



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, 2022

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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:

- Annually, the hourly rate of defense counsel will be reimbursed at \$75/hour. This hourly rate was later increased during calendar year 2022 to \$100/hour.
- The program is to reimburse the cost for provision of first appearances, 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.

On average, \$1.62 million has been set aside annually for grant awards. Unspent funds remain in the program for the following fiscal year for continued spending or supplemental awards.

Program Awards

Since the program began July 1, 2018, approximately \$2.2 million in grant awards have been made available to 36 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.

Recently, the program team conducted research regarding municipalities that do not participate in the DCFA program to determine why they do not participate. In total, 77 municipalities, not already participating in the DCFA program, provided useful feedback to better understand the current participation rate. Based on the feedback provided, DLG staff was able to conclude that of these 77 municipalities, most do not participate because they 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. A total of 49 municipalities indicated that they do not meet eligibility requirements for the program. However, 28 municipalities, not currently in the program, indicated interest in the program. Based on this

level of interest, staff was able to increase program participation by an additional 9 Colorado municipal courts, bringing the total number of open contracts from 20 to 29.

Annual outreach efforts will continue for all municipalities across the state in an effort to expand the program and better serve local communities.

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

Grantee and Project Name	November 2018	January 2019	February 2019	March 2020	July 2020	December 2020	April 2021	April 2022	August 2022	Total
Alamosa	-	\$1,800	-	-	-	-	-	-	\$4,000	\$5,800
Arvada	-	\$5,400	-	\$9,700	-	-	\$10,000	-	-	\$25,100
Aurora	-	\$98,100	-	\$145,000	-	-	\$150,000	-	-	\$393,100
Brighton	-	\$6,300	-	-	-	-	-	-	\$36,000	\$42,300
Brush	-	-	\$6,300	-	-	-	-	-	-	\$6,300
Castle Rock	-	-	-	-	-	-	-	-	\$3,300	\$3,300
Colorado Springs	\$52,875	-	-	-	-	\$20,000	\$10,000	-	-	\$82,875
Commerce City	\$18,000	\$23,400	-	-	-	\$10,000	\$15,000	\$13,000	-	\$79,400
Cortez	\$13,050	\$9,900	-	-	-	-	-	-	-	\$22,950
Cripple Creek	-	-	-	-	-	-	-	-	\$1,500	\$1,500
Denver	-	-	\$243,909	-	\$250,000	-	\$250,000	-	-	\$743,909
Edgewater	-	-	-	-	-	-	-	-	\$10,000	\$10,000
Englewood	\$29,934	-	-	-	\$30,000	-	\$25,000	\$25,000	-	\$109,934
Federal Heights	-	-	\$1,000	-	-	-	-	-	\$1,500	\$2,500
Firestone	-	-	-	-	-	\$1,000	-	-	\$1,500	\$2,500
Fort Collins	-	\$8,100	-	\$14,000	-	-	\$10,000	\$10,000	-	\$42,100
Grand Junction	\$2,196	\$1,062	-	-	-	\$4,000	-	-	-	\$7,258
Greeley	-	-	\$17,100.00	-	-	\$8,000.00	\$10,000.00	\$8,000.00	-	\$43,100
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	-	\$171,244
Littleton	\$33,300	\$26,100	-	-	-	\$15,000	\$15,000	\$15,000	-	\$104,400
Lochbuie	-	-	-	-	-	-	-	-	\$1,500	\$1,500
Longmont	-	\$23,400	-	-	-	\$8,000	\$8,000	\$6,000	-	\$45,400
Loveland	\$1,440	\$4,680	-	-	-	-	\$5,000	-	-	\$11,120
Manitou Springs	-	-	-	-	-	-	-	-	\$2,000	\$2,000
Northglenn	\$5,220	-	-	\$9,000	-	-	\$5,000	\$4,000	-	\$23,220
Palisade	-	\$1,530	-	-	-	-	-	-	-	\$1,530
Parker	-	\$2,250	-	\$2,000	-	-	\$5,000	\$4,000	-	\$13,250
Pueblo	\$136,800	\$77,175	-	-	-	\$14,000	\$14,000	\$18,000	-	\$259,975
Rifle	\$1,080	\$7,200	-	\$10,000	-	-	\$10,000	\$8,000	-	\$36,280
Sheridan	\$18,000	\$18,000	-	\$15,000	-	-	\$10,000	-	-	\$61,000
Thornton	\$33,525	\$28,800	-	\$30,000	-	-	\$20,000	\$18,000	-	\$130,325
Westminster	\$34,200	\$34,902	-	\$5,000	-	\$10,000	\$15,000	-	-	\$99,102
Wheat Ridge	\$17,190	\$12,600	-	-	-	\$8,000	\$8,000	\$8,000	-	\$53,790
Total	\$436,554	\$424,899	\$315,109	\$289,700	\$280,000	\$100,000	\$620,000	\$162,000	\$61,300	\$2,689,562