

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3750S.02I  
 Bill No.: SB 671  
 Subject: Attorney General; Crimes and Punishment; Disabilities; Elderly; Health Care; Health Care Professionals; Health and Senior Services, Department of; Hospitals; Medicaid/Mo HealthNet; Mental Health, Department of; Nursing Homes and Long- Term Care Facilities; Public Assistance; Department of Social Services  
 Type: Original  
 Date: March 1, 2022

Bill Summary: This proposal modifies provisions relating to the protection of vulnerable persons.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>				
FUND AFFECTED	FY 2023	FY 2024	FY 2025	Fully Implemented (FY 2026)
General Revenue	(\$141,615)	(\$237,480)	(\$301,510)	(\$386,507)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(\$141,615)</b>	<b>(\$237,480)</b>	<b>(\$301,510)</b>	<b>(\$386,507)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>				
FUND AFFECTED	FY 2023	FY 2024	FY 2025	Fully Implemented (FY 2026)
<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.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>				
FUND AFFECTED	FY 2023	FY 2024	FY 2025	Fully Implemented (FY 2026)
<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>				
FUND AFFECTED	FY 2023	FY 2024	FY 2025	Fully Implemented (FY 2026)
General Revenue	1 FTE	1 FTE	1 FTE	2 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>1 FTE</b>	<b>1 FTE</b>	<b>1 FTE</b>	<b>2 FTE</b>

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>				
FUND AFFECTED	FY 2023	FY 2024	FY 2025	Fully Implemented (FY 2026)
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

§§191.900, 191.905, 191.2290, 208.909, 565.184, 630.155, and 630.202 – Protection of vulnerable persons (Essential Caregiver Program Act)

Officials from the **Department of Health and Senior Services (DHSS)** state:

#### Section 191.2290(3)3

“During a state of emergency declared pursuant to chapter 44, a facility shall allow a resident, a resident's guardian, or a resident's legally authorized representative to designate an essential caregiver for in-person visitation with the resident in accordance with the standards and guidelines developed by the department under this section.” The department will have to develop “standards and guidelines” regarding essential caregiver’s in-person visitation at a hospital. Although not specified, this will likely be done through the standard rule promulgation process. It is assumed it will take one (1) Nurse Manager (average salary \$66,000) a total of approximately 80 hours to make the required change. Based on 2080 working hours per year, this would require 0.04 FTE to accomplish these duties for a total personal service cost of \$2,640 (\$66,000 x 0.04) in FY 23.

DHSS anticipates being able to absorb these costs; however, until the FY23 budgets final, the department cannot identify specific funding sources.

#### Section 208.909

Currently, when a Division of Senior and Disability Services (DSDS), Home and Community-Based Services (HCBS), Consumer Directed Services (CDS) vendor fails to pay payroll, employment, and other taxes, the CDS participant’s benefits are garnished until the garnishment is satisfied.

Senate Bill 671 will require CDS vendors to file payroll, employment, and other taxes in a timely manner. If passed, when a vendor fails to pay in a timely manner they will be liable to the participant for the garnishment(s) as a result of the vendor's failure to timely pay payroll, employment, or other taxes on behalf of the consumer. The Department of Social Services, Missouri Medicaid Audit and Compliance Unit (MMAC) receives 125 referrals per year from participants, providers, and other concerned parties regarding CDS tax issues. This results in approximately 60 vendor closings. MMAC estimates that passage of this legislation will double the number of referrals and subsequent closings, resulting in approximately 250 referrals and 120 vendor closings per year. MMAC estimates an additional 60 vendors will close. Per MMAC, typically two-thirds (66.66%) of vendors that are closed have up to 10 participants and one-third (33.33%) have between 11 and 25 participants. When a vendor closes, DSDS is responsible to complete a care plan change to ensure continuity of services for the consumers.

Due to the increase in vendor closing's, DSDS estimates between 260 ((60 vendors x 66.66% x 10 participant) + (60 vendors x 33.33% x 11 participants)) and 900 ((60 vendors x 66.66% x 10 participant) + (60 vendors x 33.33% x 25 participants)) additional care plan changes.

