



COLORADO
Department of Local Affairs
Division of Local Government

Defense Counsel on First Appearance Colorado Revised Statute 24-32-123(4)

SMART ACT REPORT

December 1, 2021



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SMART ACT REPORT Defense Counsel on First Appearance Grant Program December 1, 2021

Section 24-32-123 (4), of Colorado Revised Statute (C.R.S) requires the Department of Local Affairs, Division of Local Government, provide an update regarding the effectiveness of the Defense Counsel on First Appearance Grant program in the Department’s annual report as required by the “State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act” part 2 of article 7 of title 2. This document serves as response to this report requirement.

Defense Counsel on First Appearance Grant Program Purpose and Operation

In Colorado’s 2018 legislative session, House Bill 18-1353 was passed creating the Defense Counsel on First Appearance grant program (DCFA) in Colorado Revised Statute (C.R.S.) 24-32-123. The program gives grants to Colorado municipal courts with the purpose of reimbursing in whole, or in part, costs associated with the provision of defense counsel to defendants at their first appearance in municipal courts. In June 2018 to launch the program, the Department held stakeholder engagements that were well attended by municipal judges and other interested stakeholders. The program team learned through the engagements that costs for defense counsel vary across the state. As a result, the team and stakeholders agreed to the following programmatic guidelines to equalize the cost and grant requests.

- Annually, the hourly rate of the defense counsel will be set \$75/hour.
- The program is to reimburse the cost for provision of first appearances at \$75/hour, and costs associated with the provision of defense counsel related to the first appearance.
- A municipal court decides whether the defense counsel time is actually toward a first appearance that meets the requirements of this program. Per statute, first appearance costs can only be reimbursed when they meet C.R.S. sections 13-10-114.5 which states,

(1) At the time of first appearance on a municipal charge, if the defendant is in custody and the charged offense includes a possible sentence of incarceration, the court shall appoint counsel to represent the defendant for purposes of the initial appearance unless, after a full advisement pursuant to C.M.C.R. 210 and section 16-7-207, C.R.S., the defendant makes a knowing, intelligent, and voluntary waiver of his or her right to counsel.

(2) If the defendant remains in custody, the appointment of counsel continues until the defendant is released from custody. If the defendant is released from custody, he or she may apply for court-appointed counsel, and the court shall appoint counsel if the



court determines that the defendant is indigent and the charged offense includes a possible sentence of incarceration.

Annually, approximately \$1.8 million was to be set aside for grant awards. Unspent funds remained in the program for one-year following for continued spending or supplemental awards. Due to the COVID-19 pandemic, the DCFA program saw an approximate 50% reduction to the program budget for Fiscal Year 19/20 and 20/21 respectively.

Program Awards

Since the program began July 1, 2018, grant awards of approximately \$2.4 million were made available to 30 Colorado Municipal Courts. To participate in the program, grantees must complete an application and be awarded funds. Defense Counsel on First Appearance award amounts are determined based on anticipated expenses over the course of a given year. Eligible program expenses are submitted quarterly to the Division, and the cost for the provision of defense counsel at the first appearance that occurred during the quarter is reimbursed at a rate of \$75/hour. For a detailed full list of awards, please review *Exhibit B*.

Program Effectiveness

Statute requires that this SMART Act report discuss the effectiveness of the program. Currently, the program team is analyzing eligible community participation. The list of eligible local governments is long, but how many of those that could actually seek reimbursement is not clear. Program staff has learned that not all municipalities can meet the definition of first appearances as required by C.R.S. sections 13-10-114.5, and many municipalities rely on the county court system to try cases. Expanding eligibility to counties would likely increase the use of these funds and be consistent with legislative intent. However, that expansion would require legislative action.

In addition, the COVID-19 pandemic resulted in fewer court appearances as the courts had shut down and stay-at-home orders implemented. As the communities have begun to adapt and emerge from the pandemic, courts are returning to normal operations and grant reimbursements have begun to reflect this.



