

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0363-04  
Bill No.: HCS for SCS for SB 6  
Subject: Drugs and Controlled Substances; Crimes and Punishment; Courts; Health Care; Agriculture  
Type: #Updated  
Date: May 16, 2019

#To provide for the Department of Corrections' revised response regarding §§556.061, 579.020 relating to the distribution of heroin (not being classified as a dangerous felony in this HCS). See pages 1, 13-14, 20-21.

Bill Summary: This proposal modifies provisions relating to 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 \$120,333)	(Less than \$112,825 to \$125,650)	(Less than \$152,328 to \$165,410)	(Less than \$806,273 to \$821,300)
<b>#Total Estimated Net Effect on General Revenue</b>	<b>Less than (\$105,239 to \$120,333)</b>	<b>(Less than \$112,825 to \$125,650)</b>	<b>(Less than \$152,328 to \$165,410)</b>	<b>(Less than \$806,273 to \$821,300)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
Criminal Records (0671)	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
Industrial Hemp (0476)*	\$0 or \$734,368	\$0 or \$755,872	\$0 or \$754,169	\$0 or \$741,921
<b>Total Estimated Net Effect on Other State Funds</b>	<b>\$0 to Greater than \$734,368</b>	<b>\$0 to Greater than \$755,872</b>	<b>\$0 to Greater than \$754,169</b>	<b>\$0 to Greater than \$741,921</b>

\*Revenue and costs net to zero.

Numbers within parentheses: ( ) indicate costs or losses. This fiscal note contains 26 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
<b>Total Estimated Net Effect on All 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>				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
General Revenue	0 or 0.1 FTE	0 FTE	0 FTE	0 FTE
Industrial Hemp	2 FTE	2 FTE	2 FTE	2 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>2 or 2.1 FTE</b>	<b>2 FTE</b>	<b>2 FTE</b>	<b>2 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>				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
<b>Local Government</b>	<b>\$0 or Unknown</b>	<b>\$0 or Unknown</b>	<b>\$0 or Unknown</b>	<b>\$0 or Unknown</b>

**FISCAL ANALYSIS**

**ASSUMPTION**

**§191.225 - 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 2018, 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 <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	1	(\$6,287)	(\$5,239)	2	absorbed	\$0	(\$5,239)
Year 2	2	(\$6,287)	(\$12,825)	4	absorbed	\$0	(\$12,825)
Year 3	2	(\$6,287)	(\$13,082)	7	absorbed	\$0	(\$13,082)
Year 4	2	(\$6,287)	(\$13,344)	7	absorbed	\$0	(\$13,344)
Year 5	2	(\$6,287)	(\$13,611)	7	absorbed	\$0	(\$13,611)
Year 6	2	(\$6,287)	(\$13,883)	7	absorbed	\$0	(\$13,883)
Year 7	2	(\$6,287)	(\$14,160)	7	absorbed	\$0	(\$14,160)
Year 8	2	(\$6,287)	(\$14,444)	7	absorbed	\$0	(\$14,444)
Year 9	2	(\$6,287)	(\$14,732)	7	absorbed	\$0	(\$14,732)
Year 10	2	(\$6,287)	(\$15,027)	7	absorbed	\$0	(\$15,027)

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 2017, 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 2019 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.

The DOC cost of incarceration is \$17.224 per day or an annual cost of \$6,287 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. Therefore, Oversight will range DOC's costs from \$0 to the amount provided.

**Oversight** notes that the **Missouri Office of Prosecution Services** have stated the proposal would not have a 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 Insurance, Financial Institutions and Professional Registration** 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.

In response to similar legislation (HB 238), officials from the **Office of Attorney General (AGO)** assumed the proposal would have no 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 the AGO.

ASSUMPTION (continued)

§§195.010, 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).

