



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number: LLS 18-1093 Date: April 13, 2018
Prime Sponsors: Sen. Cooke; Gardner Bill Status: Senate Judiciary
Rep. Wist Fiscal Analyst: Kerry White | 303-866-3469
Kerry.White@state.co.us

Bill Topic: REIMBURSE ATTORNEY GENERAL OR DISTRICT ATTORNEY FOR RULE 35 MOTION COSTS

- Summary of Fiscal Impact:
- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

This bill requires the Judicial Department to reimburse the Attorney General or district attorney for specified costs associated with litigating motions brought under Rule 35 of the Colorado Rules of Criminal Procedure. It increases state expenditures and revenue for local district attorneys offices.

Appropriation Summary: For FY 2018-19, the bill requires an appropriation of \$1,891,650 to the Judicial Department. See the State Appropriations section for more information.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 18-222

Table with 4 columns: Category, FY 2018-19, FY 2019-20. Rows include Revenue, Expenditures (General Fund), Transfers, and TABOR Refund.

## **Summary of Legislation**

This bill requires the Judicial Department to reimburse a district attorney or the Attorney General for costs associated with litigating motions brought under Rule 35 of the Colorado Rules of Criminal Procedure. Eligible expenses include: lay and expert witness expenses, travel expenses, subpoena expenses, the cost of any required transcripts, and attorney time. The district attorney or Attorney General must certify the costs to the Judicial Department. The hourly rate for attorney time is the same rate established each year by the General Assembly for payment of Alternate Defense Counsel contract attorneys.

## **Background**

Rule 35 C motions concern post-conviction relief matters, commonly involving assertions of ineffective counsel, and, to a lesser extent, assertions of newly discovered material facts or a constitutional violation. Because the Office of the State Public Defender represents most criminal defendants, claims of ineffective counsel are an inherent conflict for that office and are instead handled by the Office of the Alternate Defense Counsel (OADC). In addition, there are some cases that are handled by private attorneys. The Judicial Department does not track Rule 35 C motions independently.

## **State Expenditures**

This bill increases state General Fund expenditures for the Judicial Department by at least \$1,278,800 in FY 2018-19 and by at least \$2,557,600 in FY 2019-20 and future years. In addition, a total of \$612,850 in FY 2018-19 and \$1,225,700 in FY 2019-20 in future years is shifted from General Fund appropriated to the Department of Law to General Fund appropriated to the Judicial Department. The costs presented in this fiscal note are estimates. If actual costs are lower or greater than the estimates below, the fiscal note assumes that the Judicial Department will request an adjustment in appropriations through the annual budget process.

**Initial post-conviction relief motions.** The hourly reimbursement rate for attorney time in FY 2018-19 and future years is \$85 per hour. For purposes of developing an estimate, the following assumptions were used:

- about 736 cases are handled by district attorneys;
- each of the 736 cases handled by district attorneys will require about 35 hours of work (because these cases are continued with the same counsel/office, there are efficiencies achieved);
- about 279 cases are handled by the Department of Law (DOL);
- on average, each DOL case requires 40 hours to prepare one brief;
- about 15 percent, or 42 DOL cases, requires oral arguments;
- on average, each DOL case requires 30 hours to prepare for and argue the case; and
- the average cost for lay and expert witness expenses, travel expenses, subpoena expenses, and any required transcripts is \$500 per case.

This results in reimbursements for district attorneys of \$1,278,800 for FY 2018-19 and \$2,557,600 in FY 2019-20 and future years. Reimbursements to the DOL are estimated to be \$597,600 FY 2018-19 and \$1,195,200 in FY 2019-20 and future years.

**Appellate-related motions.** If a Rule 35 C motion has been filed and denied, the defendant can appeal the ruling of the trial court. In these instances, the DOL's criminal appeals section handles the appeal. The DOL represents the prosecution when a defendant challenges his or her felony convictions before state or federal appellate courts. The hourly reimbursement rate for attorney time in FY 2018-19 and future years is \$85 per hour. The fiscal note assumes that:

- the DOL will conduct 10 Rule 35 appeals per year;
- each DOL appeal will require 30 hours of work; and
- the average cost for lay and expert witness expenses, travel expenses, subpoena expenses, and any required transcripts is \$500 per case.

This results in reimbursements of \$15,250 for FY 2018-19 and \$30,500 in FY 2019-20 and future years for the DOL.

**Judicial Department.** Workload will increase for the Judicial Department to review expenditures and make reimbursements. This workload increase does not require an increase in appropriations.

**Department of Law.** Using the assumptions listed above, costs for the Department of Law shift from General Fund appropriated to the department by the General Assembly to reappropriated funds from the Judicial Department. Total costs are assumed to be \$612,850 (\$597,600 for initial post-conviction relief motions and \$15,250 for appellate-related motions) in FY 2018-19 and \$1,225,700 (\$1,195,200 for initial post-conviction relief motions and \$30,500 for appellate-related motions) in FY 2019-20 and future years.

## **Local Government**

As discussed above in the State Expenditures section, this bill increases reimbursements to district attorneys' offices by an estimated \$2,557,600 per year, prorated to \$1,278,800 in FY 2018-19 due to the effective date of the bill. These impacts are expected to vary by jurisdiction and the precise impact to any single jurisdiction has not been estimated.

## **Effective Date**

The bill takes effect January 1, 2019, if no referendum petition is filed.

## **State Appropriations**

For FY 2018-19, the bill requires a General Fund appropriation of \$1,891,650 to the Judicial Department.

In addition, costs for the Department of Law shift from General Fund appropriated to the department by the General Assembly to reappropriated funds from the Judicial Department. The DOL's General Fund appropriation should be decreased by \$612,850 and increased by \$612,850 reappropriated funds from the Judicial Department in FY 2018-19.

**State and Local Government Contacts**

District Attorneys

Information Technology

Judicial

Law