

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0363-03  
Bill No.: Perfected SCS for SB 6  
Subject: Administrative Rules; Courts; Crimes and Punishment; Drugs and Controlled Substances; Health Care; Health and Senior Services Department; Law Enforcement Officers and Agencies  
Type: Original  
Date: February 12, 2019

**Bill Summary:** This proposal modifies provisions relating to controlled substances, including the Schedules, medical marijuana, and criminal provisions involving controlled substances.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
General Revenue	Less than (\$105,239 to \$115,094)	(Less than \$112,825)	(Less than \$152,328)	(Less than \$2,213,847)
<b>Total Estimated Net Effect on General Revenue</b>	Less than (\$105,239 to \$115,094)	(Less than \$112,825)	(Less than \$152,328)	(Less than \$2,213,847)

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
<b>Total Estimated Net Effect on Other State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses. This fiscal note contains 15 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>				
<b>FUND AFFECTED</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>Fully Implemented (FY 2029)</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</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 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>Fully Implemented (FY 2029)</b>
General Revenue	0 or 0.1 FTE	0 FTE	0 FTE	0 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>0 or 0.1 FTE</b>	<b>0 FTE</b>	<b>0 FTE</b>	<b>0 FTE</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 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>Fully Implemented (FY 2029)</b>
Local Government	\$0	\$0	\$0	\$0

## FISCAL ANALYSIS

### ASSUMPTION

**Oversight** was unable to receive some of the agency responses in a timely manner due to the short fiscal note request time. 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.

### §§195.015 and 195.017 - Controlled substances

Officials from the **Department of Health and Senior Services (DHSS)** state the proposed legislation requires the promulgation of rules and regulations, which include the following duties (not all inclusive): establish guidelines, implement strategies, make evidence-based system changes, and create policy recommendations. The DHSS, Office of General Counsel will need an additional 0.1 FTE for an attorney (salary of \$64,500 per year) to perform the research necessary to ensure the new guidelines and information for this proposed legislation has been properly vetted and implementation is completed quickly and with fiscal responsibility. Due to current workload being at maximum limits, these costs cannot be absorbed. Costs associated with this portion of the proposal to General Revenue (GR) are estimated to be \$12,133 for FY 2020.

**Oversight** assumes 0.1 FTE would not be provided fringe benefits and the state would only pay Social Security and Medicare benefits of 7.65 percent.

**Oversight** assumes since DHSS states their workload currently being at maximum limits and the responsibility to perform the research necessary to ensure the new guidelines and information for this proposed legislation has been properly vetted and implementation is completed quickly and with fiscal responsibility, Oversight will range the cost of the partial FTE from \$0 to DHSS' estimate less fringe benefits over 7.65%.

DHSS states 195.015.4 of the proposed legislation requires the Division of Regulation and Licensure, Section for Health Standards and Licensure, Bureau of Narcotics and Dangerous Drugs (BNDD) to promulgate emergency rules within 30 days of publication in the federal register each time the Drug Enforcement Administration (DEA) designates a substance as a controlled substance or reschedules or deletes a substance. The DEA makes such changes an average of 20 times annually.

It is assumed it will take a Health and Senior Services Manager approximately 16 hours to promulgate each emergency rule change. Based on 2,080 working hours per year, this would require 0.15 FTE to assume the duties set forth in the proposed section (16 hours X 20 rule changes ÷ 2,080 hours per year = 0.15) for a total personal service annual cost of \$9,915 (\$66,098 X 0.15).

ASSUMPTION (continued)

§195.805 prohibits marijuana for medical use to be designed, produced, or marketed in a manner that is designed to appeal to persons under 18 years of age. It provides for enforcement actions on the part of the DHSS. The department expects to absorb these costs in the normal ebb and flow of its operations.

The DHSS anticipates being able to absorb these costs. However, until the FY20 budget is final, the department cannot identify specific funding sources.

