COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2301-01
Bill No.: HB 1012
Subject: Crimes and Punishment; Drugs and Controlled Substances
Type: Original
Date: April 3, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
General Revenue	($94,264 to Unknown)	($222,326 to Unknown)	($243,781 to Unknown)
Total Estimated Net Effect on All State Funds	**($94,264 to Unknown)**	**($222,326 to Unknown)**	**($243,781 to Unknown)**

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
None			
Total Estimated Net Effect on All Federal Funds	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	**$0**	**$0**	**$0**

Numbers within parentheses: ( ) indicate costs or losses.
This fiscal note contains 6 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator** and the **State Treasurer's Office** assume the proposed legislation would have no fiscal impact on their agency.

Officials from the **Office of Prosecution Services** assume the cost of the proposed legislation could be absorbed within existing resources.

Officials from the **Office of the State Public Defender** assume, for the purpose of the proposed legislation, existing staff could provide representation for those cases arising where indigent persons were charged with the transportation, possession, or distribution of the precursors to methamphetamine. However, passage of more than one similar bill would require the State Public Defender System to request increased appropriations to cover the cumulative cost of representing the indigent accused in the additional cases.

Officials from the **Office of the Secretary of State** assume the proposal restricts certain sales of precursors to methamphetamine. The Department of Health will promulgate rules to implement this proposal. Based on experience with other divisions, the rules, regulations, and forms issued by the Department of Health could require as many as 16 pages in the Code of State Regulations. For any given rule, roughly half again as many pages, or 24 pages, are published in the Missouri Register as in the Code because cost statements, fiscal notes, and the like are not repeated in the Code. The estimated cost of a page in the Missouri Register is $23.00. The estimated cost of a page in the Code of State Regulations is $27.00. Based on these costs, the estimated cost of the proposal is $984 in FY02 and unknown in subsequent years. The actual cost could be more or less than the numbers given. The impact of this legislation in future years in unknown and depends upon the frequency and length of rules filed, amended, rescinded, or withdrawn.

Oversight assumes the SOS would 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 request funding through the appropriation process.

Officials from the **Department of Health (DOH)** assume the DOH would store reports of suspicious sales of ephedrine, pseudoephedrine, or phenylpropanolamine or any of their isomers and make them available for review by law enforcement agencies. The DOH would also need to promulgate rules to establish a report format for such reports. It is estimated that the DOH would receive no more than 100 reports per year of suspicious sales of these substances. Current requirements for storage and maintenance of Department records requires that such records would need to be stored for 7 years. This would require the DOH to purchase 2 file cabinets. Costs for these cabinets is $550 each. Total cost would be $1,100. **Oversight** assumes the DOH would absorb the cost of storing the reports within existing resources.

ASSUMPTION (continued)

In response to a similar proposal from the current session (SB 608), officials from the **Department of Corrections (DOC)** stated, in FY00, there were 15 admissions to prison and 30 to probation for possession of ephedrine or its derivatives with intent to manufacture methamphetamine. Probation also had 1 admission charged with distribution. These offenses were charged as class D felonies. Although the number of commitments due to the creation of the new crimes is unknown, DOC conservatively expects the offenders who will be convicted of the new offense to be at least as many as those convicted for possession with intent to manufacture. Therefore, the DOC estimates that, in any given year, there will be 15 prison admissions serving an average of 10 months (the average time served for class D felony offenders in FY00) and 30 probation case openings supervised 4 years (the average probation for class D felonies in FY00).

DOC estimates the increase in population will increase incrementally over the fiscal year. For cost estimates a snapshot of the midyear average population was used to determine fiscal impact.

The assumptions used by the DOC to determine cost, and rounded to the nearest whole number, include:

- $35.61 (FY99 cost) inmate per capita costs with an inflation rate of 3% per each subsequent year; and

- $2.47 (FY99 cost) supervision costs with an inflation rate of 3% per each subsequent year.

