

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3942-01  
Bill No.: HB 1482  
Subject: Health Care; Health Care Professionals; Health, Public  
Type: Original  
Date: January 21, 2020

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Bill Summary: This proposal establishes the “Authorized Electronic Monitoring in Long-term Care Facilities Act”.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	(Less than \$268,830)	(Less than \$308,910)	(Less than \$331,316)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(Less than \$268,830)</b>	<b>(Less than \$308,910)</b>	<b>(Less than \$331,316)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Veterans Commission Capital Improvement Trust (0304)	(Up to \$1,918,598)	(\$363,178)	(\$366,004)
<b>Total Estimated Net Effect on Other State Funds</b>	<b>(Up to \$1,918,598)</b>	<b>(\$363,178)</b>	<b>(\$366,004)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 12 pages.

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

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
General Revenue	1 to 2	1 to 2	1 to 2
Veterans Commission Capital Improvement Trust	7	7	7
<b>Total Estimated Net Effect on FTE</b>	<b>8 to 9</b>	<b>8 to 9</b>	<b>8 to 9</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### §§198.610 - 198.630 - Electronic monitoring in long-term care facilities

Officials from the **Department of Health and Senior Services (DHSS)** state this legislation requires the Division of Regulation and Licensure (DRL), Section for Long-Term Care Regulation (SLCR) to create a notification and consent form for authorization of electronic monitoring to be conducted in a Skilled Nursing Facility/Intermediate Care Facility (SNF/ICF) and Residential Care Facility/Assisted Living Facility (RCF/ALF) resident's room, and to promulgate rules to adopt the form.

It is assumed it will take a Health and Senior Services Manager (\$65,694 based on equivalent level managers in the division) approximately 200 hours to promulgate state rules, policies and procedures, and forms. Based on 2,080 working hours per year, this would require 0.1 FTE to assume these duties (200 hours / 2,080 hours per year = 0.1) for a total personal service cost of \$6,569 ( $\$65,694 \times 0.1$ ) in FY21. The DHSS anticipates being able to absorb these costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

There are 520 SNF/ICF and 653 RCF/ALF in Missouri. It is assumed it will take a Facility Advisory Nurse II (\$49,329 based on the average starting salary of a Facility Advisory Nurse II) approximately one-half hour per facility to include the additional survey process changes of ensuring facilities comply with the provisions of this legislation for a total of 587 hours ( $520 + 653 \times 0.5 = 587$ ). Based on 2,080 working hours per year, this would require 0.28 FTE ( $587 \text{ hours} / 2,080 \text{ hours per year} = 0.28$ ) to assume these duties for a total personal service annual cost of \$13,812 ( $\$49,329 \times 0.28$ ). DRL, SLCR employs approximately 200 survey staff. The DHSS anticipates being able to absorb these costs. However, until the FY21 budget is final, the department cannot identify specific funding sources.

SLCR is unable to determine the number of electronic monitoring notification and consent forms that may be completed and signed by residents or tapes and recordings submitted under a complaint investigation. It is estimated the number could range from zero to more than 2,000. At the higher range, one Health and Senior Services Manager and one Health Program Representative II would be needed to handle the requirements of this legislation.

One Health and Senior Services Manager (\$65,694 based on equivalent level managers in the division with pay plan) will be needed to coordinate receipt of tapes or recordings and provide technical assistance to facilities concerning forms and electronic monitoring.

ASSUMPTION (continued)

One Health Program Representative II (\$37,070 based on the average starting salary in the division with pay plan) will be responsible for the collection of notification and consent data.

DHSS estimates a fiscal impact to the General Revenue Fund of (\$196,748) for FY 21; (\$199,586) for FY22; and (\$201,675) for FY23.

**Oversight** notes the DHSS, SLCR is unable to determine the number of electronic monitoring notification and consent forms that may be completed and signed by residents or tapes and recordings submitted under a complaint investigation. It has been assumed that at the higher range estimated (up to 2,000), DHSS will need 2 additional FTE. Oversight assumes the DHSS could meet the requirements of this proposal with 1 FTE Health and Senior Services Manager until better information is obtained. Therefore, for fiscal note purposes, Oversight will range DHSS personal service costs from 1 FTE Senior Services Manager to the personal service costs estimated for 2 FTE.

**Oversight** notes DHSS assumes it will need a total of 2 new FTE as a result of the provisions of this proposal. Based on DHSS' response that new FTE would be located in Jefferson City, it is assumed 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 DSS needing additional rental space.

In addition, **Oversight** notes the additional partial FTE expenses calculated by DHSS are assumed to be absorbable by the department.

Officials from the **Department of Public Safety (DPS), Missouri Veterans Commission (VET)** assume the provisions of this proposal will require:

\$80,000 for hardware for a 150-bed home (4 homes); \$106,400 in hardware for a 200-bed home (2 homes; 33% increase from 150-bed home); and \$127,680 for hardware for the home in St. Louis (25% increase from 200-bed home) for a total of \$660,480 for hardware costs to update veterans homes.

