

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0633-12  
Bill No.: Perfected SS#4 for SB 224  
Subject: Civil Procedure; Courts  
Type: #Updated  
Date: May 3, 2019

#To update with agency responses (due to time constraints, the original fiscal note was published without responses)

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Bill Summary: This proposal modifies provisions relating to discovery.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
#General Revenue	\$0 to (Unknown, Could Exceed \$4,500,000)	\$0 to (Unknown, Could Exceed \$4,500,000)	\$0 to (Unknown, Could Exceed \$4,500,000)
<b>#Total Estimated Net Effect on General Revenue</b>	<b>\$0 to (Unknown, Could Exceed \$4,500,000)</b>	<b>\$0 to (Unknown, Could Exceed \$4,500,000)</b>	<b>\$0 to (Unknown, Could Exceed \$4,500,000)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 10 pages.

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

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
General Revenue	Potentially 48 FTE	Potentially 48 FTE	Potentially 48 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>Potentially 48 FTE</b>	<b>Potentially 48 FTE</b>	<b>Potentially 48 FTE</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
<b>#Local Government</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>

## FISCAL ANALYSIS

### ASSUMPTION

#Officials at the **Office of the State Public Defender (SPD)** assume the following:

SC Rule 25.02(a) - Takes away discovery rights until after arraignment and allows discovery up to 10 days prior to trial (currently discovery right starts at initial appearance and broader right within 14 days of arraignment)

Problems:

- Delay
- Witnesses and Evidence can be lost if not gathered immediately
- Trial Preparation Time becomes very limited-Discovery is not provided until 10 days prior to trial

SC Rule 25.03(a) - again eliminates right to discovery upon the filing of the information and makes the right to discovery later in the proceedings.

Problems:

- Delay
- Witnesses and Evidence can be lost if not gathered immediately

SC Rule 25.03(a/b) - Limits state's disclosure obligations: Limits the material to be disclosed, including unlimited prosecutor discretion to not provide identifying information of witnesses-makes this ability much broader than it is currently; and makes the timing for disclosure later in the judicial process

Problems

- Delay
- Witnesses and Evidence can be lost if not gathered immediately
- No ability for independent defense investigation as State has unlimited discretion to conceal identity of witnesses.
- Defense cannot conceal the identity of its witnesses. This places a greater obligation on the defense than the State.

ASSUMPTION (continued)

SC Rule 56.01 - Changes the civil discovery rules, which have applicability in criminal cases e.g. depositions are guided by civil discovery/deposition rules.

Problems:

- Gives a greater ability to limit discovery-this limits ability to investigate and access to information
- Requires party who received materials subject to claim of privilege to destroy the material or submit it to court for review etc. This will help the state because the criminal rules require defense disclosure of materials defense prepared but not the same disclosure required of the state.

SC Rule 57.01 - Limits the number of written interrogatories

Problem

- Limits access to information

SC Rule 57.03 - Limits Depositions for both Criminal and Civil Litigants

Problems

- Requires leave of court if parties haven't stipulated to deposition and if the party needs to take more than 10 depositions
- Limits the ability to take depositions resulting in limited trial preparation time
- Limits the duration of any deposition to 1 day/7 hours and requires court approval for any longer. This will be a problem in a complicated case with an important witness

SC Rule 57.04: Puts limits on depositions by written questions

Defense attorneys cannot ethically dispose of a case until he has full disclosure of evidence against his client. If discovery is not requested until arraignment, as per this proposed legislation, this will slow down the judicial process and defendants will spend more time in jail pre-trial. Defense counsel will not have the information available to advise their client on how to plea. It also means extended stays in local jails for all detained defendants. County jail costs will skyrocket. Counties will continue their pressure on State Appropriations to provide greater reimbursement.

Additionally, delayed discovery will increase wrongful convictions as witnesses and evidence can be lost if not gathered immediately after the complaint is filed. The prosecutors have the discovery information at the time the complaint is filed and the prosecutors are going to eventually provide the discovery to the defense counsel, why not continue to provide discovery when the complaint is filed? The proposed change also allows discovery to be provided to defense counsel just ten days prior to trial. This is not enough time to prepare for trial. Trials

ASSUMPTION (continued)

will be delayed.