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

ASSUMPTION (continued)

**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.

Officials from the **Office of State Public Defender (SPD)** state for §195.010, if passed, this legislation would have a positive impact on the workload of SPD. Possession, manufacture, distribution, etc. of cannabis would no longer be unlawful. These are currently offenses that the SPD uses resources to defend but with the passage of this legislation, would no longer need to.

The exact positive impact is difficult to predict because cases are tracked by statutory offense and most drug offenses are not limited to marijuana. For purposes of this fiscal note, SPD will use 25 percent of the cases as relating to marijuana, although in this instance it could be less than the 25 percent reduction because this bill does not eliminate all marijuana charges.

The chart below shows the number of “drug” related offenses opened by SPD’s Trial Division in FY2018 under the statutes that are being changed.

<u>Offense</u>	<u>Cases</u>	<u>Reduction of</u>	<u>Cases</u>
30 D = A/B Felony - Drug	595	25%	149
35 D = C/D/F Felony - Drug	<u>11,643</u>	25%	<u>2,911</u>
Total	12,238		3,060
Total Non-Probation Cases = 47,938	Percentage of Total No-Probation Violation Cases = 6.38%		
65 F = Felony Probation Violations	12,974		
65 M = Misdemeanor Probation Violations	<u>2,483</u>		
Total	15,457	PV’s Using 6.38%	986
Grand Total Misdemeanors and Felonies	<u>27,695</u>		<u>4,046</u>

ASSUMPTION (continued)

According to “The Missouri Project” (RubinBrown, June 2014), the relevant workload standards are A/B felonies, 47.6 hours per case; C/D felonies, 25.0 hours per case; misdemeanors, 11.7 hours per case; and probation violations, 9.8 hours per case. The workload standards include only case related tasks over which an attorney has some control. The study excludes in-court and travel time and thereby reflects a conservative estimate.

Applying those workload standards to the 4,046 cases would require 89,530  $[(149 \times 47.6) + (2,911 \times 25) + (986 \times 9.8)]$  attorney hours. With 2,080 hours per attorney each year, this represents the work of 43 attorneys  $(89,530 / 2,080)$ .

Therefore, despite the positive impact on the workload of the SPD, this reduction in attorney time would not allow the SPD to reduce its workforce and, therefore, would not translate into an actual cost savings.

**Oversight** assumes the SPD would not realize an overall savings from this proposal but instead would reallocate resources within its operations. Therefore, Oversight will reflect a \$0 impact for fiscal note purposes.

**SPD** officials state for §195.015 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.

In Fiscal Year 2018, SPD’s Trial Division opened 2,431 “drug” related cases under Chapter 195 of the 63,395 total cases opened. This represents almost 4 percent of the total number of cases opened in FY18  $(2,431 / 63,395)$ .

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

ASSUMPTION (continued)

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.

§195.080 - Exceptions to prescription limitations

Officials from the **Department of Public Safety, Missouri State Highway Patrol (DPS, MHP)** assume the proposal will have no fiscal impact on their organization. The DPS, MHP defers to the Missouri Department of Transportation (MoDOT), Employee Benefits Section for its response. Please see MoDOT's fiscal note response for the potential fiscal impact of this proposal.

**Oversight** notes that the **Department of Health and Senior Services, the Department of Insurance, Financial Institutions and Professional Registration, the Department of Social Services, the Missouri Consolidated Health Care Plan and the Missouri Department of Transportation** 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.

In response to similar legislation (HB 986), officials from the **Missouri Department of Conservation (MDC)** assumed the proposal would have no 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 MDC.

§§195.740 - 195.767 - Industrial hemp

In response to similar legislation (HCS SB 133), officials from the **Department of Agriculture (AGR)** assumed this proposal would increase annual Total State Revenue (TSR) by \$922,033 (from \$201,667 to \$1,123,679) by the various types.



