

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3237-14
Bill No.: CCS for SS #2 for HB 1693
Subject: Drugs and Controlled Substances; Health Care; Health, Public
Type: Original
Date: May 12, 2020

Bill Summary: This proposal modifies provisions relating to the monitoring of certain controlled substances.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	Up to (\$1,635,579)	Up to (\$388,825) to (\$788,825)	Up to (\$860,193) to (\$872,193)
Total Estimated Net Effect on General Revenue	Up to (\$1,635,579)	Up to (\$388,825) to (\$788,825)	Up to (\$860,193) to (\$872,193)

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 14 pages.

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

* Income and expenses less than \$300,000 beginning in FY 2023 and net to \$0.

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	2 FTE	2 FTE	2 FTE
Total Estimated Net Effect on FTE	2 FTE	2 FTE	2 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
Local Government	Less than \$100,000	Less than \$157,522	Less than \$158,000

FISCAL ANALYSIS

ASSUMPTION

Due to time constraints of less than 12 hours, **Oversight** was unable to receive some of the agency responses in a timely manner and performed limited analysis. Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

§195.450 - Joint Task Force for Prescription Drug Monitoring

In response to the previous version of this proposal, officials from the **Office of Administration (OA), Director's Office** stated §195.450 establishes within the Office of Administration the Joint Oversight Task Force for Prescription Drug Monitoring which shall be authorized to supervise the collection and use of patient dispensation information for prescribed controlled substances. While the members of the task force shall serve without compensation, members may be reimbursed for actual and necessary expenses from moneys appropriated to the Office of Administration. The Office of Administration shall provide technical, legal and administrative support services as required by the joint task force, and shall be authorized to hire such staff as are necessary. OA estimates this will require 2 additional FTE, with a fiscal impact of \$110,000 annually as follows:

1 Legal Counsel \$65,000

1 Administrative Office Support position: \$35,000

Reimbursements for meals, travel, and other necessary expenses: \$10,000

§195.450 also stipulates the joint oversight task force shall enter into a contract with a vendor through a competitive bid process for operation of the prescription drug monitoring program. The vendor shall be responsible for the collection and maintenance of patient dispensation information submitted to the vendor. Each dispenser will submit to the vendor the required information in accordance with transmission standards established by the American Society for Automation in Pharmacy, or any successor organization, and shall report data within twenty-four hours. A paper form alternative must be available for those provided a waiver for electronic submission.

There are Custom off the Shelf (COTS) solutions that are utilized by other surrounding states, and those estimates will be used for the purpose of this fiscal note. The fiscal impact to General Revenue is estimated to be (\$1,390,652) in FY 2021 for contracted database development and

ASSUMPTION (continued)

associated program start-up costs. Ongoing contracted costs for operation of the prescription drug monitoring program would be affected by a number of variables including the frequency of data collection, the number of prescriptions being written and filled, the number of pharmacies reporting, and the number of practitioners checking patient drug histories. These costs are estimated to be (\$507,966) in FY 2022, and (\$517,471) in FY 2023.

There is a federal grant in place for states to apply for a one-time \$400,000 grant to start a narcotics control program. States can only apply for the funding if they have already passed and enacted legislation for a narcotics control program. Since Missouri does not currently have a narcotics control program, Missouri is not yet eligible to apply. The application deadline is April 2020, and funds are awarded in October 2020. Missouri would be eligible to apply in April 2021 if Missouri enacts legislation for a narcotics control program, and the soonest the funding would be available would be SFY 2022. As the amount of any award is unknown, the impact to both General Revenue and Federal Funds will be unknown in FY 2022. Other federal funding sources which may become available to offset the costs described above are also unknown at this time.

OA estimates the impact of this proposal to the General Revenue Fund to be (Unknown to \$1,544,963) for FY 2021; (\$275,798 to \$675,798) for FY 2022; and (Unknown to \$686,905) for FY 2023.

Oversight assumes OA will apply for one federal grant program by April 2021. As it is unknown whether the state will be awarded grant monies, Oversight will range the potential funds from \$0 to \$400,000 for FY 2022. Since it is unknown whether there will be opportunities for OA to apply for grant monies in subsequent years and it is unknown whether any grant funds will be received, Oversight will not present those unknowns for fiscal note purposes.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the costs provided by OA for fiscal note purposes.