If clients spend more time in jail pre-disposition or even out on bond awaiting disposition, more client visits must follow. A client visit takes approximately 1 hour of attorney time and each client would need 3 additional visits. MSPD's Trial Division had 44,375 clients in Fiscal Year 2018. This number can be reduced by the number of Probation Violation clients (10,821),  $44,375 - 10,821 = 33,554$  clients to visit pre-disposition.  $33,554 * 3 = \mathbf{100,662}$  **additional attorney hours or 48 additional attorneys.**

These calculations do not include additional court time for various court proceedings, such as preliminary hearings and pretrial motion hearings that could be avoided with early discovery. Nor do they include any additional investigators for locating witnesses.

**#Oversight** doesn't have any information to the contrary and assumes an additional 48 attorneys could be needed by SPD per their estimate. Adding one additional Assistant Public Defender I (starting salary of \$47,000) will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional Assistant Public Defender II (at \$52,100 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. Therefore, adding 48 attorneys at \$81,000 each will cost approximately \$3,888,000. If you include expense and equipment costs such as travel, training, furniture, equipment, and supplies, Oversight assumes the cost for 48 new APDs could exceed \$4,500,000. **Oversight** also assumes from SPD's response that local political subdivisions could encounter an increase in jail costs from extended stays but is unclear on the amount of that cost.

Therefore, Oversight will reflect a \$0 to unknown cost that could exceed \$4,500,000 to the General Revenue Fund for the potential additional time spent by public defenders and a cost to local political subdivisions of \$0 to unknown for this proposal.

**#Officials at the Missouri Department of Transportation (MoDOT)** assume this bill would have a \$0 to unknown negative fiscal impact on MoDOT from additional costs incurred for reporting requirements by expert witnesses.

**#Oversight** notes this proposal removes the language agencies attributed costs in previous fiscal notes, and assumes that without that language, expected direct costs would reflect a zero impact.

ASSUMPTION (continued)

#Officials at the **Office of the State Courts Administrator**, the **Office of the Attorney General**, the **Office of Administration**, the **Department of Insurance, Financial Institutions and Professional Registration**, the **Department of Corrections**, the **Department of Revenue** and the **Office of Prosecution Services** each assume no fiscal impact to their respective agencies from this proposal.

#**Oversight** notes that the Office of the State Courts Administrator, the Office of Administration, the Department of Insurance, Financial Institutions and Professional Registration, the Department of Corrections, the Department of Revenue, 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 these agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
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**GENERAL REVENUE FUND**

<u>#Costs</u> - SPD - potential increase in discovery costs - based on potentially time equivalent to 48 attorneys	\$0 to (Unknown, Could Exceed <u>\$4,500,000</u> )	\$0 to (Unknown, Could Exceed <u>\$4,500,000</u> )	\$0 to (Unknown, Could Exceed <u>\$4,500,000</u> )
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<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<u><b>\$0 to (Unknown, Could Exceed \$4,500,000)</b></u>	<u><b>\$0 to (Unknown, Could Exceed \$4,500,000)</b></u>	<u><b>\$0 to (Unknown, Could Exceed \$4,500,000)</b></u>
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Estimated net FTE change to the General Revenue Fund	Potentially 48 FTE	Potentially 48 FTE	Potentially 48 FTE
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<u>FISCAL IMPACT - Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
<b>POLITICAL SUBDIVISIONS</b>			
<u>#Costs</u> - potential increase in discovery costs and jail costs	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT TO POLITICAL SUBDIVISIONS</b>	<b><u>\$0 to</u></b> <b><u>(Unknown)</u></b>	<b><u>\$0 to</u></b> <b><u>(Unknown)</u></b>	<b><u>\$0 to</u></b> <b><u>(Unknown)</u></b>

FISCAL IMPACT - Small Business

Small businesses involved in litigation and small law businesses could be impacted by this proposal.

#FISCAL DESCRIPTION

This act modifies numerous Supreme Court rules relating to discovery.