Exhibit A - Money Allocated, Rolled-over, Encumbered, and Expended

Fiscal Year	Long Bill Amount	Roll Over	Encumbered	Expenses
2019	\$1,846,959.00	0.00	0.00	\$211,561.41
2020	\$1,995,520.00	\$1,635,397.59	0.00	\$552,472.27
2021	\$1,000,000.00	\$995,125.65	0.00	\$517,917.65
2022	\$1,309,520.00	\$960,386.44	\$493,910.04	\$159,536.07
Totals	\$6,151,999.00	\$3,590,909.68	\$493,910.04	\$1,441,487.40

Exhibit B - Grant Awards: Defense Counsel on First Appearance Grant Program

Award Number	Grantee and Project Name	November 2018	January 2019	February 2019	March 2020	July 2020	December 2020	April 2021	Total
18A017	Alamosa Court Appointed Counsel	-	\$1,800	-	-	-	-	-	\$1,800
18A028	Arvada Court Appointed Counsel	-	\$5,400	-	\$9,700	-	-	\$10,000	\$25,100
18A024	Aurora Court Appointed Counsel	-	\$98,100	-	\$145,000	-	-	\$150,000	\$393,100
18A026	Brighton Court Appointed Counsel	-	\$6,300	-	-	-	-	-	\$6,300
18-019	Brush Court Appointed Counsel	-	-	\$6,300	-	-	-	-	\$6,300
18-014 & 19-045	Colorado Springs Court Appointed Counsel	\$52,875	-	-	-	-	\$20,000	\$10,000	\$82,875
18-016 & 19-046	Commerce City Court Appointed Counsel	\$18,000	\$23,400	-	-	-	\$10,000	\$15,000	\$66,400
18-015	Cortez Court Appointed Counsel	\$13,050	\$9,900	-	-	-	-	-	\$22,950
18-017	Denver Court Appointed Counsel	-	-	\$243,909	-	\$250,000	-	\$250,000	\$743,909
18-009	Englewood Court Appointed Counsel	\$29,934	-	-	-	\$30,000	-	\$25,000	\$84,934
18-022	Federal Heights Court Appointed Counsel	-	-	\$1,000	-	-	-	-	\$1,000
19-051	Firestone Court Appointed Counsel	-	-	-	-	-	\$1,000	-	\$1,000
18A020	Fort Collins Court Appointed Counsel	-	\$8,100	-	\$14,000	-	-	\$10,000	\$32,100
18-013 & 19-049	Grand Junction Court Appointed Counsel	\$2,196	\$1,062	-	-	-	\$4,000	-	\$7,258
18-018 & 19-044	Greeley Court Appointed Counsel	-	-	\$17,100	-	-	\$8,000	\$10,000	\$35,100
18-007	Greenwood Village Court Appointed Counsel	\$2,700	-	-	-	-	-	-	\$2,700
18-020 & 19-052	Hudson Court Appointed Counsel	-	-	\$15,300	-	-	\$2,000	-	\$17,300
18-021	Lafayette Court Appointed Counsel	-	-	\$31,500	-	-	-	-	\$31,500
18-004	Lakewood Court Appointed Counsel	\$37,044	\$34,200	-	\$50,000	-	-	\$25,000	\$146,244
18-012 & 19-047	Littleton Court Appointed Counsel	\$33,300	\$26,100	-	-	-	\$15,000	\$15,000	\$89,400
18A025 & 19-048	Longmont Court Appointed Counsel	-	\$23,400	-	-	-	\$8,000	\$8,000	\$39,400
18-001	Loveland Court Appointed Counsel	\$1,440	\$4,680	-	\$5,000	-	-	\$5,000	\$16,120
18-008	Northglenn Court Appointed Counsel	\$5,220	-	-	\$9,000	-	-	\$5,000	\$19,220



18A021	Palisade Court Appointed Counsel	-	\$1,530	-	-	-	-	-	\$1,530
18A029	Parker Court Appointed Counsel	-	\$2,250	-	\$2,000	-	-	\$5,000	\$9,250
18-002 & 19-043	Pueblo Court Appointed Counsel	\$136,800	\$77,175	-	-	-	\$14,000	\$14,000	\$241,975
18-005	Rifle Court Appointed Counsel	\$1,080	\$7,200	-	\$10,000	-	-	\$10,000	\$28,280
18-006	Sheridan Court Appointed Counsel	\$18,000	\$18,000	-	\$15,000	-	-	\$10,000	\$61,000
18-003	Thornton Court Appointed Counsel	\$33,525	\$28,800	-	\$30,000	-	-	\$20,000	\$112,325
18-011 & 19-042	Westminster Court Appointed Counsel	\$34,200	\$34,902	-	\$5,000	-	\$10,000	\$15,000	\$99,102
18-010 & 19-050	Wheat Ridge Court Appointed Counsel	\$17,190	\$12,600	-	-	-	\$8,000	\$8,000	\$45,790
TOTAL		\$436,554	\$424,899	\$315,109	\$294,700	\$280,000	\$100,000	\$620,000	\$2,471,262