

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
REVISED FISCAL IMPACT**

(replaces fiscal note dated March 20, 2014)

Drafting Number: LLS 14-0213 **Date:** April 22, 2014
Prime Sponsor(s): Rep. Kagan **Bill Status:** Senate Judiciary
 Sen. Guzman **Fiscal Analyst:** Kerry White (303-866-3469)

SHORT TITLE: DEFENSE COUNSEL FOR JUVENILE OFFENDERS

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue	See State Revenue section.	
State Expenditures	\$888,195	\$1,425,510
General Fund	698,451	1,083,558
Cash Funds	(53,350)	(59,751)
Centrally Appropriated Costs**	243,094	401,703
FTE Position Change	11.7 FTE	20.0 FTE
Appropriation Required: \$645,101 - Multiple Agencies (FY 2014-15)		

* This summary shows changes from current law under the bill for each fiscal year. Parentheses indicate a decrease in funds.

** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

Summary of Legislation

Referred by the Juvenile Defense Attorney Interim Committee, this **reengrossed bill** makes a number of changes to the procedures concerning the appointment of counsel for juveniles. It requires that certain information about the right to counsel and process for obtaining counsel be provided on a promise to appear or summons.

Detention hearings and appointment of counsel. When a juvenile is placed in a detention facility, the screening team is currently required to notify the court. This bill adds the district attorney and the local Office of the State Public Defender (OSPD) to the list of entities notified. The screening team must also provide the court and defense counsel with any screening material prepared and the law enforcement agency that arrested the juvenile must promptly provide the affidavit supporting probable cause and, if available, the arrest report. The defense counsel is required to return these materials upon completion of the detention hearing. The bill also sets new requirements for detention hearings as follows:

- for a juvenile being held in detention on a warrant for violating a court order on a status offense (an offense that wouldn't be a crime for an adult, such as truancy), the court shall hold the detention hearing within 24 hours, rather than the current 48 hours (excluding Saturdays, Sundays, and legal holidays in either case);
- a juvenile who is detained for committing a delinquent act is required to be represented at the detention hearing by counsel;

- if a juvenile has not retained counsel for a detention hearing, the court is to appoint counsel from the OSPD, or if there is a conflict of interest, from the Office of the Alternate Defense Counsel (ADC);
- appointments of counsel for a detention hearing will continue unless the juvenile retains his or her own counsel or the juvenile has made a knowing, intelligent, and voluntary waiver of his or her right to counsel;
- the time of the detention hearing must allow defense counsel sufficient time to consult with the juvenile, which may be performed by secure electronic means if confidentiality can be maintained; and
- representation by appointed counsel at a detention hearing does not, in itself, create a conflict in the event that such counsel is subsequently appointed to represent another individual on a related case.

The bill clarifies that a detention hearing shall not be combined with a preliminary hearing or first advisement.

Advisements and appointment of counsel. After the detention hearing or at the first appearance if the juvenile appears on a notice to appear or summons, the court is required to advise the juvenile of his or her constitutional rights, including the right to counsel. The bill also specifies that:

- if the juvenile has not made an early application to OSPD (at least five days before the hearing), but requests counsel at the first appearance, the court shall determine if the juvenile is eligible;
- failure of a parent or guardian to apply for appointed counsel shall not be construed as a waiver of the right to counsel or other rights held by the juvenile;
- if the juvenile is eligible for appointed counsel and has not waived or obtained other counsel, is in the custody of the state Department of Human Services or a county department of social services, or if the court determines it would be in the juvenile's best interests, the court shall appoint counsel from the OSPD or ADC;
- if the court has appointed counsel but finds that the juvenile's parent or guardian does not qualify, the court will order reimbursement be made or waived;
- amounts for reimbursements for representation shall be set by the Supreme Court in consultation with the OSPD and ADC; and
- if there is a conflict of interest between the juvenile and his or her parent or guardian, the court shall consider the juvenile's income and assets for determining whether to issue an order for reimbursement.

Waivers of counsel. The bill states that the court may only accept a waiver of counsel by a juvenile after finding on the record that the juvenile:

- is sufficiently mature to make a voluntary, knowing, and intelligent waiver;
- understands the sentencing options for the offense;
- has not been coerced by any other party, including his or her parent;
- understands that the court will provide counsel if his or her parent is unable or unwilling to do so; and
- understands the possible consequences that may result from an adjudication or conviction of the offense.