It is estimated an average cost per home for inside wiring of \$20,000 or \$140,000 (7 homes total).

In addition, maintenance and upkeep is assumed to require 1 additional FTE Maintenance Worker II per home (7 FTE; \$30,000 annually each). Fringe benefits are assumed to be \$15,000 per FTE.

ASSUMPTION (continued)

Additional electric costs are estimated to be \$300 annually per resident at 1,238 beds or approximately \$371,400 annually.

Finally, the VET estimates if infrastructure is not in place, it will cost an additional \$60,000 per home for infrastructure upgrades.

The VET estimates a fiscal impact for this proposal of approximately \$2.1 million to the Veterans Commission Capital Improvement Trust Fund for FY21; \$585,000 for FY22; and \$589,000 for FY23.

**Oversight** does not have any information to the contrary. However, Oversight assumes fringe benefits for new employees will total approximately \$151,000 annually rather than the amount estimated by the VET. Oversight will present VET costs as “Up to” the amounts determined for FY 21.

§198.620 - Violations/penalty provisions

Officials from the **Department of Corrections (DOC)** state this proposal establishes the "Authorized Electronic Monitoring in Long-term Care Facilities Act".

The bill imposes two new misdemeanor offenses and one new class D felony offense. It will be a class B misdemeanor for violation of section 198.620. It will be a class A misdemeanor if the violation of this section is in the commission of or to conceal a misdemeanor offense. It will be a class D felony if the violation of this section is in the commission of or to conceal a felony offense.

The creation of two new misdemeanor offenses does not affect DOC as misdemeanor offenses generally do not fall under the purview of the Department of Corrections. However, a new class D felony is created by this bill; the DOC will use the standard D felony response to estimate the fiscal impact.

For each new class D felony, the DOC estimates three people will be sentenced to prison and five to probation. The average sentence for a non-violent class D felony offense is 5 years, of which 2.8 years will be served in prison with 1.7 years to first release. The remaining 2.2 years will be on parole. Probation sentences will be 3 years.

The cumulative impact on the DOC is estimated to be 9 additional offenders in prison and 21 on field supervision by FY2025.

ASSUMPTION (continued)

	# to prison	Cost per year	Total Costs for <b>prison</b>	# to probation & parole	Cost per year	Total cost for <b>probation and parole</b>	Grand Total - Prison and Probation (includes 2% inflation)
Year 1	3	(\$6,386)	(\$15,965)	5	absorbed	\$0	(\$15,965)
Year 2	6	(\$6,386)	(\$39,082)	10	absorbed	\$0	(\$39,082)
Year 3	9	(\$6,386)	(\$59,796)	15	absorbed	\$0	(\$59,796)
Year 4	9	(\$6,386)	(\$60,992)	18	absorbed	\$0	(\$60,992)
Year 5	9	(\$6,386)	(\$62,212)	21	absorbed	\$0	(\$62,212)
Year 6	9	(\$6,386)	(\$63,456)	21	absorbed	\$0	(\$63,456)
Year 7	9	(\$6,386)	(\$64,725)	21	absorbed	\$0	(\$64,725)
Year 8	9	(\$6,386)	(\$66,020)	21	absorbed	\$0	(\$66,020)
Year 9	9	(\$6,386)	(\$67,340)	21	absorbed	\$0	(\$67,340)
Year 10	9	(\$6,386)	(\$68,687)	21	absorbed	\$0	(\$68,687)

**Oversight** does not have any information to the contrary. Therefore, Oversight will reflect the impact provided by DOC in the fiscal note.

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 intentionally hampering, obstructing, tampering with, or destroying a monitoring device or a recording made by a monitoring device installed in a facility would be a new class B misdemeanor; if the offense is used to conceal of misdemeanor, it would be a Class A misdemeanor and of the offense is used to conceal a felony, the offense becomes as new Class D felony. 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.

ASSUMPTION (continued)

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.

**Oversight** notes the **Missouri Office of Prosecution Services** has 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

**Oversight** notes the **Missouri Attorney General's Office**, the **Department of Public Safety**, **Missouri State Highway Patrol** and the **Office of State Courts Administrator** 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.

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

ASSUMPTION (continued)

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.

**Oversight** only reflects the responses that we have received from state agencies and political subdivisions; however, other Nursing Homes 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 - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
<b>GENERAL REVENUE FUND</b>			
<u>Costs - DHSS (§§198.610 - 198.630)</u>			
p. 3 & 4			
Personal service	(\$54,745 to \$85,637)	(\$66,351 to \$103,792)	(\$67,014 to \$104,830)
Fringe benefits	(\$27,781 to \$47,640)	(\$31,635 to \$53,669)	(\$31,855 to \$54,014)
Equipment and expense	<u>(\$7,287 to \$19,588)</u>	<u>(\$6,183 to \$12,367)</u>	<u>(\$6,339 to \$12,676)</u>
Total <u>Costs</u> - DHSS	<u>(\$89,813 to \$152,865)</u>	<u>(\$104,169 to \$169,828)</u>	<u>(\$105,208 to \$171,520)</u>
FTE Change - DHSS	1 to 2 FTE	1 to 2 FTE	1 to 2 FTE
 <u>Costs - DOC (§198.620) - Increase in incarceration costs p. 6</u>			
	(\$15,965)	(\$39,082)	(\$59,796)
 <u>Costs - SPD (§198.620) - Personnel services, fringe benefits and equipment and expense p. 7</u>			
	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>(Less than \$268,830)</u></b>	<b><u>(Less than \$308,910)</u></b>	<b><u>(Less than \$331,316)</u></b>
 Estimated Net FTE Change on the General Revenue Fund	 1 to 2 FTE	 1 to 2 FTE	 1 to 2 FTE





