

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 6205-01
Bill No.: HB 2396
Subject: Attorneys; Crimes and Punishment; Criminal Procedure; Courts
Type: Original
Date: February 28, 2018

Bill Summary: This proposal specifies that legal services for certain indigent defendants shall be contracted out to private attorneys.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
General Revenue	(\$19,699,352)	(\$24,230,204)	(\$24,835,958)
Total Estimated Net Effect on General Revenue	(\$19,699,352)	(\$24,230,204)	(\$24,835,958)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
General Revenue	-181 FTE	- 181 FTE	-181 FTE
Total Estimated Net Effect on FTE	-181 FTE	-181 FTE	-181 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 2019	FY 2020	FY 2021
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the State Public Defender (SPD)** assume the following regarding this proposal:

This proposed legislation rewrites RSMo 600.042 and 600.044, which would significantly change the manner in which legal representation for indigent persons facing deprivation of liberty is delivered in the State of Missouri.

The proposed legislation envisions all C, D, and E felony and all misdemeanor charges against the indigent accused be contracted out to private attorneys. Further, it proposes that any probation revocation cases also be provided representation by private attorneys. These cases are currently represented by the Missouri State Public Defender Trial Division. Using RubinBrown caseload metrics, from the Missouri Project, the cases to be transferred to private counsel represent 41% of the attorney time currently needed in the Trial Division.

Using the flat fee schedule in place now, for conflict cases, adding \$25 per case for mileage reimbursement to the private counsel (less than 10 miles per case), adding in the actual cost of litigation in Fiscal Year 2017 \$2,225,617 for these cases (less than \$31.55 per case), the total cost to contract out CDE felonies, misdemeanors, and probation revocations would be **\$46,946,949** (see below).

Case Type	Trial Division cases	Flat Fee Schedule 10/5/17	Cost to contract FY 2017 PD trial division cases at current fees per HB 2396	Additional costs for cases going to trial - estimated at 5% plus \$1,125	Total cost to contract FY 2017 PD Trial Division cases at current fees per HB 2396
CDE Felony Drug	12,189	\$750	\$9,141,750	\$685,631	\$9,827,381
CDE Felony Other	23,176	\$750	\$17,382,000	\$1,303,650	\$18,685,650
CDE Felony Sex	308	\$1,500	\$462,000	\$17,325	\$479,325
Misdemeanor	13,689	\$375	\$5,133,375	\$770,006	\$5,903,381
Misdemeanor - Traffic	2,175	\$375	\$815,625	\$122,344	\$937,969
Probation Violation - Felony	15,487	\$375	\$5,807,625		\$5,807,625
Probation Violation - Mis.	3,511	\$375	\$1,316,625		\$1,316,625
Totals	70,535		\$40,059,000	\$2,898,926	
				Total Fees	\$42,957,956
				Miles \$25 per case	\$1,763,375
				Litigation 40% - Litigation Expenditures	\$2,152,311
				Litigation 40% - Professional Exp.	\$73,306
Total cost of CDE felonies, misdemeanors & probation violations to private attorneys					\$46,946,949

Source: Office of the State Public Defender

ASSUMPTION (continued)

The proposed legislation would have the Missouri State Public Defender System's Trial Division retain all Homicides, all AB Felonies, and all Juvenile cases. The Trial Division would also provide representation in all conflict cases from private attorneys representing CDE felonies and probation violations. Again, using RubinBrown caseload metrics from the Missouri Project, the cases to be retained would represent **59%** of the attorney time available.

In addition, all Capital cases, all Appellate cases, all Sexually Violent Predator cases would be represented by SPD.

Case type	Number of Cases	RubinBrown Hours	Number of Attorney Hours
Murder 1st Degree	161	106.60	17,162.60
Other Homicide	173	106.60	18,441.80
AB Felony Drug	2,065	47.60	98,294.00
AB Felony Other	4,284	47.60	203,918.40
AB Felony Sex	685	63.80	43,703.00
Juvenile - Non Violent	780	19.50	15,210.00
Juvenile - Status	156	19.50	3,042.00
Juvenile - Violent	620	19.50	12,090.00
552 Release Petitions	9	0.00	0.00
Conflicts from private attorneys - (50% of the Total from MSPD Offices in 2017)			
CDE Felony Drug	332	25.00	8,287.50
CDE Felony Other	518	25.00	12,950.00
CDE Felony Sex	5	63.80	287.10
Misdemeanor	208	11.70	2,427.75
Misdemeanor - Traffic	24	11.70	274.95
Probation Violation - Felony	123	9.80	1,200.50
Probation Violation - Mis.	39	9.80	382.20
Total # cases from contract attorneys	10,180		
Total Attorney hours needed for Trial Division			437,671.80
Attorney Staff @ 2,080 hours per year			210.42
Number of Trial Division Attorneys needed (210.42) is 59% of the current Trial Division Staff (359.5)			

ASSUMPTION (continued)

