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## FISCAL IMPACT REPORT

SPONSOR Wirth ORIGINAL DATE 1/20/06  
LAST UPDATED \_\_\_\_\_ HB 124  
SHORT TITLE Non-Death Penalty Contract Attorney Rates SB \_\_\_\_\_  
ANALYST Medina

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	\$15,200.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

Response Received From  
Public Defender Department

### SUMMARY

#### Synopsis of Bill

House Bill 124 appropriates \$11.5 million from the general fund to the Public Defender Department for the purpose of contracting with attorneys for the representation of indigent defendants in non-death penalty cases, and \$3.7 million from the general fund to the Public Defender Department for additional attorneys and support staff statewide. The bill also proposes new material to the Public Defender Act setting a minimum hourly rate of \$75.00/hour for contract attorney representation of public defender clients in non-death penalty cases.

### FISCAL IMPLICATIONS

The appropriation of \$15.2 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2007 shall revert to the general fund. (See "Conflict" below)

### SIGNIFICANT ISSUES

The Public Defender Department (PDD) notes that this appropriation is not included in the Executive budget recommendation, which the department supports.

## **CONFLICT**

This bill conflicts with both the LFC's and the Executive's PDD appropriation recommendations to the Legislature. The Executive appropriation recommendation of \$10 million in the contractual services category includes \$9.8 million to provide for contract attorney fees. The LFC recommends \$11 million for contractual services, including \$10.7 million for contract attorney fees. In FY05, PDD expended \$8.6 million in contract attorney fees and in FY06 the department is budgeted to expend \$9.6 million. The appropriation contained in this bill would effectively more than double the appropriation for expenditure on contract attorney fees.

Both the LFC and the Executive also recommended base expansion for additional PDD staff. The LFC recommended \$325.2 thousand for 10 additional permanent FTE distributed among the Clovis, Aztec and Albuquerque offices, all of which experience high caseloads. The Executive recommended \$1 million for 19 additional permanent in those areas of the state with the highest caseloads per attorney.

## **OTHER SUBSTANTIVE ISSUES**

The Public Defender Department does not currently have a minimum hourly rate for its contract attorneys. Instead, the department sets flat fee rates that depend on the nature of the case handled by the contractor. While the rates vary by judicial district, they range from \$150.00 to \$180.00 for a misdemeanor case to \$5.0 thousand for a non-death penalty first degree murder case.

## **ALTERNATIVES**

The LFC and the Executive recommendations for the PDD budget are viable alternatives to this legislation.

## **POSSIBLE QUESTIONS**

How was \$75.00/hour determined to be a fair hourly rate as proposed by this bill?

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