On average, DSDS staff can complete one care plan change per hour. However, care plan changes in relation to completing a vendor change are more time consuming because a new vendor will need to be established in addition to the time it takes to complete the actual change to the care plan. Therefore, DSDS estimates it will require between 0.25 FTE and 0.50 FTE. One Social Service Specialist (average salary \$36,891) will be needed to assist with the increased work load resulting in a personal service cost of approximately \$7,686 ( $\$36,891 * 0.25 \text{FTE} * 10/12$ ) to \$15,372 ( $\$36,891 * 0.50 \text{FTE} * 10/12$ ) in FY 2023. These will be split between general revenue and federal 50/50.

**Oversight** assumes the DHSS can absorb the additional duties required by this proposal with existing staff and resources. If necessary, the DHSS can request additional resources through the appropriations process.

Officials from the **Department of Social Services (DSS), Missouri Medicaid Audit Compliance (MMAC)** anticipates there will be a fiscal impact if this legislation becomes law. MMAC currently receives 100-125 referrals per year from consumers, vendors, and other concerned parties regarding Consumer Directed Services (CDS) payroll tax issues. If the statute goes into effect with the updated language, MMAC anticipates the number of referrals would double to 200-250 per year. MMAC would require a new FTE position in order to efficiently track, evaluate and investigate the referrals. Such referrals are time consuming to investigate because MMAC has to collect and compare payroll records from the CDS vendors, CDS consumers and their attendants, and the Internal Revenue Service (IRS) or Missouri Department of Revenue (DOR).

The additional FTE would also be tasked with tracking CDS vendors' compliance with the proposed second sentence of 208.909.6 regarding vendors notifying CDS consumers of any communication or correspondence from any federal, state, or local tax authority of any overdue or unpaid tax obligation, as well as any notice of an impending garnishment.

The new FTE would be a Benefit Program Senior Specialist (\$44,437 annually).

Officials from the **Department of Mental Health (DMH)** state §630.202.2 known as the "Essential Caregiver Program Act" states during a state of emergency declared pursuant to chapter 44, a facility shall allow a resident, their guardian or legal representative to designate an essential caregiver for in-person visitation in accordance with the standards and guidelines developed by DMH. A facility is defined as a residential facility licensed by DMH. Subsection 3 states the facility shall inform residents, their guardians or legal representatives of the "Essential Caregiver Program" and the process for designating an essential caregiver. Subsection 4 outlines the standards and guidelines concerning the essential caregiver program. Subsection 5 outlines the guidelines for suspensions of in-person visitation by essential caregivers. Subsection 7 states

a facility, its employees and contractors shall be immune from civil liability for an injury or harm caused from exposure to a contagious disease that is specified during the state of emergency or acts or omissions by essential caregivers who are present, but it does not apply to recklessness or willful misconduct.

Further clarification is needed to determine any effect on security, staff, and patient safety and the fiscal impact of any such effects. Due to current language proposed in this legislation, DMH cannot calculate a fiscal impact on the Department and estimates a range of \$0 to Unknown.

**Oversight** assumes the DMH would not incur significant increase in costs related to this proposal. However, if the provisions of the proposal resulted in a significant increase in costs, the DMH could request additional resources through the appropriations process.

Officials from the **Department of Corrections (DOC)** state SB 671 modifies provisions relating to the protection of vulnerable persons; §191.905 creates a new class D felony for knowingly abusing or neglecting a person receiving health care; §565.184 reclassifies an existing class A misdemeanor to a class D felony; and §630.155 reclassifies an existing class E felony to a class D felony.

#### Section 191.905

A new class D Felony was added for knowingly abusing or neglecting a person receiving health care.

For each new nonviolent class D felony, the DOC estimates three people will be sentenced to prison and five to probation. The average sentence for a nonviolent 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 on the department is estimated to be 8 additional offenders in prison and 22 additional offenders on field supervision by FY 2027.

