

# Vermont Legislative Joint Fiscal Office

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## *FISCAL NOTE*

Date: February 1, 2018  
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### **S.237 An act relating to providing representation to needy persons concerning immigration matters – As Introduced –**

<https://legislature.vermont.gov/assets/Documents/2018/Docs/BILLS/S-0237/S-0237%20As%20Introduced.pdf>

S.237 adds ‘matters arising out of or relating to immigration status’ to the Vermont statutes with regard to right to representation including in a federal court, notice of rights, assignment of counsel, and copayment and reimbursement for financially needy persons by the Vermont Defender General.

This bill will have a fiscal impact on the Office of the Defender General (ODG) budget estimated to be between \$300,000 and \$400,000.

#### **Fiscal Estimate**

The ODG has reviewed its current public defense and assigned counsel caseloads and finds that approximately 3% of each current caseload is for noncitizens. The additional immigration work S.237 requires for this existing 280 to 300 combined caseload consists of full representation and litigation of the immigration case in immigration court for deportation defense plus the filing of applications for naturalizations or lawful immigration status with USCIS in Vermont. This work is estimated to require 1.5 additional attorneys for the ODG based on the benchmark of 1:200 for attorney to felony cases.

Much harder to estimate is the scope of impact to the ODG to provide immigration representation for additional cases falling outside of the state criminal and family court system, particularly in the current climate of federal immigration enforcement. The recent immigration population information for Vermont is summarized:

#### **2015 VT Immigrant Population<sup>1</sup>**

28,247	Total Immigrants
15,464	Total Naturalized
12,783	Not Naturalized
6,485	Eligible to become Naturalized
6,298	Ineligible

<sup>1</sup> [https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants\\_in\\_vermont.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_vermont.pdf)

If 100 new immigration-only cases (1.59% of the ineligible for naturalization population) resulted from referrals by groups that provide services to the noncitizen community in Vermont this would require a 0.5 additional attorney in the ODG. Most difficult to estimate is the potential new cases for ODG that may result from immigrants detained while passing through Vermont who are not included in the population estimates.

The following range of fiscal impact assumes 2 to 2.5 new attorneys hired into to the mid-range of experience on the Defender General’s attorney pay plan<sup>2</sup> plus the addition of one new investigator and expenses for travel and overhead summarized in the chart below.

<b>Low End</b>	<b>#</b>	<b>Salary</b>	<b>W/Fringe</b>	<b>Total</b>
Attorneys	2	\$72,000	\$97,200	\$194,400
Investigator	1	\$50,000	\$67,500	\$67,500
Expenses				\$40,000
<b>Total</b>				<b>\$301,900</b>
<b>High End</b>	<b>#</b>	<b>Salary</b>	<b>W/Fringe</b>	<b>Total</b>
Attorneys	2.5	\$85,000	\$114,750	\$286,875
Investigator	1	\$60,000	\$81,000	\$81,000
Expenses				\$40,000
<b>Total</b>				<b>\$407,875</b>

Currently some portion of the work that S.237 would require of the Vermont ODG is being covered by nonprofits in other states and likely to some degree the families of impacted individuals. The extent and amount is not possible to estimate, but this bill would shift some costs that are currently external to the state onto the state.

**FY19 Defender General Budget Context**

The Defender General has reported to both the House and the Senate Appropriations Committee that the FY19 funding for his office included in the Governor’s FY19 recommended budget is below the amount calculated based on current staffing and caseload need. JFO has not at this time conducted an analysis of the FY19 ODG budget. However, this indicates that a FY19 budget gap for the ODG may exist; prior any new workload demands being placed on the office. This will of course depend on the final funding level provided to ODG and does not impact the cost estimate above.

**Other States**

JFO requested NCSL survey the fiscal offices of the states in regard to state funding provided for representation in matters relating to immigration status. This request was sent out by NCSL on Tuesday currently eight states have responded. This note will be updated as more responses come in. Of these states, not one provides funding to public defenders office’s specifically for

<sup>2</sup> [http://humanresources.vermont.gov/sites/humanresources/files/documents/Compensation/DHR-ODG\\_Pay\\_Plan\\_FY18.pdf](http://humanresources.vermont.gov/sites/humanresources/files/documents/Compensation/DHR-ODG_Pay_Plan_FY18.pdf)

matters related to immigration status. However several report that the duties of their public defenders' include advice regarding rights and potential impact to a defendant's immigration status.

In many states, especially those with high immigration populations, legal nonprofits provide immigration status related legal services but are unlikely to serve the entirety of the financially needy population requiring services. New Jersey reports indirect support since they provide some state funding to their legal aid organization and do not restrict how these funds are used. It is likely these funds are comingled with other funds at the NJ organization and help fund immigration services.

Only California is reporting direct support of \$45 million to their legal nonprofit specifically for immigration services. New York has not responded to the NCSL survey but news reports indicate \$10 million of state funds have been slated to go to legal nonprofits for immigration services. If the NY and CA amounts are translated into per capita amounts and applied to Vermont this would equate to a fiscal range of \$120,000 to \$220,000.

The NCSL state survey responses to date are attached.



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The following question was sent to NALFO listserv on January 30, 2018.

1. Does your state provide any funding to state public defenders' offices or non-profits specifically for representation for a matter arising out of, or relating to, immigration status?

The responses we received are below:

### **Arizona**

Arizona does not.