Reporting. The Judicial Department, OSPD, and ADC are each required to report annually to the judiciary committees of the General Assembly regarding juvenile cases.

Background

In FY 2012-13, there were 9,714 juvenile cases filed, including about 4,000 for juveniles who appeared before the court for a detention hearing and the remainder who appeared as a result of a notice to appear or summons. Of this number, 360 juveniles were represented by a private attorney, 3,178 were represented by OSPD, and 1,235 were represented by ADC at some point during the case. The remaining 4,941 were not represented at any stage of the case.

State Revenue

Overall, this bill is not expected to alter the amount of revenue received when a person is determined not to be eligible for, but has received, services from court-appointed counsel. The bill directs the Supreme Court to establish, by rule, service costs for reimbursement. Currently this amount is assessed on a case-by-case basis. The fiscal note assumes that reimbursement amounts may become level or standard, but that overall reimbursement rates will not change.

State Expenditures

Overall, this bill will increase state expenditures by \$888,195 and 11.7 FTE in FY 2014-15 and by \$1,425,510 and 20.0 FTE in FY 2015-16. Table 1 and the discussion that follows describe the costs of HB14-1032.

Table 1. Expenditures Under HB14-1032		
Cost Components	FY 2014-15	FY 2015-16
Office of the State Public Defender	<u>\$971,972</u>	<u>\$1,481,475</u>
Personal Services	609,429	1,045,085
FTE	11.1	19.0
Operating Expenses and Capital Outlay Costs	110,134	24,098
Travel	16,032	24,184
Attorney Registration	2,280	2,280
Centrally Appropriated Costs*	234,097	385,828
Office of the Alternate Defense Counsel	<u>\$84,113</u>	<u>\$132,070</u>
Personal Services	65,548	109,245
FTE	0.6	1.0
Operating Expenses and Capital Outlay Costs	5,368	950
Travel Costs	4,200	6,000
Centrally Appropriated Costs*	8,997	15,875
Judicial Department	<u>(\$167,889)</u>	<u>(\$188,035)</u>
Parent Refusal Cases	(167,889)	(188,035)
TOTAL	<u>\$888,195</u>	<u>\$1,425,510</u>
General Fund	<u>941,545</u>	<u>1,485,261</u>
Cash Funds	<u>(53,350)</u>	<u>(59,751)</u>

* Centrally appropriated costs are not included in the bill's appropriation.

Assumptions. The fiscal note is based on the assumption that approximately two-thirds of the cases that are unrepresented will require counsel at some point in the case. In addition, OSPD or ADC will be required to provide representation at all detention hearings for which no private counsel has been appointed. Finally, the OSPD or ADC will provide counsel in place of private attorneys who are appointed by the trial courts in parent refusal cases (appointments made by the court when a parent doesn't qualify as indigent and does not secure counsel for the juvenile) or because there is a conflict between the juvenile and his or her parent. No costs will be incurred to enable attorneys to consult with juveniles by electronic means.

Office of the State Public Defender. The total caseload increase is assumed to be approximately 3,000 cases for OSPD, prorated in the first year. Costs for the OSPD are based on a weighted caseload of 250 cases per attorney, rather than the standard 193 cases per attorney, in order to account for the fact that not all juveniles will be represented for the entire length of the case. Costs for the OSPD also assume that an investigator is required for every 3.0 FTE attorneys and an administrative assistant is required for every 4.0 FTE attorneys. A total of 19.0 FTE are required, including 12.0 FTE attorneys, 4.0 FTE investigators, and 3.0 FTE administrative assistants. Total salary costs are \$1,045,205, which, along with FTE, are prorated in the first year to account for the General Fund pay date shift and the revised effective of the bill.

