

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 13-0365

Date: February 19, 2013

Prime Sponsor(s): Rep. Levy
Sen. Steadman

Bill Status: House Judiciary

Fiscal Analyst: Hillary Smith (303-866-3277)

TITLE: CONCERNING CREATION OF AN ADULT DIVERSION PROGRAM.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue		
State Expenditures General Fund	See State Expenditures section.	
FTE Position Change		
Effective Date: August 7, 2013, if the General Assembly adjourns on May 8, 2013, as scheduled, and no referendum petition is filed.		
Appropriation Summary for FY 2013-2014: None required.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

This bill repeals the adult deferred prosecution option and replaces it with an adult diversion program. Under the bill, a defendant and a district attorney may enter into a diversion agreement for up to two years either before or after charges are filed. The period of diversion may be extended for an additional year if failure to pay restitution is the only diversion condition that has not been fulfilled and the defendant has a future ability to pay. During the period of diversion, the defendant is subject to the supervisory conditions of the diversion agreement and may be supervised by the Probation Department of the Judicial Branch or by a diversion program approved by the district attorney. The diversion agreement may include a statement of facts the charge is based on, which is admissible in court if the defendant fails to complete his or her diversion agreement. The bill specifies the factors that a district attorney must consider when determining whether a defendant is appropriate for diversion.

If the defendant successfully completes the diversion period, the court will dismiss the charges with prejudice. The effect of a dismissal with prejudice is to restore the defendant to the status he or she occupied before the arrest, citation, or summons, and is not considered to be a conviction. The prosecution is then barred from bringing another action on the same claim. A defendant who successfully completes the diversion agreement may have his or her arrest and other criminal records sealed. If the defendant violates a condition of the diversion agreement, the prosecution may initiate revocation of diversion agreement proceedings against the defendant.

State Revenue

The bill is not expected to affect state revenue from fines, because it is not expected to change the number of convictions. The fiscal note assumes that the number of defendants who will enter a diversion program established by the bill will be approximately equal to the number of defendants who enter a deferred prosecution under current law.

State Expenditures

The effect of this bill on state expenditures depends on whether district attorneys set up an adult diversion program and how often they make use of it. Potential impacts to various departments are described in more detail below.

Judicial Branch. The deferred prosecution option available under current law is used infrequently, so it is reasonable to assume that the diversion option created by the bill will be used infrequently as well. In addition, any use of the diversion option, including whether the defendant is supervised by the Probation Department within the Judicial Branch or by a different diversion program, depends on the discretion of district attorneys. In cases in which diversion is pursued prior to the filing of charges, the Judicial Branch will see a decrease in court activity. However, this fiscal note estimates that any decrease in workload will be minimal.

Department of Corrections. This fiscal note assumes that any defendants sent to an adult diversion program created under the bill would already be candidates either for deferred prosecution or for probation under current law, so the bill will not result in fewer offenders being sentenced to prison.

Department of Human Services. The bill is not expected to substantially affect the number of defendants required to complete alcohol evaluation, education, or treatment programs administered by the Department of Human Services. Therefore, no change in appropriations is required.

Local Government Impact

Expenditures will increase for district attorneys' offices if the district attorney elects to set up a diversion program. Costs will include personal services and operating expenses associated with supervising defendants, and will vary depending on the judicial district. The fiscal note assumes that any defendants who participate in a diversion program created under the bill would already be candidates either for deferred prosecution or for probation under current law, so the bill will not result in a substantial change in the number of individuals sentenced to jail.

Departments Contacted

Corrections	Counties	District Attorneys	Human Services
Judicial	Law	Local Affairs	Municipalities
Public Safety	Sheriffs		