### **California**

California's Immigration Services Funding program provides grants to nonprofit organizations in the state to assist individuals applying for naturalization, deferred action, and other immigration remedies, and to conduct outreach and education in immigrant communities relative to these remedies. The 2017-18 budget provided an augmentation of \$30 million from the General Fund on top of base funding of \$15 million for the Immigration Services Funding program, for a total of \$45 million from the General Fund in 2017-18, and assumes that this augmentation will be maintained through 2019-20. Budget legislation provides additional flexibility in what services can be funded through the program's grants (for example, legal defense of individuals subject to deportation proceedings will be an allowable activity for grant recipients) and also prohibits grant funds from being used to provide services to individuals convicted of serious or violent felonies.

Further budget legislation in 2017-18 provided an additional \$20 million augmentation from the General Fund (one time) for grants specifically to assist individuals who have (or are seeking) immigration status under Deferred Action for Childhood Arrivals (DACA). These funds have been used, in part, to pay the application fee to renew DACA status registration for some individuals.

### **Colorado**

In Colorado, our public defenders do not represent clients in Federal Immigration court. However, they do represent people who are charged with crimes that may have immigration

holds or immigration consequences. Our public defenders are constitutionally required to ensure that those folks are properly advised of the immigration consequences of their conviction.

## **Maryland**

As are all criminal defense attorneys, the Maryland Office of the Public Defender is required by U.S. Supreme Court and Maryland Court of Appeals' rulings to provide individual advice to clients about the immigration consequences of the criminal charges against them. OPD provides funding for that advice, for related training of public defenders, and for some work on specific, relevant immigration issues that affect clients' immigration consequences. OPD does not provide funding for representation in immigration court or with immigration applications before the immigration agencies. There are no specific "immigration" funds allocated other than to pay the staff immigration attorney salary; it is otherwise minimal and indirect, spread throughout the agency.

## **Michigan**

Michigan does not provide any funding to state public defenders' offices, or non-profits, specifically for representation for a matter arising out of, or relating to, immigration status.

## **Minnesota**

Minnesota does not provide funding to our public defenders' office, or any other legal entities, to provide representation specifically for matters arising out of, or relating to, immigration status.

## **Montana**

There is no specific funding mechanism for "immigration status" although our state does provide holistic defense for individuals. "Immigration status" would fall outside of OPD service although they may use this status during argument - such as illegal holds for example.

## **New Jersey**

State appropriations for the Office of the Public Defender do not have a specific earmark for immigration status-related matters.

State appropriations for grants to Legal Services of New Jersey do not have a specific earmark for immigration status-related matters. LSNJ's website indicates it provides that type of service; we do not think (but are not totally certain) that the state grant agreement with LSNJ prohibits use of state funds for immigration-status related services, so if we are right then there is at least an indirect connection between state funding and LSNJ's providing representation for a matter arising out of, or relating to, immigration status.

No other state grant appropriations for non-profits is explicitly earmarked for representation for a matter arising out of, or relating to, immigration status. Grants issued by the Center for Hispanic Policy, Research and Development (NJ Department of State) from its appropriation

support that activity. See below, from the Center's website:

[http://www.nj.gov/state/programs/dos\\_program\\_chprd\\_service\\_directory.html](http://www.nj.gov/state/programs/dos_program_chprd_service_directory.html)

## **"BRIDGING THE GAP - CITIZENSHIP AND INTEGRATION DIRECT SERVICES GRANT PROGRAM**

Funding has been made available to the following organizations to create and implement a new social model of immigrant integration– one that promotes mutual benefits for immigrants and their receiving communities and that allows newcomers enhanced civic participation and improved economic mobility – is critical.

This program provides access to affordable and reliable immigration legal services provided by nonprofit community organizations with the goal of enabling large numbers of immigrants to obtain legal status that can lead to citizenship, better jobs, family unification, health care, increased educational opportunities for children and adults, and fuller participation in community life – the building blocks of strong communities and healthy societies."

### **North Carolina**

While North Carolina (NC) does not provide a specific appropriation for legal representation of indigent defendants for a matter arising out of, or relating to, immigration status, the NC Office of Indigent Defense Services has just initiated an immigration consultation program. That program is intended to provide assistance to counsel that may require advice about potential immigration consequences faced by a client.

### **Oregon**

Oregon has three entities that receive state funding that have some involvement with immigration status - the Department of Justice, the Public Defense Services Commission, and Legal Aid (not really a state agency, but receives some state funding). Here is a summary of what they do in this area.

Department of Justice (DOJ) - DOJ does not provide any direct funding that relates to immigration status. Child Advocacy Section lawyers advise the Department of Human Services (DHS) Child Welfare program regarding that agency's legal obligations when immigration issues may affect DHS ability to achieve permanency for children. DHS pays for this advice. DOJ sometimes hires State Assistant Attorney Generals or private counsel to advise on immigration issues.

Public Defense Services Commission (PDSC) - the general answer for PDSC (indigent defense agency) is no; PDSC does not represent clients in immigration status matters. The U.S. Supreme Court, however, ruled in 2010 that criminal defense attorneys must inform noncitizen clients of the risks that criminal convictions and guilty pleas impose on their immigration status. A guilty plea may result in a defendant being deported, or in some other change in immigration status. PDSC-paid attorneys are required to notify clients if this is a possibility. Because this area of the law is complicated, PDSC contracts with the Oregon Justice Resource Center (OJRC) to help public defenders provide accurate information to their clients. The OJRC immigration attorneys do not represent indigent clients, but they do provide legal information for the attorneys that do.

Legal Aid - Legal aid offices do use state funds to handle immigration matters. In some areas of the state (not Portland), they help immigrants change their status as permitted by federal law. Most of the time, though, immigration matters are handled in conjunction with other civil actions, such as domestic violence and housing cases.