



Memorandum

To: Representative Tammie Wilson, House Finance Standing Committee

From: Beth Goldstein, Acting Public Defender &
James Stinson, Director for the Office of Public Advocacy

Date: 4.24.19

Subject: Fiscal Impacts of House Bill 14

This memorandum responds to an inquiry by the House Finance Committee about the increased cost per case of House Bill 14 as it relates to the PDA and OPA's indeterminate fiscal notes. As a result of this bill, conduct that might formerly have been charged as second-degree assault, a class B felony, could be charged as first-degree assault, a class A felony, which carries a maximum sentence of 20 years—double the maximum sentence for second-degree assault. The bill also creates a new aggravating factor, which, if found, would permit a court to impose a sentence above the presumptive range for the offense.

As the Department of Law stated in its fiscal note on House Bill 49, "increased sentences and penalties will likely increase the number of trials, contested sentencing hearings, and appeals." More serious felonies and increased sentences require more experienced attorneys and more resources, including both attorney time and other litigation expenses such as experts, interpreters, investigators, support staff, and travel. Thus, while we are currently unable to determine what, if any, caseload increase may occur as a result of House Bill 14, there will likely be an increase in cost per individual cases irrespective of caseload increases.

To understand the increased cost per case, it may be helpful to examine how a case progresses through the system. At the most basic level, when an individual is charged with an offense like felony assault, that person has the personal choice to enter into a plea agreement or to go to trial. If the defendant decides to plead guilty, the plea agreement can set forth the applicability of aggravating factors and the sentence to be imposed or, it can leave those determinations up to the court. If a sentencing hearing is required to determine whether aggravating factors are applicable and what sentence to impose, the court may hear evidence at a hearing. For instance, if a defendant pleaded guilty to second-degree assault, and the State asked the court to find the aggravating factor set out in House Bill 14, factual witnesses and expert

witnesses could be required to provide the court with information about whether the victim was strangled and lost consciousness. If the court found that the aggravating factor applied, it could impose up to the maximum sentence for second-degree assault, which is 10 years.

If the defendant opts to go to trial and the charge is first-degree assault, an expert may be necessary to rebut the State's evidence that the victim lost consciousness. If convicted, the State could not obtain a higher sentence based on the House Bill 14 aggravating factor. However, if the defendant went to trial on a second-degree assault charge, the State may seek application of the aggravating factor at sentencing after that trial. This might require an expert witness to testify about the likelihood that the victim lost consciousness. This also may require the need for the transcription of the testimony of certain witnesses the State presented at trial in order to effectively contest the imposition of the aggravating factor.

According to past actual billings, expert medical witnesses who can testify on these issues have cost between \$1250 and \$7000 per case, with the average cost per case of \$3000 for their time. Additionally, there are costs associated with travel for those experts coming from both inside and outside of the state, and those costs have ranged from an additional \$600-\$2750 per case. Higher travel costs are generally associated with cases charged in more rural locations. It is difficult to pinpoint the exact transcription costs per case because those costs will be driven by both the number of witnesses whose transcribed testimony is needed as well as the length of that testimony. The typical transcript cost ranges from a few hundred dollars to several thousand dollars per case.

We hope this answers the committee's questions about the potential increase in cost for individual cases as a result of House Bill 14. Please let us know if we can provide any additional information.