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FISCAL NOTE

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Prime Sponsors: Sen. Gonzales Bill Status: Senate Judiciary
Fiscal Analyst: Chris Creighton | 303-866-5834 Chris.Creighton@state.co.us

Bill Topic: REMEDYING IMPROPER GUILTY PLEAS

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

This bill allows a defendant who has entered a guilty plea that has been withdrawn to petition the court for an order vacating the guilty plea on the grounds that they were not properly advised of all of the potential penalties associated with the guilty plea.

Appropriation Summary: For FY 2019-20, this bill requires appropriations totaling \$2.0 million to the Judicial Department and the Department of Law.

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

Table 1 State Fiscal Impacts Under SB 19-030

Table with 3 columns: Category, FY 2019-20, FY 2020-21. Rows include Revenue, Expenditures (General Fund, Central Appropriated, Total), Total FTE, Transfers, and TABOR Refund.

Summary of Legislation

Under current law, a defendant in a criminal case may agree to enter a guilty plea and receive a deferred sentence. Upon completion of any requirements imposed on them by the courts, such as a term of probation, the guilty plea is withdrawn and the case, including any charges and sentences is dismissed. This bill allows a defendant who has entered a guilty plea that has been withdrawn to petition the court for an order vacating the guilty plea on the grounds that they were not properly advised of all of the potential penalties associated with the guilty plea. This petition can be filed at any time, and if satisfied that the defendant would suffer a penalty from the guilty plea, the court must vacate it. The court is not required to vacate the guilty plea if the record clearly demonstrates that the defendant was properly advised prior to entering the guilty plea or if the penalty would remain despite the vacating of the guilty plea.

Background and Assumptions

Under current law, the successful completion of a deferred sentence results in the charges and sentence being dropped, therefore the offender is not considered to have been convicted of a crime. However the record of the conviction remains unless the offender petitions to have the record sealed. Failure to seal the record could result in adverse consequences such as difficulty obtaining employment or housing. Additionally, a deferred judgement may still be considered a conviction and result in an immigration action.

This bill applies to deferred sentences that occurred before or after the effective date of the bill. According to the Judicial Department, in the last 10 years there were 205,228 cases that were dismissed due to the successful completion of a deferred sentence. This analysis assumes that 5 percent of these cases or 10,261 cases, will petition the courts to vacate the guilty plea. During 2018, 17,644 cases were dismissed after the successful completion of a deferred sentence. In future years, it is assumed that the number of petitions will be 5 percent of all deferred sentences occurring in one year or approximately 880 petitions based on the 2018 data. It is further assumed that 150 petitions not granted by the courts will be appealed in the initial years following the passage of this bill and that there will be 30 appeals in future years. Lastly, it is assumed that petitions will not be received by the courts until FY 2019-20.

State Revenue

This bill impacts revenue to the Judicial Department and the Department of Public Safety as discussed below.

Criminal fines and court fees. This bill both potentially increases and decreases Judicial Department revenue from criminal fines and court fees. Additional fee revenue will be collected to the extent that petitions to have deferred sentence guilty pleas vacated result in the payment of additional court fees. Conversely, petitions to vacate a prior guilty plea could also result in a decrease in criminal fine and court fee revenue, including restitution, on the grounds that revenue was collected under a improperly entered guilty plea. This impact has not been estimated. Criminal fine and court fee revenue is subject to TABOR.

Record sealing. To have a criminal record sealed, a record sealing fee of \$27.98 must be paid to the Colorado Bureau of Investigation and a civil filing fee of \$224 must be paid to the Judicial Department. To the extent that this bill decreases the number of petitions to seal the record of a deferred sentence guilty plea, record sealing fee and filing fee revenue will decrease. These impacts have not been estimated. Record and filing fee revenue is subject to TABOR.

State Expenditures

For FY 2019-20, this bill increases state expenditures by a total of \$2.3 million and 18.4 FTE in FY 2019-20 and \$2.2 million and 20.0 FTE in FY 2020-21. More specifically, for FY 2019-20 costs are increased by \$1.8 million and 13.8 FTE in the Judicial Department and by \$527,003 and 4.6 FTE in the Department of Law. For FY 2020-21, costs are increased by \$1.6 million and 15.0 FTE in the Judicial Department and by \$548,648 and 5.0 FTE in the Department of Law. These impacts are summarized in Table 2 and discussed below.

