

**STATE  
FISCAL IMPACT**

**Drafting Number:** LLS 15-0184  
**Prime Sponsor(s):** Rep. Lawrence; Fields

**Date:** February 6, 2015  
**Bill Status:** House Judiciary  
**Fiscal Analyst:** Bill Zepernick (303-866-4777)

**BILL TOPIC:** PUBLIC DEFENDER ADC RECORDS OPEN RECORDS

<b>Fiscal Impact Summary*</b>	<b>FY 2015-2016</b>	<b>FY 2016-2017</b>
<b>State Revenue</b>	<b>\$83,650</b>	<b>\$83,650</b>
Cash Funds	83,650	83,650
<b>State Expenditures</b>	<b>\$556,247</b>	<b>\$601,594</b>
General Fund	506,708	540,030
Centrally Appropriated Costs**	49,539	61,564
<b>FTE Position Change</b>	<b>3.4 FTE</b>	<b>4.0 FTE</b>
<b>TABOR Set Aside</b>	<b>\$83,650</b>	<b>\$83,650</b>
<b>Appropriation Required: \$506,708 - Multiple agencies (FY 2015-16)</b>		

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

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

**Summary of Legislation**

The bill applies the Colorado Open Records Act (CORA) to the records of the Office of the State Public Defender (OSPD) and the Office of Alternate Defense Counsel (ADC). The bill exempts privileged attorney-client records from public disclosure.

**Background**

Under current law, CORA requires that state agencies allow the public to inspect documents and records, with certain exceptions. Currently, the Judicial Department, including the OSPD and ADC, are exempt from CORA. Under CORA, state agencies must produce a record for inspection within a reasonable period of time, which is specified as three business days. If there are extenuating circumstances, the state agency may take up to seven days to produce a record. Agencies may charge fees to cover some of the costs associated with CORA, including a fee of up to \$0.25 per printed page for copies of records and up to \$30 per hour for the research and retrieval of records, with the first hour provided at no cost.

**State Revenue**

The bill will increase cash fund revenue to the Judicial Department by **up to \$84,000 per year beginning in FY 2015-16** from fees paid by CORA requesters. This revenue to the OSPD and ADC will be used to offset research and retrieval costs and printing costs for providing copies of records. Of this revenue, \$71,700 would go to the OSPD and \$11,950 to the ADC. The estimated revenue is summarized in Table 1 and discussed below.

**Assumptions.** While the exact volume of CORA requests to the OSPD and ADC and the associated workload of each is not know at this time, the revenue projections above are based on the following assumptions:

- the OSPD receives 600 requests per year and the ADC receives 100 requests;
- for research and retrieval, 40 percent of requests can be completed in one hour or less, 30 percent take an average of 5 hours, and 30 percent take an average of 10 hours;
- the cost for research and retrieval is \$30 per hour, with the first hour free;
- each request, on average, generates 10 pages of records, for which a fee of \$0.25 per page is charged for copies; and
- the August effective date of the bill is not assumed to significantly affect the number of requests received in the first year.

**Research and retrieval fees.** Based on the assumptions above, the OSPD will require 2,700 hours for research and retrieval for the 360 requests requiring more than an hour of staff time. In line with current law, they are assumed to charge \$30 per hour for 2,340 hour of staff time, after providing the first hour free of charge. For the ADC, it is projected they will require 450 hours of staff time for the 60 requests requiring more than an hour of staff time. For this work, the ADC will charge the allowable \$30 fee on 390 hours of staff time.

**Printing fees.** Printing costs will vary based on the number of types of records requested. Based on the assumptions above, the OSPD will charge for 6,000 pages and the ADC will charge for 1,000 pages.

<b>Fee Source</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>
<b>Office of the State Public Defender</b>	<b><u>\$71,700</u></b>	<b><u>\$71,700</u></b>
Research and Retrieval (2,340 hours x \$30)	70,200	70,200
Printing (6,000 x \$0.25)	1,500	1,500
<b>Alternate Defense Counsel</b>	<b><u>\$11,950</u></b>	<b><u>\$11,950</u></b>
Research and Retrieval (450 hours x \$30)	11,700	11,700
Printing (1,000 x \$0.25)	250	250
<b>TOTAL</b>	<b><u>\$83,650</u></b>	<b><u>\$83,650</u></b>

**TABOR Impact**

This bill increases state revenue from fees, which will increase the amount required to be refunded under TABOR.

**State Expenditures**

The bill increases General Fund costs in the Judicial Department by a total of **\$556,247 and 3.4 FTE in FY 2015-16 and \$601,594 and 4.0 FTE in FY 2016-17**. These costs in the OSPD and the ADC are summarized in Table 2 and discussed below.

**Assumptions.** In addition to the assumptions listed above in the State Revenue section, the fiscal note assumes the following:

- 150 requests with the OSPD and 25 requests with the ADC each year will require consultation with the Department of Law concerning issues relating to attorney-client privilege and the application of CORA with an average of 2 hours of legal service time required for each referral;
- 30 requests with the OSPD and 5 requests with the ADC each year will require the use of outside legal counsel in response to litigation concerning CORA denials and other issues with an average of 22 hours required in each case;
- outside legal counsel will be retained at a rate of \$200 per hour; and
- 30 days of staff travel will be required in the OSPD and 10 days will be required in the ADC at a cost of \$150 per day.

