
Joint Budget Committee Bill

SUMMARY OF S.B. 13-246:

CONCERNING CREATION OF A TASK FORCE TO STUDY DISCOVERY COSTS IN CRIMINAL CASES.

Prime Sponsors: Senator Lambert and Representative Levy

Bill Summary

The bill creates a 12-member Discovery Task Force to study and make recommendations regarding criminal discovery. The Task Force is required to study the following issues:

- The ability of district attorneys' offices to obtain law enforcement discoverable evidence in an electronic format;
- The feasibility of a single statewide criminal case management system or other technology that could facilitate electronic discovery or electronic redaction of documents; and
- The appropriateness of a statewide standardized law enforcement reporting form that is easily redactable.

The Task Force is required to make recommendations or suggestions concerning the following:

- The short-term needs for law enforcement and district attorneys to facilitate greater use of electronic discovery;
- A definition of the term "actual costs" for purposes of adequately and fairly reimbursing district attorneys for the expenses related to the discovery process; and
- An alternative funding process to reimburse the district attorneys for appropriate discovery costs without requiring publicly funded defense attorneys or indigent, self-represented defendants to pay for discovery.

The Attorney General or his designee will serve as chair of the Discovery Task Force, and the State Court Administrator or his designee will serve as vice-chair. The remaining Task Force members include: the State Public Defender or his designee; the Alternate Defense Counsel or her designee; a representative of the criminal defense bar; three district attorneys representing different types of judicial districts; a county sheriff; a chief of police; and a district court judge. The Governor is also required to appoint a non-voting member from the Office of Information Technology to serve as a technology advisor to the Task Force.

The Chair is required to convene the first meeting of the Task Force by June 30, 2013, and the Task Force must meet at least twice per month until it completes its duties or until November 15, 2013, whichever is earlier. The Task Force must report back to the Joint Budget Committee and the Judiciary Committees by January 31, 2014.

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Fiscal Impact

The bill will affect the workload for affected agencies to serve on the Task Force and prepare a report for the General Assembly. This workload increase will be managed within the agencies' existing resources.

Background Information

Under Colorado court rules concerning criminal procedure, the prosecuting attorney is required to make available to the defense certain material and information which is within his or her control and to provide duplicates upon request ("Rule 16"). However, the rule states that the cost of duplicating these materials shall be borne by the party receiving the material, based on the "actual cost of copying" the material. The State pays the costs of duplicating discoverable material when legal representation is provided for an indigent defendant. In FY 2011-12, Judicial Branch agencies spent \$2.3 million General Fund to obtain discoverable materials from district attorneys' offices, local law enforcement, and the Department of Law. From FY 2006-07 to FY 2011-12, these General Fund expenditures increased by \$1.0 million (84 percent).

There is a long history of disagreements between the defense and the prosecution concerning the procedures and fees associated with duplicating discoverable materials. Since March 2009 the Joint Budget Committee (JBC) has taken several actions to facilitate resolution of this issue.

- In 2009 the JBC sent a letter to the Chief Justice requesting that the Judicial Department review and analyze the impact of the Rule 16 on state expenditures, and determine whether amendments to Rule 16 and/or statutory changes are warranted. In November 2009 the Department responded, and acknowledged that questions about what should be counted within "actual costs of copying" and whether and how to account for the costs of converting materials to an electronic format are not easily addressed by the rule as currently written.
- The State Court Administrator's Office subsequently submitted a proposed amendment to Rule 16 to define terms and clarify procedures. The Supreme Court Advisory Committee on Rules of Criminal Procedure, however, voted to not act on the proposal. Committee members opined that the issue was more appropriate for the legislature to resolve.
- In December 2009 the JBC met with several district attorneys to discuss issues related to sharing information and the provision of discoverable materials to defense attorneys. The district attorneys agreed that clarification of Rule 16 would be helpful, and suggested that one of the best ways to reduce the cost of discovery would be for the State to develop an electronic system for collecting and sharing discoverable materials.

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- In February 2010 the JBC sent a letter to the Colorado District Attorneys' Council (CDAC) requesting that it address procedural issues concerning district attorneys and Rule 16, including: (1) developing a standardized statement to use in recovering costs from public agencies; (2) developing a standardized letter to use when notifying state agencies of rate changes; and (3) adopting a standard practice with respect to the timing of rate changes. While CDAC members agreed to notify the defense of rate changes in a timely manner, whenever possible, no further action was taken by the CDAC.
- The JBC met with district attorneys on February 21, 2013, to again discuss issues related to the process of gathering and sharing discoverable materials. The district attorneys supported a long-term goal of transitioning to an electronic discovery system in all judicial districts, for both the prosecution and the defense, and suggested that the General Assembly consider establishing a task force to study the issues and make specific recommendations to the General Assembly to achieve this goal.