In response to the previous version of this proposal, officials from the **Department of Social Services (DSS)** stated §195.450.2(3) of the proposal provides that members of the task force would get no compensation but may be reimbursed for their actual and necessary expenses from money appropriated to the Office of Administration.

§195.450.3(3) provides that the joint oversight task force shall be authorized to cooperate with the MO HealthNet division within the DSS for the purposes of applying for and accepting any available federal money or other grants to develop and maintain the program.

ASSUMPTION (continued)

The fiscal impact for MO HealthNet would be up to \$120,000 initial database setup and connection fee for the first year and then \$240,000 for the first year and then annually to remain connected to the database. DSS assumes the \$0 to \$120,000 initial database setup would be split 90/10 between federal funds (\$0 to \$108,000) and General Revenue (\$0 to \$12,000) for FY 2023; connection costs for FY 2023 and beyond are assumed to be split 75/25 between federal funds (\$180,000) and (\$60,000) General Revenue (GR).

Therefore, estimated costs for FY 2023 are \$60,000 to \$72,000 GR and \$180,000 to \$288,000 Federal funds.

Oversight contacted DSS regarding the initial database setup and connection fees estimated for this program. Officials indicated they looked at what other states paid for similar programs when deriving their cost estimates.

Oversight does not have any information to the contrary. Oversight will reflect the costs provided by DSS for fiscal note purposes.

Officials from the **Department of Corrections (DOC)** state §195.450 subsection 14 (2) sets the penalty for unlawful use of the registry by authorized or unauthorized persons and unlawful disclosure of information in violation of this section as a class E felony. For each new nonviolent class E felony, the DOC 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 DOC is estimated to be two additional offenders in prison and seven on field supervision by FY 2023.

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.

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

Oversight does not have any information to the contrary. For fiscal note purposes, Oversight will present DOC's estimated costs.

In response to the previous version of this proposal, officials from the **St. Louis County Department of Public Health (DPH)** stated the adoption of HB 1693 would decrease County expenditures related to the contract for the prescription drug monitoring program (PDMP) platform by \$56,118 (2021); \$57,522 (2022); and \$58,000 (2023).

The County would lose \$680,726 (2021) and \$598,804 (2022) in federal funding if the state operated the PDMP.

ASSUMPTION (continued)

Oversight assumes the St. Louis County DPH will continue operating its PDMP through FY 2021 while OA and the Joint Oversight Task Force develops and implements the state's PDMP. Provisions at 195.450.15(1) provides that any PDMP in operation prior to August 28, 2020 shall cease operation within this state when the vendor's program is available for utilization by prescribers and dispensers throughout the state. Oversight assumes it will take at least a year for the state to have a functioning PDMP.

Oversight notes provisions at §195.450.14 provide for administrative penalties in the amount of \$1,000 per violation when a dispenser knowingly fails to submit dispensation information to the vendor or knowingly submits incorrect dispensation information. Penalties shall be assessed through an order issued by the joint oversight task force. Any person subject to an administrative penalty may appeal to the administrative hearing commission.

Oversight notes it would require 100 penalties to be assessed for the impact to be \$100,000. Oversight further assumes the impact would be less than \$100,000 annually and that penalties will be distributed to school districts.

In response to the previous version of this proposal, officials from the **Office of State Public Defender (SPD)** stated, for the purpose of this proposed legislation, they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the proposed new crimes relating to disclosure of pharmaceutical information, new class E felonies. 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.

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

ASSUMPTION (continued)

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, in response to similar legislation from the current session (SB 523), the **Missouri Office of Prosecution Services** stated the proposal would not have a measurable fiscal impact on their organization. The creation of additional responsibilities for county prosecutors may result in additional costs which are difficult to determine at the present time. **Oversight** does not have any information to the contrary. Therefore, **Oversight** will reflect a zero impact in the fiscal note for this organization.

Bill as a whole

In response to the previous version of this proposal, officials from the **OA, Budget & Planning (B&P)** stated the proposed legislation should not result in additional costs or savings to the Division of Budget and Planning.