**Change in prison admissions and probation openings with legislation-Class D Felony (nonviolent)**

	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032
<b>New Admissions</b>										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	3	3	3	3	3	3	3	3	3	3
<b>Probation</b>										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	5	5	5	5	5	5	5	5	5	5
<b>Change (After Legislation - Current Law)</b>										
Admissions	3	3	3	3	3	3	3	3	3	3
Probations	5	5	5	5	5	5	5	5	5	5
<b>Cumulative Populations</b>										
Prison	3	6	8	8	8	8	8	8	8	8
Parole			1	4	7	7	7	7	7	7
Probation	5	10	15	15	15	15	15	15	15	15
<b>Impact</b>										
Prison Population	3	6	8	8	8	8	8	8	8	8
Field Population	5	10	16	19	22	22	22	22	22	22
<b>Population Change</b>	<b>8</b>	<b>16</b>	<b>24</b>	<b>27</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>	<b>30</b>

**Section 565.184**

The Office of State Court Administrators reports 17 class A misdemeanors under §565.184 during FY 2021. These offenses are now considered nonviolent class D felony offenses.

For each new nonviolent class D felony, the DOC estimates three people will be sentenced to prison and five to probation. The average sentence for a nonviolent 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 on the department is estimated to be 17 additional offenders in prison and 46 additional offenders on field supervision by FY 2027.

**Change in prison admissions and probation openings with legislation-Class D Felony (nonviolent)**

	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032
<b>New Admissions</b>										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	6	6	6	6	6	6	6	6	6	6
<b>Probation</b>										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	11	11	11	11	11	11	11	11	11	11
<b>Change (After Legislation - Current Law)</b>										
Admissions	6	6	6	6	6	6	6	6	6	6
Probations	11	11	11	11	11	11	11	11	11	11
<b>Cumulative Populations</b>										
Prison	6	12	17	17	17	17	17	17	17	17
Parole			1	7	13	13	13	13	13	13
Probation	11	22	33	33	33	33	33	33	33	33
<b>Impact</b>										
Prison Population	6	12	17	17	17	17	17	17	17	17
Field Population	11	22	34	40	46	46	46	46	46	46
<b>Population Change</b>	<b>17</b>	<b>34</b>	<b>51</b>	<b>57</b>	<b>63</b>	<b>63</b>	<b>63</b>	<b>63</b>	<b>63</b>	<b>63</b>

**Section 630.155**

The department did not receive any new commitments under section 630.155 in FY 2021. Therefore, DOC estimates no impact to minimal impact from changing the class E felony offense in that section to a class D felony offense.

### Combined Estimated Cumulative Impact

The combined estimated cumulative impact of a new Class D felony and 17 class A misdemeanor changed to Class A Felony on the DOC is estimated to be 25 additional offenders in prison and 68 additional offenders on field supervision by FY 2027.

#### Change in prison admissions and probation openings with legislation

	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032
<b>New Admissions</b>										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	9	9	9	9	9	9	9	9	9	9
<b>Probation</b>										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	16	16	16	16	16	16	16	16	16	16
<b>Change (After Legislation - Current Law)</b>										
Admissions	9	9	9	9	9	9	9	9	9	9
Probations	16	16	16	16	16	16	16	16	16	16
<b>Cumulative Populations</b>										
Prison	9	18	25	25	25	25	25	25	25	25
Parole	0	0	2	11	20	20	20	20	20	20
Probation	16	32	48	48	48	48	48	48	48	48
<b>Impact</b>										
Prison Population	9	18	25	25	25	25	25	25	25	25
Field Population	16	32	50	59	68	68	68	68	68	68
<b>Population Change</b>	<b>25</b>	<b>50</b>	<b>75</b>	<b>84</b>	<b>93</b>	<b>93</b>	<b>93</b>	<b>93</b>	<b>93</b>	<b>93</b>

\* If this impact statement has changed from statements submitted in previous years, it could be due to an increase/decrease in the number of offenders, a change in the cost per day for institutional offenders, and/or an increase in staff salaries.

