

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0496-01
Bill No.: SB 22
Subject: Courts; Attorneys; Attorney General
Type: Original
Date: March 25, 2019

Bill Summary: This proposal modifies the Missouri Supreme Court Rules relating to discovery in criminal cases.

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|--|----------------------------|----------------------------|----------------------------|
| FUND AFFECTED | FY 2020 | FY 2021 | FY 2022 |
| General Revenue | Up to (\$2,119,284) | Up to (\$2,567,495) | Up to (\$2,592,201) |
| Total Estimated Net Effect on General Revenue | Up to (\$2,119,284) | Up to (\$2,567,495) | Up to (\$2,592,201) |

| ESTIMATED NET EFFECT ON OTHER STATE FUNDS | | | |
|---|------------|------------|------------|
| FUND AFFECTED | FY 2020 | FY 2021 | FY 2022 |
| | | | |
| | | | |
| 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 2020 | FY 2021 | FY 2022 |
| | | | |
| | | | |
| Total Estimated Net Effect on <u>All</u> Federal Funds | \$0 | \$0 | \$0 |

| ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE) | | | |
|---|---------------------|---------------------|---------------------|
| FUND AFFECTED | FY 2020 | FY 2021 | FY 2022 |
| General Revenue | Up to 42 FTE | Up to 42 FTE | Up to 42 FTE |
| | | | |
| Total Estimated Net Effect on FTE | Up to 42 FTE | Up to 42 FTE | Up to 42 FTE |

☒ 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 2020 | FY 2021 | FY 2022 |
| Local Government | \$0 or (Unknown) | \$0 or (Unknown) | \$0 or (Unknown) |

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Office of the State Public Defender (MSPD)** assume a cost of \$1,608,936 from this proposal. The proposed legislation would restrict discovery rights, which would significantly slow down the disposition of cases. This would increase MSPD's pending caseloads and the need for additional attorneys for the MSPD.

If depositions are no longer available for defense attorneys to discover details, additional investigators will be needed to track down and interview witnesses in the field. Although the proposed legislation does not add a new crime or increase penalties for an existing offense, it would increase the workload of the MSPD. If each office required one additional investigator to do the leg work now being accomplished by depositions, the costs would be as follows:

| <u>Job Title</u> | <u>Job Class</u> | <u>Annual</u> | <u># Required</u> | <u>Total</u> |
|------------------|------------------|---------------|-------------------|--------------|
| Investigator | C00300 | \$ 31,608 | 42 | \$ 1,327,536 |
| Travel | 140 | \$ 3,000 | 42 | \$ 126,000 |
| Office | 190 | \$ 600 | 42 | \$ 25,200 |
| Rent | 680 | \$ 1,900 | 42 | \$ 79,800 |
| Phone & Net | 340 | \$ 1,200 | 42 | \$ 50,400 |
| Grand Total | | | | \$ 1,608,936 |

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 \$38.0 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.

Oversight notes the SPD did not include fringe benefits in their estimated cost for the 42 additional Investigators above. Therefore, Oversight will include fringe benefits as well as adjust the estimated additional cost for inflation. Oversight does not have information to the contrary; therefore, Oversight will assume a cost of Up to approximately \$2.6 million from the Up to 42 FTE investigators from this proposal based on SPD's estimated impact.

Officials at the **Office of the State Courts Administrator**, the **Office of the Attorney General** and the **Office of Prosecution Services** each assume no fiscal impact to their respective agencies from this proposal.

ASSUMPTION (continued)

Oversight notes that the Office of the State Courts Administrator, the Office of the Attorney General and the Office of Prosecution Services each has 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 for the Office of the State Courts Administrator and Office of the Attorney General. However, based upon the response from the Office of the State Public Defender, Oversight will reflect an additional possible expense for the county prosecutors.