Standard operating and capital outlay costs are included for 11.0 FTE that will primarily be located in a fixed office. The other 8.0 FTE are assumed to be high-travel employees, which require additional costs for a mobile office set up and mobile telephone (\$1,706 for operating and \$5,303 for capital outlay costs per FTE). Annual travel costs are based on an assumption that fixed employees will have costs of \$832 per FTE and high-travel employees will have costs of \$1,879 per FTE. Attorney registration fees are provided for the 12.0 FTE at a cost of \$190 per FTE, per year. Workload will also increase to complete the required annual reporting, which can be accomplished within existing appropriations.

Office of the Alternate Defense Counsel. The ADC represents clients who are deemed indigent but cannot be represented by the OSPD without creating a conflict of interest. The coordination of cases and completion of the required annual reporting requires 1.0 FTE at an annual cost of \$109,245, prorated in the first year to account for the General Fund pay date shift and the bill's revised effective date. Standard operating (\$950 per FTE) and capital outlay costs (\$4,703 per FTE) are included, and travel costs are assumed to be \$6,000 per year. The average case cost is assumed to be \$673, which is not included in the estimate of costs for the ADC because it is not known how many additional cases will be referred. To the extent that the ADC cannot absorb the increase in caseload under HB14-1032, the fiscal note assumes it will request additional appropriations through the annual budget process.

Judicial Department. Overall, this bill will increase workload and decrease costs for the Judicial Department.

Workload increases. For a juvenile being held in detention on a warrant for violating a court order on a status offense, the court is required to hold the detention hearing within 24 hours, rather than the current 48 hours (excluding Saturdays, Sundays, and legal holidays in either case). Trial courts are also required to make advisements concerning a juvenile's rights, including the right to counsel. The bill directs the Supreme Court to promulgate rules concerning reimbursements for persons found to be ineligible for court-appointed counsel. Screening personnel must provide notification of a juvenile being detained, as well as certain case information to the district attorneys and defense counsel. Finally, workload will also increase to complete the required annual reporting. These activities are not expected to require an increase in appropriations.

Decreases in costs. Under the bill, appointments made in parent refusal cases and where a conflict exists between the juvenile and his or her parent will be represented by the OSPD or ADC rather than by private counsel. The Judicial Department currently expends \$381,566 per year on these costs, including \$260,317 General Fund and \$121,249 cash funds. This amount is prorated to \$167,889, including \$114,539 General Fund and \$53,350 cash funds in the first year and to \$188,035, including \$128,284 General Fund and \$59,751 cash funds in the second year because a portion of costs in FY 2014-15 are associated cases originating in prior years and are assumed to continue.

Centrally appropriated costs. 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 estimated in the fiscal note for informational purposes and summarized in Table 2.

Table 2. Centrally Appropriated Costs Under HB14-1032*		
Cost Components	FY 2014-15	FY 2015-16
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$85,488	\$146,135
Supplemental Employee Retirement Payments	46,874	89,470
Leased Space for OSPD only	110,732	166,098
TOTAL	\$243,094	\$401,703

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

Local Government Impact

The bill requires local law enforcement agencies to provide a copy of the affidavit supporting probable cause and, if available, the arrest report to the court and to defense counsel. This increase in costs and workload is assumed to be minimal.

Effective Date

The bill takes effect on November 1, 2014, if no referendum petition is filed.

State Appropriations

For FY 2014-15, the bill includes the following appropriations:

- the Office of the State Public Defender is appropriated of \$1,105,983 General Fund and allocated 17.5 FTE.
- The Office of the Alternate Defense Counsel is appropriated \$109,973 General Fund and allocated 0.9 FTE.
- The appropriation for the trial courts section of the Judicial Department is reduced by \$248,018, including \$169,206 General Fund and \$78,812 cash funds.

However, the bill was amended to, in part, revise the effective date of the bill. As such, the appropriations clause for FY 2014-15 should be revised to read as follows:

- the Office of the State Public Defender requires an appropriation of \$737,875 General Fund and an allocation of 11.1 FTE.
- The Office of the Alternate Defense Counsel requires an appropriation of \$75,116 General Fund and an allocation of 0.6 FTE.
- The appropriation for the trial courts section of the Judicial Department should be reduced by \$167,889, including \$114,539 General Fund and \$53,350 cash funds.

State and Local Government Contacts

Counties
Sheriffs
Municipalities
Office of the State Public Defender

District Attorneys
Judicial
Office of the Alternate Defense Counsel