

**FINAL  
FISCAL NOTE**

**Drafting Number:** LLS 13-0756  
**Prime Sponsor(s):** Sen. Lambert

**Date:** May 15, 2013  
**Bill Status:** Postponed Indefinitely  
**Fiscal Analyst:** Kerry White (303-866-3469)

**TITLE:** CONCERNING THE RIGHTS OF PERSONS IN CRIMINAL PROCEEDINGS.

Fiscal Impact Summary	FY 2012-13	FY 2013-2014	FY 2014-2015
<b>State Revenue</b> General Fund Cash Funds Fines Collection Cash Fund	See State Revenue section.		
<b>State Transfers</b>	See State Transfers section.		
<b>State Expenditures</b> General Fund	at least \$87,418	at least \$829,018	at least \$829,018
<b>FTE Position Change</b>	7.0 FTE	39.6 FTE	39.6 FTE
<b>Effective Date:</b> The bill was postponed indefinitely by the Senate Judiciary Committee on March 13, 2013.			
<b>Appropriation Summary for FY 2013-2014:</b> See State Appropriations section.			
<b>Local Government Impact:</b> Increase. See Local Government Impact section.			

**Summary of Legislation**

This bill establishes new procedures with respect to criminal court proceedings and sets forth changes in procedures and penalties for criminal tax evasion, as listed below.

**Discovery in all criminal trials.** The prosecution is required to provide discovery documents to the defendant without charge and within 20 days of the defendant's first appearance in court. Materials received after that date must be provided within 72 hours.

**Motions in all criminal trials.** If a defendant files a motion at least ten days before trial, the court is required to provide a written ruling on the motion. The court is also required to hold a hearing when a defendant files a motion to dismiss.

**Procedures for tax evasion cases.** The statute of limitations for tax evasion is to begin on the date when the tax return was due. Criminal penalties may not be pursued until all administrative and civil appeal remedies have been exhausted. A defendant must be tried in the county where the return was mailed or he or she lived, and is to be prosecuted by the district attorney for that

jurisdiction. Courts must dismiss a case when the Internal Revenue Service rules that a defendant has no untaxed federal income for the same period and may not set a monetary bond in excess of the amount of tax owed. If a defendant is acquitted of charges, the district attorney is liable for attorney fees and costs and actual damages. If a person convicted of an offense appeals, the transcript is required to be provided within 90 days and the appropriate court is required to issue its opinion within one year.

***Penalties for tax evasion-related offenses.*** The bill reduces the penalty for tax evasion in cases when the tax liability is less than \$3,000 from a class 5 felony to a class 1 misdemeanor. If the offender has not been previously convicted of tax evasion, the court is to require the offender to pay the tax due and a fine equal to 25 percent of the tax, and may also sentence the offender to probation for up to one year.

The bill also adds a class 1 misdemeanor penalty for a person who fails to collect or account for a tax payment or makes a false statement to obtain a refund of a tax payment. If the offender has not been previously convicted of a similar offense, the court is to require the offender to pay the tax due and a fine equal to 25 percent of the tax, and may also sentence the offender to probation for up to one year.

A person who fails to file a state tax return is subject to a civil fine of \$100. This penalty may only be enforced by the district attorney for the jurisdiction in which the defendant lived at the time of the offense.

## **State Transfers**

House Bill 12-1338 transfers any General Fund surplus in FY 2012-13 to the State Education Fund. By increasing General Fund appropriations by a net \$87,418 for FY 2012-13, this bill will reduce the amount to be transferred to the State Education Fund by an equal amount.

## **State Revenue**

Beginning in FY 2012-13, this bill could both increase and reduce state revenue by an indeterminate amount, as described below.

***Increase from civil penalties.*** Conditional upon the action of district attorneys, the bill could increase state revenue as a result of assessing civil fines of \$100 for failure to file a state tax return. This analysis assumes the term "state tax return" could include individual and corporate income, sales and use, withholding, severance, and excise returns. Depending on the type of return, these filings may be due monthly, quarterly, or annually. A minimum of 600,000 taxpayers annually fail to meet at least one return deadline and could be subject to multiple penalties per year at the discretion of the applicable district attorney. Because it is unknown whether district attorneys will choose to pursue such actions and the frequency with which that will occur, it is not possible to determine the actual increase in revenue credited to the General Fund. However, this analysis assumes that the incentive for district attorneys to pursue these types of cases is low and, therefore, the increase in revenue will be minimal.

