

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1016H.01I
 Bill No.: HB 755
 Subject: Crimes and Punishment; Corrections, Department of; Health, Public; Mental Health, Department of
 Type: Original
 Date: February 3, 2021

Bill Summary: This proposal modifies provisions regarding unlawful actions by persons knowingly infected with communicable diseases.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Revenue*	(Unknown) or Unknown	(Unknown) or Unknown	(Unknown) or Unknown
Total Estimated Net Effect on General Revenue	(Unknown) or Unknown	(Unknown) or Unknown	(Unknown) or Unknown

*Oversight assumes the fiscal impact (either positive or negative) would not exceed \$250,000. Oversight notes to reach the \$250,000 threshold, an additional (or reduction of) 32 prisoners would be required. Oversight assumes fewer than that number.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on FTE	0	0	0

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§§191.677, 545.940, 575.155, and 575.157 - Persons knowingly infected with communicable diseases

Officials from the **Department of Corrections (DOC)** state this bill modifies provisions regarding unlawful actions by persons knowingly infected with communicable diseases. The bill broadens the scope of sections 191.677, 575.155, and 575.157 by making them applicable to serious infectious or communicable diseases beyond the previously proscribed HIV, hepatitis B, and hepatitis C.

It is also unknown what bodily fluids are scientifically shown to be a known means of transmission of a serious infectious or communicable disease. Therefore, the Department is unable to estimate a fiscal impact for this legislation.

Oversight does not have any information contrary to that provided by DOC. Oversight will assume this proposal could impact DOC's in several ways; therefore, Oversight will range the impact to DOC from a positive unknown (reduction in penalty for these offenses from a B felony to a D felony (or from an A felony to a C felony if the victim contracts the disease)) to a negative unknown for expanding the number of diseases that qualify for this crime from HIV to all "serious infectious or communicable diseases."

Officials from the **Department of Health and Senior Services (DHSS)** state §191.677 of the proposed legislation states that it is unlawful for any individual with a serious infectious disease to knowingly expose another. "Serious infectious or communicable disease" is defined in the proposed legislation as a "nonairborne disease spread from person to person that is fatal or causes disabling long-term consequences in the absence of lifelong treatment and management." Depending on the legal interpretation of that definition, conditions apart from HIV/AIDS could be considered for prosecution, increasing the number of records requests received by the DHSS.

The proposed legislation would add the criminalization of the transmission of additional diseases which will increase the number of requests for records from attorneys, law enforcement officers, or others investigating potential cases. Currently, DHSS receives a number of such requests for HIV/AIDS, the only disease that is criminalized in regards to disease transmission under state law. DHSS therefore assumes that the number of requests would increase. For every request received, the Bureau of Reportable Disease Informatics (BRDI) staff must search, pull, prep, and review the records. Once this is completed, the BRDI staff compiles the information and sends it to the Office of General Counsel (OGC).

The estimates used in this fiscal note are based upon the ratio of 2018 requests for HIV/AIDS records under Section 191.677, RSMo, divided by the number of new HIV/AIDS cases in 2018 (11 requests/456 new HIV/AIDS diagnoses = .02412). This ratio was then applied to the 2018 numbers of other selected reportable conditions. The Department anticipates that hepatitis B and syphilis (early latent, secondary, and primary) would be the most likely to generate requests as they have the potential to most closely align with the bill's definition of a "serious infectious or communicable disease."

Condition	2018 New Cases	Expected Record Requests
Syphilis (early latent, secondary, and primary)	1,352	33
Hepatitis B (chronic and acute)	468	11
Total for Selection	1,820	44

The estimated average amount of BRDI staff time for a basic record request without court appearance is two hours. Thus, the estimated staff time to handle anticipated requests for only the conditions listed in the table above would be 88 hours (44 estimated additional requests x 2 hours per request). A Public Health Program Manager (\$71,265) currently employed by DHSS would be responsible for processing and responding to the additional records requests. The cost in staff time would be approximately \$3,015 (\$34.26 hourly rate x 88 hours). The salary listed for this position reflects the average annual salary of staff in this position within the Division of Community and Public Health as of January 1, 2021.

The department anticipates being able to absorb these costs. However, until the FY22 budget is final, the department cannot identify specific funding sources.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect DHSS's no impact for fiscal note purposes.

For the purpose of the proposed legislation, and as a result of excessive caseloads, the **Missouri State Public Defender (SPD)** cannot assume existing staff will be able to provide competent, effective representation for any new cases where indigent persons are charged with the proposed new crime(s) concerning communicable diseases as prohibited by sections 191.677, 545.940, 575.155, and 575.157. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards. While the number of new cases may be too few or uncertain to request additional funding for this specific bill, the Missouri State Public Defender will continue to request sufficient appropriations to provide competent and effective representation in all cases where the right to counsel attaches.

Oversight assumes the SPD will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the SPD for fiscal note purposes.

Officials from the **Attorney General’s Office**, the **Department of Mental Health**, the **Department of Public Safety - Missouri Highway Patrol**, the **Missouri Office of Prosecution Services**, and the **Office of the State Courts Administrator** each assume the proposal will have no 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.

<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
GENERAL REVENUE FUND			
<u>Cost or Savings – DOC (§§191.677, 575.155, 575.157) incarceration costs</u>	<u>(Unknown) or Unknown</u>	<u>(Unknown) or Unknown</u>	<u>(Unknown) or Unknown</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Unknown) or Unknown</u>	<u>(Unknown) or Unknown</u>	<u>(Unknown) or Unknown</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

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

FISCAL DESCRIPTION

Under current law, it is illegal for a person knowingly infected with HIV to donate blood, organs, tissue, or sperm, unless for medical research, as well as illegal for such person to act recklessly in exposing another person to HIV without their knowledge and consent.

This act modifies those provisions to make it unlawful for a person knowingly infected with a serious infectious or communicable disease to: (1) donate blood, organs, tissue, or sperm, unless for medical research or as deemed medically appropriate by a licensed physician; (2) knowingly

expose another person to the disease through an activity that creates a substantial risk of transmission; or (3) act in a reckless manner by exposing another person to the disease through an activity that creates a substantial risk of disease transmission. A "serious infectious or communicable disease" is defined as a non-airborne disease spread from person to person that is fatal or causes disabling long-term consequences in the absence of lifelong treatment and management. The penalty for donation of blood, organs, tissue, or sperm while knowingly infected with the disease or knowingly exposing another person to the disease shall be a Class D felony, rather than the current Class B felony, and a Class C felony, rather than the current Class A felony, if the victim contracts the disease. The penalty for recklessly exposing another person is a Class A misdemeanor.

It shall be an affirmative defense to this offense if the person exposed to the disease knew that the infected person was infected with the disease at the time of the exposure and consented to the exposure.

This act specifies the actions to be taken during a judicial proceeding to protect the identifying information of the victim and the defendant from public release, except as otherwise specified. Additionally, this act changes similar provisions involving exposure of persons in correctional centers, jails, or certain mental health facilities to HIV or hepatitis B or C to exposure to a serious infectious or communicable disease.

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

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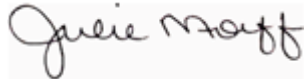
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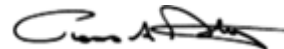
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SOURCES OF INFORMATION

Attorney General's Office
Department of Corrections
Department of Health and Senior Services
Department of Mental Health
Department of Public Safety
Missouri Office of Prosecution Services
Office of the State Courts Administrator
Office of the State Public Defender



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