§195.450.14(1) contains an administrative penalty of \$1,000 per violation for dispensers that knowingly fail to submit or submit incorrect information. §195.450.14(2) states that any person who unlawfully and knowingly accesses or discloses, or any person authorized to have prescription and dispensation information who knowingly discloses or misuses such information, shall be guilty of a Class E felony. To the extent that fines and penalties are impacted by these changes, which must be directed to the benefit of public schools, TSR may be impacted by an unknown amount.

The proposal has no direct impact on the calculation in Article X, Section 18(e).

In response to the previous version of this proposal, officials from the **Office of Attorney General (AGO)** assumed any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

Oversight does not have any information to the contrary. Therefore, **Oversight** assumes the AGO 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 AGO for fiscal note purposes.

ASSUMPTION (continued)

In response to the previous version of this proposal, officials from the **Joint Committee on Administrative Rules (JCAR)** stated 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.

In response to the previous version of this proposal, officials from the **OA, Administrative Hearing Commission** anticipated this legislation will not significantly alter its caseload. However, if similar bills pass resulting in more cases, there could be a fiscal impact.

In response to the previous version of this proposal, officials from the **Department of Commerce and Insurance (DCI)** stated this bill is anticipated to have no fiscal impact to the department. However, should the extent of the work be more than anticipated, the DCI would request additional appropriation and/or FTE through the budget process.

Oversight notes, in response to the previous version of this proposal, the **Department of Health and Senior Services, the Department of Public Safety, Missouri State Highway Patrol, the Office of State Courts Administrator, the Columbia/Boone County Department of Public Health and Human Services, the City of Kansas City and the Springfield Police Department** each 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.

In response to the previous version of this proposal, officials from the **Office of the Secretary of State (SOS)** stated 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.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
GENERAL REVENUE FUND			
<u>Grant Income</u> - OA (\$195.450) - PDMP start-up grant funding p. 4	\$0	\$0 to \$400,000	\$0
<u>Costs</u> - OA (\$195.450) p. 3	Up to...	Up to...	Up to...
Personal service	(\$83,333)	(\$101,000)	(\$102,010)
Fringe benefits	(\$46,875)	(\$56,582)	(\$56,918)
Expense and equipment, task force expenses, etc.	(\$8,333)	(\$10,250)	(\$10,506)
Contracted costs - database development & program administration	<u>(\$1,390,652)</u>	<u>(\$507,966)</u>	<u>(\$517,471)</u>
Total <u>Costs</u> - OA	<u>(Up to \$1,529,193)</u>	<u>(Up to \$675,798)</u>	<u>(Up to \$686,905)</u>
FTE Change - OA	2 FTE	2 FTE	2 FTE
<u>Costs</u> - DSS (\$195.450) - Setup and connection fee for database p. 5	\$0	\$0	(\$60,000 to \$72,000)
<u>Costs</u> - DOC (\$195.450) - Increase in incarceration costs p. 6	(\$6,386)	(\$13,027)	(\$13,288)
<u>Costs</u> - SPD (\$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>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>Up to (\$1,635,579)</u>	<u>Up to (\$388,825) to (\$788,825)</u>	<u>Up to (\$860,193) to (\$872,193)</u>
Estimated Net FTE Change on the General Revenue Fund	2 FTE	2 FTE	2 FTE

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
FEDERAL FUNDS			
<u>Income</u> - DSS (§195.450) - Reimbursement for database setup and connection fee p. 5	\$0	\$0	\$180,000 to \$288,000
<u>Costs</u> - DSS (§195.450) - Database setup and connection fee p. 5	<u>\$0</u>	<u>\$0</u>	<u>(\$180,000 to \$288,000)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
LOCAL GOVERNMENTS			
<u>Income</u> - Schools (§195.450) Administrative penalties p. 7	Less than \$100,000	Less than \$100,000	Less than \$100,000
<u>Savings</u> - St. Louis County (§195.450) Reduction in PDMP platform expenditures p. 6	<u>\$0</u>	<u>\$57,522</u>	<u>\$58,000</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS	<u>Less than \$100,000</u>	<u>Less than \$157,522</u>	<u>Less than \$158,000</u>

