

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4853-02
Bill No.: HB 2234
Subject: Crimes and Punishment; Drugs and Controlled Substances; Health, Public
Type: Original
Date: March 4, 2020

Bill Summary: This proposal prohibits the inhalation of certain substances.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	(Less than \$105,322)	(Less than \$113,027)	(Less than \$113,288)
Total Estimated Net Effect on General Revenue	(Less than \$105,322)	(Less than \$113,027)	(Less than \$113,288)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on FTE	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 2021	FY 2022	FY 2023
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§579.097 - Inhalation of certain substances

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 expanded definition for the offense of inhaling or inducing other to inhale solvent fumes - a misdemeanor. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

In Fiscal Year 2019, SPD's Trial Division opened 3 cases under charge code 579.097 of the 62,002 total cases opened.

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 \$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 with 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.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS.

ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** state §579.097 adds more substance to the list which is prohibited from smelling and inhaling. While no penalty provisions are listed in this legislation, §579.101 references a B misdemeanor for the first offense and an E felony for any subsequent offenses for anyone who violates §§579.097 through 579.101.

The department will use a standard nonviolent E felony to estimate a fiscal impact. For each new nonviolent class E felony, the department estimates one person will be sentenced to prison and two to probation. The average sentence for a nonviolent class E felony offense is 3.4 years, of which 2.1 years will be served in prison with 1.4 years to first release. The remaining 1.3 years will be on parole. Probation sentences will be 3 years.

The cumulative impact on the department is estimated to be 2 additional offenders in prison and 7 on field supervision by FY23.

	# 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 a 2% inflation)
Year 1	1	(\$6,386)	(\$5,322)	2	absorbed	\$0	(\$5,322)
Year 2	2	(\$6,386)	(\$13,027)	4	absorbed	\$0	(\$13,027)
Year 3	2	(\$6,386)	(\$13,288)	7	absorbed	\$0	(\$13,288)
Year 4	2	(\$6,386)	(\$13,554)	7	absorbed	\$0	(\$13,554)
Year 5	2	(\$6,386)	(\$13,825)	7	absorbed	\$0	(\$13,825)
Year 6	2	(\$6,386)	(\$14,101)	7	absorbed	\$0	(\$14,101)
Year 7	2	(\$6,386)	(\$14,383)	7	absorbed	\$0	(\$14,383)
Year 8	2	(\$6,386)	(\$14,671)	7	absorbed	\$0	(\$14,671)
Year 9	2	(\$6,386)	(\$14,964)	7	absorbed	\$0	(\$14,964)
Year 10	2	(\$6,386)	(\$15,264)	7	absorbed	\$0	(\$15,264)

Oversight does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC's impact for fiscal note purposes.

Oversight notes the **Department of Public Safety - Missouri State Highway Patrol** and the **Office of State Courts Administrator** have each stated the proposal would not have a direct fiscal impact on their respective organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

ASSUMPTION (continued)

Oversight notes the provisions of this bill do not provide penalties for a person who violates §579.097. However, per 579.101 (Possession or purchase of solvents to aid others in violations), any person who violates any provision of §§579.097 to 579.101 is guilty of a class B misdemeanor for the first violation and a class E felony for any subsequent violations.

Oversight notes according to records from Office of the State Courts Administrator, the following charges were filed under Section 579.097 (Intentionally Inhale/Smell Fumes Or Induce Another To Inhale/Smell Fumes Of Any Solvents)

	FY 2019	FY 2018
B misdemeanor	9	13
E felony	4	2

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
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GENERAL REVENUE FUND

<u>Cost - SPD (§579.097) Salaries, fringe benefits, and equipment and expense</u>	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
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<u>Cost - DOC (§579.097) Increased incarceration costs</u>	<u>(\$5,322)</u>	<u>(\$13,027)</u>	<u>(\$13,288)</u>
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ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Less than \$105,322)</u>	<u>(Less than \$113,027)</u>	<u>(Less than \$113,288)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
	<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 make changes to existing statute prohibiting a person from intentionally smelling or inhaling the fumes of a solvent for the purposes of inducing certain symptoms.

The bill adds "inhaling the gases or vapors of a solvent" to the statute. The bill also adds "inhaling a chemical, reagent, refrigerant, or other substance to the statute". The bill adds "inhaling the fumes of a solvent for the purposes of causing hallucination".


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



Julie Morff
Director
March 4, 2020



Ross Strobe
Assistant Director
March 4, 2020