

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1068-01  
Bill No.: HB 586  
Subject: Courts; Criminal Procedure; Evidence; Judges  
Type: Corrected#  
Date: April 15, 2003  
 #To show Net Effect on General Revenue Fund as a cost.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue	(\$1,183,253)	(\$1,240,438)	(\$1,270,150)
<b>Total Estimated Net Effect on General Revenue Fund#</b>	<b>(\$1,183,253)</b>	<b>(\$1,240,438)</b>	<b>(\$1,270,150)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
None			
<b>Total Estimated Net Effect on Other State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.  
 This fiscal note contains 5 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
None			
<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 LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
<b>Local Government</b>	<b>(More than \$100,000)</b>	<b>(More than \$100,000)</b>	<b>(More than \$100,000)</b>

**FISCAL ANALYSIS**

**ASSUMPTION**

Officials from the **Office of Attorney General** assume the costs of the proposed legislation could be absorbed within existing resources.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Office of State Public Defender (SPD)** assume this proposed legislation will eliminate discovery depositions in criminal cases in Missouri. Discovery depositions are a valuable investigative tool that saves considerable investigator and attorney time.

If discovery depositions are eliminated, defense counsel will be compelled to seek the same information by increasing other forms of investigation. This could only be accomplished by increasing the number of Public Defender Investigators and would also increase Attorney time needed to process the information gathered. Without increased investigations, attorneys would be exploring discovery during trial. "Trial by Ambush" will result in more mistakes by counsel. This will result in more rule 29.15 post convictions relief cases being filed.

ASSUMPTION (continued)

Last Fiscal Year the SPD expended a total of \$490,874 for depositions. There were approximately 1,760 invoices. Some cases had multiple invoices. Some invoices were for multiple cases. Therefore, for the purposes of this fiscal note, SPD assumes that 1,760 cases required depositions.

For each case needing depositions (but depositions were no longer allowed) the SPD would require an additional 3 days of investigator time and 1 day of attorney time to obtain the same or similar information that could have been obtained via deposition, or 20 Investigators and 6.7 Attorneys. In addition, SPD anticipates 10% more trials, due to lack of information at the trial level and surprises encountered. (Last FY the State Public Defender disposed of 771 cases by Court or Jury Trial.) Each additional trial will require an additional 60 hours (minimum) attorney time, or 2.2 Attorneys. Further, more post conviction relief motions (PCR's) would be filed from the cases going to trial. SPD is estimating that 66% of the 77 cases would result in PCR motions being filed, or 51 PCR motions. An attorney can provide representation in 35 29.15 PCR cases in a year, or 1.5 Attorneys.

SPD assumes the proposal would require 10.5 FTE Attorneys (each at \$47,100 per year), 20 FTE Paralegal/Investigators (each at \$24,132 per year), and 2 FTE Secretaries (each at \$19,764 per year). The SPD estimates the total cost of the proposal to be \$1,183,252 in FY 04; \$1,240,437 in FY 05; and \$1,270,148 in FY 06. This includes the offset of the deposition cost.

Officials from the **Office of Prosecution Services** assume prosecutors could absorb the costs of the proposed legislation within existing resources.

**Oversight** assumes, based on information received from the Office of Attorney General, that the proposed legislation would eliminate discovery depositions. Oversight assumes the elimination of discovery depositions could result in increased costs to the prosecuting attorneys. Oversight assumes the cost to prosecuting attorneys could exceed \$100,000 in any given fiscal year.

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
<b>GENERAL REVENUE FUND</b>			
<u>Savings</u> – Office of State Public Defender			
Cost of depositions	\$408,898	\$505,600	\$520,768
<u>Costs</u> – Office of State Public Defender			
Personal Service (32.5 FTE)	(\$868,447)	(\$1,068,189)	(\$1,094,894)
Fringe Benefits	(\$351,461)	(\$432,296)	(\$443,104)
Equipment and Expenses	<u>(\$372,243)</u>	<u>(\$245,553)</u>	<u>(\$252,920)</u>
<u>Total Costs</u> – SPD	<u>(\$1,592,151)</u>	<u>(\$1,746,038)</u>	<u>(\$1,790,918)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(\$1,183,253)</u></b>	<b><u>(\$1,240,438)</u></b>	<b><u>(\$1,270,150)</u></b>
<u>FISCAL IMPACT - Local Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
<b>POLITICAL SUBDIVISIONS</b>			
<u>Costs</u> – Prosecuting Attorneys			
Elimination of depositions	(More than <u>\$100,000</u> )	(More than <u>\$100,000</u> )	(More than <u>\$100,000</u> )
<b>ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS</b>	<b>(More than <u>\$100,000</u>)</b>	<b>(More than <u>\$100,000</u>)</b>	<b>(More than <u>\$100,000</u>)</b>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

The proposed legislation would limit the depositions any party could take in a criminal case. Depositions could be taken only of essential witnesses. An essential witness, defined in Section 492.303, RSMo, is an eyewitness to a felony or a witness whose testimony would establish an element of the felony that cannot be proven in any other manner.

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



Mickey Wilson, CPA  
Director  
April 15, 2003