**Oversight** obtained information from the DHSS regarding the U.S. Department of Justice, Drug Enforcement Administration (DEA) Diversion Control Division. Oversight determined that in the past 5 years (2014 - 2018), the DEA has taken scheduling actions on substances/controlled substances 99 times (average 19.8 actions per year). Based on this information the DHSS would need 0.15 FTE to manage the DEA's average annual change in substance/controlled substance schedules. Oversight assumes the additional duties can be performed within current funding/staffing levels.

§§565.021, 579.015, 579.065, 579.068 - Increase in criminal penalties

Officials from the **Department of Corrections (DOC)** state the bill makes changes to the schedule of controlled substances and adds drug offenses to four criminal statutes.

§565.021 - 2<sup>nd</sup> Degree Murder

This section adds the offense of manufacturing, delivering or distributing a schedule I or II controlled substance that caused or was a contributing factor in the death of a person. The number of deaths from drug overdoses is a national concern and Missouri reported 1,367 deaths from drug overdoses during 2017 (**Oversight** determined this is the most recent data available from the Centers for Disease Control and Prevention (CDC)). At present it is unknown the number of convictions of the providers of the controlled substance, but the DOC is estimating one per year will receive a prison sentence. It is also likely that the offender would be sentenced to a drug offense but the conviction will be concurrent with the murder conviction.

In FY18 the average sentence for 2<sup>nd</sup> degree murder was 21.0 years and offenders will serve 85% of their time before parole. The expected time served is 17.9 years which is beyond the 10 year budget horizon. In FY2029 the population increase is estimated to be 10.

ASSUMPTION (continued)

§579.015 - Possession of a controlled substance

This section increases the felony class from D to C if the offender is employed as an emergency care provider or other care assistant. The US Bureau of Labor Statistics reported in 2017 personal care assistants comprised 1.42% of the occupational workforce so the DOC is estimating that 1.42% of offenders convicted of drug possession will be sentenced for the class C offense. The offense is estimated to increase the average sentence from 4.3 years to 7 years (the average sentence for drug distribution). There were 1,176 prison admissions (FY 18) for drug possession of which 17 will be sentenced for a class C felony. Time served for the class D offense in FY18 is 28.9% and 33.5% for the class C. The change will add 2 offenders to the population in FY22.

**Oversight** obtained information from the Bureau of Labor Statistics (May 2017 National Occupational Employment and Wage Estimates (most recent available)). The Personal Care Aids employment category (Occupation code 39-9021) employs 2,035,610 persons nationwide and the total employment for all occupational categories is 142,549,250. Therefore, personal care aids comprise 1.428% of the occupational workforce.

§579.065 - 1<sup>st</sup> Degree Drug Trafficking

DOC officials state this section of the proposal adds Fentanyl to the list of controlled substances. If the amount is from 10 to 60 grams, it is a class B felony and becomes a class A if it is a greater amount. The legislation will result in some drug distribution offenses being sentenced as 1<sup>st</sup> degree drug trafficking. In FY18, 20% of drug distribution new admissions were estimated to be for Fentanyl and there were 9 new prison admissions for 1<sup>st</sup> degree drug trafficking. Applying the 20% expansion factor results in an expected increase of 2 additional new admissions who would have been sentenced for drug distribution. The average sentence will increase from 7.0 years to 9.4 years and the percent of time served from 33.5% to 42%. The prison population is expected to increase by 2 in FY24 and stabilize at 4 in FY25.

§579.068 - 2<sup>nd</sup> Degree Trafficking

This section adds Fentanyl to the list of controlled substances if the amount is greater than 10 grams. In FY18, 23% of drug possession new admissions are estimated to have been for fentanyl, and there were 34 new admissions for 2<sup>nd</sup> degree drug trafficking. The impact is expected to be 5 offenders charged with 2<sup>nd</sup> degree drug trafficking instead of drug possession. The average sentence will increase from 4.3 years to 7 years and the average time served will increase from 28.9% to 33.5%. The population will increase by 4 in FY22 and stabilize at 9 in FY23.

ASSUMPTION (continued)

There is no impact on probation sentencing from these statute changes because the probation term will be unchanged.

