

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4361-01  
Bill No.: HB 1706  
Subject: Criminal Procedure; Courts; Attorneys  
Type: Original  
Date: March 6, 2020

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Bill Summary: This proposal establishes laws relating to discovery in criminal cases.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
General Revenue	Up to (\$2,359,706)	Up to (\$2,742,547)	Up to (\$2,768,561)
<b>Total Estimated Net Effect on General Revenue</b>	<b>Up to (\$2,359,706)</b>	<b>Up to (\$2,742,547)</b>	<b>Up to (\$2,768,561)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
<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 8 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</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 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
General Revenue	Up to 42 FTE	Up to 42 FTE	Up to 42 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>Up to 42 FTE</b>	<b>Up to 42 FTE</b>	<b>Up to 42 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 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
<b>Local Government</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials at the **Office of the State Public Defender (MSPD)** assume a cost of \$1,678,992 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	\$ 33,276	42	\$ 1,397,592
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				\$ 1,678,992

**Oversight** notes over the last three fiscal years, the SPD has lapsed a total of \$153 of General Revenue appropriations (\$2 out of \$28.0 million in FY 2017; \$150 out of \$42.5 million in FY 2018; and \$1 out of \$46.0 million in FY 2019). Therefore, **Oversight** assumes the MSPD is at maximum capacity and the increase in workload resulting from this bill cannot be absorbed within SPD's current resources.

**Oversight** notes the MSPD 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 MSPD's estimated impact.

Officials at the **Department of Corrections (DOC)** assume no fiscal impact from this proposal. However, this legislation makes no provision for the protection or discovery in regard to non-parties. The DOC may have motions to compel granted against it in criminal cases where it is never served with a subpoena or had the opportunity to object and protect its privileges because of the existing rule's silence in regard to non-parties.

ASSUMPTION (continued)

Officials at the **Office of the State Courts Administrator** assume there may be some impact, but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

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

**Oversight** notes the Department of Corrections, the Office of the Attorney General, the Missouri Highway Patrol and the Office of Prosecution Services have stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for those agencies. 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 2021 (10 Mo.)	FY 2022	FY 2023
<b>GENERAL REVENUE</b>			
<u>Cost - MSPD</u>	Up to...	Up to...	Up to...
Personal Service	(\$1,164,660)	(\$1,411,568)	(\$1,425,684)
Fringe Benefits	(\$960,546)	(\$1,042,544)	(\$1,047,232)
Equipment and Expense	<u>(\$234,500)</u>	<u>(\$288,435)</u>	<u>(\$295,646)</u>
<u>Total Costs - MSPD</u>	Up to <u>(\$2,359,706)</u>	Up to <u>(\$2,742,547)</u>	Up to <u>(\$2,768,562)</u>
FTE Change - MSPD	Up to 42 FTE	Up to 42 FTE	Up to 42 FTE
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b>Up to <u>(\$2,359,706)</u></b>	<b>Up to <u>(\$2,742,547)</u></b>	<b>Up to <u>(\$2,768,562)</u></b>
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 2021 (10 Mo.)	FY 2022	FY 2023
<b>COUNTY PROSECUTORS</b>			
<u>Costs</u> - potential additional costs from the proposal	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT TO THE COUNTY PROSECUTORS</b>	<b>\$0 or <u>(Unknown)</u></b>	<b>\$0 or <u>(Unknown)</u></b>	<b>\$0 or <u>(Unknown)</u></b>

FISCAL IMPACT - Small Business

Small law businesses could be impacted by this proposal.

FISCAL DESCRIPTION

This bill establishes criminal discovery statutes, replacing Missouri Supreme Court Rule 25, which currently dictates the procedure for discovery in criminal cases.

The bill provides that discovery in criminal cases must not begin earlier than the arraignment of the defendant, whereas Rule 25.02 allows for discovery to begin on filing of a felony complaint or after the filing of an indictment or information. The bill further requires the state to, upon written request of defendant's counsel, or of defendant if counsel has been waived, disclose certain documents and other items specified in the bill; however, the state may redact any personal identifying information of witnesses or other individuals named in the documents and other items and must make it clear that the information has been redacted. Rule 25.03 allows the state to redact information on a separate copy provided to the defendant and to provide an unredacted copy to defendant's counsel. This bill removes that ability. Currently, Rule 25.03 requires the state to disclose the names and last known addresses of persons the state plans to call as witnesses. This bill specifies that only the names, and not the last known addresses, of the individuals may be disclosed. Additionally, if there are no written or recorded statements or memoranda summarizing a witness's testimony, the state must provide a summary of the witness's expected testimony. The bill requires the prosecutor to use diligence and good faith to make available discoverable information that is not in the prosecutor's possession but is in the possession of other governmental personnel.