ASSUMPTION (continued)

Type of revenue	Current Estimate	Estimate with HCS for HB 824 (A.A)	Difference
Annualized application fees	\$ 8,000	\$ 26,033	\$ 18,033
Annualized grower fees	\$ 25,000	\$ 83,333	\$ 58,333
Annualized handler fees	\$ 0	\$ 20,833	\$ (20,833)
Annual handler processing fees	\$ 0	\$ 337,500	\$ (337,500)
Annualized propagule and seed permit fees	\$ 26,000	\$ 26,000	\$ 0
Annual Acreage fees	\$ 90,000	\$ 900,000	\$ 810,000
Totals	\$ 149,000	\$ 1,393,699	\$ 528,033

AGR assumed this proposal would remove the minimum and maximum acreage requirements for Industrial Hemp. The proposal will increase the number and diversity of grower and handler operations in the state. The department assumes increases in the following areas compared to the FY 2020 Governor's recommended New Decision Item to implement HB 2034 (2018):

- "applications" will increase from 240 to 781;
- "growers" will increase from 150 to 500;
- "propagule and seed permits will increase from 0 to 156;
- "acres" will increase from 2,000 to 20,000;
- "inspections" will increase from 217 to 781;
- "FTEs" will increase from 2 to 4 (add 2 Program Coordinators);
- "personal service" plus "fringe" will increase from \$171,305 to \$286,431; and
- "E&E" will increase from \$32,068 in first year to \$92,554. Subsequent years will be \$12,600.

The number of licensed entities (growers and ag hemp propagule and seed permittees) will increase from 217 to 781. The 564 additional licensed entities will be set on a three-year inspection rotation ( $564 / 3 = 188$ ). The increased annual inspection of 188 licensed entities at 10 hours per inspection will require 1,880 additional inspection hours.

ASSUMPTION (continued)

AGR assumed the need for two (2) additional FTE Program Coordinators for: outreach to a larger and more diversified set of industrial hemp growers; year-round inspections of indoor growing facilities; inspections of the increased number of outdoor growers; continuous application reviews; and continuous improvement of processes used to manage a dynamic industry.

All fees used in this fiscal note are based on the rates found in the currently proposed rule for the Industrial Hemp Pilot Program authorized by HB 2034 in 2018. The proposed rule and fee rates are likely to change if subsequent legislation (such as this bill) is enacted.

The following chart shows the fee rates used in both the HB 2034 proposed rule and the fiscal note estimate for HCS for HB 824, A.A.

Fee Type	When Collected	Fee	Gov's Rec NDI Estimate (HB 2034)	New Estimate (HCS for HB 824 A.A.)	Increase/ Decrease	Subtotal Increase	Total New	Total Gov's Rec NDI (HB 2034)	Total Increase (HCS for HB 824 A.A.)
Applications	Once every 3 years	\$100	240	781	541	\$54,100	\$26,033	\$8,000	\$18,033
Growers	Once every 3 years	\$500	150	500	350	\$175,000	\$83,333	\$25,000	\$58,333
Handlers	Once every 3 years	\$500	25	125	100	\$50,000	\$20,833	\$4,167	\$16,667
Handler Processing	Annually	\$2,700	25	0	(25)	(\$270,000)	\$67,500	\$67,500	\$0
Propagule and Seed Permit	Once every 3 years	\$500	42	156	114	\$57,000	\$26,000	\$7,000	\$19,000
Acres	Annually	\$45	2,000	20,000	18,000	\$810,000	\$900,000	\$90,000	\$810,000
<b>Total</b>							<b>\$1,123,699</b>	<b>\$201,667</b>	<b>\$922,033</b>

Source: Department of Agriculture

AGR noted in response to HB 2034 (2018), AGR made the assumption that they would need to purchase \$600,000 of equipment needed for pesticide analysis and the anticipated fee structure used on the fiscal note for HB 2034 (2018) included covering this expense. AGR noted that upon further review, the implementation strategy was revised to lower the fees paid by program participants.

