

JOINT BUDGET COMMITTEE BILL

SUMMARY OF S.B. 14-190:

CONCERNING CRIMINAL DISCOVERY, AND, IN CONNECTION THEREWITH, CREATING A STATEWIDE DISCOVERY SHARING SYSTEM, A CRIMINAL DISCOVERY SURCHARGE, AND CIVIL IMMUNITY FOR DISTRICT ATTORNEYS THAT MAKE A GOOD-FAITH EFFORT TO REDACT INFORMATION FROM DISCOVERY DOCUMENTS

Prime Sponsors: Senator Lambert and Representative Gerou

Bill Summary

The bill implements the recommendations of the Discovery Task Force.

Specifically, the bill makes the following changes:

- The bill requires the Colorado District Attorneys' Council (CDAC) to develop and maintain a statewide discovery sharing system ("discovery system") integrated with its ACTION case management system [Section 3 of the bill]. The bill requires the General Assembly to appropriate necessary moneys from the General Fund and a newly created cash fund to the Judicial Department to fund the development, continuing enhancement, and maintenance of the new discovery system as well as the maintenance and continuing enhancement of the existing ACTION system. The newly created cash fund will consist of revenues from a new criminal surcharge for persons who are represented by private counsel or appear without legal representation [Section 4].
- The bill turns the Discovery Task Force into a Steering Committee to assist the CDAC in developing a process to select a vendor to develop the discovery system [Section 2]. The CDAC is required to select and enter into a contract with a vendor to complete the discovery system by October 31, 2016. The Steering Committee is required to develop benchmarks and contractual requirements for the discovery system, and is authorized to meet as necessary to provide practical and technical support for the maintenance and enhancement of the discovery system.
- The bill includes a legislative declaration indicating that the General Assembly intends that once the discovery system is operational, the existing General Fund appropriations that are used to reimburse district attorneys for the cost of duplicating discoverable materials shall be redirected to fund the ongoing costs of the discovery system and the ACTION system [Section 1]. Further, the General Assembly intends that once the discovery system is operational the district attorneys shall not seek or receive reimbursement for copying discovery from anyone.
- The bill gives civil immunity to a district attorney who, after making a good-faith effort to redact all information legally required to be redacted from a discovery document provided to a defendant or defense counsel, provides a document that contains information that is legally required to be redacted [Section 2].

Fiscal Impact

This bill includes an appropriation of \$5.3 million General Fund to the Judicial Department for FY 2014-15, and allows any unspent funds to remain available for expenditure in FY 2015-16. This appropriation is based on the higher of two estimates that were included in the Task Force final report (estimated costs of \$5.3 million in year one and \$3.1 million in year two). The actual development and implementation costs will be determined through the request for proposal and vendor selection process and the benchmarks and contractual requirements that are outlined in the bill.

The bill also increases state cash fund revenues by approximately \$24,000 in FY 2014-15, \$55,000 in FY 2015-16, and \$72,000 in FY 2016-17. Five percent of revenues will be credited to the Judicial Stabilization Cash Fund and the remainder will be credited to the newly created Statewide Discovery Sharing System Surcharge Fund. Moneys in the latter fund will be available for appropriation to fund the development and maintenance of the discovery system.

Background Information

Colorado Supreme Court Rule 16 requires the prosecuting attorney to make available to the defense certain material and information and to provide duplicates upon request. The State pays the costs of duplicating the discoverable material when state-paid legal representation is provided for a defendant. Several agencies within the Judicial Department incur expenditures related to discoverable materials. As detailed in Table 1, total state discovery-related expenditures have nearly doubled since FY 2006-07. The vast majority of these expenses are incurred by the Office of the State Public Defender (OSPD) and the Office of the Alternate Defense Counsel (OADC).

| Fiscal Year | Courts/ Probation | Office of the State Public Defender | Office of the Alternate Defense Counsel | Office of the Child's Representative | Total | Annual % Change |
|--------------------|------------------------------|--|--|---|---------------|----------------------------|
| FY 2006-07 | \$38,514 | \$761,495 | \$435,361 | \$13,235 | \$1,248,605 | |
| FY 2007-08 | 49,728 | 886,112 | 470,098 | 11,274 | 1,417,211 | 13.5% |
| FY 2008-09 | 39,615 | 969,306 | 567,917 | 0 | 1,576,838 | 11.3% |
| FY 2009-10 | 36,737 | 1,125,966 | 635,061 | 0 | 1,797,764 | 14.0% |
| FY 2010-11 | 25,549 | 1,514,957 | 599,872 | 9,107 | 2,149,485 | 19.6% |
| FY 2011-12 | 35,458 | 1,623,452 | 626,180 | 13,418 | 2,298,508 | 6.9% |
| FY 2012-13 | 35,515 | 1,751,829 | 648,392 | 21,219 | 2,456,955 | 6.9% |
| <i>% of Total</i> | <i>1.4%</i> | <i>71.3%</i> | <i>26.4%</i> | <i>0.9%</i> | <i>100.0%</i> | |