***Increase from criminal penalties.*** A new class 1 misdemeanor is established by the bill for persons who fail to collect or account for a tax payment or make a false statement to obtain a refund of a tax payment. In addition, the bill allows the court to add a 25 percent fine to the amount of tax owed in cases where the penalty is a class 1 misdemeanor. The fine penalty for a class 1 misdemeanor is \$500 to \$5,000. Because fines are imposed at the discretion of the court and it is unknown how many persons will be convicted or what their tax liabilities will be, the increase in revenue cannot be determined. This analysis assumes that the increase will be minimal. Fine revenue is credited to the Fines Collection Cash Fund in the Judicial Department.

***Decrease from changes in procedures and penalties.*** The bill requires that all administrative and civil appeal remedies be exhausted prior to criminal action. Because of the statute of limitations provision, it is possible that cases that would have otherwise gone to trial will no longer do so. This is because the Department of Revenue often receives its information from the Internal Revenue Service and, at the time of such notifications, filings are already one to two years late. To the extent that these individuals would have been convicted in court, revenue from criminal penalty fines will be reduced. In addition, for certain cases, a person convicted of tax evasion may be eligible for a lesser penalty than under current law, which would likely reduce the amount of fine penalty owed. The fine penalty for a class 5 felony is \$1,000 to \$100,000, whereas the fine penalty for a class 1 misdemeanor is \$500 to \$5,000. Because fines are imposed at the discretion of the court, it is not possible to determine the impact of this provision. Fine revenue is credited to the Fines Collection Cash Fund in the Judicial Department.

**State Expenditures**

This bill will increase state expenditures by at least \$87,418 and 7.0 FTE in FY 2012-13, and beginning in FY 2013-14, by \$829,018 and 39.6 FTE per year. Costs will be paid with General Fund and are based on the assumption that the bill will take effect on May 1, 2012. Table 1 and the discussion that follows describe the cost components of the bill.

<b>Table 1. Expenditures Under SB13-122</b>			
<b>Cost Components</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Personal Services	\$237,371	\$2,848,445	\$2,848,445
FTE	7.0	39.6	39.6
Operating Expenses and Capital Outlay	192,889	37,620	37,620
Reduction in Discovery Costs	(342,842)	(2,057,047)	(2,057,047)
<b>TOTAL</b>	<b>\$87,418</b>	<b>\$829,018</b>	<b>\$829,018</b>

**Judicial Department.** Personal services and operating costs for the Judicial Department will increase by at least \$2,848,445 General Fund and 39.6 FTE per year. In the first year, this amount is prorated to the assumed effective date of the bill and includes capital outlay costs of \$186,239 for the new FTE. Costs are based on the following assumptions:

- about 90 percent of current county court filings (15,000 per year) will require written orders under the bill (15 minutes per order), requiring 1.8 FTE magistrates and 3.6 FTE support staff;
- about 6,250 motions in district court (half of the 12,500 motions that are estimated to be filed more than 10 days prior to the start of trial) will require written orders under the bill (30 minutes per motion), requiring 1.5 FTE magistrates and 4.5 FTE support staff;
- about half of the misdemeanor cases (47,000 per year) will result in a hearing for a motion to dismiss (20 minutes per hearing), requiring 3.8 FTE magistrates and 7.5 FTE support staff; and
- about half of the felony cases (35,000 per year) will result in a hearing for a motion to dismiss (30 minutes per hearing), requiring 4.2 FTE magistrates and 12.6 FTE support staff.

Probation costs could also increase as a result of class 1 misdemeanor convictions allowing for a period of up to one year of probation. As the imposition of a probation sentence is at the discretion of the judge, it is not possible to determine the increase in costs. However, this impact is anticipated to be minimal and will not require an increase in appropriations. Finally, the bill requires that decisions on appeals be issued within one year. This could increase costs and workload for the Court of Appeals or Colorado Supreme Court in order to meet the new deadline.