ASSUMPTION (continued)

1. AGR decided to require growers to pay the costs of gathering and submitting samples to private labs for analysis instead of AGR to perform the testing;
2. The revised strategy eliminated the need for additional laboratory staff and equipment - including the \$600,000 pesticide testing equipment included in the HB 2034 TAFP fiscal note; and
3. The fiscal impact statement for this bill does not include any impact to the Department of Public Safety - Missouri Highway Patrol.

AGR's department request for the FY 2020 budget year regarding the Industrial Hemp proposal was for \$347,338 (5 FTE). The Governor's Recommendation was for \$119,200 (2 FTE). All from the Industrial Hemp Fund.

**Oversight** inquired of AGR regarding the current proposed fee revenue of \$201,667 indicated for HB 824 as compared to the fee revenue of \$1,006,100 estimated in HB 2034 (2018), which established the industrial hemp program. AGR notes the proposed fees listed above might be likely to change again due to any legislation impacting the program as the rules have not been approved yet. The original proposal, HB 2034 (2018), was intended to be revenue neutral, meaning the estimated fees charged were calculated to cover the estimated program expenses of \$1,006,100. Any new rules proposed could also be adjusted to reflect program costs; therefore, Oversight will range the fiscal impact as revenue neutral (net impact \$0, proposed fees updated so that additional participants in the program would still result in revenue equaling costs to the Industrial Hemp Fund) to the increased revenue amounts indicated by AGR (proposed fees do not change even though participation in the program increases substantially).

**AGR** notes the fund number for the Industrial Hemp Fund is 0476.

**Oversight** notes this is a new fund and does not appear on the monthly State Treasurer's fund balance reports as of February 2019 as no revenues have been received.

**Oversight** will extrapolate income and costs to FY 2029.

In response to the perfected HCS for HB 824, officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** assumed this proposal added a new definition for "agricultural hemp propagule" and states that if required by federal law, any applicant for a permit would have to request a fingerprint criminal history background check.

For each background check, the Patrol would collect \$31.25, of which it would retain \$22 and pass through the remaining \$9.25 to the FBI. The Patrol has no way to determine the number of potential applicants for this permit; therefore, the impact is unknown to the General Revenue Fund.

ASSUMPTION (continued)

**Oversight** does not have any information to the contrary in regards to MHP's; therefore, Oversight will range the fiscal impact from \$0 (federal law does not require a background check) to a positive "Unknown" fiscal impact (revenue collected from fees for background checks) to the Criminal Records Fund as required by Section 43.530, RSMo.

In response to similar legislation (SCS SB 482), officials from the **University of Missouri** assume the fiscal impact is unable to be determined but is not expected to be significant.

**Oversight** does not have any information to the contrary in regards to the University of Missouri's assumptions; therefore, Oversight will not reflect a fiscal impact to the University of Missouri on the fiscal note. If more information becomes available, Oversight will update the fiscal impact to higher education institutions.

In response to similar legislation (SCS SB 482), officials from the **St. Louis County Police Department** assume the proposal will require an hour of training for all commissioned. The average pay for police officers including fringe benefits is \$46.72 per hour. The Department currently has 930 officers. The total cost for one hour of training is \$43,449.60.

**Oversight** assumes the St. Louis County Police Department can absorb these costs; therefore, Oversight will not reflect a fiscal impact on the fiscal note.

§195.805 - Marketing of marijuana products

**DHSS** officials state §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.

**DOC** officials state this provision of the proposal will have no fiscal impact on their organization.

**Oversight** does not have any information to the contrary. Therefore, for fiscal note purposes, Oversight will reflect no fiscal impact for this provision of the proposal as provided by DOC.

**Oversight** notes provisions of 195.805.3 provides for departmental sanctions, including administrative penalties, for any licensed or certified entity regulated by the Department of Health and Senior Services that designs, produces, or markets medical marijuana products that would appeal to persons under eighteen years of age. Administrative penalties are distributed to school districts based on the location of the entity receiving the penalty. It is unknown whether penalties

ASSUMPTION (continued)

will be imposed or how much in penalties may be distributed to school districts. Therefore, Oversight will present penalties to school districts as \$0 to Unknown, for fiscal note purposes.

