



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 11, 2023

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December 1, 2023

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 a 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 (DCFA) Grant Program within the Division of Local Government to provide grants to reimburse local governments, in part or in full, for costs associated with the provision of defense counsel to defendants at their first appearances in municipal courts. Following sunset review, Senate Bill 23-072 extended the program an additional five years through FY 2027-2028. 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:

- Annually, the reimbursement rate of the defense counsel will be reimbursed at \$100/hour.
- The program is to reimburse the cost for provision of first appearances, and defense counsel cost related to the first appearance.
- A municipal court determines 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.

On average, \$1.69 million has been set aside annually for DCFA grant awards. Unspent funds remain in the program for the following fiscal year for continued spending or supplemental awards. The department does not anticipate experiencing sustained demand warranting the current appropriation amount for the next two years. Therefore an annual allocation reduction of \$500,000 has been submitted to the Joint Budget Committee for future allocations. If future reimbursement demand changes significantly, the department will request increased funding at that time.

Program Awards

Since the program began July 1, 2018, approximately \$3.4 million in grant awards have been made available to 37 Colorado Municipal Courts. For a detailed full list of awards, please review *Exhibit A*. Because any unexpended and unencumbered money remains available for expenditure by the division in the next fiscal year as mentioned in C.R.S. 24-32-123.2, the division creates amendment opportunities for existing contracts each year between February and April at the recipient's request based on their programmatic needs. These amendment cycles coincide with normal funding opportunities open to all municipal courts within the state that are not already a part of the program. Additionally, ongoing needs assessments are performed on all open contracts throughout the fiscal year to determine if they are on track to receive their full award. In cases where a contract appears to receive its full award before the end of the fiscal year, and a clear need for funding is still present, an additional amendment may be made for that contract.

Program Effectiveness

Statute requires that this SMART Act report discuss the effectiveness of the program. DLG staff believes this program has been successful for a program entering its 4th year. Currently the DCFA Program serves municipalities making up over 50% of the state's total population and has increased overall participation by 45% in 2022 alone. An additional municipality opted into the program in 2023 bringing the total number of contracts to 28.

Based on a 2022 program study, DLG staff was able to conclude that most municipalities that do not participate in the program do not meet the requirements of both having their own municipal court with the ability to incarcerate defendants as set forth in (C.R.S) 13-10-114.5.

In response to this issue, annual outreach efforts are being refined to target specific municipalities based on population and arrest rates, to include in person contact with court staff to spread awareness and information about the program, to ensure that those municipalities meet the requirements to actually benefit from the program.

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

Grantee and Project Name	2018	2019	2020	2021	2022	2023	Grand Total
Alamosa		\$1,800			\$4,000	\$4,000	\$9,800
Arvada		\$5,400	\$9,700	\$10,000	\$8,000	\$8,000	\$41,100
Aurora		\$98,100	\$145,000	\$150,000	\$150,000	\$450,000	\$993,100
Brighton		\$6,300			\$36,000	\$36,000	\$78,300
Broomfield						\$15,000	\$15,000
Brush		\$6,300					\$6,300
Castle Rock					\$3,300	\$3,300	\$6,600
Colorado Springs	\$52,875		\$20,000	\$10,000	\$5,000		\$87,875
Commerce City	\$18,000	\$23,400	\$10,000	\$15,000	\$13,000	\$13,000	\$92,400
Cortez	\$13,050	\$9,900					\$22,950
Cripple Creek					\$1,500		\$1,500
Denver		\$243,909	\$250,000	\$250,000	\$275,000	\$275,000	\$1,293,909
Edgewater					\$10,000	\$10,000	\$20,000
Englewood	\$29,934		\$30,000	\$25,000	\$25,000	\$25,000	\$134,934
Federal Heights		\$1,000			\$1,500	\$2,500	\$5,000
Firestone			\$1,000		\$1,500	\$1,500	\$4,000
Fort Collins		\$8,100	\$14,000	\$10,000	\$10,000	\$15,000	\$57,100
Grand Junction	\$2,196	\$1,062	\$4,000				\$7,258
Greeley		\$17,100	\$8,000	\$10,000	\$8,000	\$8,000	\$51,100
Greenwood Village	\$2,700						\$2,700
Hudson		\$15,300	\$2,000				\$17,300
Lafayette		\$31,500					\$31,500
Lakewood	\$37,044	\$34,200	\$50,000	\$25,000	\$25,000	\$30,000	\$201,244
Littleton	\$33,300	\$26,100	\$15,000	\$15,000	\$15,000	\$45,000	\$149,400
Lochbuie					\$1,500	\$1,500	\$3,000
Longmont		\$23,400	\$8,000	\$8,000	\$6,000	\$6,000	\$51,400
Loveland	\$1,440	\$4,680	\$5,000	\$5,000	\$4,000	\$4,000	\$24,120
Manitou Springs					\$2,000	\$2,000	\$4,000
Northglenn	\$5,220		\$9,000	\$5,000	\$4,000	\$4,000	\$27,220
Palisade		\$1,530					\$1,530
Parker		\$2,250	\$2,000	\$5,000	\$4,000	\$4,000	\$17,250
Pueblo	\$136,800	\$77,175	\$14,000	\$14,000	\$18,000	\$54,000	\$313,975
Rifle	\$1,080	\$7,200	\$10,000	\$10,000	\$8,000	\$8,000	\$44,280
Sheridan	\$18,000	\$18,000	\$15,000	\$10,000	\$8,000	\$8,000	\$77,000



Grantee and Project Name	2018	2019	2020	2021	2022	2023	Grand Total
Thornton	\$33,525	\$28,800	\$30,000	\$20,000	\$18,000	\$54,000	\$184,325
Westminster	\$34,200	\$34,902	\$10,000	\$15,000	\$15,000	\$40,000	\$149,102
Wheat Ridge	\$17,190	\$12,600	\$8,000	\$8,000	\$8,000	\$8,000	\$61,790
Grand Total	\$436,554	\$740,008	\$669,700	\$620,000	\$688,300	\$1,134,800	\$4,289,362