If the projected impact of legislation is less than 1,500 offenders added to or subtracted from the department's institutional caseload, the marginal cost of incarceration will be utilized. This cost of incarceration is \$22.616 per day or an annual cost of \$8,255 per offender and includes such costs as medical, food, and operational E&E. However, if the projected impact of legislation is 1,500 or more offenders added or removed to the department's institutional caseload, the full cost of incarceration will be used, which includes fixed costs. This cost is \$88.12 per day or an annual cost of \$32,162 per offender and includes personal services, all institutional E&E, medical and mental health, fringe, and miscellaneous expenses. None of these costs include construction to increase institutional capacity.

DOC's cost of probation or parole is determined by the number of P&P Officer II positions that are needed to cover its caseload. The DOC average district caseload across the state is 51 offender cases per officer. An increase/decrease of 51 cases would result in a cost/cost avoidance equal to the salary, fringe, and equipment and expenses of one P&P Officer II. Increases/decreases smaller than 51 offender cases 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.**

	<u># to</u>	<u>Cost per</u>	<u>Total Costs for</u>	<u>Change in</u>	<u>Total cost</u>	<u># to</u>	<u>Grand Total -</u>
	<u>prison</u>	<u>year</u>	<u>prison</u>	<u>probation</u>	<u>for</u>	<u>probation</u>	<u>Prison and</u>
				<u>&amp; parole</u>	<u>probation</u>	<u>&amp; parole</u>	<u>Probation</u>
				<u>officers</u>	<u>and</u>		<u>(includes 2%</u>
					<u>parole</u>		<u>inflation)</u>
Year 1	9	(\$8,255)	(\$61,913)	0	\$0	16	(\$61,913)
Year 2	18	(\$8,255)	(\$151,562)	0	\$0	32	(\$151,562)
Year 3	25	(\$8,255)	(\$214,713)	0	\$0	50	(\$214,713)
Year 4	25	(\$8,255)	(\$219,007)	1	(\$79,810)	59	(\$298,817)
Year 5	25	(\$8,255)	(\$223,387)	1	(\$71,897)	68	(\$295,284)
Year 6	25	(\$8,255)	(\$227,855)	1	(\$72,673)	68	(\$300,528)
Year 7	25	(\$8,255)	(\$232,412)	1	(\$73,460)	68	(\$305,872)
Year 8	25	(\$8,255)	(\$237,060)	1	(\$74,255)	68	(\$311,315)
Year 9	25	(\$8,255)	(\$241,801)	1	(\$75,060)	68	(\$316,861)
Year 10	25	(\$8,255)	(\$246,637)	1	(\$72,873)	68	(\$322,510)

**Oversight** does not have any information to the contrary. Therefore, Oversight will reflect DOC's estimated fiscal impact for this proposal.

Officials from the **Attorney General's Office**, the **Department of Commerce and Insurance**, the **Department of Labor and Industrial Relations**, the **Department of Revenue**, the **Department of Public Safety**, **Missouri Highway Patrol**, the **Missouri Office of Prosecution Services** and the **Office of the State Public Defender** each assume the proposal will have no 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.

**Oversight** only reflects the responses received from state agencies and political subdivisions; however, nursing homes and hospitals were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System (MOLIS) database is available upon request.



<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025	Fully Implemented (FY 2026)
<b>GENERAL REVENUE FUND</b>				
<u>Costs – DSS (§208.909) p.4</u>				
Personal service	(\$37,031)	(\$44,882)	(\$45,331)	(\$45,784)
Fringe benefits	(\$24,744)	(\$29,841)	(\$29,992)	(\$30,144)
Equipment and expense	(\$17,927)	(\$11,195)	(\$11,474)	(\$11,762)
<b>Total Costs – DSS</b>	<b>(\$79,702)</b>	<b>(\$85,918)</b>	<b>(\$86,797)</b>	<b>(\$87,690)</b>
FTE Change – DSS	1 FTE	1 FTE	1 FTE	1 FTE
<u>Costs – DOC (§§191.905 and 565.184) p.8</u>				
Personal service costs	\$0	\$0	\$0	(\$39,927)
Fringe benefits	\$0	\$0	\$0	(\$27,467)
Equipment and expense	\$0			(\$12,416)
Incarceration costs	(\$61,913)	(\$151,562)	(\$214,713)	(\$219,007)
<b>Total Costs - DOC</b>	<b>(\$61,913)</b>	<b>(\$151,562)</b>	<b>(\$214,713)</b>	<b>(\$298,817)</b>
FTE Change – DOC	0 FTE	0 FTE	0 FTE	1 FTE
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b>(\$141,615)</b>	<b>(\$237,480)</b>	<b>(\$301,510)</b>	<b>(\$386,507)</b>
Estimated Net FTE Change on the General Revenue Fund	1 FTE	1 FTE	1 FTE	2 FTE

