

**STATE
FISCAL IMPACT**

Drafting Number: LLS 15-0247
Prime Sponsor(s): Rep. Lawrence
 Sen. Roberts

Date: March 2, 2015
Bill Status: House Judiciary
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BILL TOPIC: COURT MAKE PUBLIC DEFENDER INDIGENCY DETERMINATION

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017	FY 2017-18
State Revenue			
State Expenditures		<u>\$937,796</u>	<u>\$952,752</u>
General Fund		819,849	814,643
Centrally Appropriated Costs**		117,947	138,109
FTE Position Change		5.9 FTE	8.1 FTE
Appropriation Required: None.			

* 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

Effective July 1, 2016, this bill changes the agency making determinations for eligibility for a public defender on the basis of indigency from the Office of the State Public Defender (OSPD) to the court.

Background

In most cases, a finding of indigency is required before a public defender is appointed. There are some exceptions, such as cases where the court finds it would be in a juvenile defendant's best interests to be represented, juvenile detention hearings, adult in-custody appointments, adult appellate cases, and adult defendant best interest cases. In FY 2013-14, the OSPD represented 115,107 clients in new trial court cases. About 80 percent of these clients completed paperwork to be assessed for indigency. According to the OSPD's November 1, 2014, Annual Performance Report, new client caseload is anticipated to be 149,132 in FY 2016-17.

Three factors are evaluated to determine indigency: gross household income, household expenses as compared to household income, and the severity of the charge compared to assets deemed to be able to be used to pay for the costs of defense.

State Expenditures

This bill results in a net increase of General Fund expenditures by \$937,796 and 5.9 FTE in FY 2016-17 and by \$952,752 and 8.1 FTE in FY 2017-18. No costs are incurred in FY 2015-16. Table 1 displays the change in costs by agency, which are discussed in further detail, below.

Table 1. Changes in Expenditures Under HB15-1160			
Cost Components	FY 2015-16	FY 2016-17	FY 2017-18
Office of the State Public Defender		(\$558,572)	(\$643,771)
Personal Services		(\$404,814)	(\$466,149)
FTE		(14.4 FTE)	(15.2 FTE)
Operating Expenses and Capital Outlay Costs		(13,680)	(14,440)
Centrally Appropriated Costs*		(140,078)	(163,182)
Judicial - Courts		\$1,496,368	\$1,596,523
Personal Services		\$1,109,179	\$1,273,097
FTE		20.3 FTE	23.3 FTE
Operating Expenses and Capital Outlay Costs		129,164	22,135
Centrally Appropriated Costs*		258,025	301,291
TOTAL		\$937,796	\$952,752
FTE		5.9 FTE	8.1 FTE

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

Assumptions. No costs will be incurred in FY 2015-16 due to the effective date of the bill. Beginning in FY 2016-17, costs will increase for the courts to make indigency determinations instead of the OSPD. Cost estimates are based on the following assumptions:

- Based on projected caseload growth in the OSPD's most recent annual report, OSPD new client caseload is assumed to be 149,132 in FY 2016-17 and 157,413 in FY 2017-18;
- 80.4 percent of all cases will require an indigency determination to be made, resulting in 119,902 cases reviewed in FY 2016-17 and 126,560 cases reviewed in FY 2017-18;
- court staff will access additional databases, be required to take additional steps for filings, and take 23 minutes to process each indigency application;
- OSPD staff is currently expending about 15 minutes to process each indigency application;
- court staff responsible for implementing the bill (collections investigators) are compensated at a higher level than OSPD staff (administrative assistants); and
- first year salary costs are adjusted for the General Fund pay date shift.

Office of the State Public Defender. In the OSPD, indigency applications are processed by administrative assistants in district offices. The salary for an administrative assistant is currently \$2,290 per month. Based on the average of 15 minutes per case, FTE are reduced by 14.4 FTE in FY 2016-17 and 15.2 FTE in FY 2017-18. Standard operating costs of \$950 per FTE per year are also reduced.

Judicial — Courts. For the courts, indigency applications will be processed by collections investigators. The salary for these positions is assumed to be \$4,080 per month, which is the rate at which other collections investigators are paid within the department. FTE calculations assume each indigency application review with take 23 minutes. Standard operating costs of \$950 per FTE per year are included, plus one-time costs of \$4,703 per FTE for capital outlay costs are provided for all FTE in the first year.

Representation costs. The bill may affect the number of cases approved for public defender appointments, but as no data exists from which to make estimates, this potential impact has not been calculated.

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. Changes in Centrally Appropriated Costs Under HB15-1160*		
Cost Components	FY 2016-17	FY 2017-18
Office of the State Public Defender	<u>(\$140,078)</u>	<u>(\$163,182)</u>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	(\$105,437)	(\$121,412)
Supplemental Employee Retirement Payments	(34,641)	(41,770)
Judicial - Courts	<u>\$258,025</u>	<u>\$301,291</u>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	163,109	187,214
Supplemental Employee Retirement Payments	94,916	114,077
TOTAL	<u>\$117,947</u>	<u>\$138,109</u>

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

Effective Date

The bill takes effect July 1, 2016, if no referendum petition is filed.

State and Local Government Contacts

Joint Budget Committee Staff

Judicial

Office of the State Public Defender