



Colorado  
Legislative  
Council  
Staff

HB16-1311

FISCAL NOTE

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

Drafting Number: LLS 16-0972

Date: March 21, 2016

Prime Sponsor(s): Rep. Salazar

Bill Status: House Judiciary

Fiscal Analyst: Amanda Hayden (303-866-4918)

**BILL TOPIC:** PROCEDURES WHEN ORDERS REQUIRE MONETARY PAYMENTS

Fiscal Impact Summary	FY 2015-2016 (Current year)	FY 2016-2017	FY 2017-2018			
<b>State Revenue</b> Cash Funds	Potential decrease.					
<b>State Expenditures</b> General Fund Centrally Appropriated Costs	Workload increase.	\$731,979 642,205 89,774	\$613,391 521,575 91,816			
<b>FTE Position Change</b>		5.8 FTE	5.8 FTE			
<b>TABOR Impact</b>	Potential decrease.					
<b>Appropriation Required:</b> \$642,205 - Judicial Department (FY 2016-17).						
<b>Future Year Impacts:</b> Ongoing increase in state expenditures and potential decrease in state revenue.						

**Summary of Legislation**

When a court imposes a sentence requiring a defendant to pay a monetary amount, the court may make arrangements for payment at a future date or in installments and must provide certain instructions to defendants. This bill specifies that these same rules apply when the court enters a judgment or issues an order requiring payment. The bill also specifies that when imposing a monetary obligation, the court must inform the defendant that he or she may petition the court for a reduction in the amount or may request an alternative sentence, other than incarceration. The court must also inform the defendant that if he or she is unable to pay, the court may not jail the defendant for failure to pay.

The bill also requires the court to show that a defendant willfully failed to pay before imposing a suspended sentence, revoking probation, or holding a defendant in contempt. The court must make findings on the record of the defendant's ability to pay without undue hardship before accepting a defendant's guilty plea in contempt of court proceedings related to failure to pay. The court may issue an arrest warrant only if a defendant fails to appear at a hearing intended to determine his or her ability to pay.

The court defines "undue hardship" related to ability to pay as depriving a person or his or her dependents of money for basic necessities. In determining undue hardship, the court may consider homelessness; a defendant's income, expenses, and employment status; outstanding debts; whether he or she receives public assistance; and the availability of real or personal property. There is a rebuttal presumption of undue hardship if the defendant lives in public housing or receives public assistance, or if the defendant's family income is less than 200 percent of the federal poverty line.

### **State Revenue**

This bill may reduce state cash fund revenue by a minimal amount. Courts may reduce monetary sentences for defendants who request a reduction or an alternative sentence or for those for whom the sentence presents an undue hardship. The fiscal note assumes that courts are already accounting for defendants' ability to pay when imposing monetary sentences and that any reduction in revenue will be minimal.

### **TABOR Impact**

This bill may reduce state cash fund revenue from fines and court fees, which may reduce the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

### **State Expenditures**

This bill increases state General Fund expenditures in the Judicial Department by **\$731,979 and 5.8 FTE in FY 2016-17 and by \$613,391 and 5.8 FTE in FY 2017-18**. The bill increases workload for the Office of the State Public Defender and the Office of the Alternate Defense Counsel. Costs are shown in Table 1 and explained below.

<b>Table 1. Expenditures Under HB16-1311</b>		
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Personal Services	\$506,375	\$506,375
FTE	5.8 FTE	5.8 FTE
Operating Expenses and Capital Outlay Costs	135,830	15,200
Centrally Appropriated Costs*	89,774	91,816
<b>TOTAL</b>	<b>\$731,979</b>	<b>\$613,391</b>

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

**Assumptions.** The fiscal note makes the following assumptions:

- Based on data from 2015, there will be approximately 123,000 sentences given in court, all of which have a monetary component. Judicial officers will spend an extra 15 seconds advising defendants of their rights as specified by the bill, resulting in 512 hours of additional court time.

- Approximately ten percent of defendants (12,300) will request a hearing for a reduction in the amount they owe or for an alternative sentence. Each hearing will take on average 15 minutes, resulting in an additional 3,075 hours of court time.
- Approximately 30 percent of these cases will take place in district court and 70 percent of the cases will take place in county court.
- Staff will begin on June 1, 2016, increasing workload for hiring new staff in the current FY 2015-16.

**Personal services.** Based on the assumptions above, courts require additional staff to make the 500 hours of advisements and hear an estimated 3,000 hours of motions for reduced payments or alternative sentences. District courts require an additional 0.5 FTE for a magistrate and 1.5 FTE for support staff. County courts require an additional 1.25 FTE for a magistrate and 2.5 FTE for support staff.

**Operating expenses and capital outlay costs.** Standard operating expenses and capital outlay costs for judges and magistrates are higher than for other personnel and include judges' chambers, courtroom and jury room expenses, and law library access.

**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.

<b>Table 2. Centrally Appropriated Costs Under HB16-1311</b>		
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$46,442	\$46,442
Supplemental Employee Retirement Payments	43,332	45,374
<b>TOTAL</b>	<b>\$89,774</b>	<b>\$91,816</b>

**Office of the State Public Defender (OSPD) and Office of the Alternate Defense Counsel.** The bill increases workload for OSPD to provide representation for indigent clients requesting an additional hearing for a reduced or alternative sentence. Whenever OSPD has a conflict, the Office of the Alternate Defense Counsel may provide representation, and thus may see an increase in workload, as well. Any increase in workload in these offices is expected to be minimal.

## Local Government

The bill may increase costs in municipal courts and the Denver County Court to hear requests for reduced or alternative sentences. To the extent that these courts grant defendants' requests for reduced sentences, it may also reduce the amount of revenue collected from fines and fees. The fiscal note has not estimated these costs or the potential reduction in revenue.

**Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, and it applies to sentences entered and to hearings for failure to make payments conducted on or after the effective date of this act.

**State Appropriations**

For FY 2016-17, the bill requires a General Fund appropriation of \$642,205 and an allocation of 5.8 FTE to the Judicial Department.

**State and Local Government Contacts**

Judicial