

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0516-02
Bill No.: Perfected SCS for SB 37
Subject: Crimes and Punishment; Public Defenders; Courts; Fees; Criminal Procedure
Type: Original
Date: February 25, 2009

Bill Summary: The proposal modifies provisions relating to the public defender system.

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|---|----------------------------|----------------------------|----------------------------|
| FUND AFFECTED | FY 2010 | FY 2011 | FY 2012 |
| General Revenue | More than \$100,000 | More than \$100,000 | More than \$100,000 |
| | | | |
| Total Estimated Net Effect on General Revenue Fund | More than \$100,000 | More than \$100,000 | More than \$100,000 |

| ESTIMATED NET EFFECT ON OTHER STATE FUNDS | | | |
|---|------------|------------|------------|
| FUND AFFECTED | FY 2010 | FY 2011 | FY 2012 |
| | | | |
| | | | |
| Total Estimated Net Effect on <u>Other</u> State Funds | \$0 | \$0 | \$0 |

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 7 pages.

| ESTIMATED NET EFFECT ON FEDERAL FUNDS | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2010 | FY 2011 | FY 2012 |
| | | | |
| | | | |
| Total Estimated Net Effect on <u>All</u> Federal Funds | \$0 | \$0 | \$0 |

| ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE) | | | |
|---|----------------|----------------|----------------|
| FUND AFFECTED | FY 2010 | FY 2011 | FY 2012 |
| | | | |
| | | | |
| Total Estimated Net Effect on FTE | 0 | 0 | 0 |

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

| ESTIMATED NET EFFECT ON LOCAL FUNDS | | | |
|--|----------------|----------------|----------------|
| FUND AFFECTED | FY 2010 | FY 2011 | FY 2012 |
| Local Government | \$0 | \$0 | \$0 |

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Corrections** and the **Missouri Senate** assume the proposal would have no fiscal impact on their agencies.

In response to a previous version of the proposal (SCS for SB 37, LR # 0516-02), officials from the **Office of the Governor, Department of Public Safety – Director’s Office, Missouri House of Representatives, City of Centralia, City of Kansas City, City of Cape Girardeau, and Clinton County** assumed the proposal would have no fiscal impact on their agencies.

Officials from the **Office of the Attorney General** assume any potential costs arising from this proposal can be absorbed within existing resources.

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would modify several provisions relating to the public defender system. CTS assumes there will be a local cost to the jails for pretrial incarceration. In addition, CTS assumes the legislation will create a backlog in the courts criminal docket, which may lead to the dismissal of criminal cases. CTS assumes there may be a cost to the courts, but they have no way of quantifying the cost at this time. Any significant increase would be reflected in future budget requests.

In response to a previous version of the proposal (SCS for SB 37, LR # 0516-02), officials from the **Office of Prosecution Services** assumed the proposal would not have a significant direct fiscal impact on county prosecutors or the Office of Prosecution Services.

In response to a previous version of the proposal (SCS for SB 37, LR # 0516-02), officials from the **Office of the Secretary of State (SOS)** assumed 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 proposal for Administrative Rules is less than \$2,500. The SOS recognizes this is a small amount and does not expect additional funding would be required to meet these costs. However, SOS also recognizes that many such bills may be passed in a given year and that collectively the costs may be in excess of what the SOS can sustain with their core budget. Any additional required funding would be handled through the budget process.

ASSUMPTION (continued)

Officials from the **Office of the State Public Defender (SPD)** assume the provisions limiting taxpayer-provided attorneys in misdemeanor cases to only those in which the prosecutor is actually seeking jail time instead of all misdemeanors A-C for which jail time is a potential penalty would provide a significant savings of taxpayer dollars and help to ease the public defender case overload.

In FY08, SPD provided taxpayer-funded attorneys in over 26,000 misdemeanor cases, a significant number of which are ultimately disposed of without jail time, though SPD does not currently track cases by jail time vs non-jail time disposition and so can't provide an exact number of cases likely to be impacted.

