

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0886-07
Bill No.: Truly Agreed To and Finally Passed CCS for SS for SCS for SB 230
Subject: Attorneys; Children and Minors; Civil Procedure; Courts; Disabilities; Domestic Relations; Family Law; Guardians
Type: Original
Date: June 12, 2019

Bill Summary: This proposal modifies provisions relating to judicial proceedings.

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|--|------------|------------|------------|
| FUND AFFECTED | FY 2020 | FY 2021 | FY 2022 |
| | | | |
| Total Estimated Net Effect on General Revenue | \$0 | \$0 | \$0 |

| ESTIMATED NET EFFECT ON OTHER STATE FUNDS | | | |
|--|---|---|---|
| FUND AFFECTED | FY 2020 | FY 2021 | FY 2022 |
| Tort Victims Compensation Fund | Unknown, greater than \$100,000 to (Unknown, greater than \$100,000) | Unknown, greater than \$100,000 to (Unknown, greater than \$100,000) | Unknown, greater than \$100,000 to (Unknown, greater than \$100,000) |
| | | | |
| Total Estimated Net Effect on Other State Funds | Unknown, greater than \$100,000 to (Unknown, greater than \$100,000) | Unknown, greater than \$100,000 to (Unknown, greater than \$100,000) | Unknown, greater than \$100,000 to (Unknown, greater than \$100,000) |

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 10 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 |
| | | | |
| | | | |
| Total Estimated Net Effect on FTE | 0 | 0 | 0 |

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 |
| Counties | \$0 or Unknown to (Unknown) | \$0 or Unknown to (Unknown) | \$0 or Unknown to (Unknown) |

FISCAL ANALYSIS

ASSUMPTION

§§476.001 & 600.042 - State Public Defender district offices

Oversight notes in 2013, HB 215 was Truly Agreed To and Finally Passed which included language that required the realignment of district offices to coincide with existing judicial circuits. The Missouri State Public Defender District Office Realignment Plan can be found at <https://publicdefender.mo.gov/about-mspd>.

In response to the previous legislation, Oversight notes the SPD has 33 trial district offices serving 45 judicial circuits, 114 counties and the City of St. Louis. By statute, office space for these district offices is provided and paid for by the counties served by that district office, each county paying a proportion of the total rent and utilities according to the comparative population.

Each time the geographic boundaries of a defender office's area of service are changed, the leases which the counties have signed and the respective payment obligations of all the counties involved are also impacted. Counties pulling out of a particular office's service area are no longer receiving services from that office but are obligated under the signed lease to pay a proportion of the cost of the lease of that office. If the lease could be renegotiated, the remaining counties would be required to pick up a larger portion of the lease even though that was never planned for in their budgets. Even where the switch in coverage areas does not change the number of counties (i.e. one is removed and a different one is added) the amounts owed by each county can and usually do shift. The obligation of the counties is allocated by population, so the removal of a more populous county and its replacement with a lesser populated county shifts a higher percentage of the rent costs for the public defender office to the other counties in the district.

Only then can it be determined which offices need to move, the costs of those moves, which offices are closing, where are new offices opening, what the counties will agree to pay for in terms of office space adjustments and where are the gaps that SPD may have to step in and cover to keep an office from becoming homeless, as has happened before.

ASSUMPTION (continued)

The duration of leases also vary by district office all around the state -- i.e. they do not all expire at one time making it impossible to conveniently rearrange all into new geographic boundaries and then sign new leases. While the lease in two of the counties that make up one-half of a judicial circuit may expire this year, the lease for two other counties that need to move into that circuit may not expire for five years. This makes transitioning offices to congruency with judicial circuits a very complicated task. Counties are not willing to pay for overlapping leases, which means that leases entered into by the counties will have to be broken. Each lease generally has a fiscal year end out clause if the legislature no longer funds the public defender office -- or, as in this case, so drastically reduces the size of the offices that office space changes will need to be made. However, not only does that often cost county commissioners good will with their local constituents who are the landlords for the building, there is also a cost penalty involved. Most leases amortize the costs of renovation and build-out over the life of the lease. If the lease is terminated early, those build-out costs become immediately payable in full by the counties who signed the leases. This is without regard to whether the counties have budgeted for such large payments to come due all at once.

Because of the change in law in 2013, counties now include language in the lease to accommodate a potential change in a county's assigned area.

