



**Legislative  
Council Staff**

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**REVISED  
FISCAL NOTE**

(replaces fiscal note dated January 28, 2019)

**Drafting Number:** LLS 19-0422  
**Prime Sponsors:** Sen. Gonzales

**Date:** February 25, 2019  
**Bill Status:** Senate Appropriations  
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**Bill Topic:** REMEDYING IMPROPER GUILTY PLEAS

**Summary of Fiscal Impact:**

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> 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This bill allows a defendant who has entered a guilty plea that has been withdrawn to petition the court for an order vacating the guilty plea on the grounds that they were not properly advised. The bill affects state and local government revenue and increases state and local government expenditures on an ongoing basis.

**Appropriation Summary:** For FY 2019-20, this bill requires appropriations totaling \$1.0 million to the Judicial Department and the Department of Law.

**Fiscal Note Status:** This fiscal note has been revised to reflect the introduced bill, as amended by the Senate Judiciary Committee.

**Table 1  
State Fiscal Impacts Under SB 19-030**

		<b>FY 2019-20</b>	<b>FY 2020-21</b>
<b>Revenue</b>		-	-
<b>Expenditures</b>	General Fund	\$1,025,036	\$912,966
	Centrally Appropriated	\$165,503	\$179,115
	<b>Total</b>	<b>\$1,190,539</b>	<b>\$1,092,081</b>
	<b>Total FTE</b>	<b>9.0 FTE</b>	<b>10.0 FTE</b>
<b>Transfers</b>		-	-
<b>TABOR Refund</b>		-	-

## **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 Upon completion of any requirements imposed on them by the courts, such as a term of probation, the guilty plea is withdrawn and the case, including any charges and sentences, is dismissed.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 to petition the court and challenge the guilty plea on the grounds that they were not properly advised of all of the potential penalties associated with the guilty plea. This motion can be filed at any time and must allege in good faith that:

- the defendant has suffered, is suffering, or will suffer an adverse immigration consequence; and
- the guilty plea was obtained in violation of state or federal law regarding proper advisement.

Upon receipt of a motion challenging such a guilty plea, the court must direct the prosecution to respond within 21 days or request additional time. If no response is received, the motion is deemed unopposed and must be granted. If a response is received and an issue of material fact is raised, a hearing must be set. After the hearing, the court must grant the motion to vacate the guilty plea, unless the prosecution proves that the defendant will not suffer an immigration action or that the guilty plea was constitutionally entered.

## **Background**

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.

## **Data and Assumptions**

Deferred sentence data from the Judicial Department was analyzed for the last 10 years to form an estimate on the potential number of motions to vacate a guilty plea. In the last 10 years there were 205,228 cases that were dismissed due to the successful completion of a deferred sentence.

**Motions to withdraw a guilty plea.** Following the passage of this bill, this analysis estimates an initial influx of 6,164 motions will be received in FY 2019-20 and FY 2020-21. This is based on the following assumptions:

- 5.9 percent or 12,087, of the 205,228 deferred sentences involve an unlawful citizen based on 2017 U.S. Census data;
- 60 percent or 7,252, of the 12,087 deferred sentence guilty pleas potentially have an immigration consequence; and
- 85 percent or 6,164, of the remaining 7,252 cases will be motivated to file a motion to vacate the guilty plea and avoid any potential immigration consequences. This assumes 15 percent would not file a motion because of disinterest, relocation, deportation, or death.

It is further assumed that motions will not be received by the courts until FY 2019-20 and that half of one percent or approximately 30 motions will be appealed each year due to the denial of the motion to vacate the guilty plea.

**Future appropriations adjustments.** Because the estimate in this analysis is based on 10 years of data and this bill applies to all historical deferred sentences with an immigration consequence or a potential immigration consequence, it is assumed that an adjustment in appropriations will be requested by the Judicial Department and the Department of Law should the number of motions filed be substantively greater or less than 6,164. Future year motions are expected to decrease after an initial two-year influx and it is assumed that reductions in future appropriations will be addressed through the annual budget process.

### **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 motions to have deferred sentence guilty pleas vacated result in the payment of additional court fees. Conversely, motions 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 motions 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 \$1.2 million and 9.3 FTE in FY 2019-20 and \$1.1 million and 10.0 FTE in FY 2020-21. These impacts are summarized in Table 2 and discussed below.

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

<b>Cost Components</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
<b>Judicial Department</b>		
Personal Services	\$727,248	\$793,361
Operating Expenses and Capital Outlay Costs	\$39,198	\$10,890
Judge Operating and Capital Costs	\$169,827	\$17,100
Centrally Appropriated Costs*	\$149,062	\$161,001
FTE – Personal Services	8.4 FTE	9.0 FTE
<b>Judicial Department (Subtotal)</b>	<b>\$1,085,335</b>	<b>\$982,352</b>
<b>Department of Law</b>		
Personal Services	\$83,110	\$90,665
Operating Expenses and Capital Outlay Costs	\$5,653	\$950
Centrally Appropriated Costs*	\$16,441	\$18,114
FTE – Legal Services	0.9 FTE	1.0 FTE
<b>Department of Law (Subtotal)</b>	<b>\$105,204</b>	<b>\$109,729</b>
<b>Total</b>	<b>\$1,190,539</b>	<b>\$1,092,081</b>
<b>Total FTE</b>	<b>9.3 FTE</b>	<b>10.0 FTE</b>

\* 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 6,164 motions per year. It is assumed that each motion will take one hour of court time on average to review the motion to ensure it complies with the requirements in the bill, locate and review the original case files, direct the prosecution to respond to the motion, and to hold a hearing when the prosecution objects to the motion. The Judicial Department requires 9.0 FTE, including 3.0 FTE for magistrates, 3.0 FTE for judicial assistants, and 3.0 FTE for assistant court clerks to handle this additional caseload.

- *Operating costs.* 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 paydate shift. Future appropriation adjustments based on the actual number of motions filed will be made through the annual budget process, if needed.
- *Indigent defense.* To the extent that indigent offenders motion 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 approximately 30 appeals per year in FY 2019-20 and FY 2020-21. The average attorney in the department's criminal appeals section can handle 30 appeals per year; therefore, the Department of Law requires 1.0 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 paydate shift. Future caseload is expected to be less than 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 \$165,503 in FY 2019-20 and \$179,115 in FY 2020-21.

## **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 motions filed within its jurisdiction.

**District attorneys.** This bill increases district attorney costs and workload by an estimated two hours per motion filed with the courts for a total workload increase of 12,329 hours per year in FY 2019-20 and FY 2020-21. Because it is not known where such motions will be filed and the extent to which they will be challenged, this analysis did not estimate the number of district attorney FTE needed to handle this increased caseload. Future workload is expected to decrease as the initial influx of motions tapers off and as district attorney client advisement practices and guilty plea forms are changed to include immigration consequences.

**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 motions to vacate a deferred sentence guilty plea. This impact has not been estimated.

**Municipal court.** This bill increases revenue, costs, and workload for municipal courts to process motions to vacate a deferred sentence guilty plea. The number of municipal court motions that will be received is unknown and this impact has not been estimated.

**Records sealing.** To the extent that this bill decreases the number of motions 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:

- \$936,273 and an allocation of 8.4 FTE to the Judicial Department; and
- \$88,763 and an allocation of 0.9 FTE to the Department of Law.

### **State and Local Government Contacts**

District Attorneys      Judicial      Law      Municipalities