The **total** impact of the legislation is an increase in the prison population by 24 in FY29 and an increase of 5 in the field (probation) population.

DOC officials state Senate Amendment No. 3 adds §§556.061 and 579.020 - Distribution of heroin. The proposed legislation defines Delivery of a Controlled Substance as a Dangerous Felony (RSMo 556.061) if the substance is a mixture or contains a detectable amount of heroin. The offense of Delivery of a Controlled Substance (RSMo 579.020) becomes a class B felony, from a Class C felony, if the substance contains a detectable amount of heroin which could increase the sentence length for those convicted.

The DOC estimates in FY 18 that there were 62 new admissions for the distribution of heroin (15% of new admissions for drug distribution). The average sentence was 7 years and the percent of sentence served before first release was 33.5%. If the sentence was enhanced to a Class B, the average sentence would be 8.9 years (the average sentence of those sentenced when the offense was a Class B) and the offenders would serve 85% before first release. The impact includes an estimate of 35% of the remaining sentence after the first release for the incarceration of parole returns.

**New admissions in FY18 for the distribution of heroin**

Drug Distribution Admissions	Estimated Heroin percent	Estimated Heroin Admissions	Avg. Sentence (yrs)		Percent Time Served	Time to 1st Release	
			Class C Yrs	Class B Yrs		Class C Yrs	Dangerous Felony (85%)
413	15%	62	7.0	8.9	33.5%	2.3	7.6

The full impact is estimated to be an increase in the prison population of 260 in FY 28 and a reduction in the parole population of 143 because more of the sentence is served in prison. The impact will begin after the offenders serving the current sentence would be released (FY 23).

The combined impact is as follows:

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 and 2% inflation)
Year 1	1.0	(\$6,287)	(\$5,239)	0	absorbed	\$0	(\$5,239)
Year 2	2.0	(\$6,287)	(\$12,825)	0	absorbed	\$0	(\$12,825)
Year 3	8.0	(\$6,287)	(\$52,328)	(5)	absorbed	\$0	(\$52,328)
Year 4	20.0	(\$6,287)	(\$133,436)	(16)	absorbed	\$0	(\$133,436)
Year 5	85.0	(\$6,287)	(\$578,446)	(77)	absorbed	\$0	(\$578,446)
Year 6	150.0	(\$6,287)	(\$1,041,203)	(136)	absorbed	\$0	(\$1,041,203)
Year 7	213.0	(\$6,287)	(\$1,508,079)	(193)	absorbed	\$0	(\$1,508,079)
Year 8	276.0	(\$6,287)	(\$1,993,213)	(190)	absorbed	\$0	(\$1,993,213)
Year 9	283.0	(\$6,287)	(\$2,084,641)	(139)	absorbed	\$0	(\$2,084,641)
Year 10	284.0	(\$6,287)	(\$2,133,847)	(139)	absorbed	\$0	(\$2,133,847)

**Oversight** does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC’s impact for fiscal note purposes.

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 possession of a newly added substance to the controlled substance list. 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.

In Fiscal Year 2018, SPD’s Trial Division opened 2,431 “drug” related cases (Chapter 195). These drug cases represent almost 4% of the total Trial Division caseload of 63,395.

**Oversight** notes over the last three fiscal years, the SPD has lapsed a total of \$152 of General Revenue appropriations (\$0 out of \$36.4 million in FY 2016; \$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018). 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 appropriation. With drug-related cases a large portion of SPD's workload, Oversight will assume the changes in this proposal could result in costs exceeding \$100,000 per year to the Office of the State Public Defender.

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.

**Oversight** notes that the **Department of Public Safety, Missouri State Highway Patrol** and the **Missouri Office of Prosecution Services** 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)** 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.



ASSUMPTION (continued)

In response to the previous version of this proposal, officials from the **Office of State Courts Administrator (OSCA)** 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 OSCA.

