

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0890-01
Bill No.: HB 358
Subject: Drugs and Controlled Substances; Crimes and Punishment
Type: Original
Date: February 25, 2015

Bill Summary: This proposal modifies provisions relating to controlled substances and requires probation and parole officers to arrest people suspected of violating their conditions of release.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	Could exceed (\$1,993,195)	Could exceed (\$2,628,702)	Could exceed (\$2,672,068)
Total Estimated Net Effect on General Revenue	Could exceed (\$1,993,195)	Could exceed (\$2,628,702)	Could exceed (\$2,672,068)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on <u>Other</u> State Funds	\$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 2016	FY 2017	FY 2018
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	Less than 18 FTE	Less than 18 FTE	Less than 18 FTE
Total Estimated Net Effect on FTE	Less than 18 FTE	Less than 18 FTE	Less than 18 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 2016	FY 2017	FY 2018
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Corrections (DOC)** state this bill proposes to modify provisions relating to controlled substances and requires probation and parole officers to arrest people suspected of violating their conditions of release.

Section 217.720 - Parolees - DOC states this section of the bill requires that parole officers obtain a warrant for the arrest of parolees whom they believe to be in violation of the conditions of their parole. At present, the statute allows a parole officer to obtain a warrant in these conditions, but it is not required. Offenders who are arrested by the police following the issuance of a warrant will be held in a county jail or returned to the DOC for investigation. The statute change will, therefore, increase the number of offenders held in jail or prison. The length of time offenders are incarcerated because of the arrest will depend on the time taken by the Board of Probation and Parole to decide on the revocation or continuance of the parolee.

In FY14, there were a total of 13,021 parolees who received one or more field violations and warrants were issued for a total of 7,276 offenders, (or those offenders were already in the custody of another law enforcement agency). The remaining 5,745 offenders did not have a warrant issued for their arrest as a result of their field violation(s) but would be arrested with the proposed statute change. At present, if offenders are reporting and there are no law violations and no public safety issues, parole officers are encouraged to work with offenders before recommending revocation.

The impact on the DOC will be the additional number of offenders who are arrested and returned to the DOC. In FY14 there were 4,816 offenders returned to a DOC institution from an arrest warrant and the other 2,460 offenders with an arrest warrant were placed in a county jail. If the same ratio (66% DOC, 34% county jail) applies to the additional 5,745 offenders who will be arrested, then 3,802 offenders will be returned to the DOC and 1,942 will be held in a county jail. The time taken to process offenders returned to the DOC from a warrant in FY14 was 24 days and the impact on the DOC offender population will be an increase of 250 offenders per year ($3,802 * 24 \text{ days} / 365 \text{ days}$). If the processing time at county jails is similar to the DOC incarceration time then the impact on county jails will be an increase of 128 offenders per year ($1,942 * 24 / 365$). There is also the possibility that more parolees will be revoked and the average time for parolees revoked for a technical violation is thirteen months.

Thus, this portion of the bill would have a large effect on the department and on county jails. The impact would be on prison capacity and on staff processing the increased number of prison admissions. At present the DOC has very little unused prison capacity to hold additional

ASSUMPTION (continued)

offenders. With the increase in the number of DOC offenders in county jails there could be a cost to the DOC of the jail stays if the offenders were then returned and incarcerated by the DOC.

Section 217.722 - Probationers - DOC states this section of the bill requires that probation officers obtain a warrant for the arrest of probationers whom they believe to be in violation of the conditions of their probation. At present, the statute allows a probation officer to obtain a warrant in these conditions, but it is not required.

In FY14, there were a total of 32,305 probationers who received one or more field violations. Warrants were issued for a total of 8,608 probationers (or they were already in the custody of another law enforcement agency) as a result of their violation(s). The remaining 23,697 probationers did not have a warrant for their arrest issued as a result of their field violation(s) but would be arrested with the proposed statute change. As with parolees, supervising officers are encouraged to work with probationers unless they are not reporting, have committed a law violation or there is a public safety issue.