**Table 2
Expenditures Under SB 19-030**

Cost Components	FY 2019-20	FY 2020-21
Judicial Department		
Personal Services	\$1,212,079	\$1,322,268
Operating Expenses and Capital Outlay Costs	\$60,580	\$18,150
Judge Operating and Capital Costs	\$283,045	\$28,500
Centrally Appropriated Costs*	\$246,466	\$268,334
FTE – Personal Services	13.8 FTE	15.0 FTE
Judicial Department (Subtotal)	\$1,802,170	\$1,637,252
Department of Law		
Personal Services	\$415,551	\$453,328
Operating Expenses and Capital Outlay Costs	\$28,265	\$4,750
Centrally Appropriated Costs*	\$83,187	\$90,570
FTE – Legal Services	4.6 FTE	5.0 FTE
Department of Law (Subtotal)	\$527,003	\$548,648
Total	\$2,329,173	\$2,185,900
Total FTE	18.4 FTE	20.0 FTE

* Centrally appropriated costs are not included in the bill's appropriation.

Judicial Department. Beginning in FY 2019-20, this bill increases workload in the trial courts by an estimated 10,261 petitions per year. The Judicial Department requires 15.0 FTE; including 5.0 FTE for magistrates, 5.0 FTE for judicial assistants, and 5.0 FTE for assistant court clerks to handle this additional caseload. Judicial officer operating and capital outlay costs are included for the magistrates based on judicial common policies and includes funds for law library materials, robes, and office, courtroom, library, jury room, and conference room furnishings. Standard state

employee operating and capital outlay costs are included for the support staff. FY 2019-20, costs are prorated for the General Fund payday shift. Future caseload is expected to be 880 petitions per year and this analysis assumes staffing and appropriations adjustments will be made through the annual budget process, if needed.

To the extent that indigent offenders petition the court to have an improperly entered guilty pleas vacated, costs and workload will increase for the Office of the State Public Defender and the Office of Alternate Defense Council if a conflict of interest exists. Should a change in funding be required for any agency or division with the Judicial Department, the fiscal note assumes it will be addressed through the annual budget process.

Department of Law. This bill is anticipated to increase Department of Law workload by 150 appeals per year. The average attorney in the department's criminal appeals section can handle 30 appeals per year; therefore, the Department of Law requires 5.0 FTE to handle the additional caseload created by this bill. Standard operating and capital costs are included and FY 2019-20 costs are prorated for the General Fund payday shift. Future case load is expected to be 30 appeals per year and this analysis assumes staffing and appropriations adjustments will be made through the annual budget process.

Department of Public Safety. To the extent that this bill decreases the number of requests to have a criminal record sealed, this bill will decrease Colorado Bureau of Investigation costs and workload. This analysis assumes any appropriation adjustments will be made through the annual budget process.

TABOR refunds. The bill potentially increases and decreases state General Fund obligations for TABOR refunds in FY 2019-20. Under current law and the Legislative Council Staff December 2018 forecast, the bill will correspondingly reduce or increase the amount refunded to taxpayers via sales tax refunds on income tax returns for tax year 2020. The state is not expected to collect a TABOR surplus in FY 2020-21.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$329,653 in FY 2019-20 and \$358,904 in FY 2020-21 as shown in Table 3.

**Table 3
Centrally Appropriated Cost Estimates Under SB 19-030**

Cost Components	FY 2019-20	FY 2020-21
Judicial Department		
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$138,099	\$150,116
Supplemental Employee Retirement Payments	\$108,367	\$118,329
Judicial Department (Subtotal)	\$246,466	\$268,334
Department of Law		
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$46,034	\$50,040
Supplemental Employee Retirement Payments	\$37,153	\$40,530
Department of Law (Subtotal)	\$83,187	\$90,570
Total	\$329,653	\$358,904

Local Government

Beginning in FY 2019-20, this bill is expected to increase local government revenue, costs, and workload as described below. The exact impact to a particular local government will vary depending on the number of petitions filed within its jurisdiction.

District attorneys. This bill increases district attorney costs and workload by an estimated two hours per petition filed with the courts for a total workload increase of 20,522 hours per year. Future workload is expected to be increased by 1,760 hours per year. Because it is not known where such petitions will be filed, this analysis did not estimate the number of district attorney FTE needed to handle this increased caseload.

Denver County Court. Similar to the Judicial Department, this bill increases revenue, costs and workload for the Denver County Court, which is managed and funded by the City and County of Denver, to process petitions to vacate a deferred sentence guilty plea. This impact has not been estimated.

Records sealing. To the extent that this bill decreases the number of petitions to seal the record of a deferred sentence guilty plea, this bill decreases workload for Denver County Court. Any other local government custodians of criminal records may also see an decrease in workload related to the sealing of conviction records.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature and applies to charges that were dismissed before, on, or after the effective date of this bill.

State Appropriations

For FY 2019-20, this bill requires the following General Fund appropriations:

- \$1,555,704 and an allocation of 13.8 FTE to the Judicial Department; and
- \$443,816 and an allocation of 4.6 FTE to the Department of Law.

State and Local Government Contacts

Counties	District Attorneys	Judicial
Law	Municipalities	