

Colorado Legislative Council Staff Fiscal Note
STATE and LOCAL
REVISED FISCAL IMPACT
(replaces fiscal note dated March 25, 2013)

Drafting Number: LLS 13-0396
Prime Sponsor(s): Rep. Lee
 Sen. Newell

Date: April 16, 2013
Bill Status: House Appropriations
Fiscal Analyst: Jessika Shipley (303-866-3528)

TITLE: CONCERNING RESTORATIVE JUSTICE.

| Fiscal Impact Summary | FY 2013-2014 | FY 2014-2015 |
|--|-------------------------|-------------------------|
| State Revenue | | |
| Cash Funds | <u>\$432,998</u> | <u>\$781,887</u> |
| Restorative Justice Surcharge Fund | 411,348 | 742,793 |
| Judicial Stabilization Cash Fund | 21,650 | 39,094 |
| State Expenditures | <u>\$32,892</u> | |
| General Fund | 20,629 | |
| Cash Funds | | |
| Restorative Justice Surcharge Fund | 12,263 | \$36,553 |
| FTE Position Change | 0.5 FTE | 0.5 FTE |
| 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: For FY 2013-14, the Judicial Branch will require a General Fund appropriation of \$20,629, an appropriation from the Restorative Justice Surcharge Fund of \$12,263, and 0.5 FTE. | | |
| Local Government Impact: Increased costs to four district attorneys' offices. See Local Government Impact section. | | |

Summary of Legislation

The bill creates a \$10 surcharge on all crimes, to be deposited in the newly created Restorative Justice Surcharge Fund, which is subject to annual appropriation to the Judicial Branch for the costs of restorative justice programs and administrative costs associated with the Restorative Justice Coordinating Council.

The bill creates a restorative justice pilot project consisting of two new restorative justice programs in the 10th and 19th Judicial Districts and two existing programs in the 12th and 20th Judicial Districts. Before implementing a restorative justice pilot project, each judicial district is required to establish guidelines for the project. Such guidelines must include a front-end assessment of the offender, the crime, victim impact, and the best methodology to involve victims, among other things.

At each program site, if a juvenile, who has not been previously charged with a crime or who has not participated in the pilot project, could be charged with a misdemeanor, the district attorney is required to assess the juvenile's suitability (after consultation with the victim in a Victims' Rights Act crime) for restorative justice programs. The district attorney is also permitted to refer juveniles charged with a class 3, 4, 5, or 6 felony if the juvenile has not been previously charged or has not participated in the pilot project. If the juvenile is deemed suitable and agrees to participate in the restorative justice program at his or her own expense, the district attorney will not file charges pending completion of the program. If the juvenile fails to complete the program, the charges may be reinstated by the district attorney.

Each of the programs are required to provide certain information to the Division of Criminal Justice (DCJ) within the Department of Public Safety by July 1, 2014, and each July 1 thereafter concerning the following:

- a description of the types of restorative justice practices used and the costs associated with each practice;
- the number of juveniles in the jurisdiction's juvenile justice system who met the criteria for participating in a diversion program utilizing restorative justice practices;
- the number of juveniles who participated in such programs, including demographic information ;
- the number of juveniles who successfully completed the program and the number who did not;
- the results of the uniform restorative justice satisfaction evaluation developed by the Restorative Justice Coordinating Council;
- the number of juveniles who participated in a program and subsequently had a juvenile petition filed against him or her within one year; and
- information about victim participation.

The DCJ is then required to prepare a report by December 1, 2014, of the information it receives. The DCJ is required to prepare a second report by December 1, 2015, that includes a summary of the pilot project and existing sites.

Additionally, the bill makes changes to the existing Restorative Justice Coordinating Council within the Office of the State Court Administrator. The council is required to:

- develop a uniform restorative justice satisfaction evaluation, based on research principles, by September 1, 2013, that will be administered to restorative justice participants;
- develop a database of existing restorative justice programs in the state by December 31, 2013, and update it annually by December 31 of each year; and
- collect information regarding restorative justice practices in the state and report to the House and Senate Judiciary Committees by January 31, 2014.

The membership of the council is expanded to include:

- a parole board member;
- a representative from the Department of Corrections;
- a representative from a nongovernment statewide organization representing victims;
- three restorative justice practitioners; and
- a representative of the Juvenile Parole Board.

Finally, under current law, restorative justice victim-offender conferences may only be initiated by the victim. The bill allows the district attorney or the offender to initiate such a conference under some circumstances, but not directly to the victim.

State Revenue

The bill imposes a \$10 surcharge on all criminal convictions and juvenile adjudications. The surcharge revenue is to be deposited as follows:

- 95 percent in the newly created Restorative Justice Surcharge Fund; and
- 5 percent in the Judicial Stabilization Cash Fund.