COST OF RETAINED CASES:		
	Private Attorneys (from page 3 above)	\$46,946,949
	59% of Trial Division Costs from 2017	\$14,731,448
	Capital Costs from 2017	\$2,538,074
	Appellate Costs from 2017	\$3,256,021
	Sexual Predator Unit Costs from 2017	\$406,392
	Administrative Costs @ 59% from 2017	\$975,399
	Statewide Costs from 2017 @ 59%	\$834,278
	Fringe Benefits from 2017 @ 29.7% PS per OA	
	Trial Division @ 59% of FY 2017 Total	\$3,792,190
	Capital Division	\$488,398
	Appellate Division	\$891,264
	Sexual Predators Unit	\$75,623
	TOTAL COSTS FOR SPD	\$74,936,036
	FY 2018 General Revenue appropriations to the SPD	\$42,497,581
	Fringe Benefits @ 29.7% of PS appropriation	\$8,879,392
	Total FY 2018 General Revenue appropriation for the SPD	\$51,376,973
	Net Additional Costs of HB 2396	\$23,559,064

Notes: Court time and travel time have not been included in the above tables. Also, there would be additional conflicts to be assigned from the AB Felony, Juvenile, Appeals and Capital to be assigned to private counsel, whose costs are not included in the above tables.

ASSUMPTION (continued)

Note: SPD will pay additional compensation in cases resolved by Trials (Jury Trials \$1,500 for the first day and \$750 for each additional day, Bench Trials \$750 per day - prorated)

In summary, SPD assumes an additional **\$23,559,064** will be required per fiscal year to comply with the provisions in this proposal.

Officials from the **Office of Administration - Purchasing (OA)** assume this proposal will require OA to bid, award and administer contracts for legal services under Section 600.042 RSMo through a competitive bidding process.

If new staffing levels are not obtained, the increase in the number of new legal services bids will hinder OA's ability to bid and award contracts for other commodities and services that are needed by the citizens of Missouri. In addition, due to the unknown variables such as how many procurements and contracts this will entail, the fiscal impact is unknown at this time.

Oversight assumes OA is provided with core funding to handle a certain amount of activity each year. Oversight assumes OA could absorb the costs related to this proposal.

Officials from the **Attorney General's Office (AGO)** assume that any potential costs arising from this proposal can be absorbed with existing resources. AGO may seek additional appropriations if there is a significant increase in litigation.

Officials at the **Office of the State Courts Administrator** assume the fiscal impact of this proposal is unknown. There may be some impact but there is no way to quantify the impact at this time. Any significant changes will be reflected in future budget requests.

Officials from the **Office of the Secretary of State (SOS)** assume 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 \$2,500. 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

ASSUMPTION (continued)

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.

Officials from the **Joint Committee on Administrative Rules** state that the proposal is not anticipated to cause a fiscal impact to their agency beyond its current appropriation.

Officials from the **Office of Administration - General Services** and **Office of Administration - Facilities Design, Management and Construction** each assume the proposal will have no fiscal impact on their respective organizations.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
GENERAL REVENUE FUND			
<u>Cost</u> - SPD - Estimated amount of contracted services for CDE felonies, misdemeanors, and probation violations p.3	(\$39,122,458)	(\$48,120,623)	(\$49,323,638)
<u>Savings</u> - SPD - assumed savings of 40% of current staffing - work replaced by contracted services p.5	\$16,463,308	\$20,249,868	\$20,756,115
<u>Savings</u> - SPD - 40% of Fringe Benefits p.5	<u>\$2,959,798</u>	<u>\$3,640,551</u>	<u>\$3,731,565</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(\$19,699,352)</u>	<u>(\$24,230,204)</u>	<u>(\$24,835,958)</u>
Estimated Net FTE Change for the General Revenue Fund	-181 FTE	- 181 FTE	- 181 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Local law firms and private attorneys could be impacted by this proposal.

FISCAL DESCRIPTION

Currently, the Director of the Office of State Public Defender must contract for legal services with private attorneys on a case-by case basis and with assigned counsel as the Public Defender Commission deems necessary considering the needs of the area. This bill repeals this provision and requires the director to contract out legal services with private attorneys for all nonsexual class C and class D, and class E felonies, all misdemeanor cases, all traffic cases, and all probation violation cases. The Office of Administration must handle the bidding process for all the contracts. Contracts must be awarded through a competitive bidding process with the approval of the presiding judge of the judicial circuit where the services are rendered.


The process must be designed to award contracts to the lowest and best bidder and must give priority to bidders who exhibit experience in criminal law, demonstrate the capacity to provide effective representation in all assigned cases, and carry sufficient malpractice insurance. The Office of Administration must also administer all contracts made by the director, including contracts for cases that are conflicts of the public defender.

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 Administration - Division of Purchasing
Office of Administration - General Services
Office of Administration - Facilities Design, Management and Construction
Attorney General's Office
Office of the State Courts Administrator
Office of the Secretary of State
Joint Committee on Administrative Rules

Ross Strobe



Acting Director
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