The provisions authorizing the creation of a waiting list for SPD services in overloaded offices is also likely to result in a reduction in SPD caseload. Many minor felony cases are also ultimately disposed of without a jail sentence, but because jail is a potential penalty in the statute, the taxpayers must provide an attorney for indigent defendants unless the prosecutor waives that jail time up front. Where cases are being wait-listed for defender services, it is likely many more courts will ask prosecutors to indicate early on which of those cases could be disposed of with a non-jail time sentence in order to move those cases more quickly. The more cases that are moved in such a manner without defender services, the more SPD is able to focus its limited attorney resources on the serious cases that remain and move those more quickly and more effectively. The limiting of attorney caseloads to numbers that can be reasonably and effectively handled also drastically reduces the state's liability for malpractice claims brought against defenders unable to effectively represent many more clients than any attorney is ethically supposed to accept. Since the attorneys are covered by the state's legal defense fund, it is ultimately the state which will be paying out any successful claims made against overloaded attorneys by disgruntled defendants who did not receive the service to which they are ethically and constitutionally entitled.

The change in Legal Defense and Defender Fund rollover amounts will have no fiscal impact, but will permit SPD to utilize its debt offset dollars more effectively and efficiently.

Oversight assumes the proposal would result in a significant savings to the SPD. Although SPD was unable to quantify the savings, Oversight assumes the savings could exceed \$100,000 per fiscal year.

| <u>FISCAL IMPACT - State Government</u> | FY 2010 (10 Mo.) | FY 2011 | FY 2012 |
|--|--|--|--|
| GENERAL REVENUE FUND | | | |
| <u>Savings – Office of the State Public Defender</u> | | | |
| Reduced cases | <u>More than</u> <u>\$100,000</u> | <u>More than</u> <u>\$100,000</u> | <u>More than</u> <u>\$100,000</u> |
| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | <u>More than</u> <u>\$100,000</u> | <u>More than</u> <u>\$100,000</u> | <u>More than</u> <u>\$100,000</u> |
| | | | |
| <u>FISCAL IMPACT - Local Government</u> | FY 2010 (10 Mo.) | FY 2011 | FY 2012 |
| | <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

The proposed legislation modifies various provisions relating to the public defender system.

The Public Defender Commission shall establish maximum public defender caseload standards in order to fulfill the constitutional obligation to provide effective counsel and comply with the rules of professional conduct. In doing so, the commission shall consider national defender caseload standards, particulars of local practice, the needs of the criminal justice system, and other pertinent factors. (Section 600.017)

The state shall pay for the parking costs for public defender system employees. (Section 600.040)

FISCAL DESCRIPTION (continued)

The director of the Office of the State Public Defender shall ensure that public defender caseloads remain within the maximum defender caseloads established by the commission. Where the number of cases exceeds the maximum caseload, the director shall contract the excess cases to private counsel when funds are available. If funds are not available, the director shall notify the court that the public defender is unavailable. Persons eligible for public defender services shall then be placed on a waiting list for services and the court shall proceed as provided in this section. (Section 600.042)

When the public defender is unavailable to accept additional cases because maximum caseload standards have been met, the court and the public defender shall proceed in the following manner:

1. The public defender shall continue to make indigency determinations and inform the court of the status of defendants requesting services;
2. If, after consulting with the prosecutor, the court determines a case can be disposed of without a jail or prison sentence, the court may proceed without the provision of counsel to the defendant;
3. If a jail or prison sentence remains possible, the court shall place the case on a waiting list for defender services;
4. The court shall determine the order in which cases will be placed on its waiting list for services.

Nothing in this section shall prevent the court from using non-public defender resources to obtain counsel for a defendant on the waiting list or from making pro bono appointments. Private counsel may seek payment of litigation expenses from the public defender system for such services, but such expenses shall not include counsel fees and shall be limited to the expenses approved in advance by the director. (Section 600.047)

The proposal requires state and local government offices to provide financial records and information about a person seeking services from the public defender system to any employee of the system, upon request and without a fee. Currently, only persons in certain positions may request such information. (Section 600.086)

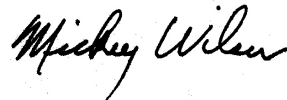
The proposal also requires public offices to provide public defenders with photographs, recordings, and electronic files at no cost. (Section 600.096)

FISCAL DESCRIPTION (continued)

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 the Attorney General
Office of the Governor
Office of State Courts Administrator
Department of Corrections
Department of Public Safety
 – Director's Office
Missouri House of Representatives
Office of Prosecution Services
Missouri Senate
Office of the Secretary of State
Office of the State Public Defender
City of Kansas City
City of Centralia
City of Cape Girardeau
Clinton County



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Director
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