By removing the provisions in §600.042, some counties may experience a savings in lease costs, other counties may experience an increase, and still others may not be impacted. Therefore, **Oversight** will reflect the impact to counties as \$0 to unknown costs/unknown savings.

Oversight notes the plan is to be implemented by December 31, 2021.

§508.010 - Joinder and Venue

Officials at the **Department of Corrections (DOC)** assume an unknown savings from this section of the proposal. It could reduce the potential pay-out on punitive damages for medical or for other reasons, should the DOC get sued.

Oversight notes according to Section 537.675, "Any party receiving a judgment final for purposes of appeal for punitive damages in any case filed in any division of any circuit court of the state of Missouri shall notify the attorney general of the state of Missouri of such award, except for actions claiming improper health care pursuant to chapter 538. The state of Missouri shall have a lien for deposit into the tort victims' compensation fund to the extent of fifty percent of the punitive damage final judgment which shall attach in any such case after deducting attorney's fees and expenses."

ASSUMPTION (continued)

Oversight notes the Tort Victims' Compensation Fund has had court awards of the following amounts over the last ten years:

| Fiscal Year | Total Awards |
|--------------------|---------------------|
| 2008 | \$36,558.98 |
| 2009 | \$3,253,480.92 |
| 2010 | \$3,316,710.05 |
| 2011 | \$538,742.81 |
| 2012 | \$144,224.19 |
| 2013 | \$535,548.19 |
| 2014 | \$61,172.30 |
| 2015 | \$439,779.46 |
| 2016 | \$23,349.62 |
| 2017 | \$488,831.72 |
| 2018 | \$8,648,291.13 |

Due to the uncertainty of the impact of this bill (including the recent Missouri Supreme Court ruling), **Oversight** will reflect a negative unknown to a positive unknown that is greater than \$100,000 on either side for this proposal to the Tort Victims Compensation Fund.

Bill as a Whole

In response to a previous version, officials at the **Office of Administration's Division of Budget and Planning** assume the following:

- Has no direct fiscal impact.
- Has no direct impact on general or total state revenues.
- Will not impact the calculation pursuant to Article X, Sec. 18(e).

Officials at the **Office of the State Courts Administrator**, the **Office of the Attorney General**, the **Department of Labor and Industrial Relations**, the **Department of Insurance, Financial Institutions and Professional Registration**, the **Department of Economic Development**, the **Department of Health and Senior Services**, the **Department of Mental Health**, the **Office of the State Public Defender**, the **Office of the State Treasurer**, the **Department of Revenue**, the **Department of Higher Education**, the **Office of Prosecution Services** and the **State Tax Commission** each assume no fiscal impact to their respective agencies from this proposal.

Except what is already mentioned above, officials at the **DOC** assume no additional fiscal impacts from this proposal.

ASSUMPTION (continued)

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

In response to a previous version, officials at the **Office of the Secretary of State (SOS)** stated 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 fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the Governor.

Oversight assumes the SOS could 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.

In response to a previous version, officials at the **Department of Social Services** assumed no fiscal impact from this proposal.

| <u>FISCAL IMPACT - State Government</u> | FY 2020 (10 Mo.) | FY 2021 | FY 2022 |
|--|--|--|--|
| TORT VICTIMS COMPENSATION FUND | | | |
| <u>Savings</u> - DOC - less punitive damages paid out (§508.010) | Unknown | Unknown | Unknown |
| <u>Savings</u> - in the potential amount of punitive damages awarded (§508.010) | Unknown, greater than \$100,000 | Unknown, greater than \$100,000 | Unknown, greater than \$100,000 |
| <u>Loss</u> - in the potential amount of punitive damages awarded (§508.010) | (Unknown, greater than <u>\$100,000</u>) | (Unknown, greater than <u>\$100,000</u>) | (Unknown, greater than <u>\$100,000</u>) |
| ESTIMATED NET EFFECT ON THE TORT VICTIMS COMPENSATION FUND | Unknown, greater than \$100,000 to (Unknown, greater than <u>\$100,000</u>) | Unknown, greater than \$100,000 to (Unknown, greater than <u>\$100,000</u>) | Unknown, greater than \$100,000 to (Unknown, greater than <u>\$100,000</u>) |
| | | | |
| <u>FISCAL IMPACT - Local Government</u> | FY 2020 (10 Mo.) | FY 2021 | FY 2022 |
| COUNTIES | | | |
| <u>Savings</u> - Certain counties - (§600.042) Decrease in operational costs including rent expense from removal of SPD plans to establish district offices | \$0 to Unknown | \$0 to Unknown | \$0 to Unknown |
| <u>Costs</u> - Certain counties - (§600.042) Increase in operational costs - including rent and lease from removal of SPD plans to establish district offices | \$0 to (Unknown) | \$0 to (Unknown) | \$0 to (Unknown) |
| ESTIMATED NET EFFECT ON COUNTIES | <u>\$0 or Unknown to (Unknown)</u> | <u>\$0 or Unknown to (Unknown)</u> | <u>\$0 or Unknown to (Unknown)</u> |