§332.361 - Authority of dentists to prescribe certain opioids

Officials from the **Department of Insurance, Financial Institutions and Professional Registration**, the **Department of Social Services**, the **Department of Health and Senior Services** and the **Department of Mental Health** each assume the proposal will have no fiscal impact on their respective organizations.

**Oversight** notes that the above mentioned agencies have 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 on the fiscal note.

§579.020 - Distribution of heroin

#Officials from the **Department of Corrections (DOC)** state this bill proposes to make the distribution of a controlled substance that contains heroin a class B felony. This version removes it from being listed as a dangerous felony.

#The DOC estimates in FY 2018 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 percent. 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 33.5% before first release. The impact includes an estimate of 35% of the remaining sentence after the first release for the incarceration of parole returns.

#The full impact is estimated to be an increase in the prison population of 70 in FY 2025 and an increase of 51 in the parole population by FY 2028 because of the longer sentence. The impact will begin after the offenders serving the current sentence would be released (FY 2023).

#DOC states this version removed Section 556.061 which includes the distribution of heroin being a dangerous felony. By removing this section, those who are charged with distribution of heroin no longer have to serve 85% of their sentence as they would if it was classified as a dangerous felony.

ASSUMPTION (continued)

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	# 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	0	(\$6,287)	\$0	0	absorbed	\$0	\$0
Year 2	0	(\$6,287)	\$0	0	absorbed	\$0	\$0
Year 3	0	(\$6,287)	\$0	0	absorbed	\$0	\$0
Year 4	2	(\$6,287)	(\$13,344)	-2	absorbed	\$0	(\$13,344)
Year 5	64	(\$6,287)	(\$435,536)	-64	absorbed	\$0	(\$435,536)
Year 6	70	(\$6,287)	(\$485,895)	-70	absorbed	\$0	(\$485,895)
Year 7	70	(\$6,287)	(\$495,613)	-70	absorbed	\$0	(\$495,613)
Year 8	70	(\$6,287)	(\$505,525)	-8	absorbed	\$0	(\$505,525)
Year 9	70	(\$6,287)	(\$515,636)	51	absorbed	\$0	(\$515,636)
Year 10	70	(\$6,287)	(\$525,948)	51	absorbed	\$0	(\$525,948)

**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 enhanced penalties for distribution of heroin - a class B felony. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

In Fiscal Year 2018, SPD's Trial Division opened 1,165 cases (or approximately 1.8%) under charge code 579.020 of the 63,395 total cases opened.

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.

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.

According to “The Missouri Project” (RubinBrown, June 2014), the number of hours that should be spent on a C/D/E felony case is 28.5. This number takes into account time for travel and in-court appearances. In contrast, the number of hours that should be spent on an A/B felony case is 54.3. This equates to a difference of 25.8 additional hours spent on an A/B felony case versus a C/D/E felony case ( $54.3 - 28.5 = 25.8$ ). For purposes of this fiscal note, the **SPD** assumes 5 percent or approximately 58 individuals previously charged with a C/D/E felony will now be charged with an A/B felony. This equates to an additional 1,496.40 hours ( $25.8 \text{ hours} \times 58 \text{ cases}$ ) annually. With 2,080 work hours in a year, the SPD would need one additional attorney to meet the requirements of this legislation ( $1,496.40 / 2,080$ ).

**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 that the **Missouri Office of Prosecution Services** and **Office of State Courts Administrator** 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.

§§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.

ASSUMPTION (continued)

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.

§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 version of the proposal reduces the amounts of fentanyl that will make the offense a drug trafficking offense. The effect of this change is likely to make more drug offenses involving fentanyl sentenced for drug trafficking instead of drug distribution or drug possession. The DOC estimate for the introduced version of this proposal did not use the amount of fentanyl involved in drug offenses and as a result, it is assumed the fiscal impact of this proposal will be unchanged.