Senate Amendment (SA) No. 1

**Oversight** assumes SA No. 1 is clarifying language and will present no fiscal impact for fiscal note purposes.

**Oversight** notes that the **Missouri Department of Transportation** 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 MoDOT.

Senate Substitute Amendment (SSA) for Senate Amendment (SA) No. 2

**Oversight** assumes SSA for SA No. 2 is a requirement of businesses that will be selling marijuana edibles and, therefore, will not present a fiscal impact for fiscal note purposes.

**Oversight** notes that the **Missouri Department of Transportation** 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 MoDOT.

Senate Amendment No. 3

§§556.061 and 579.020 - Distribution of heroin

In response to the previous version of this proposal (SB 93), 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 enhanced penalties for distribution of heroin, now a class B felony. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

In FY 2018, SPD's Trial Division opened 1,165 cases where the charge was delivery of a controlled substance of the 63,395 total cases opened.

ASSUMPTION (continued)

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 \$152 of General Revenue appropriations (\$0 out of \$36.4 million in FY 2016; \$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018). 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 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.

According to "The Missouri Project" (RubinBrown, June 2014), the number of hours that should be spent on an A/B felony case is 54.3. This number takes into account time for travel and in-court appearances. In contrast, the number of hours that should be spent on a C/D/E felony case is 28.5, for a difference of 25.8 additional hours ( $54.3 - 28.5 = 25.8$ ) per case. For purposes of this fiscal note, if just five percent of the 1,165 cases in FY18 were elevated to a class A/B felony, this would equate to 58 cases ( $1,165 \text{ cases} \times .05$ ). Therefore, the SPD could spend an additional 1,496 hours (rounded down) on these cases annually ( $58 \text{ cases} \times 25.8 \text{ hours}$ ).

**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 the fiscal notes for SCS SB 6 and SB 93 that each bill would result in SPD not being able to absorb the additional duties the proposals would require. Each fiscal note had an assumption that SPD's impact would be (Less than \$100,000) per year to the General Revenue Fund. It was assumed for this Perfected SCS SB 6 fiscal note, that SPD will have a fiscal impact (Less than \$100,000) to the General Revenue Fund.

**Oversight** notes that the **Department of Public Safety, Missouri State Highway Patrol** and the **Missouri Office of Prosecution Services** have stated the proposal would not have a direct 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.

ASSUMPTION (continued)

**Oversight** notes that the **Missouri Department of Transportation** 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 MoDOT.

In response to the previous version of this proposal, officials from the **Office of State Courts Administrator (OSCA)** 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 OSCA.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2029)
<b>GENERAL REVENUE FUND</b>				
<u>Costs - DHSS</u> (§195.015)				
Personal service (0.1 Attorney)	\$0 to (\$5,375)	\$0	\$0	\$0
Fringe benefits	\$0 to (\$411)	\$0	\$0	\$0
Equipment and expense	<u>\$0 to (\$4,069)</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Costs - DHSS	<u>\$0 to (\$9,855)</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
FTE Change - DHSS	0 to 0.1 FTE	0 FTE	0 FTE	0 FTE
<u>Costs - DOC</u> (§§556.061, 565.021, 579.015, 579.020, 579.065, 579.068)				
Increase in incarceration expenditures	(\$5,239)	(\$12,825)	(\$52,328)	(\$2,113,847)

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2029)
<b>GENERAL REVENUE FUND</b> (continued) Costs - SPD (§§195.015, 195.017, 556.061 and 579.020) Personal service, fringe benefits and equipment and expense for additional APD(s)	<u>(Less than \$100,000)</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>Less than (\$105,239 to <u>\$115,094)</u></b>	<b>(Less than <u>\$112,825)</u></b>	<b>(Less than <u>\$152,328)</u></b>	<b>(Less than <u>\$2,213,847)</u></b>
Estimated Net FTE Effect on the General Revenue Fund	0 to 0.1 FTE	0 FTE	0 FTE	0 FTE
<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2029)
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

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

FISCAL DESCRIPTION

This act modifies several provisions relating to controlled substances, including: (1) updating the schedules of controlled substances; (2) the sale of certain medical marijuana products; (3) manufacture, delivery, or distribution of drugs with death resulting; (4) unlawful possession of a controlled substance by certain providers and employees; and (5) trafficking of fentanyl and carfentanil.