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025	Fully Implemented (FY 2026)
	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

### FISCAL IMPACT – Small Business

Small businesses may be negatively impacted when garnishment is required by the IRS, as the vendor may have to pay the original taxes and possibly additional fines. (§208.909)

## FISCAL DESCRIPTION

This act modifies current law on abuse and neglect of certain vulnerable persons. This act contains provisions that prohibit a person from knowingly neglecting a person receiving health care, which shall be a Class D felony, unless the act involves no physical, sexual, or emotional harm or injury, in which case it shall be a Class A misdemeanor. This act also modifies the penalty of the existing offense of abuse of an elderly person, a person with a disability, or a vulnerable person from a Class A misdemeanor to a Class D felony. Finally, this act modifies the existing offense of patient, resident, or client abuse or neglect against a person admitted on a voluntary or involuntary basis to a mental health facility or mental health program from a Class E felony to a Class D felony.

This act establishes the "Essential Caregiver Program Act". During a governor-declared state of emergency, a hospital, long-term care facility, or residential facility licensed by the Department of Mental Health shall allow a resident of such facility, or the resident's guardian or legal representative, to designate an essential caregiver for in-person visitation with the resident in accordance with the standards and guidelines developed under this act. An "essential caregiver" is defined as a family member, friend, guardian, or other individual selected by a resident, or the guardian or legal representative of the resident.

The Department of Health and Senior Services and the Department of Mental Health shall develop the program's standards and guidelines, including: (1) allowing the resident to select at least two caregivers, although the facility may limit visitation to one at a time; (2) establishing a visitation schedule allowing for at least four hours each day; and (3) establishing procedures enabling physical contact between the caregiver and resident. The facility may require the caregiver to follow infection control and safety measures; provided that such measures are no more stringent than required for facility employees. Visitation may be restricted or revoked for caregivers who do not follow such measures.

A facility may request a suspension of in-person visitation for a period not to extend seven days. The suspension may be extended, but not for more than fourteen consecutive days in a twelve-month period or more than forty-five days in a twelve-month period.

A facility, its employees, and its contractors shall be immune from civil liability for (1) an injury or harm caused by or resulting from exposure of a contagious disease or harmful agent or (2) acts or omissions by essential caregivers who are present in the facility, as a result of the implementation of the caregiver program. This immunity shall not apply to any act or omission that constitutes recklessness or willful misconduct.

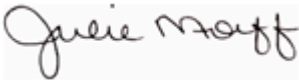
Finally, a vendor participating in the MO HealthNet consumer-directed services program shall ensure all payroll, employment, and other taxes are timely paid on behalf of the consumer and the vendor shall be liable to the consumer for any garnishment action occurring or that has occurred as a result of the vendor's failure to timely pay such taxes. The vendor shall notify the

consumer of any communication or correspondence from any federal, state, or local tax authority of any overdue or unpaid tax obligations, as well as any notice of an impending garnishment.

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 Commerce and Insurance  
Department of Health and Senior Services  
Department of Mental Health  
Department of Corrections  
Department of Labor and Industrial Relations  
Department of Revenue  
Department of Public Safety –  
    Missouri Highway Patrol  
Department of Social Services  
Office of the State Public Defender  
Missouri Office of Prosecution Services  
Office of the State Courts Administrator



Julie Morff  
Director  
March 1, 2022



Ross Strope  
Assistant Director  
March 1, 2022