

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3137-01
Bill No.: SB 765
Subject: Drugs and Controlled Substances
Type: Original
Date: January 3, 2020

Bill Summary: This proposal makes kratom a Schedule 1 controlled substance.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	(Less than \$115,965)	(Less than \$139,082)	(Less than \$159,796)
Total Estimated Net Effect on General Revenue	(Less than \$115,965)	(Less than \$139,082)	(Less than \$159,796)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 6 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

§195.017 - Makes kratom a Schedule I controlled substance

Officials from the **Department of Corrections (DOC)** state DOC has no prior data relating to charges involving kratom; therefore, the department estimates there could be either no impact or an impact comparable to the creation of a new class D felony. The DOC will use the standard response for a new class D felony.

For each new class D felony, the DOC estimates three people will be sentenced to prison and five to probation. The average sentence for a class D felony offense is 5 years, of which 2.8 years will be served in prison with 1.7 years to first release. The remaining 2.2 years will be on parole. Probation sentences will be 3 years. The cumulative impact of one new class D felony on the department is estimated to be 9 additional offenders in prison and 21 on field supervision by FY 2025.

In December 2019, the DOC reevaluated the calculation used for computing the Probation and Parole average daily cost of supervision and revised the cost calculation to be used for 2020 fiscal notes. For the purposes of fiscal note calculations, the DOC averaged district caseloads across the state and came up with an average caseload of 51 offender cases per officer. The new calculation assumes that an increase/decrease of 51 cases would result in a change in costs/cost avoidance equal to the cost of one FTE staff person. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

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.

ASSUMPTION (continued)

	# 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	3	(\$6,386)	(\$15,966)	5	absorbed	\$0	(\$15,966)
Year 2	6	(\$6,386)	(\$39,082)	10	absorbed	\$0	(\$39,082)
Year 3	9	(\$6,386)	(\$59,796)	15	absorbed	\$0	(\$59,796)
Year 4	9	(\$6,386)	(\$60,992)	18	absorbed	\$0	(\$60,992)
Year 5	9	(\$6,386)	(\$62,212)	21	absorbed	\$0	(\$62,212)
Year 6	9	(\$6,386)	(\$63,456)	21	absorbed	\$0	(\$63,456)
Year 7	9	(\$6,386)	(\$64,725)	21	absorbed	\$0	(\$64,725)
Year 8	9	(\$6,386)	(\$66,020)	21	absorbed	\$0	(\$66,020)
Year 9	9	(\$6,386)	(\$67,340)	21	absorbed	\$0	(\$67,340)
Year 10	9	(\$6,386)	(\$68,687)	21	absorbed	\$0	(\$68,687)

Oversight notes DOC is ranging its fiscal impact from \$0 to the impact provided above. As Oversight does not have any information to the contrary, Oversight will reflect DOC’s estimated fiscal impact from \$0 to the impact provided.

For the purpose of this proposed legislation, officials from the **Office of State Public Defender (SPD)** state they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the proposed new crime of possession of kratom. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

Oversight notes over the last three fiscal years, the SPD has lapsed a total of \$153 of General Revenue appropriations (\$2 out of \$28.0 million in FY 2017; \$150 out of \$42.5 million in FY 2018; and \$1 out to \$46.0 million in FY 2019). Therefore, **Oversight** assumes the SPD is at maximum capacity and the increase in workload resulting from this bill cannot be absorbed within SPD’s current resources.

ASSUMPTION (continued)

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, **Oversight** assumes the cost for a new APD could approach \$100,000 per year.

Oversight assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing resources and, therefore, will reflect a potential additional cost of (Less than \$100,000) per year to the General Revenue Fund.

Oversight notes the **Missouri Office of Prosecution Services** has stated the proposal would not have a measurable fiscal impact on their organization. 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 Public Safety**, **Missouri State Highway Patrol** and the **Office of State Courts Administrator** have stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
GENERAL REVENUE FUND			
<u>Costs - DOC</u> (§195.017) - Increase in incarceration and parole costs	(\$0 to \$15,965)	(\$0 to \$39,082)	(\$0 to \$59,796)
<u>Costs - SPD</u> (§195.017) - Personal service, fringe benefits and equipment and expense	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>	<u>(Less than \$100,000)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(Less than \$115,965)</u>	<u>(Less than \$139,082)</u>	<u>(Less than \$159,796)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
	<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 makes kratom a Schedule I controlled substance.

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
Missouri Office of Prosecution Services
Office of State Courts Administrator
Office of State Public Defender



Julie Morff
Director
January 3, 2020



Ross Strope
Assistant Director
January 3, 2020