**Office of the State Public Defender.** Annual costs of \$1.6 million will be avoided as a result of not having to pay for discovery documents. For the current FY 2012-13, this amount is prorated to \$266,542.

**Office of the Alternative Defense Counsel.** Similar to the Office of the State Public Defender, savings of \$457,790 will be achieved as a result of no longer having to pay for discovery documents. For the current FY 2012-13, this amount is prorated to \$76,298.

**Department of Corrections.** Reducing the penalty from a class 5 felony to a class 1 misdemeanor for certain persons convicted of tax evasion could result in a reduction of prison beds. However, as there are currently only four offenders serving a prison sentence for tax evasion and these individuals were convicted of other felony crimes, this analysis assumes the reduction will be minimal and not require an adjustment in appropriations.

**Department of Revenue.** The Department of Revenue (DOR) could experience an increase in costs as a result of having to ensure the exhaustion of administrative and civil procedures prior to filing for criminal action, as well as provisions that relate to notification of pending investigations. Between 20 and 25 new cases are opened each year within the DOR. To the extent that the statute of limitations changes under SB13-122 result in having to increase staff to process cases more rapidly, or extra work is required in order to ensure notification of a pending investigation does not result in the loss of evidence, costs for the DOR could increase. This amount has not been estimated but is assumed to be minimal.

**Department of Law.** The Department of Law could experience a reduction in costs as a result of not having to represent the DOR in criminal tax evasion cases. To the extent that the changes in the statute of limitations under SB13-122 result in fewer criminal actions being filed, costs will be reduced. As it is unknown whether this will occur, the reduction is assumed to be minimal and not require an adjustment in appropriations.

### **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.

<b>Table 2. Expenditures Not Included Under SB13-122*</b>			
<b>Cost Components</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Employee Insurance	\$239,951	\$267,085	\$267,085
Supplemental Employee Retirement Payments	12,462	172,158	194,778
<b>TOTAL</b>	<b>\$252,413</b>	<b>\$439,243</b>	<b>\$461,863</b>

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

### **Local Government Impact**

This bill will affect local governments in several ways, primarily related to the changes in criminal proceedings and the allowance of a class 1 misdemeanor penalty for certain tax-related offenses.

**Criminal proceedings.** First, the bill could increase workload for district attorneys to pursue civil damages for failure to file a tax return. As this authority is at the discretion of the applicable district attorney, the fiscal note assumes that such actions will only be undertaken as time permits. Second, the bill requires district attorneys to furnish discovery documents at no cost to defendants. The savings from discovery for two state agencies is \$2.1 million per year. Therefore, this analysis assumes the increase in costs to district attorneys will be several times that amount to account for all defendants. Third, the bill makes district attorneys liable for the attorney fees and costs and damages when a defendant is acquitted of tax evasion. As it is unknown how many defendants will prevail in court and what their costs will be, it is not possible to estimate the impact of this provision. Fourth, the bill requires that the district attorney in the judicial district where the defendant lives or mailed a tax return conduct the prosecution for cases involving tax evasion. Currently, these cases are mostly heard in Denver. The effect of this provision will be to increase costs in some jurisdictions and to reduce costs in Denver. As of this writing, the assumed distribution of these cases under this bill was not available.

**Jail.** To the extent that offenders are convicted of a class 1 misdemeanor and they had prior convictions, this bill allows them to be subject to a penalty of up to 18 months in a county jail. Because the courts have the discretion of incarceration, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. It is assumed that the impact of this bill will be minimal for county sheriffs.

### **State Appropriations**

For the current FY 2012-13, the Judicial Department requires an increase in appropriations of \$430,260 General Fund and 7.0 FTE. The Office of the State Public Defender requires a reduction in its General Fund appropriation of \$266,542. The Office of the Alternate Defense Counsel requires a reduction in its General Fund appropriation by \$76,298.

For FY 2013-14, the Judicial Department requires an increase in appropriations of \$2,886,065 General Fund and 39.6 FTE. General Fund appropriations to the Office of the State Public Defender and Alternate Defense Counsel are required to decrease by \$1,599,257 and \$457,790, respectively.

### **Departments Contacted**

Corrections  
Local Affairs

District Attorneys  
Revenue

Judicial