The DOC does not know the processing time of courts in considering violations but an increase of over 23,000 arrests will be substantial on jail capacity and on the workload of courts, jails and police. There is also the possibility that the increased number of arrests will increase the number of probationers who are revoked and serve a prison or 120-day sentence. The average time served by revoked probationers released in FY14 was 15 months.

Below is an indication of the number of warrants, by sentencing county, that would be issued for probationers, under this bill.

The effect of this portion of the bill on the DOC is not known. Based upon the type of sentence, suspended imposition of sentence (SIS) or suspended execution of sentence (SES), the DOC could be responsible for reimbursing the counties for the cost of jail days incurred by offenders being processed based upon the issuance of a warrant. Also, with the increase in the number of DOC offenders in county jails, there could be a cost to the DOC to reimburse counties for the jail stay if the offenders were revoked and then incarcerated by the DOC.

The DOC assumes this could have a substantial impact on the courts and police authorities if a large number of offenders are in jail due to warrants issued due to this legislation.

Section 579.010 - Ingesting Controlled Substances - DOC states the bill creates a new offense of ingesting a controlled substance without a prescription or while under the supervision of a practitioner. The penalty for this offense is a Class A Misdemeanor. In FY14, the DOC

ASSUMPTION (continued)

supervised 3 new misdemeanor drug offenders, with an average sentence of 5.0 years.

This section of the bill creates a new offense, and thus the impact on the DOC cannot be well studied. However, given the small number of misdemeanor drug offenders supervised by the department, the impact of this portion of the bill is expected to be very small.

Summary - the impact of the proposed changes to the statutes on drug offenses in this bill is not well known, as these changes create new offenses. However, the combined effect of these changes is expected to be very small.

The impact of the proposed change dealing with warrants for probationers on the department of corrections is not known. It is clear that this change will greatly increase the work load for courts, police, and county jails. It is possible that an increase in warrants could lead to an increase in the number of probationers serving sentences with the DOC.

The penalty provision component of this bill resulting in potential fiscal impact for DOC is due to increased number of revoked probation and parolees being incarcerated because of violations listed in this legislation. Based upon historical data, we assume that approximately 250 offenders would be sentenced to incarceration annually under this new legislation. The DOC cost of incarceration is \$16.725 per day or an annual cost of \$6,105 per offender.

DOC assumes a cost to the General Revenue fund of \$1,058,200 to unknown in FY 2016 from an additional 208 incarcerated offenders and an additional \$1.55 million to unknown per year thereafter from an additional 250 incarcerated offenders.

Officials from the **Office of the State Public Defender (SPD)** state while the change in Section 217.722 from may arrest to shall arrest could increase the number of probation violations, the SPD assumes it will not and instead only effect whether our probation violation client is in custody or out of custody. Therefore, the SPD assumes no impact for Section 217.722.

Regarding the new offense of 579.010, Ingesting a Controlled Substance, how many cases that will add to our workload is difficult to predict. The SPD suspects not that many offenses would be charged that are not already charged as Possession.

Assuming it would add 10% on top of our Possessions: In FY2014 the SPD opened 8,081 adult Possession of Controlled Substance cases, so adding 10% of that number of cases would add 808 new cases. By terms of the proposed statute, they would be misdemeanors.

ASSUMPTION (continued)

Also, In FY2014 the SPD opened 53,187 new adult offenses plus 17,226 probation violations, i.e., 1 probation violation for approximately every 0.32 new offenses. Applying that same percentage to our marijuana cases, then in increasing our caseload by 808 new cases the SPD also would add 262 probation violation cases, or a total of 1,070 new cases.

In The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards, prepared by RubinBrown on behalf of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants, the relevant workload standards are: misdemeanors, 11.7 hours per case; and probation violations, 9.8 hours per case. (The workload standards include only case related tasks over which an attorney has some control (they exclude, for example, in court and travel time) and thereby reflect a conservative estimate.)