## FISCAL DESCRIPTION

This bill creates the "Authorized Electronic Monitoring in LongTerm Care Facilities Act."

The bill permits a resident of any residential care facility, assisted living facility, intermediate care facility, or skilled nursing facility to conduct authorized electronic monitoring of the resident's room using electronic monitoring devices if the facility permits electronic monitoring and the devices comply with the facility's policies. The bill requires a resident, his or her representative, or his or her parent, if the resident is under 18 years of age, and the facility to consent in writing to electronic monitoring before electronic monitoring can occur in a resident's room. The bill delineates who may consent on behalf of a resident if the resident lacks the capacity to understand the nature and consequences of electronic monitoring and how such consent must be obtained. A resident or roommate may consent to monitoring with any conditions he or she may choose and may request the device be turned off or blocked at any time. Prior to electronic monitoring a resident must obtain written consent of any other resident residing in the room and must obtain written consent of any new roommate before recording can resume. Consent may be withdrawn by a resident or roommate at any time and such withdrawal must be noted in the resident's clinical record. As specified in the bill, a facility must make a reasonable attempt to accommodate a resident who wants electronic monitoring but whose roommate will not consent to monitoring (§198.612).

The bill permits electronic monitoring to begin only after a notification and consent form has been completed and submitted to the facility. A resident must notify the facility in writing of his or her intent to install an electronic monitoring device. The bill specifies what must be included in a notification and consent form and requires the Department of Health and Senior Services to create such form within 60 days of the effective date of these provisions. If the department fails to timely create the form, the Attorney General must create a form to be used until the department creates a form (§198.614).

The bill requires a resident who elects to conduct electronic monitoring to do so at his or her own expense. If the monitoring system requires Internet, it is the responsibility of the resident to contract with an Internet provider for such services. The facility must make a reasonable attempt to accommodate a resident's installation needs. The electronic monitoring device must be in a conspicuously visible location and a facility is prohibited from charging a resident a fee for the electricity used by a device (§198.616).

If a resident of a facility conducts electronic monitoring, a sign must be clearly and conspicuously posted at all building entrances accessible to visitors and at the entrance to a resident's room where such monitoring is occurring. Such signs must state specified information and a facility is responsible for installing and maintaining the signage (§198.618).

FISCAL DESCRIPTION (continued)

The bill prohibits any person or entity from knowingly hampering, obstructing, tampering with, or destroying an electronic monitoring device installed in a resident's room or any video or audio recording obtained from such device without the permission of the resident. Violation of this provision is a class B misdemeanor. A person or entity who violates this provision in the commission of or to conceal a misdemeanor offense is guilty of a class A misdemeanor. A person or entity who violates this provision in the commission of or to conceal a felony offense is guilty of a class D felony (§198.620).

The bill prohibits a facility from accessing any video or audio recording through an authorized electronic monitoring device without the written consent of the resident. Except as required by the Freedom of Information Act, a recording or copy of a recording must only be disseminated for the purpose of addressing concerns relating to the health, safety, or welfare of a resident. The bill requires a resident to provide a copy of any video or audio recording to parties involved in a civil, criminal, or administrative proceeding, upon a party's request, if the recording was made during the time period that the conduct at issue occurred (§198.622).

Subject to rules of evidence and procedure, any recording created through authorized electronic monitoring under the provisions of the bill may be admitted into evidence in a civil, criminal, or administrative proceeding if the contents of the recording have not been edited or artificially enhanced and the video includes the date and time events occurred (§198.624).

Each facility must report to the department the number of authorized electronic monitoring notification and consent forms received annually and the department must report the total number of forms received annually to the Attorney General (§198.626).

The bill prohibits a facility from being civilly or criminally liable for the inadvertent or intentional disclosure of a recording by a resident for any purpose not authorized by these provisions. No facility must be held civilly or criminally liable for a violation of a resident's right to privacy arising out of any electronic monitoring conducted in accordance with these provisions (§198.628).

The bill prohibits a person from intentionally retaliating or discriminating against any resident for consenting to authorized electronic monitoring under these provisions or preventing the installation or use of an electronic monitoring device by a resident who has provided the facility with notice and consent as required under these provisions (§198.630).


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

Office of Attorney General  
Department of Health and Senior Services  
Department of Corrections  
Department of Public Safety -  
    Missouri State Highway Patrol  
    Missouri Veterans Commission  
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



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