FISCAL IMPACT - Small Business

Certain small businesses involved in torts could be impacted by this proposal.

FISCAL DESCRIPTION

This act modifies several provisions relating to judicial proceedings, including: (1) ABLE account assets; (2) venue in guardianship and conservatorship proceedings; (3) public defenders; and (4) venue.

ABLE ACCOUNT ASSETS (Sections 209.625 and 472.010)

This act provides that the assets held in an ABLE account shall not be considered the property of a conservatorship estate, with the exception of accounts in the charge and custody of a public administrator.

VENUE IN GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS (Sections 475.035 and 475.115)

This act modifies current law to require proper venue in cases of appointment of a guardian or conservator of a minor or incapacitated or disabled person to be the following: (1) the county where the minor or incapacitated or disabled person is domiciled, as long as placement by a court, fiduciary, or agency in such county does not count as choice of domicile; or (2) if there is no domicile, then the county where the minor or incapacitated or disabled person has a significant connection, as specified in the act. If venue for guardianship and conservatorship is in different counties, then venue shall be in the county of the guardianship.

Additionally, this act repeals provisions of current law regarding the commencement of proceedings in more than one county and venue when transferring certain cases involving the appointment of a successor guardian or conservator.

PUBLIC DEFENDERS (Sections 476.001 and 600.042)

This act removes a provision requiring the Director of the Public Defender's Office to prepare a plan to establish district offices, which would coincide with existing judicial circuits.

VENUE (Section 508.010)

For the purposes of meeting the venue requirement, there is a rebuttable presumption that the principal place of residence for an individual is the county of voter registration at the time of the injury. For an individual whose employment conduct with a corporation is at issue in at least one count in the action, the principal place of residence shall be the corporation's principal place of residence. For a corporation that wholly owns or operates a railroad, the principal place of residence shall be the place where the corporation has its registered agent, provided that the registered agent is in a city not within a county, a charter county, or a first class county. When all defendants are nonresidents, proper venue in a non-tort action is any county in this state if there is personal jurisdiction over each defendant, independent of each other defendant.

FISCAL DESCRIPTION (continued)

In tort actions where the plaintiff was first injured in Missouri, venue shall be the county where the plaintiff was first injured by the acts or conduct alleged in the action. In tort actions where the plaintiff was injured outside the state of Missouri and the defendant is an individual, venue for that individual plaintiff shall be the county where the defendant has his or her principal place of residence, which shall be that of his or her employer corporation if any count alleges conduct in the course of employment.

If the county where the action is filed is not proper venue, the plaintiff shall be transferred to a county where proper venue can be established. If no such county exists, then the claim shall be dismissed without prejudice. If denied in error, a denial of a motion to transfer venue pursuant to this act is required to be reversed and no finding of prejudice is required for such reversal.

For the purposes of meeting the venue requirement, an insurance company resides in the county where it maintains its registered office. A foreign insurance company without a registered office in any county in Missouri shall be deemed to reside in, and be a resident of, Cole County.

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 Corrections
Office of the State Courts Administrator
Office of the State Public Defender
Office of the Attorney General
Department of Social Services
Department of Insurance, Financial Institutions and Professional Registration
Office of Prosecution Services
Department of Mental Health
Office of Administration
 Division of Budget and Planning
Department of Health and Senior Services
Department of Labor and Industrial Relations
Office of the State Treasurer
Department of Economic Development
Department of Higher Education
Department of Revenue
State Tax Commission
Office of the Secretary of State



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