The bill allows the defense to make a written motion in the proper court requesting the state to disclose material in the prosecutor's possession or control and state with particularity the relevance and materiality of the material and information. If the court finds the request reasonable and necessary to ensure a fair trial, the court must order the state to disclose the material and information to the defendant.

FISCAL DESCRIPTION (continued)

The bill also requires the defendant to, upon written request by the state, disclose all or part of the material or information specified in the bill, including the names and last known addresses of people the defendant intends to call as witnesses, as well as the birth dates of witnesses by whom the defendant intends to establish an alibi. If there are no written or recorded statements or memoranda summarizing a witness's testimony, the defense must provide a summary of the expected testimony of a witness other than the defendant.

Subject to constitutional limitations, the state may make a written motion to the court requesting the defendant to disclose material and information not already covered, and the motion must specify the material or information sought. The state may also make a motion and show good cause asking the court to require the defendant to participate in various activities specified in the bill, such as appearing in a lineup or providing a handwriting sample, for example. These provisions do not apply to investigative procedures before an indictment or information is filed. The defendant has the right to have counsel present during any disclosure under these provisions.

The bill specifies material and information that is not subject to disclosure, including, among other things, attorney notes prepared for the purpose of presenting testimony of identified witnesses at trial.

The court may, at any time, on motion and for good cause shown:

- (1) Order specified disclosures be denied or restricted;
- (2) Order non-discoverable material or information contained within discoverable material be removed or redacted;
- (3) Order the recording of a private proceeding be sealed and preserved in the records of the court; and
- (4) Make various considerations, specified in the bill, when determining a motion for a protective order.

Currently, under Rule 25.12, a defendant in any criminal case, after an indictment or filing of an information, may depose any person by oral examination or written questions, and the manner or the deposition is governed by the Rules governing depositions in civil matters. This bill provides that depositions must be taken only of expert witnesses and for purposes of preserving testimony for trial. Additionally under Rule 25.12, a defendant must not be physically present at a discovery deposition unless there is good cause shown. The bill provides that the defendant must not be at a deposition except upon a showing by defendant's counsel that defendant's presence at a deposition is constitutionally required. Under Rule 25.12, the defense may discover by deposition the facts and opinions to which an expert is expected to testify. Under this bill, both parties may discover such information by deposition. The party seeking such discovery is responsible for

FISCAL DESCRIPTION (continued)

paying the expert a reasonable hourly fee; however, in the case of an indigent defendant, the court may dispense with this requirement. The bill also provides that, at trial or upon any hearing, a deposition obtained properly that is otherwise admissible may be used under certain circumstances specified in the bill.

A prosecuting or circuit attorney or a defense attorney may file a motion to take a deposition of a witness to preserve testimony. The motion must not seek the deposition of a defendant or the spouse of a defendant. The order must require the defendant to attend the deposition or to waive the right to be present and the right of confrontation in writing or in open court. The court must direct the deposition to be taken in the county where the offense occurred or at another location designated by the court.

The bill provides that no victim's testimony may be excluded as a discovery sanction, and no motion for sanctions or to compel discovery will be heard unless the counsel for the party that filed the motion has certified to the court that informal efforts to resolve the dispute have failed.

Finally, unless otherwise ordered by the court for good cause shown, neither counsel nor any party, or their agents or employees, may contact or communicate with identified witnesses for the opposing party, except upon advance notice to counsel for the opposing party. However, nothing will limit or prevent the state or its officers from conducting lawful investigations into any offenses or from continuing to conduct further investigation of any charged offense.


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  
Department of Corrections  
Office of the State Courts Administrator  
Office of the Attorney General  
Missouri Highway Patrol  
Office of Prosecution Services



Julie Morff  
Director  
March 6, 2020



Ross Strobe  
Assistant Director  
March 6, 2020