

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 14-1019
Prime Sponsor(s): Sen. Lambert
 Rep. Gerou

Date: April 17, 2014
Bill Status: Senate Judiciary
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SHORT TITLE: STATEWIDE DISCOVERY SHARING SYSTEM

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue	\$52,723	\$74,383
Cash Funds	\$52,723	\$74,383
State Expenditures	\$5.3 million**	Potential increase
General Fund	\$5.3 million	Potential increase
Cash Funds	0	Potential increase
FTE Position Change		
Appropriation Required: \$5.3 million - Judicial Department (FY 2014-15).		

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

** Depending on the timing of the selection of a vendor to develop and implement a new eDiscovery system, these costs may be incurred in FY 2015-16.

Summary of Legislation

Recommended by the Joint Budget Committee (JBC), this bill implements the recommendations of the Discovery Task Force concerning developing a statewide discovery sharing (eDiscovery) system.

eDiscovery system. The bill continues and renames the task force to be the Discovery Project Steering Committee for the purposes of developing a request for proposal application and selection process to choose a vendor to develop an eDiscovery system. The steering committee is to make a recommendation by November 1, 2014, to the Colorado District Attorneys' Council (CDAC), which is to select a vendor. The CDAC is to enter into a contract with the selected vendor by June 30, 2016. The executive director of the CDAC is required to provide periodic progress reports to the steering committee and the JBC. The new eDiscovery system is to be integrated into the CDAC's "ACTION System" and be operational by July 1, 2016. Once operational, the CDAC is required to maintain and operate the system with the assistance of the Discovery Project Steering Committee. The bill provides immunity from civil causes of action for failure to redact information when a good faith effort has been made to comply with statutory requirements.

eDiscovery surcharge. The bill creates a surcharge for each person who is represented by private counsel or who appears pro se and is convicted of a felony, misdemeanor, drug felony, or drug misdemeanor. The surcharge is \$10 for a felony or drug felony, and \$5 for a misdemeanor or drug misdemeanor. The court may waive these surcharges if a person is indigent or financially unable to pay all or any portion of the surcharge. For each surcharge collected, five percent is retained by the court for administrative costs and credited to the Judicial Stabilization Cash

Fund (JSCF). The remainder is credited to the newly created Statewide Discovery Sharing System Surcharge Fund (Surcharge Fund). By January 15, 2016, the Judicial Department is required to report to the Judiciary Committees of the General Assembly and the JBC on collections of the surcharge.

Funding of the eDiscovery system. The General Assembly shall appropriate moneys from the Surcharge Fund to pay the costs of developing and maintaining the new eDiscovery system and operating the existing ACTION system. Appropriations for this purpose are made to the Judicial Department for allocation to the CDAC, which is required to provide specified financial reports for inclusion in the Judicial Department's budget request.

Background

Colorado Supreme Court Rule 16 (V)(c) requires the prosecuting attorney to make certain material (discovery) available to the defense counsel and to provide duplicates upon request. The state pays the costs of duplicating discovery when legal representation is provided for an indigent defendant. In FY 2012-13, agencies of the Judicial Branch and the Department of Law spent a total of \$2.5 million General Fund to obtain discovery.

Senate Bill 13-246 created the 12-member Discovery Task Force to study and make recommendations on the feasibility of providing discovery for criminal cases in an electronic format and alternate means of sharing and reimbursing discovery costs. The Discovery Task Force recommended the state develop an eDiscovery system that would allow materials to be transmitted from law enforcement agencies to prosecutors and from prosecutors to the defense in an electronic or digital format. The eDiscovery system is intended to eliminate the need for state judicial agencies to reimburse the prosecution for duplication costs and instead use these funds to maintain the eDiscovery system.

State Revenue

This bill will increase state cash fund revenue by a total of \$52,723 in FY 2014-15 and by \$74,383 in FY 2015-16.

Assumptions. There will be about 18,700 misdemeanor convictions and 4,025 felony convictions in a given fiscal year for which the new fee will be assessed. The fiscal note assumes the bill does not apply to deferred judgment and sentence cases and that the bill will take effect on June 1, 2014, and that the bill will apply to convictions entered on or after this date.

Fee impact on individuals. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. Under the bill, the fee is \$5 for a misdemeanor conviction and \$10 for a felony conviction. The fiscal note assumes that 10 percent of persons convicted of a misdemeanor and 20 percent of persons convicted of a felony will be determined indigent and unable to pay the fine. In addition, due to the time payment option, most persons will opt to pay fines over time.

For each year's misdemeanor convictions, a person will pay 55 percent of the fine assessed in the first year; 20 percent of the fine assessed in the second year; and 5 percent of the fine assessed in each successive year until paid. For each year's felony convictions, a person will pay 20 percent of the fine assessed in the first year; 15 percent of the fine assessed in the second year; and 5 percent of the fine assessed in each successive year until paid. Tables 1 and 2 below identify the fee impact of this bill.

Table 1. Fee Impact on Persons Convicted of a Crime FY 2014-15						
Type of Fee	Proposed Fee	Number Affected	Number Assessed	Total Revenue	JSCF (5%)	Surcharge Fund (95%)
Misdemeanor Convictions - Y1	\$5	18,700	16,830	\$46,283	\$2,314	\$43,969
Felony Convictions - Y1	\$10	4,025	3,220	\$6,440	\$322	\$6,118
TOTAL				\$52,723	\$2,636	\$50,087

Table 2. Fee Impact on Persons Convicted of a Crime FY 2015-16						
Type of Fee	Proposed Fee	Number Affected	Number Assessed	Total Revenue	JSCF (5%)	Surcharge Fund (95%)
Misdemeanor Convictions - Y2	\$5	18,700	16,830	\$46,283	\$2,314	\$43,968
Misdemeanor Revenue Collections (20% of Y1 fees)				\$16,830	\$842	\$15,989
Felony Convictions - Y2	\$10	4,025	3,220	\$6,440	\$322	\$6,118
Felony Revenue Collections (15% of Y1 fees)				\$4,830	\$242	\$4,589
TOTAL				\$74,383	\$3,719	\$70,663

State Expenditures

The bill appropriates \$5.3 million General Fund to the Judicial Department to be used to fund the costs of the eDiscovery system in either FY 2014-15 or FY 2015-16. The actual costs of the system, any ancillary costs such as implementing wireless access in courtrooms or other improvements recommended by the task force, and the timing of the expenditures will be determined once the request for proposals and selection process is complete. Moneys in the Surcharge Fund will be available to be appropriated to help offset the costs of the new eDiscovery system once known. The fiscal note assumes that beginning in FY 2016-17, the \$2.2 million appropriated to judicial agencies for reimbursements of discovery costs will be reallocated to the Judicial Department for distribution to the CDAC.

Local Government Impact

The bill affects local governments in several ways. The bill creates workload and revenue for the CDAC to develop and house the eDiscovery system, and to provide progress reports during its implementation.

Over the long term, the bill will reduce workload and revenue to local governments for the duplication of discovery materials once the eDiscovery system is implemented. Shifting to a digital format for collecting and exchanging discovery materials may create costs and workload for law enforcement agencies and district attorneys, for which no information is available as of this writing.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2014-15, the bill appropriates \$5.3 million General Fund to the Judicial Department, for allocation to the trial courts section. Any moneys appropriated, but not expended, prior to July 1, 2015, may be used in FY 2015-16 for the same purposes.

State and Local Government Contacts

Counties	District Attorneys
Joint Budget Committee Staff	Judicial
Law	Municipalities
Office of the Alternate Defense Counsel	Office of the State Public Defender
Public Safety	Sheriffs