

*Colorado Legislative Council Staff Fiscal Note*

**STATE and LOCAL  
REVISED FISCAL IMPACT**

(replaces fiscal note dated March 19, 2013)

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

**Date:** April 9, 2013  
**Bill Status:** House Appropriations  
**Fiscal Analyst:** Jessika Shipley (303-866-3528)

**TITLE:** CONCERNING APPOINTMENT OF LEGAL COUNSEL DURING PLEA NEGOTIATIONS FOR INDIGENT ADULT DEFENDANTS.

<b>Fiscal Impact Summary</b>	<b>FY 2013-2014</b>	<b>FY 2014-2015</b>
<b>State Revenue</b>		
<b>State Expenditures</b>		
General Fund	\$4,323,184	\$7,881,909
<b>FTE Position Change</b>	45.6 FTE	91.1 FTE
<b>Effective Date:</b> January 1, 2014, assuming no referendum petition is filed.		
<b>Appropriation Summary for FY 2013-2014:</b> For FY 2013-14, the Office of the State Public Defender requires a General Fund appropriation of \$4,228,247 and 44.6 FTE. Additionally, the Judicial Branch requires a General Fund appropriation of \$94,937 and 1.0 FTE.		
<b>Local Government Impact:</b> See Local Government Impact section.		

*\*This fiscal note is revised to include additional information and new assumptions.*

**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 offenses to meet with a prosecuting attorney to resolve the case before being appointed a public defender. Additionally, under current law and the bill, 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**

There were 70,000 misdemeanor cases and 121,000 traffic cases in FY 2011-12 and 1,600 (0.8 percent) of those cases went to trial. The new expenditures required by the bill (at least \$4,323,184 and 45.6 FTE for FY 2013-14 and at least \$7,881,909 and 91.1 FTE for FY 2014-15) are based on the following key assumptions:

- 25,000 new misdemeanor and traffic cases will be eligible for a public defender under the bill;
- 20,000 (80 percent) of those cases will elect to be represented by court-appointed counsel instead of meeting with the district attorney without an attorney;
- an additional 2,000 cases will go to trial as a result of the bill's requirement to appoint legal counsel to a defendant before he or she meets with the district attorney; and
- the new trials will require an additional 30 minutes of court time each.

**Office of the State Public Defender (OSPD).** The bill will require increased General Fund expenditures in the OSPD of **\$4,228,247 and 44.6 FTE in FY 2013-14 and \$7,752,285 and 89.1 FTE each year thereafter.** The bill is expected to result in approximately 20,000 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 20,000 new cases per year, the OSPD will require 89.1 FTE, including attorneys, investigators, paralegals, and administrative support.

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.

<b>Table 1. Office of the State Public Defender Expenditures Under HB 13-1210</b>		
<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Personal Services	\$2,831,485	\$5,662,970
FTE	44.6	89.1
Operating Expenses	47,068	94,023
Capital Outlay	209,754	209,754
Travel	37,196	74,309
Leased Space	389,893	778,912
Employee Insurance (Health, Life, Dental, and Short-term Disability)	539,055	539,055
Supplemental Employee Retirement Payments	173,796	393,262
<b>TOTAL</b>	<b>\$4,228,247</b>	<b>\$7,752,285</b>

*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 20,000 new cases assigned court-appointed counsel each year at an average cost of \$580 for misdemeanor and traffic cases, the increased cost would be \$174,000 in FY 2013-14 and \$348,000 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 filed each year, but an increased number are likely to go to trial rather than ending in a guilty plea 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. If there are 2,000 new trials that take an additional 30 minutes of court time each, 0.5 FTE magistrate and 1.5 FTE support staff will be required to address the increased workload. The costs associated with the increased staffing needs are shown in Table 2. Costs for FY 2013-14 are shown for six months due to the effective date of the bill.

<b>Table 2. Judicial Branch Expenditures Under HB 13-1210</b>		
<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Personal Services	\$62,674	\$125,349
FTE	1.0	2.0
Regular Operating Expenses	713	1,425
Regular Capital Outlay	7,055	0
Magistrate Operating Expenses	1,425	2,850
Magistrate Capital Outlay	23,070	0
<b>TOTAL</b>	<b>\$94,937</b>	<b>\$129,624</b>

**Expenditures Not Included**

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 3.

<b>Table 3. Expenditures Not Included Under HB 13-1254*</b>		
<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$6,050	\$12,100
Supplemental Employee Retirement Payments	3,847	8,705
<b>TOTAL</b>	<b>\$9,897</b>	<b>\$20,805</b>

*\*More information is available at: <http://colorado.gov/fiscalnotes>*

### **Local Government Impact**

The bill is expected to significantly increase workloads in local district attorneys' offices as more cases go to trial rather than ending in a guilty plea to a lesser charge. Additionally, plea negotiations will generally take longer and be more complex if defendants are represented by counsel. The increased amount of time required is likely to vary widely by case and by county. Additionally, the bill could result in some defendants spending more time in county jails awaiting trial while they apply for a public defender. The exact impact to local governments cannot be quantified, but is expected to be significant.

### **State Appropriations**

For FY 2013-14, the Office of the State Public Defender requires a General Fund appropriation of \$4,228,247 and 44.6 FTE. Additionally, the Judicial Branch requires a General Fund appropriation of \$94,937 and 1.0 FTE.

### **Departments Contacted**

- Counties
- District Attorneys
- Human Services
- Judicial
- Law
- Municipal League