Assuming a 20 percent rate of indigent defendants on whom the surcharge will not be assessed and a collection rate of 55 percent each year, the increased revenue in the first year will be \$432,998 in the first year and \$781,887 in the second year. In FY 2014-15 and each subsequent year, it is expected that a portion of the previous year's uncollected assessments will be paid.

Additionally, the bill requires juveniles to pay a fee of up to \$125 to participate in a diversion program that utilizes restorative justice practices. The bill is silent on the mechanics of the collection of such a fee. As such, it is assumed that defendants will pay the fees directly to the restorative justice vendor or provider for the costs associated with participation in such a diversion program.

State Expenditures

Judicial Branch. The branch will require \$32,892 and 0.5 FTE in FY 2013-14 and \$36,553 and 0.5 FTE in FY 2014-15. The position will be funded from the Restorative Justice Surcharge Fund. However, because the fund will take time to build up a balance, but work must begin immediately, the branch will require a one-time General Fund appropriation of \$20,629 for the first six months after the effective date. The administration and allocation of the Restorative Justice Surcharge Fund moneys and providing support to the council will require a part-time analyst. This person will develop guidelines and procedures used for distribution and perform regular oversight activities associated with the monitoring and expenditure of the funds. He or she will also provide staff support to the council. Table 1 explains the expenditures required under the bill.

| Cost Components | FY 2013-14 | FY 2014-15 |
|------------------------|-------------------|-------------------|
| Personal Services | \$30,065 | \$36,078 |
| FTE | 0.5 | 0.5 |
| Operating Expenses | 475 | 475 |
| Capital Outlay | 2,352 | 0 |
| TOTAL | \$32,892 | \$36,553 |

The pilot programs described in the bill will be overseen by district attorneys' offices and are entered prior to the filing of a delinquency action with the courts. The fiscal note assumes that the district attorneys' offices in the four pilot program jurisdictions will collect the data required by the bill and send it to the DCJ for reporting purposes. As such, there is no expected fiscal impact to the trial courts.

Department of Human Services. Due to the number of existing community-based services and diversionary programs designed to keep at-risk youth out of the juvenile justice system that target the same population as that addressed by the bill, the Division of Youth Corrections (DYC) in the Department of Human Services is not expected to experience a significant reduction in the number of future new commitments. The additional responsibilities of the Restorative Justice Coordinating Council, of which a representative of the DYC is the vice chair, will increase the workload of the department. However, the increased workload is anticipated to be minimal and can be accommodated within existing resources.

Department of Public Safety. The bill requires the DCJ to compile a report in FY 2013-14 and FY 2014-15. The report will increase the workload of the DCJ, but such an increase can be accommodated within existing resources.

Office of the State Public Defender (OSPD). In general, the juvenile clients of the OSPD tend to have prior criminal records and not be eligible to participate in diversion programs. Because the bill only applies to first-time offenders and first-time participants, it is not expected to measurably reduce the workload of public defenders in the four pilot program jurisdictions.

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 2.

| Table 2. Expenditures Not Included Under HB 13-1254* | | |
|--|-------------------|-------------------|
| Cost Components | FY 2013-14 | FY 2014-15 |
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | \$3,025 | \$3,025 |
| Supplemental Employee Retirement Payments | 1,845 | 2,505 |
| TOTAL | \$4,870 | \$5,530 |

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

Local Government Impact

The bill is expected to increase the workloads of the district attorneys' offices in the four pilot program jurisdictions. These offices will be required to assess the suitability of juvenile offenders for participation in restorative justice programs prior to the filing of charges and track the progress of those juveniles deemed suitable for participation. The offices will further be responsible for collecting data to send to the DCJ for reporting purposes, overseeing the restorative justice programs, and collecting or overseeing the collection of the \$125 participation fee and requests for a reduction in the fee based on a sliding scale.

While no information was provided by the district attorneys regarding the specific costs associated with the bill, they have the potential to be significant. Presumably these costs will be defrayed to a certain extent by the revenue in the Restorative Justice Surcharge Cash Fund and the \$125 program fee collected from juvenile offenders. The moneys in the fund are subject to annual appropriation by the General Assembly to the Judicial Branch for distribution to judicial districts that offer restorative justice programs and the Restorative Justice Coordinating Council for administrative expenses.

State Appropriations

For FY 2013-14, the Judicial Branch will require a General Fund appropriation of \$20,629, an appropriation from the Restorative Justice Surcharge Fund of \$12,263, and 0.5 FTE.

Departments Contacted

Corrections
Judicial

District Attorneys
Public Safety

Human Services
Sheriffs