FISCAL IMPACT - Small Business

Licensed pharmacies and individual practitioners dispensing controlled substances may incur an indeterminate fiscal impact obtaining the computer hardware and software and for additional work hours related to entering and transmitting dispensation data. This dispensing information is already maintained and documented by law; however, the proposed legislation would require the dispensation log information to be submitted within 24 hours of dispensing to the patient. (§195.450)

FISCAL DESCRIPTION

This act establishes the "Joint Oversight Task Force of Prescription Drug Monitoring" within the Office of Administration, with members selected from the Board of Registration for the Healing Arts, the Board of Pharmacy, the Board of Nursing, and the Missouri Dental Board. The Task Force shall enter into a contract with a vendor, through a competitive bid process, to collect and maintain patient controlled substance prescription dispensation information submitted by dispensers throughout the state as specified in the act. Such information shall be retained by the vendor for no more than 3 years before deletion from the program.

The Task Force may apply for and accept any grants or other moneys to develop and maintain the program and shall work cooperatively with the MO HealthNet Division to apply for and accept federal moneys and other grants for the program.

The vendor shall treat patient dispensation information and any other individually identifiable patient information submitted under this act as protected health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any regulations promulgated thereunder. Such information shall only be accessed and utilized in accordance with the privacy and security provisions of HIPAA and the provisions of this act. Such information shall also be considered a closed record under state law.

The patient dispensation information submitted under this act shall only be utilized for the provision of health care services to the patient. Prescribers, dispensers, and other health care providers shall be permitted to access a patient's dispensation information collected by the vendor in the course of providing health care services to the patient. The vendor shall also provide dispensation information to the individual patient, upon his or her request. The MO HealthNet Division shall have access to dispensation information for MO HealthNet recipients.

The vendor shall provide patient dispensation information to any health information exchange operating in the state, upon the request of the health information exchange and at a cost not to exceed the cost of the technology connection or recurring maintenance of the connection. Any health information exchange receiving information under this act shall comply with the provisions of this act regarding privacy and security and permitted uses of dispensation information.

The Task Force may provide data to public and private entities for statistical, research, or educational purposes after removing identifying information.

No patient dispensation information shall be provided to law enforcement or prosecutorial officials or any regulatory body, professional or otherwise, for purposes other than those explicitly set forth in HIPAA and any regulations promulgated thereunder. No dispensation information shall be used to prevent an individual from owning or obtaining a firearm or as the basis for probable cause to obtain an arrest or search warrant as part of a criminal investigation.

FISCAL DESCRIPTION (continued)

Dispensers who knowingly fail to submit the required information or who knowingly submit incorrect dispensation information shall be subject to a penalty of \$1,000 per violation. Any persons who are authorized to have patient dispensation information under this act and who purposefully disclose such information or who purposefully use it in a manner and for a purpose in violation of this act shall be guilty of a Class E felony.

These provisions shall supercede any local law, ordinance, order, rule, or regulation in this state for the purpose of monitoring the prescription or dispensation of prescribed controlled substances within the state. Any such program operating prior to August 28, 2020, shall cease operation when the vendor's program is available for utilization by dispensers throughout the state. The Task Force may enter into an agreement with such program to transfer patient dispensation information from the program to the program operated by the vendor under this act. (§195.450)

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

Missouri Attorney General's Office
Department of Commerce and Insurance
Department of Health and Senior Services
Department of Corrections
Department of Public Safety -
 Missouri State Highway Patrol
Department of Social Services
Joint Committee on Administrative Rules
Missouri Office of Prosecution Services
Office of Administration -
 Administrative Hearing Commission
 Budget & Planning
 Director's Office
Office of State Courts Administrator
Office of Secretary of State
Office of State Public Defender
Columbia/Boone County Department of Public Health and Human Services

SOURCES OF INFORMATION (continued)

St. Louis County Department of Public Health
City of Kansas City
Springfield Police Department



Julie Morff
Director
May 12, 2020



Ross Strobe
Assistant Director
May 12, 2020