



Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

# FISCAL NOTE

**Drafting Number:** LLS 18-0759  
**Prime Sponsors:** Sen. Gardner

**Date:** February 2, 2018  
**Bill Status:** Senate Judiciary  
**Fiscal Analyst:** Josh Abram | 303-866-3561  
Josh.Abram@state.co.us

**Bill Topic:** UPDATE COLORADO CODE OF MILITARY JUSTICE

**Summary of Fiscal Impact:**

<input checked="" type="checkbox"/> State Revenue ( <i>minimal</i> )	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure ( <i>minimal</i> )	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill updates the Colorado Code of Military Justice. Minimal changes in state revenue and expenditures are anticipated for the Department of Military and Veterans Affairs on an ongoing basis.

**Appropriation Summary:** No appropriation is required. See State Appropriations section.

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

## Summary of Legislation

This bill modifies and updates the Colorado Code of Military Justice (the code). The bill modernizes definitions, updates non-judicial and court martial punishments and other sentencing provisions, redefines allowable fine amounts, and authorizes certain levels of command to initiate a court martial. Among its many provisions, the bill:

- authorizes commanding officers to arrest any enlisted member and impose certain non-judicial disciplinary punishments without the intervention of a court-martial;
- describes the punishments that may be imposed by general, special, and summary courts-martial;
- permits a military judge to preside over a court-martial irrespective of military branch;
- authorizes specific officers of the Colorado National Guard to convene a general court-martial and authorizes certain other officers to convene a special court-martial;
- classifies the felony offenses for which an accused may be convicted by general court-martial and receive a sentence of confinement, and classifies all other military offenses as misdemeanors or non-criminal offenses;
- creates an offense related to the possession and use of controlled substances; and

- establishes a process by which a member of the military forces may make a complaint against a commanding officer.

## **Background**

The Colorado Code of Military Justice is the legal framework that applies to the Colorado National Guard in the same way that the Uniform Code of Military Justice applies to branches of the federal military. The Colorado National Guard is administered by the Department of Veterans and Military Affairs (DMVA). The Colorado code was last updated in 1983.

## **Comparable Crime**

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. As referenced above, there have been no felony convictions under the code that resulted in a sentence of incarceration. No gender or minority information is available for military charges under the code.

This fiscal note assumes that military discipline of national guardsman is primarily non-judicial, that courts martial are rare or non-existent, and that the changes to the code in SB 18-135 will not require any new appropriations to the DMVA.

## **State Revenue**

Under the existing code, most allowable fines are limited in statute to \$250. This bill removes these specific fine amounts and replaces them with the authority to impose:

- a non-judicial fine equal to what an enlisted member earns for 2 days of unit training or 2 days of annual training, whichever is applicable to the member's duty status
- a general court martial fine equal to any amount up to the maximum pay and allowances for 8 applicable days;
- a special courts martial may impose fines equal to up to 6 days.

As a result, the amounts of fine revenue collected by officers of the DMVA may change from the amount of fines levied under current law. Fines collected from service members, if any, will be retained by the DMVA in its general operational fund.

## **State Expenditures**

This bill classifies any military offense for which an accused may receive a sentence of confinement as a felony offense. Except for convictions by a summary court martial, all other military offenses are classified as misdemeanors, and any conviction by a summary court martial is not a criminal conviction. Certain other military crimes under the code are subject to sentences of up to 10 years incarceration. These penalty changes potentially change the cost to incarcerate military convicts; however, in the preceding 20 years, no military conviction in Colorado has resulted in incarceration.

**Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

**State Appropriations**

The bill contains a potential appropriation clause pursuant to existing law that requires that any bill that results in a net increase in periods of imprisonment in a state correctional facility must include an appropriation sufficient to cover the five years of increased capital construction, operational, and parole costs that result from the bill.

There is no record of criminal convictions under the military code ever being transferred to the State Department of Corrections (DOC) for incarceration. For this reason, the fiscal note assumes that the changes in SB 18-135 will not increase periods of imprisonment in the DOC, and no new appropriation is required.

**State and Local Government Contacts**

Corrections

Judicial

Law

Military Affairs