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 to 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.



ASSUMPTION (continued)

§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.

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.

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

	# 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)	0	absorbed	\$0	(\$52,328)
Year 4	14.0	(\$6,287)	(\$93,405)	0	absorbed	\$0	(\$93,405)
Year 5	17.0	(\$6,287)	(\$115,689)	0	absorbed	\$0	(\$115,689)
Year 6	20.0	(\$6,287)	(\$138,827)	0	absorbed	\$0	(\$138,827)
Year 7	21.0	(\$6,287)	(\$148,684)	0	absorbed	\$0	(\$148,684)
Year 8	22.0	(\$6,287)	(\$158,879)	0	absorbed	\$0	(\$158,879)
Year 9	23.0	(\$6,287)	(\$169,423)	0	absorbed	\$0	(\$169,423)
Year 10	24.0	(\$6,287)	(\$180,325)	0	absorbed	\$0	(\$180,325)

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

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

ASSUMPTION (continued)

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.

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.

**Oversight** notes that the **Missouri Office of Prosecution Services** has stated the proposal would not have a 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.

ASSUMPTION (continued)

Bill as a whole

**Oversight** notes the **Department of Higher Education**, the **Department of Mental Health**, the **Springfield Police Department**, the **St. Louis County Department of Justice Services**, the **State Technical College of Missouri** and the **University of Central Missouri** 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 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 Police Departments, Sheriffs' Offices, and Colleges and Universities were requested to respond to this proposed legislation but did not. For a general listing of political subdivisions included in our database, please refer to [www.legislativeoversight.mo.gov](http://www.legislativeoversight.mo.gov).

FISCAL IMPACT -  
State Government

	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2029)
<b>GENERAL REVENUE FUND</b>				
<u>Costs - DOC</u> (§191.255) p. 3	\$0 to...	\$0 to...	\$0 to...	\$0 to...
Increase in incarceration expenditures	(\$5,239)	(\$12,825)	(\$13,082)	(\$15,027)
<u>Costs - DHSS</u> (§195.015) p. 5				
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 - SPD</u> (§§195.015, 195.805, 579.020, 579.065, and 579.068) various				
Personal service, fringe benefits and equipment and expense for additional APD(s)	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<u>#Costs - DOC</u> (§579.020) p. 13				
Increase in incarceration expenditures	\$0	\$0	\$0	(\$525,948)

**FISCAL IMPACT -**  
**State Government**

Fully  
 Implemented  
 (FY 2029)

**GENERAL**  
**REVENUE FUND**  
 (continued)

Costs - DOC  
 (§§565.021, 579.015,  
 579.065, 579.068)  
 p. 17

Increase in  
 incarceration  
 expenditures

FY 2020

FY 2021

FY 2022

(\$5,239)

(\$12,825)

(\$52,328)

(\$180,325)

**#ESTIMATED**  
**NET EFFECT ON**  
**THE GENERAL**  
**REVENUE FUND**

Less than  
(\$105,239 to  
\$120,333)

(Less than  
\$112,825 to  
\$125,650)

(Less than  
\$152,328 to  
\$165,410)

(Less than  
\$806,273 to  
\$821,300)

Estimated Net FTE  
 Effect on the General  
 Revenue Fund

0 to 0.1 FTE

0 FTE

0 FTE

0 FTE

FISCAL IMPACT -  
State Government

Fully  
 Implemented  
 (FY 2029)

FY 2020                      FY 2021                      FY 2022

**INDUSTRIAL  
 HEMP FUND  
 (0476)**

Revenue - AGR  
 (§§195.740 -  
 195.767) p. 11

Increased fees due to increased number of applicants - ranged from fees changing to collect only enough to cover additional costs to new estimate of applicants at currently proposed fee schedule

\$187,665 to	\$166,161 to	\$167,864 to	\$180,112 to
\$922,033	\$922,033	\$922,033	\$922,033

