

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 2/2/15

SPONSOR Ryan LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Indigent Defense Act & Public Defender Act SB 321

ANALYST Jorgensen

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
None	(\$415.0)	(\$415.0)	Recurring	General Fund
None	\$415.0	\$415.0	Recurring	PD Defense Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$945.3	\$945.3	\$1,890.6	Recurring	PDC Operating Budget

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Attorney General's Office (AGO)  
 Public Defender Commission (PDC)

### SUMMARY

#### Synopsis of Bill

Senate Bill 321 makes several changes to the Indigent Defense Act and the Public Defender Act in the following ways:

- Clarifies that the Chief Public Defender is responsible for collecting reimbursements from non-indigent clients;
- Directs any client reimbursement received to the public defender client reimbursement fund. Currently, client reimbursements collected by PDC revert to the general fund;
- Streamlines the process for allowing the PDC to waive the \$10 application fee for indigent clients;
- Amends the definition of a “serious crime,” which triggers eligibility for a public defense, from an offence punishable by at least six months incarceration to any crime for which the possible penalty includes incarceration in a jail or prison;
- Clarifies that attorneys employed or contracted by the PDC who provide criminal defense shall not be liable in any civil action regarding the performance of duties under the contract for services;
- Requires the determination of indigency to be made by the PDC and provides for a challenge to a finding of non-indigency; and
- Terminates the authority of the District Attorney to seek reimbursement for client representation provided by the PDC to a non-indigent individual.

## **FISCAL IMPLICATIONS**

SB 321 directs that any funds collected by PDC as a reimbursement for representation should be deposited in the public defender client reimbursement fund and should not revert to the general fund. Based on reimbursements for representation received by the PDC from FY12 to FY14, this enactment of SB 321 will result in a reduction of \$415 thousand to the general fund and an increase of that same amount to the PDC operating budget. This revenue swap is shown in the revenue table above.

Additionally, PDC anticipates that changes in the indigency standards provided for in SB 321 may create significant savings in the operating budget. In FY14, PDC stated that the office represented non-indigent clients in 1,048 cases at an estimated cost of \$945.3 thousand as reflected in the estimated additional operating budget table above.

## **SIGNIFICANT ISSUES**

The AOC writes:

The deletion in Section 2 of the court’s role in determining indigency would rid the courts of a burdensome administrative task that is arguably not the court’s business in the first place. Courts can assist the public defender by collecting affidavits of indigency upon first appearance, to be later verified by the public defender. However, it is logical for the public defender to determine on whom to spend its appropriated funds.

The PDC states:

Some PDC clients are determined by the courts to not be indigent, and thus able to pay for their representation. SB 321’s proposed changes in reimbursement fee collection and retention (and in disallowing non-indigents to hire PDC to represent them) would stop a situation in which non-indigents have been able to raid the funds this Legislature has set aside by for the defense of indigents. The present situation has non-indigents using the money given by the Legislature for

indigent defense, and any reimbursements going into the general fund - the result being that the amount of the cost of the defense of these non-indigents vanishes from the budget this Legislature allots the PDC in order to meet the state's indigent defense duty. SB 321 would set this right.

Enabling the PDC to collect and retain reimbursement for client representation may translate into more successful collection of debts.

### **TECHNICAL ISSUES**

SB 321, on page 12, lines 13 and 14, directs any amounts recovered or deposited to the “public defender client reimbursement fund.” This fund has not been created in statute. An amendment to create the fund may be needed to allow the PDC to retain client reimbursements.

### **OTHER SUBSTANTIVE ISSUES**

The AGO points out that the provisions of Section 3 and Section 9, which shield an attorney assigned or contracted with to provide representation from civil liability may not provide protection from a suit claiming ineffective assistance of counsel as this is a quasi-civil proceeding.

CJ/bb