Applying those workload standards to the 1,070 cases, those cases would require 12,021.2 attorney hours. With 2,080 hours per attorney available each year, that represents the work of 5,78 attorneys or 6 attorneys

While in theory we might also handle more appeals of guilty verdicts after trial, the fact is that only a very small percentage of our cases proceed to trial and it's likely that only a small percentage of these new Ingesting a Controlled Substance cases would result in appeals. Therefore the impact on appeals is not taken into account in this estimate.

In sum, this legislation, under the above estimates, could require an additional 6 attorneys plus 12 support staff and equipment.

The SPD assumes a total cost to the General Revenue Fund of \$934,995 in FY 2016, \$1,071,947 in FY 2017 and \$1,084,157 in FY 2018 for the additional 18 FTE.

Oversight assumes the 10% estimate (an additional 10% on top of current possession charges) used by SPD may be high; however, Oversight does not have information to predict a new number of offenders. Also, SPD is not currently at the recommended workload standards stated above, therefore, applying the additional anticipated caseloads with the actual caseloads per defender would probably result in a lower estimate of needed additional public defenders. Therefore, Oversight will assume the impact will be "Less Than" the SPD's cost estimate.

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.

ASSUMPTION (continued)

Officials from the **Attorney General's Office** assume that any potential costs arising from this proposal could be absorbed with existing resources.

Officials from the **Office of the State Courts Administrator**, the **Department of Mental Health**, the **Department of Health and Senior Services**, and the **Department of Public Safety - Missouri Highway Patrol** each assume the proposal would not fiscally impact their respective agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
GENERAL REVENUE			
<u>Costs - Department of Corrections</u>			
Increased number of parolees and probationers incarcerated because of the changes in this bill	Could exceed (\$1,058,200)	Could exceed (\$1,556,755)	Could exceed (\$1,587,911)
<u>Costs - Office of the State Public Defender</u>			
Personal Service (18 FTE)	(\$527,940)	(\$639,863)	(\$646,262)
Fringe Benefits	(\$274,555)	(\$332,761)	(\$336,089)
Expense & Equipment	<u>(\$132,500)</u>	<u>(\$99,323)</u>	<u>(\$101,806)</u>
	Less than	Less than	Less than
Total Costs - SPD	<u>(\$934,995)</u>	<u>(\$1,071,947)</u>	<u>(\$1,084,157)</u>
	Less than	Less than	Less than
FTE Change - SPD	18 FTE	18 FTE	18 FTE
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	Could exceed <u>(\$1,993,195)</u>	Could exceed <u>(\$2,628,702)</u>	Could exceed <u>(\$2,672,068)</u>
Estimated Net FTE Change for the General Revenue Fund	Less than 18 FTE	Less than 18 FTE	Less than 18 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
COUNTIES			
<u>Costs</u> - additional incarcerations	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT TO COUNTIES	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This proposal specifies that a controlled substance includes an altered state of a drug or substance listed in schedules I through V absorbed into the human body.

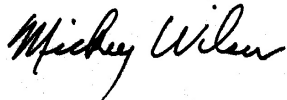
At any time during release on parole or conditional release the Board of Parole must issue a warrant for the arrest of a released offender for violation of any of the conditions of parole or conditional release. If a parole or probation officer has probable cause to believe that an offender has violated a condition of parole or conditional release, the officer must issue a warrant for the arrest of the offender.

A person commits the offense of ingesting a controlled substance if he or she intentionally ingests, inhales, or otherwise takes into his or her body any controlled substance, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of a practitioner's professional practice. The offense of ingesting a controlled substance is a class A misdemeanor.

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



Mickey Wilson, CPA
Director
February 25, 2015

Ross Strobe
Assistant Director
February 25, 2015