Cost - AGR  
 (§§195.740 -  
 195.767) p. 10

Personal service	(\$76,760)	(\$93,033)	(\$93,963)	(\$100,742)
Fringe benefits	(\$44,409)	(\$53,571)	(\$53,855)	(\$55,920)
Equipment and expense	<u>(\$66,496)</u>	<u>(\$19,557)</u>	<u>(\$20,046)</u>	<u>(\$23,450)</u>
Total <u>Costs - AGR</u>	<u>(\$187,665)</u>	<u>(\$166,161)</u>	<u>(\$167,864)</u>	<u>(\$180,112)</u>

FTE Change - AGR	2 FTE	2 FTE	2 FTE	2 FTE
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**ESTIMATED NET  
 EFFECT ON THE  
 INDUSTRIAL  
 HEMP FUND\***

<u>\$0 or \$734,368</u>	<u>\$0 or \$755,872</u>	<u>\$0 or \$754,169</u>	<u>\$0 or \$741,921</u>
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\*Revenues and cost net to zero

FISCAL IMPACT -  
 State Government

Fully  
 Implemented  
 (FY 2029)

FY 2020                      FY 2021                      FY 2022

**CRIMINAL  
 RECORDS FUND  
 (0671)**

Income - DPS, MHP  
 (§195.740) p. 11-12  
 Fees from  
 background checks

\$0 to Unknown    \$0 to Unknown    \$0 to Unknown    \$0 to Unknown

**ESTIMATED NET  
 EFFECT ON THE  
 CRIMINAL  
 RECORDS FUND**

**\$0 to Unknown    \$0 to Unknown    \$0 to Unknown    \$0 to Unknown**

FISCAL IMPACT -  
 Local Government

Fully  
 Implemented  
 (FY 2029)

FY 2020                      FY 2021                      FY 2022

**SCHOOL  
 DISTRICTS**

Income - School  
 Districts (§195.805) -  
 administrative  
 penalty income  
 Penalty income

\$0 or Unknown    \$0 or Unknown    \$0 or Unknown    \$0 or Unknown

**ESTIMATED NET  
 EFFECT TO  
 SCHOOL  
 DISTRICTS**

**\$0 or Unknown    \$0 or Unknown    \$0 or Unknown    \$0 or Unknown**

### FISCAL IMPACT - Small Business

Small businesses related to the cultivation of hemp could be impacted by this proposal.  
(§§195.740 - 195.767)

### FISCAL DESCRIPTION

This bill creates a class E felony when a state agency discloses the statewide list of persons who have obtained a medical marijuana card to the federal government. (§191.225)

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. (§§ 195.010, 195.015 and 195.017)

This proposal modifies provision relating to industrial hemp. (§§195.740 - 195.767)

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. (§195.805)

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. (§579.015)

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.



FISCAL DESCRIPTION (continued)

#This act provides that the distribution of a controlled substance that contains heroin is a class B felony. (§579.020)

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. (§565.021)

Finally, this acts 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. (§§579.065 and 579.068)

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 Agriculture  
Department of Higher Education  
Department of Health and Senior Services  
Department of Insurance, Financial Institutions and Professional Registration  
Department of Mental Health  
Department of Corrections  
Department of Public Safety -  
    Missouri State Highway Patrol  
Department of Social Services  
Joint Committee on Administrative Rules

SOURCES OF INFORMATION (continued)

Missouri Consolidated Health Care Plan  
Missouri Department of Conservation  
Missouri Department of Transportation  
Missouri Office of Prosecution Services  
Office of State Courts Administrator  
Office of Secretary of State  
Office of State Public Defender  
Springfield Police Department  
St. Louis Police Department  
St. Louis County Department of Justice Services  
State Technical College of Missouri  
University of Central Missouri  
University of Missouri



Kyle Rieman  
Director  
May 16, 2019

Ross Strobe  
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May 16, 2019