	AVERAGE POPULATION (Incarceration)	OPERATING EXPENSE (Incarceration)	AVERAGE POPULATION (Probation)	OPERATING EXPENSE (Probation)	TOTAL COST W/ INFLATION
FY 2002	13	$77,998	15	$13,530	$94,264
FY 2003	13	$168,974	45	$40,590	$222,326
FY 2004	13	$168,974	60	$54,120	$243,781

At this time, the DOC is unable to determine the number of people who would be convicted under the provisions of this proposal to estimate the potential need for additional capital improvements. Estimated construction cost for one new medium-security inmate bed is $48,300 at FY99 average costs. A maximum security inmate bed is $55,000, also using FY99 average costs. Utilizing this per-bed cost provides for a conservative estimate by the DOC, as entire facilities and/or housing units would have to be constructed to cover the cost of housing new commitments resulting from the cumulative effect of various new legislation, if adopted as statute.

ASSUMPTION (continued)

Based on the above-mentioned assumptions, the long range fiscal impact to the DOC is unknown, but is estimated at least to include the costs as follows:

	AVERAGE POPULATION (Incarceration)	OPERATING EXPENSE (Incarceration)	AVERAGE POPULATION (Probation)	OPERATING EXPENSE (Probation)	TOTAL COST W/ INFLATION
FY 2005	13	$168,974	60	$54,120	$251,094
FY 2006	13	$168,974	60	$54,120	$258,627
FY 2007	13	$168,974	60	$54,120	$266,386
FY 2008	13	$168,974	60	$54,120	$274,377
FY 2009	13	$168,974	60	$54,120	$282,609
FY 2010	13	$168,974	60	$54,120	$291,087
FY 2011	13	$168,974	60	$54,120	$299,820
				Total Ten-Year Fiscal Impact:	**$2,484,371**

FISCAL IMPACT - State Government	FY 2002 (10 Mo.)	FY 2003	FY 2004
GENERAL REVENUE FUND			
Costs – Department of Corrections Incarceration/Probation costs	**($94,264 to Unknown)**	**($222,326 to Unknown)**	**($243,781 to Unknown)**

FISCAL IMPACT - Local Government	FY 2002 (10 Mo.)	FY 2003	FY 2004
	$0	**$0**	**$0**

FISCAL IMPACT - Small Business

Manufacturers, wholesalers, retailers, and anyone else furnishing ephedrine, pseudoephedrine, or phenylpropanolamine or any of their isomers would be required to report any suspicious sales to the Department of Health. These reports would require both time and resources on the part of the business.

DESCRIPTION

This proposal requires any manufacturer or wholesaler of ephedrine, pseudoephedrine, or phenylpropanolamine to report suspicious transactions to the Department of Health. A violation is a class D felony.

DESCRIPTION (continued)

The proposal would make it unlawful for any person to possess more than 5 grams of ephedrine or 9 grams of pseudoephedrine. The proposal contains exceptions for pharmacists, physicians and other professionals, pharmacies or retailers who possess the substances in the ordinary course of business, manufacturers, wholesalers and distributors, and any person in their residence under circumstances consistent with typical medicinal or household use. Possession of more than the specified amounts shall constitute prima facie evidence of intent to manufacture methamphetamine or other controlled substance. A violation is a class D felony for the first offense, and a class C felony for the second or subsequent offense.

The proposal creates a class D felony for the sale or distribution of any product containing ephedrine, pseudoephedrine, or phenylpropanolamine if the person knows that the purchaser will use the product as a precursor to manufacturing methamphetamine or other controlled substance, or with reckless disregard for its use. A second or subsequent offense is a class C felony.

The proposal would prohibit the purchase of, or the sale or distribution by a retail distributor or employee in a single transaction of, any of the following: (a) more than 3 packages of products known to contain ephedrine, pseudoephedrine, or phenylpropanolamine, where the total quantity is greater than 9 grams; (b) any single package of more than 96 individual units that contains any of the 3 substances, where the total quantity is greater than 9 grams; (c) more than 3 grams of the substances, when sold in blister packs, dose packets, or pouches where each blister, packet, or pouch contains 2 dosage units or less; or (d) more than 3 grams of the substances in the case of liquids. A violation of this provision is a class A misdemeanor. This provision lists certain exceptions, including pediatric products in specified amounts, products specifically exempted by the Department of Health, and products sold in packages of 3 grams or less where the total sale is for less than 3 packages or 9 grams. Owners or operators of outlets where these substances are sold will not be subject to prosecution on employee violations if they provide an employee training program and document that the program was completed by all employees who sell the substances.

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 State Courts Administrator
Department of Health
Office of Prosecution Services
Office of the Secretary of State
Office of the State Public Defender
State Treasurer's Office

Jeanne Jarrett, CPA
Director

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