Senior Services shall promulgate emergency rules to implement such change within 30 days of publication of the change in the Federal Register, unless the Department objects to such change. If the Department promulgates emergency rules under this act, the rules may remain in effect until the legislature concludes its next regular session following the imposition of the rules.

Additionally, this act updates the schedules of controlled substances in Missouri to mirror the most recent update to the schedules in 19 CFR 30-1.002 and further updates by the Drug Enforcement Agency in the Federal Register.

PRESCRIPTIONS FOR PSEUDOEPHEDRINE AND RELATED DRUGS (§§195.417 and 579.060)

This act prohibits the requirement of a prescription for the dispensation, sale, or distribution of any drug containing any detectable amount of ephedrine, phenylpropanolamine, or pseudoephedrine, or any of their salts or optical isomers, or salts of optical isomers, in an amount within the limits set forth in law. A prescription shall be required for such drug in excess of the statutory limits. This provision shall not apply in any calendar year in which the state's methamphetamine laboratory seizure incidents, as reported by the Missouri State Highway Patrol, exceed 300 incidents for the most recent calendar year for which such data is reported and made publicly available.

This act also changes the amounts that can be sold, dispensed, or otherwise provided to a person in a 30-day period without a prescription from a maximum of 9 grams to a maximum of 7.2 grams.

FISCAL DESCRIPTION (continued)

MEDICAL MARIJUANA EDIBLES (§195.805)

This act prohibits the sale of edible marijuana-infused products that are designed, produced, or marketed in a manner to appeal to persons under 18 years of age, including candies, gummies, lollipops, cotton candy, or products in the shape of a human, animal, or fruit. Each individually wrapped edible marijuana-infused product containing any amount of tetrahydrocannabinols (THC) shall be stamped or the package or wrapping otherwise labeled with a diamond containing the letters "THC" and the number of milligrams of THC in that individually wrapped product.

Any medical marijuana licensed or certified entity regulated by the Department of Health and Senior Services found to have violated this act shall be subject to sanctions, including an administrative penalty. The Department shall develop a process by which a licensed or certified entity may seek approval of a product design, package, or label prior to manufacture or sale to determine compliance with these provisions.

DRUG TRAFFICKING (§§579.065 and 579.068)

This act adds to the offense of trafficking drugs in the first degree knowingly distributing, delivering, manufacturing, or producing or attempting to distribute, deliver, manufacture, or produce more than 10 milligrams of fentanyl or any derivative thereof, or any mixture or substance containing more than 10 milligrams of fentanyl or carfentanil, as a Class B felony and a Class A felony when the amount is 20 milligrams or more. Additionally, trafficking in the first degree of one or more grams of flunitrazepam or any amount of gamma-hydroxybutyric acid for the first offense shall be a Class B felony and a Class A felony for any second or subsequent offense.

This act adds to the offense of trafficking drugs in the second degree knowingly possessing or having under one's control, purchasing or attempting to purchase, or bringing into the state more than 10 milligrams of fentanyl or any derivative thereof, or any mixture or substance containing a detectable amount of fentanyl or carfentanil as a Class C felony and a Class B felony when the amount is 20 milligrams or more. Additionally, trafficking in the second degree of less than one gram of flunitrazepam shall be a Class C felony for the first offense and a Class B felony for any second or subsequent offense.

Finally, this act modifies current law for the Class B felony offense of trafficking of drugs in the first degree and the Class C felony offense of trafficking drugs in the second degree by removing the ceiling of the ranges of grams or milligrams of various controlled substances, including heroin, cocaine, LSD, PCP, phencyclidine, marijuana, and amphetamines and methamphetamines.

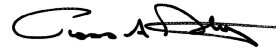
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Commerce and Insurance
Department of Health and Senior Services
Department of Corrections
Department of Public Safety -
 Missouri State Highway Patrol
Joint Committee on Administrative Rules
Missouri Office of Prosecution Services
Office of State Courts Administrator
Office of Secretary of State
Office of State Public Defender
City of Kansas City
St. Louis County Department of Justice Services
Springfield Police Department



Julie Morff
Director
March 4, 2020



Ross Strobe
Assistant Director
March 4, 2020