



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
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**Bill Number:** H. 4830 Amended by House Judiciary on March 1, 2018  
**Author:** Delleney  
**Subject:** Affidavits  
**Requestor:** House Judiciary  
**RFA Analyst(s):** Gardner  
**Impact Date:** March 6, 2018

**Estimate of Fiscal Impact**

	FY 2018-19	FY 2019-20
<b>State Expenditure</b>		
General Fund	Pending	\$0
Other and Federal	\$0	\$0
Full-Time Equivalent Position(s)	0.00	0.00
<b>State Revenue</b>		
General Fund	\$0	\$0
Other and Federal	\$0	\$0
<b>Local Expenditure</b>	\$0	\$0
<b>Local Revenue</b>	\$0	\$0

**Fiscal Impact Summary**

The Judicial Department indicates that while there is no data to estimate the number of new offenses that may be heard in general sessions, magistrates, or municipal courts they expect to manage any General Fund expenditure impact using existing resources. The Commission on Indigent Defense indicates that the implementation of this bill will have no expenditure impact on the General Fund, Other Funds, or Federal Funds. As the Revenue and Fiscal Affairs Office (RFA) is awaiting a response from the Department of Probation, Pardon and Parole Services, the full expenditure impact of the bill is pending.

**Explanation of Fiscal Impact**

**Amended by House Judiciary on March 1, 2018**

**State Expenditure**

This bill requires that all Affidavit of Indigency and Application for Counsel forms contain specific financial information for both the applicant and his spouse, as well as information on whether the applicant is currently incarcerated, is on probation or parole, or has pending criminal charges for which an attorney has been appointed. The bill makes it unlawful to willfully provide false, misleading, or incomplete information on these documents, an offense which is punishable by a fine of not more than \$5,000 or imprisonment for not more than five years.

The South Carolina Department of Probation, Parole and Pardon Services (department) is responsible for determining whether an applicant meets indigency requirements or otherwise qualifies for a public defender. For this purpose, the applicant and his spouse must submit to the department their most recent tax returns and their tax returns for the previous five years (or W2s,

if returns are not available), as well as copies of any court orders relevant to their financial status. The applicant, at his expense, must also provide the department with copies of his and his spouse's respective credit reports obtained within the previous year. All Affidavit of Indigency and Application for Counsel forms must be notarized, the cost of which must also be borne by the applicant.

Should the department determine that a person who has been provided with counsel, by any court of the state, is financially able to employ or contribute to the cost of counsel, it must provide the court, having initially appointed counsel, a written report containing substantiating information. Should an attorney appointed to an indigent defendant have reason to believe his client is financially able to employ or contribute to the cost to employ the attorney's counsel, the attorney must notify the court in writing to relay his beliefs, at which time he may ask for relief as appointed counsel or be permitted to receive compensation from the defendant. Similarly, should an attorney who has served as counsel for a defendant previously determined indigent have knowledge that the defendant provided false, misleading, or incomplete information the attorney must report the alleged violation to the appropriate circuit solicitor's office.

This bill requires the South Carolina Court Administration to revise the Affidavit of Indigency and Application for Counsel forms for publication by the South Carolina Supreme Court. Beginning January 15, 2019, the department must provide to the General Assembly an annual report containing the number of these forms accepted and rejected, as well as reasons for rejection.

**Judicial Department.** This bill requires the South Carolina Court Administration to develop new forms for the Affidavit of Indigency and Application for Counsel after determining whether additional information is necessary or useful to the applicant evaluation process. The Department of Probation, Pardon and Parole Services (PPPS) is responsible for approving indigency determinations under penalty of perjury. The bill creates a new felony offense of willfully providing false, misleading, or incomplete information on either the Affidavit or the Application.

The bill requires judges to question a defendant (applicant) under oath in cases where the court receives a written statement from either PPPS or an appointed attorney questioning a defendant's indigent status. This will increase the amount of time needed for certain hearings, mainly in circuit court. The circuit court would have jurisdiction over cases involving the willful use of false information on Affidavits and Applications, as well as jurisdiction over cases for perjury charges resulting from a PPPS employee's unlawful certification of an applicant as indigent.

As the bill creates a new offense, it requires circuit courts to hear new perjury cases and requires the development of new forms, there is no data available with which to estimate an expenditure impact. However, the department expects to manage any additional costs within existing General Fund resources. Should a significant number of additional hearings and trials be heard in circuit court, it could result in an increased case backlog.

**Commission on Indigent Defense.** The commission indicates that the implementation of this bill will have no expenditure impact on the General Fund, Other Funds, or Federal Funds.

**Department of Probation, Parole and Pardon Services.** A determination of the bill's fiscal impact is pending, as the agency is still reviewing the bill.

**State Revenue**

N/A

**Local Expenditure**

N/A

**Local Revenue**

N/A



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Frank A. Rainwater, Executive Director