

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 14-0225
Prime Sponsor(s): Rep. Lawrence

Date: February 12, 2014
Bill Status: House Judiciary
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SHORT TITLE: DISCOVERY REQUIREMENTS IN CRIMINAL CASES

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue		
State Expenditures	See State Expenditures section.	
FTE Position Change		
Appropriation Required: None.		

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

This bill makes adjustments to procedures for discovery in criminal cases. The defense is to do the following no later than 35 days before the start of trial:

- provide all specified discovery materials, except when good cause can be shown;
- disclose the nature of the defense strategy for a felony trial (this requirement is seven days for non-felony cases); and
- notify the prosecution if the defense intends to introduce evidence that the defendant was intoxicated or at a place other than the location of the offense.

No later than 45 days before trial, except for good cause, the prosecutor and defense are required to confer and attempt to reach agreement on discovery issues. Unless the moving party can certify that the prosecutor and defense counsel have satisfied this requirement, no motions concerning discovery issues can be filed.

Background

This bill codifies and expands upon certain provisions of Rule 16 of the Colorado Rules of Criminal Procedure, including the requirement to disclose the nature of defense for a felony trial and to provide notice of alibi at least 35 days prior to trial. Rule 16 also requires the defense to disclose the nature of defense within 7 days for a non-felony trial. The defense is not currently required to provide evidence of intoxication or to preemptively disclose all materials that may be introduced as evidence.

State Expenditures

This bill may both increase and decrease workload and increase costs for agencies within the Judicial Department as discussed below.

Trial courts. By requiring the prosecution and defense to confer, it could reduce the number of discovery motions filed. In current practice, many judges require the prosecution and defense to confer through a trial management order process, so any reduction in workload for the trial courts is assumed to be minimal and will not require an adjustment in appropriations. To the extent that persons challenge the constitutionality of the new discovery requirements, workload for trial courts will also increase. The fiscal note assumes that this increase will not require an increase in appropriations.

Judicial defense agencies. The bill is anticipated to increase workload and costs for the Office of the State Public Defender and Office of Alternate Defense Counsel. The bill establishes a new duty to confer with the prosecution about defense issues, which may increase workload by a minimal amount. The bill also requires additional discovery to be provided by the defense to the prosecution prior to the start of trial. This will increase workload and costs. As of this writing, costs have not been estimated. This analysis assumes that depending on the increased volume of workload, additional appropriations may be necessary and will be requested through the annual budget process.

Local Government Impact

The bill may reduce workload and costs for district attorneys. To the extent that additional materials are made newly available and earlier in the process, costs to investigate and prepare for trial may be reduced. The amount of reduced workload and costs has not been estimated.

Effective Date

The bill takes effect August 6, 2014, if the General Assembly adjourns on May 7, 2014, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

District Attorneys

Judicial