While most discovery-related expenditures are reimbursements paid to the prosecution as required by Rule 16, expenses are incurred for other reasons. For example, the OADC pays a contractor to scan paper files provided by the prosecution in certain jurisdictions so that they can be electronically formatted and distributed to multiple attorneys representing different defendants in a single case. Judicial agencies also make payments to the courts, other state agencies (such as the Department of Corrections), law enforcement agencies, schools, etc., to obtain certain records. Table 2 splits out the discovery-related expenses incurred in FY 2012-13 that reimbursed the prosecution as required by Rule 16 from other discovery-related expenses.

TABLE 2: FY 2012-13 Expenditures Related to Discovery

| Description | Courts/ Probation | Office of the State Public Defender | Office of the Alternate Defense Counsel | Office of the Child's Representative | Total |
|--|----------------------|---|---|--|----------------|
| Payments to District Attorneys and the Attorney General's Office | \$4,804 | \$1,660,185 | \$512,229 | \$1,601 | \$2,178,819 |
| Other expenditures | <u>30,711</u> | <u>91,644</u> | <u>136,163</u> | <u>19,618</u> | <u>278,136</u> |
| Total expenditures | \$35,515 | \$1,751,829 | \$648,392 | \$21,219 | \$2,456,955 |

Private defense counsel also pay reimbursements to the prosecution for discovery.

There is a long history of disagreement between the defense and the prosecution concerning reimbursements to the prosecution for duplicating discoverable materials, and some of these disputes have required court action to resolve. Since March 2009, the Joint Budget Committee has taken several actions to facilitate resolution of this issue. Most recently, the Committee sponsored S.B. 13-246 to create a Discovery Task Force to meet to address the issue of discovery costs in criminal cases. The act required the Task Force to study several topics and report back to the Joint Budget Committee and the Judiciary Committees by January 31, 2014. Table 3 lists the members of the Discovery Task Force.

Table 3: Discovery Task Force Membership

| Category | Role | Name | Office/ Judicial District/ County |
|---|-------------------|------------------|--|
| (1) Attorney General (designee) | Chair | Matthew Durkin | Deputy Attorney General, Criminal Justice section |
| (2) State Court Administrator | Vice Chair | Jerry Marroney | |
| (3) State Public Defender | | Doug Wilson | |
| (4) Representative of the criminal defense bar | | Phil Cherner | |
| (5) Three district attorneys (DAs) who represent differently sized judicial districts | | George Brauchler | 18th JD (Arapahoe, Elbert, Douglas, Lincoln) |
| | | Pete Hautzinger | 21st (Mesa) |
| | | Thom LeDoux | 11th (Chaffee, Fremont, Custer, Park) |
| (6) County sheriff | | Fred Wegener | Park County Sheriff |
| (7) Alternate Defense Counsel | | Lindy Frolich | |
| (8) Chief of police | | John Jackson | Chief of Police for Greenwood Village |
| (9) District court judge | | Steven Patrick | Chief Judge for 7th (Delta, Ouray, San Miguel, Gunnison, Hinsdale, Montrose) |
| OIT Technology advisor | non-voting member | Steve Fowler | OIT - Director of Business Architecture |

Rather than recommending clarifications to Rule 16, the Task Force recommended that the General Assembly fund the creation of a statewide system that will enable the sharing and transfer of information between law enforcement agencies and district attorneys' offices in a format that will then allow the district attorneys to provide discoverable materials in an electronic format. Once the new system is fully implemented, district attorneys will no longer seek or receive reimbursement for the cost of duplicating discoverable materials, and the existing General Fund appropriations that are used for that purpose (approximately \$2.2 million) will be redirected to support the ongoing maintenance of the statewide discovery sharing system. This bill implements the recommendations of the Task Force and provides the associated state funding for FY 2014-15.