| <u>FISCAL IMPACT - State Government</u> | FY 2020 (10 Mo.) | FY 2021 | FY 2022 |
|---|---------------------------------------|---------------------------------------|---------------------------------------|
| GENERAL REVENUE | | | |
| <u>Cost - MSPD</u> | Up to... | Up to.... | Up to.... |
| Personal Service | (\$1,106,280) | (\$1,340,811) | (\$1,354,219) |
| Fringe Benefits | (\$778,504) | (\$938,249) | (\$942,335) |
| Equipment and Expense | (\$234,500) | (\$288,435) | (\$295,647) |
| | Up to | Up to | Up to |
| <u>Total Costs - MSPD</u> | <u>(\$2,119,284)</u> | <u>(\$2,567,495)</u> | <u>(\$2,592,201)</u> |
| FTE Change - MSPD | Up to 42 FTE | Up to 42 FTE | Up to 42 FTE |
| ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND | Up to <u>(\$2,119,284)</u> | Up to <u>(\$2,567,495)</u> | Up to <u>(\$2,592,201)</u> |
| Estimated Net FTE Change for General Revenue Fund | Up to 42 FTE | Up to 42 FTE | Up to 42 FTE |
| <u>FISCAL IMPACT - Local Government</u> | FY 2020 (10 Mo.) | FY 2021 | FY 2022 |
| COUNTY PROSECUTORS | | | |
| <u>Costs - potential additional costs from the proposal</u> | \$0 or <u>(Unknown)</u> | \$0 or <u>(Unknown)</u> | \$0 or <u>(Unknown)</u> |
| ESTIMATED NET EFFECT TO COUNTY PROSECUTORS | \$0 or <u>(Unknown)</u> | \$0 or <u>(Unknown)</u> | \$0 or <u>(Unknown)</u> |

FISCAL IMPACT - Small Business

Small law businesses could be impacted by this proposal.

FISCAL DESCRIPTION

Current rules regarding discovery on filing of a felony complaint are repealed and new provisions are created regarding discovery after arraignment. Discovery shall not commence before arraignment of the defendant. Responses to discovery requests shall be made within 15 days of service of the request or not less than 10 days prior to trial, whichever is earlier. The response time may be extended for good cause, but no more than one extension may be granted without notice to the opposing party. Any objection to a discovery request must be made within the time for responding to such request.

The act modifies provisions regarding disclosure after arraignment. Any disclosure of certain reports or documents that contains personal identifying information may be redacted to remove such identifying information. The act removes the last known addresses of persons whom the state intends to call as witnesses as information that must be disclosed and requires the state to provide a synopsis of the expected testimony for any oral statements of the witness. Currently, the state may redact certain listed personal information from documents provided to the defense. This act provides that any personal identifying information of witnesses or other persons in the document may be redacted. Currently, the state must disclose exculpatory evidence or information that would be required to comply with certain U.S. Supreme Court cases. This act removes reference to the cases and provides that the disclosure must comply with the requirements of due process.

The defense may move the court to request the state to disclose material not covered by the Rules if in the possession of prosecutor. The act requires the motion to state with particularity the relevance and materiality of such material. If the court finds the request to be reasonable and necessary to ensure a fair trial, the court shall order disclosure by the state. Further, the act provides that nothing in the Rules shall be construed to prevent the state or defense from securing subpoenas duces tecum to require attendance of witnesses and the production of material at trial.

With regard to disclosure by the defense to the state, the act requires the defense to provide a synopsis of the expected testimony for any oral statements of any witnesses the defense intends to call.

The act provides that depositions shall be taken only of expert witnesses and for purposes of preserving testimony for trial. Currently provisions regarding the ability of a prosecutor to obtain the deposition of any person after indictment or filing of information are repealed.

FISCAL DESCRIPTION (continued)

Current provisions authorize sanctions for failure to comply with a discovery rule or order. This act provides that a victim's testimony shall not be excluded as a discovery sanction. No motion for sanctions shall be heard unless the counsel for the moving party has certified to the court that informal efforts to resolve the dispute have been unsuccessful.

Current provisions that prohibit counsel for the parties from advising any individual to not discuss the case with opposing counsel are repealed and the act provides that neither counsel or party shall contact or communicate with identified witnesses for the opposing party except upon advance notice to the opposing counsel.

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 State Public Defender
Office of the State Courts Administrator
Office of the Attorney General
Office of Prosecution Services



Kyle Rieman
Director
March 25, 2019

Ross Strobe
Assistant Director
March 25, 2019