DISCOVERY IN CRIMINAL CASES

Currently, discovery in criminal cases may be made any time after the defendant's initial appearance in court and the state is required to respond within 14 days of service of the defendant's request, unless otherwise enlarged or shortened by the court. Additionally, under current rules, discovery may be commenced upon the filing of an indictment or information. Requests or motions for discovery shall be made not later than 20 days after arraignment and shall be answered within 14 days of service of request.

This act amends this rule by providing that the 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.

Additionally, under this act, prosecutors will have discretion to redact personal identifying information which is contained in materials and information that the state shall disclose to the defendant's counsel during the discovery process of a criminal proceeding.

FISCAL DESCRIPTION (continued)

DISCOVERY IN CIVIL CASES - REQUIREMENT OF PROPORTIONALITY

The act requires that parties may discover any relevant matter, not privileged, as described in the act, provided that the matter is proportional to the needs of the case considering several factors described within the act.

DISCOVERY IN CIVIL CASES - LIMITS ON FREQUENCY OR EXTENT OF DISCOVERY AND ELECTRONICALLY STORED INFORMATION

The act requires that the court limit the frequency or extent of discovery if it determines that certain factors exist. Additionally, a party does not need to provide discovery of electronically stored information if the source of the information is not reasonably accessible because of an undue burden or cost. The court may order and specify the conditions for the discovery nonetheless if the requesting party shows good cause.

DISCOVERY IN CIVIL CASES - LIMITS ON PRIVILEGED INFORMATION AND TRIAL PREPARATION MATERIALS

When a party withholds information on the basis of privilege or protection as trial preparation materials, the party may notify any party that received information of the claim and the basis for it. A notified party is required to return, sequester, or destroy the specified information and may present it under seal to the court for claim determination. Additionally, the party shall take steps to retrieve any information disclosed prior to notification, shall preserve the information until the claim is resolved, and shall not use or disclose the information until the claim is resolved.

An attorney who receives privileged information involving an adverse or third party and who has reasonable cause to believe that the information was wrongfully obtained shall not read the information, shall promptly notify the attorney to return the information, and shall delete and take reasonable measures to assure that the information is inaccessible. An attorney notified has the obligation to preserve the information.

The production of privileged or protected trial preparation materials is not a waiver of the privilege or protection from discovery in the proceeding.



FISCAL DESCRIPTION (continued)

DISCOVERY IN CIVIL CASES - LIMITS ON INTERROGATORIES AND DEPOSITIONS

The act limits the number of written interrogatories that may be served upon a party to 25, including all discrete sub-parts.

For oral or written depositions, leave of court is required if the deponent is confined in prison or the parties have not stipulated to a deposition and:

- The deposition would result in more than 10 depositions being taken by the plaintiffs, or by the defendants, or by the third-party defendants;
- The deponent has already been deposed in the case; or
- The plaintiff seeks a deposition prior to the expiration of 30 days after the service of the summons and petition upon any defendant, except leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery.

The act additionally limits the length of any oral deposition to one day of seven hours, provided that the court may order additional time for any deposition under certain circumstances. The court is permitted to impose sanctions on persons who impede, delay, or otherwise frustrate the fair examination of a deponent.

DISCOVERY IN CIVIL CASES - LIMITS ON REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Under this act, a party may serve a request to produce and permit the requesting party or its representative to inspect, copy, test, or sample designated documents, electronically stored information, or any designated tangible things. Requests may specify that electronically stored information be produced in native format. Objections to part of a request shall specify the part and permit inspection of the rest.

DISCOVERY IN CIVIL CASES - LIMITS ON REQUESTS FOR ADMISSIONS

The act limits the number of written requests for admission that may be served upon a party to 25 without leave of the court or stipulation of the parties. However, this limitation shall not apply to requests regarding the genuineness of documents.

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

Missouri Department of Transportation  
Office of the State Public Defender  
Office of the State Courts Administrator  
Office of Administration  
Department of Insurance, Financial Institutions and Professional Registration  
Department of Corrections  
Office of Prosecution Services  
Office of the Attorney General  
Department of Conservation  
Department of Revenue



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