FISCAL DESCRIPTION (continued)

UPDATING THE SCHEDULES OF CONTROLLED SUBSTANCES (Sections 195.015 and 195.017)

Under this act, if a substance is designated, rescheduled, or deleted as a controlled substance under federal law, the Department of Health and Senior Services shall promulgate emergency rules to implement such change within 30 days of publication of the change in the Federal Register, unless the Department objects to such change. When the Department promulgates emergency rules under this act, the rules may remain in effect until the legislature concludes its next regular session following the imposition of the rules.

Additionally, this act updates the schedules of controlled substances in Missouri to mirror the most recent update to the schedules in 19 CFR 30-1.002.

SALE OF CERTAIN MEDICAL MARIJUANA PRODUCTS (Section 195.805)

This act prohibits the sale of medical marijuana products that are designed, produced, or marketed in a manner to appeal to persons under 18 years of age, including, candies, gummies, lollipops, cotton candy, or products in the shape of a human, animal, or fruit. Any medical marijuana licensed or certified entity regulated by the Department of Health and Senior Services found to have violated this act shall be subject to Department sanctions, including an administrative penalty.

MANUFACTURE, DELIVERY, OR DISTRIBUTION OF DRUGS WITH DEATH RESULTING (Section 565.021)

This act modifies the crime of murder in the second degree by adding language making a person who knowingly and unlawfully manufactures, delivers, or distributes a Schedule I or II controlled substance, excluding marijuana for medical use, and thereafter the controlled substance is the proximate cause of the death of another person who uses or consumes it. It shall not be a defense that the defendant did not directly deliver or distribute the controlled substance to the decedent.

UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE BY CERTAIN PROVIDERS AND EMPLOYEES (Section 579.015)

Currently, unlawful possession of a controlled substance, except 35 grams or less of marijuana or any synthetic cannabinoid, is a Class D felony. This act adds an enhanced penalty if the defendant is an emergency care provider, a home health care employee, a hospice employee, an in-home care employee, a personal care assistant, or any other individual providing home health or personal care assistance services to patients. If such defendant knowingly and unlawfully possesses a controlled substance belonging to the patient or another member of the patient's household, the offense shall be a Class C felony.

FISCAL DESCRIPTION (continued)

TRAFFICKING OF FENTANYL AND CARFENTANIL (Sections 579.065 and 579.068)

Finally, this act adds to the offense of trafficking drugs in the first degree knowingly distributing, delivering, manufacturing, producing, or attempting to do so more than 10 milligrams but less than 50 milligrams of fentanyl or carfentanil, or any derivative thereof, or any combination thereof, or any mixture containing fentanyl or carfentanil, as a Class B felony and a Class A felony when the amount is 50 milligrams or more.

Additionally, this act adds to the offense of trafficking drugs in the second degree knowingly possessing, purchasing, or attempting to do so more than 10 milligrams but less than 50 milligrams of fentanyl or carfentanil, or any derivative thereof, or any combination thereof, or any mixture containing fentanyl or carfentanil, as a Class C felony and a Class B felony when the amount is 50 milligrams or more.

INCREASED PENALTIES FOR THE DISTRIBUTION OF HEROIN (Sections 556.061 and 579.020; Senate Amendment 3)

Under current law, the distribution of heroin is not distinguished from the distribution of most other controlled substances, and is a class C felony. This act provides that the distribution of any substance containing a detectable amount of heroin is a class B felony.

This act provides that the distribution of heroin is a dangerous felony as defined by statute. Any offender who has been found guilty of a dangerous felony and is committed to the Department of Corrections shall be required to serve a minimum prison term of eighty-five percent of the sentence imposed by the court or until the offender attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first.

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 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



Kyle Rieman  
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February 12, 2019