

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4303-04
Bill No.: Perfected HCS #2 for HB 1896
Subject: Health, Public; Health and Senior Services Department; Highway Patrol
Type: Original
Date: March 10, 2020

Bill Summary: This proposal adds provisions relating to background checks in the medical marijuana industry.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Criminal Record System (0671)	\$76,560	\$43,472 to \$85,800	\$43,472 to \$85,800
Total Estimated Net Effect on Other State Funds	\$76,560	\$43,472 to \$85,800	\$43,472 to \$85,800

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 8 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

§191.255 - Disclosure to federal government of list of persons with medical marijuana cards

Officials from the **Department of Corrections (DOC)** state this legislation creates a class E felony offense when a state agency discloses to the federal government the statewide list of persons who obtained a medical marijuana card.

In order to provide information on the impact of this legislation, a standard impact for a new, nonviolent offense of a class E felony is used. In FY 2019, the average class E nonviolent sentence is 3.4 years. Incarcerated offenders serve 2.1 years in prison and 1.3 years on parole. Average term for probation is 3.0 years. An estimate, for each year, is one offender is sentenced to incarceration while two offenders are given probation.

	# 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 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)

If this impact statement has changed from statements submitted in previous years, it is because the Department of Corrections (DOC) has changed the way probation and parole daily costs are calculated to more accurately reflect the way the Division of Probation and Parole is staffed across the entire state.

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. The new calculation estimates the increase/decrease in caseloads at each Probation

ASSUMPTION (continued)

and Parole district due to the proposed legislative change. 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 in a district would result in a change in costs/cost avoidance equal to the cost of one FTE staff person in the district. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

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.

Oversight assumes state agencies or state employees would not share medical marijuana user/registry information with the federal government. In addition, Oversight assumes the minimal fiscal impact incurred by the DOC for this proposal will be absorbable within current funding levels. Therefore, Oversight assumes no fiscal impact for the DOC for this fiscal note.

Oversight notes that the **Missouri Office of Prosecution Services** have stated the proposal would not have a measurable fiscal impact on their organization. However, 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. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

Oversight notes the **Office of State Public Defender (SPD)** has stated the proposal would not have a direct fiscal impact on their organization. **Oversight** contacted SPD officials and determined the SPD assumes state agencies and employees will not be indigent and, therefore, will not require services from the SPD. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

Oversight notes the **Department of Health and Senior Services**, the **Department of Commerce and Insurance** 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.

ASSUMPTION (continued)

Oversight notes, in response to an earlier version of this proposal, the **Missouri Attorney General's Office** stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this organization.

§195.815 - Medical marijuana industry background checks

Officials from the **Department of Public Safety (DPS), Missouri State Highway Patrol (MHP)** state the Missouri Department of Health and Senior Services (DHSS) notes there are 348 medical marijuana “facilities” and assumes each facility will request background checks on 10 employees. DHSS has the ability to conduct the state fingerprint portion of the employee background check requirement pursuant to the Missouri Constitution Article XIV. This legislation, if enacted and approved by the Federal Bureau of Investigation (FBI) Criminal Justice Information Law Unit (CJILU), would authorize the federal fingerprint portion of the employee background check requirement. With the estimation of 348 facilities conducting background checks on 10 employees, it is assume that \$6,960 will be deposited into the Criminal Record System Fund which includes a \$2.00 FBI fee (CJISD retains \$2.00 of the FBI fee).

The state fee for a fingerprint based criminal record check is \$20.00 per request. The federal fee for a fingerprint based criminal record check is \$13.25 per request, of which, the CJIS Division retains \$2.00. This equates to \$22 of the total state and federal fingerprint background check fee that is retained in the Criminal Record System Fund per request.

State and Federal Fingerprint Fee Schedule

State Fee = \$20.00

Federal Fee = \$13.25

Total State and Federal fee = \$33.25

Vendor Fee (if applicable) = \$8.50

Total State and Federal with Vendor fee = \$41.75

Total Retained in the Criminal Record System (CRS) Fund = \$22.00

Oversight obtained additional information from the Department of Health and Senior Services (DHSS) regarding the number of background checks that could be required as a result of this legislation. DHSS notes there are 348 medical marijuana “facilities” and assumes each facility will request background checks on 10 employees. Therefore, Oversight assumes \$76,560 (348 facilities x 10 employees x \$22/background check) will be deposited into the Criminal Record System Fund for FY 21.

ASSUMPTION (continued)

Based on DHSS' analysis, it is expected the DHSS will receive 38 to 75 background check requests per week once the industry is up and running. Therefore, for fiscal note purposes, **Oversight** will present an impact to the Criminal Records System Fund of \$43,472 (38 checks/week x 52 weeks x \$22 fee retained in CRS Fund) to \$85,800 (75 checks/week x 52 weeks x \$22 fee retained in CRS Fund) for FY 22 and FY 23.

Oversight notes the **Department of Health and Senior Services** has 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 this organization.

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.

In response to an earlier 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	FY 2022	FY 2023
CRIMINAL RECORD SYSTEM FUND (0671)			
<u>Income</u> - DPS, MHP (§195.815) - Increase in background check fees	<u>\$76,560</u>	<u>\$43,472 to</u> <u>\$85,800</u>	<u>\$43,472 to</u> <u>\$85,800</u>
ESTIMATED NET EFFECT ON THE CRIMINAL RECORD SYSTEM FUND	<u>\$76,560</u>	<u>\$43,472 to</u> <u>\$85,800</u>	<u>\$43,472 to</u> <u>\$85,800</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2021	FY 2022	FY 2023
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal will negatively impact small businesses in the medical marijuana industry if they pay the background check fees for potential employees. (§195.815)

FISCAL DESCRIPTION

This bill creates a class E felony when a state agency, including employees, discloses to the federal government or any federal employee, or any unauthorized third party, the statewide list of persons who have obtained a medical marijuana card. (§191.255)

Under the provisions of this bill, the Department of Health and Senior Services (DHSS) shall require all employees, officers, managers, staff, and owners of marijuana facilities to submit fingerprints for criminal background checks to the State Highway Patrol. The fingerprint submissions must be a part of the medical marijuana facility application. All fingerprint cards and fees must be sent to the State Highway Patrol. The fingerprints will also be forwarded to the FBI for a federal criminal background check. (§195.815)

This proposal contains an effective clause of July 1, 2020.

FISCAL DESCRIPTION

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
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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March 10, 2020



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