<b>Table 1. Expenses under HB 15-1101</b>		
<b>Cost Component</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>
<b>Office of the State Public Defender</b>	<b><u>\$379,987</u></b>	<b><u>\$406,729</u></b>
Personal Services	167,037	200,445
FTE	2.1 FTE	2.5 FTE
Operating and Capital Outlay Expenses	16,484	2,375
Legal Services	28,353	28,353
Outside Legal Counsel	132,000	132,000
Miscellaneous Expenses	6,190	6,190
Centrally Appropriated Costs*	29,923	37,366
<b>Alternate Defense Counsel</b>	<b><u>\$176,260</u></b>	<b><u>\$194,865</u></b>
Personal Services	117,147	140,576
FTE	1.3 FTE	1.5 FTE
Operating and Capital Outlay Expenses	10,831	1,425
Legal Services	4,726	4,726
Outside Legal Counsel	22,000	22,000
Miscellaneous Expenses	1,940	1,940
Centrally Appropriated Costs*	19,616	24,198
<b>TOTAL</b>	<b><u>\$556,247</u></b>	<b><u>\$601,594</u></b>

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

**Personal services.** The fiscal note estimates that 2.5 FTE in the OSPD and 1.5 FTE in the ADC is required to respond to CORA requests if the current exemption is eliminated. For the OSPD, this staff will include an attorney, a legal assistant, and a half-time administrative assistant. For the ADC, this staff include an attorney and a half-time legal assistant. These staff will receive requests, retrieve records, review records for confidential information, redact information as necessary, and correspond with requesters concerning denials, clarification of requests, and other issues. Personal service costs are estimated at \$167,037 in FY 2015-16 and \$200,445 in FY 2016-17 for the OSPD and \$117,147 in FY 2015-16 and \$140,576 in FY 2016-17 for the ADC. First-year staff costs are prorated to reflect the August effective date of the bill and the General Fund pay date shift.

**Operating and capital outlay expenses.** Standard operating and capital outlay expenses for new staff are expected to be \$16,484 in the OSPD and \$11,271 in the ADC in FY 2015-16. In the second year, these costs for operating expenses will be \$2,375 in the OSPD and \$1,425 in the ADC.

**Legal services.** The OSPD and ADC will require an additional 300 hours and 50 hours of legal services, respectively. At the current blended rate of \$94.51, this will increase costs in the OSPD by \$28,353 and in the ADC by \$4,726. These legal services require a reappropriation of funds and an allocation of 0.2 FTE to the Department of Law.

**Outside legal representation.** In practice, there may be ambiguity about which types of records held by the agencies are privileged and exempt from release under the bill. This will likely result in litigation costs for the OSPD and ADC for outside legal representation. In addition, there may be some cases that arise where the Department of Law cannot provide counsel to the OSPD and ADC because its role in prosecuting clients represented by these agencies. While the exact amount of litigation is difficult to project, the fiscal note estimates these costs at \$132,000 for the OSPD and \$22,000 for the ADC.

**Miscellaneous Expenses.** Other costs include staff travel (\$4,500 for OSPD and \$1,500 for ADC), attorney registration fees (\$190 for both agencies), and printing of requested documents (\$1,500 for OSPD and \$250 for ADC).

**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 3.

<b>Table 3. Centrally Appropriated Costs Under HB 15-1101*</b>		
<b>Cost Components</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$27,512	\$32,381
Supplemental Employee Retirement Payments	22,027	29,183
<b>TOTAL</b>	<b>\$49,539</b>	<b>\$61,564</b>

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

### **Effective Date**

The bill takes effect August 5, 2015, if the General Assembly adjourns on May 6, 2015, as scheduled, and no referendum petition is filed.

### **State Appropriations**

The bill requires the following appropriations for FY 2015-16:

- \$350,064 General Fund and an allocation of 2.1 FTE to the Office of the State Public Defender, of which \$28,353 and an additional 0.2 FTE is reappropriated to the Department of Law; and
- \$156,644 General Fund and an allocation of 1.3 FTE to the Office of Alternate Defense Counsel, of which \$4,726 is reappropriated to the Department of Law.

### **Departmental Difference**

The OSPD estimated its costs under the bill as \$651,704 and 4.0 FTE in FY 2015-16. The ADC estimated its costs as \$396,969 and 2.7 FTE in FY 2015-16. Combined, these agencies' estimates total \$1,048,673 and 6.7 FTE in FY 2015-16. Similar costs were estimated by both agencies in FY 2016-17 and beyond. While the fiscal note agrees that there will be an increase in workload and legal costs for these agencies from being subject to CORA, this analysis includes a lower estimate for several reasons.

First, the fiscal note includes lower staffing levels for both agencies based on a slightly lower level of work assumed per request and different assumptions on the staffing mix required to complete the work. Also, the fiscal note assumes that some work can be absorbed by existing staff and accounts for the fact that these agencies currently do spend some staff time responding to CORA request under current law, if only to issue denials based on their current exemption from the law.

Second, while litigation is possible, the fiscal note includes a more conservative estimate for the required hours of outside counsel. Generally, fiscal note policy is to assume that agencies will implement and comply with legislation in a manner that avoids litigation. However, the fiscal note recognizes that this may not be possible in all cases, especially in the case of CORA, which is an area of law where lawsuits have been brought previously. Therefore, the fiscal note includes a lower estimate with the assumption that any additional costs from litigation, if they occur, will be addressed through the budget process once the actual number and complexity of cases are known.

Lastly, the fiscal note includes other adjustments, for the ADC in particular, to standardize the costs components for both agencies and to adjust costs and workload to reflect the lower caseload of the ADC in proportion to the OSPD.

### **State and Local Government Contacts**

Judicial  
Law

State Public Defender

Alternate Defense Counsel