

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 13-0462
Prime Sponsor(s): Rep. Kagan
 Sen. Steadman

Date: March 19, 2013
Bill Status: House Judiciary
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TITLE: CONCERNING APPOINTMENT OF LEGAL COUNSEL DURING PLEA NEGOTIATIONS FOR INDIGENT ADULT DEFENDANTS.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue		
State Expenditures		
General Fund	\$5,285,214	\$9,691,581
FTE Position Change	55.7 FTE	111.4 FTE
Effective Date: January 1, 2014, assuming no referendum petition is filed.		
Appropriation Summary for FY 2013-2014: The Office of the State Public Defender requires a General Fund appropriation of \$5,285,214 and 55.7 FTE.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

Current law requires an indigent person charged with a misdemeanor, petty offense, traffic offense, or municipal or county ordinance violation, for which there is the possibility of a jail sentence, to meet with a prosecuting attorney prior to being appointed legal counsel. This bill repeals that requirement.

Background. In 1993, as a way to move some criminal cases along more quickly, the Colorado General Assembly amended the law to require indigent defendants charged with misdemeanors, petty offenses, and traffic offense to meet with a prosecuting attorney to resolve the case before applying for a public defender. Additionally, the state is not required to bear the cost of providing court-appointed counsel in cases where the prosecution is not seeking a sentence of incarceration.

State Expenditures

Office of the State Public Defender (OSPD). The bill will require increased General Fund expenditures in the OSPD of \$5,285,214 and 55.7 FTE in FY 2013-14 and \$9,691,581 and 111.4 FTE each year thereafter. The bill is expected to result in approximately 25,000 new misdemeanor and traffic cases for the OSPD each year that are currently meeting with a prosecuting

attorney without legal representation. In order to accommodate 25,000 new cases per year, the OSPD will require 111.4 FTE, including attorneys, investigators, paralegals, and administrative support, to spend approximately 9 hours per case.

While the cost of items such as employee insurance, supplemental employee retirement payments, and leased space is usually addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations, rather than in individual bills, it is being included here due to the high number of FTE required by the bill. Table 1 explains the expenditures required under House Bill 13-1210. Because the bill takes effect on January 1, 2014, only half of the eventual impact will be seen in the first year of implementation.

Cost Components	FY 2013-14	FY 2014-15
Personal Services	\$3,539,846	\$7,079,694
FTE	55.7	111.4
Operating Expenses	58,783	117,548
Capital Outlay	261,957	261,957
Travel	46,454	92,908
Leased Space	486,929	973,859
Employee Insurance (Health, Life, Dental, and Short-term Disability)	673,970	673,970
Supplemental Employee Retirement Payments	217,275	491,645
TOTAL	\$5,285,214	\$9,691,581

Office of the Alternate Defense Counsel (OADC) Workload and expenditures in the OADC are expected to increase as a result of the bill. The OADC contracts with attorneys in private practice to represent indigent defendants when the OSPD has a conflict of interest. Such a conflict occurs in 5 to 10 percent of cases involving indigent defendants each year, although the percentage is lower for the lower-level offenses involved. Assuming the OADC will be required to represent 3 percent of the approximately 25,000 new cases assigned court-appointed counsel each year at an average cost of \$580 for misdemeanor and traffic cases, the increased cost would be \$217,500 in FY 2013-14 and \$435,000 each year thereafter. As it is not possible to determine the number of cases that will require OADC representation in any given year, the increased expenditure needs will be addressed through the annual budget process.

Judicial Branch. County trial courts will see increased workloads as a result of the bill. The same number of misdemeanor and traffic cases are expected to be charged each year, but an increased number are likely to go to trial rather than pleading guilty to a lesser charge. Additionally, trials are expected to last longer as more issues are considered and addressed when a party is represented by counsel. No information was available from the Judicial Branch at the time the fiscal

note was published about the cost of the increased workload. If such information becomes available at a later date, the fiscal note will be revised.

Local Government Impact

The bill is expected to increase workloads in local district attorneys' offices as more cases go to trial rather than pleading out. No information was available at the time the fiscal note was published about the specific increase. Additionally, the bill could result in some defendants spending more time in county jails awaiting trial while they apply for a public defender.

State Appropriations

For FY 2013-14, the Office of the State Public Defender requires a General Fund appropriation of \$5,285,214 and 55.7 FTE.

Departments Contacted

Counties
District Attorneys
Human Services
Judicial
Law
Municipal League