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Fiscal Note

Drafting Number: LLS 23-0438
Prime Sponsors: Rep. Daugherty
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Bill Status: House Judiciary
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Bill Topic: MEASURES TO EXPAND POSTCONVICTION DNA TESTING

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

The bill expands the population of persons who are eligible to receive DNA testing after being convicted of a felony. DNA testing is available if there is a reasonable probability that it would give a favorable result to the defendant. The bill will increase state and local government costs and state revenue from FY 2023-24 to FY 2024-25.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$139,437 to the Judicial Department.

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

Table 1
State Fiscal Impacts Under HB 23-1034

Table with 4 columns: Category, Sub-category, Budget Year FY 2023-24, and Out Year FY 2024-25. Rows include Revenue, Expenditures (General Fund, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve).

Summary of Legislation

The bill expands the population of persons who are eligible to apply for post-conviction DNA testing. Current law limits the population to those who are currently incarcerated; the bill expands the population to include persons on felony parole, registered sex offenders, and persons who have completed their felony prison sentences. Individuals who were charged with a felony but received a not guilty verdict by reason of insanity are also eligible for testing. Courts must order testing if there is a reasonable probability that the person would receive a favorable result. Testing can be completed at a facility mutually agreed upon by the state and the recipient of the testing, with the court deciding the facility in the event of a disagreement. If testing produces a favorable result to the recipient, the court will schedule a hearing to determine any sentencing relief.

Data and Assumptions

According to Judicial Department data, between 2017 and 2022, an average of 42,678 cases per year resulted in either a felony conviction or required the defendant to register as a sex offender. According to Colorado District Attorney Council data from the same time period, district attorneys participated in an average of 112 post-conviction hearings per year. Judicial Department data also indicate that Rule 35 motions were filed in 1.42 percent of felony cases in the last 20 years.

A Korey Wise Innocence Project study on six states—Arizona, California, Iowa, New Mexico, Oregon and Utah—indicates 2.7 initial petitions would be filed per year under the bill based on Colorado’s population. However, some states, including California, have populations eligible for post-conviction DNA testing that are more restrictive than those in the bill.

Given the broader population of individuals eligible for testing and an anticipated increase in hearing requests after the bill is enacted, this fiscal note estimates that 18 additional petitions will be entered into the courts in FY 2023-24 and FY 2024-25. The fiscal note assumes that the courts will process the majority of cases newly eligible for post-conviction testing in the first two years after the bill is enacted.

State Revenue

The bill may increase state revenue from court filing fees by a minimal amount from FY 2023-24 to FY 2024-25 credited to various cash funds in the Judicial Department and the General Fund. Court fee revenue is subject to TABOR.

State Expenditures

The bill increases state General Fund expenditures in the Judicial Department by about \$160,000 and 1.1 FTE in FY 2023-24 and about \$145,000 and 1.2 FTE in FY 2024-25. Costs are not anticipated beyond FY 2024-25. Expenditures are shown in Table 2 and detailed below.

**Table 2
Expenditures Under HB 23-1034**

	FY 2023-24	FY 2024-25
Judicial Department		
Personal Services	\$107,443	\$117,212
Operating Expenses	\$1,140	\$1,140
Capital Outlay Costs	\$30,854	\$480
Centrally Appropriated Costs ¹	\$22,187	\$24,204
Total Cost	\$161,624	\$143,036
Total FTE	1.1 FTE	1.2 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Judicial Department. Each petition for post-conviction DNA testing will result in additional reviews for judicial staff and potentially three hearings for the defendant: one to select a DNA testing site, one to interpret the results, and one to determine post-conviction relief if the testing produces a favorable result. The average total amount of court time per case is expected to be 30 hours. As discussed in the Data and Assumptions section above, assuming the courts experience 18 new petitions per year, this results in an additional 540 hours of work for district court judicial officers, or approximately 0.3 FTE. Each judicial officer requires support staff at approximately a 3-to-1 ratio, or 0.9 FTE. Workload will also increase for judicial staff to forward the motion to the district attorneys, enter appointed attorneys, schedule hearings, and enter any new sentences and warrants that are required. Costs shown in Table 2 above include personal services costs, as well as operating and capital expenses for the new magistrate and support staff.

If the number of petitions exceeds this estimate, additional resources will be requested through the annual budget process.

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 shown in Table 2.

Other Budget Impacts

TABOR refunds. The bill may increase the amount of state revenue required to be refunded to taxpayers, as discussed in the State Revenue section above. This impact is expected to be minimal.

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government

Costs will increase for district attorneys who must act on behalf of the state to review petitions for eligibility, negotiate DNA testing if the defendant is eligible for relief, and review evidence for the previous casework. District attorneys must also participate in any and all hearings that result from the post-conviction order or request. Each petition is anticipated to cost \$1,126 for district attorneys and their legal assistants, on average. Costs will vary by district depending on the number of petitions filed in each jurisdiction. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

Effective Date

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

State Appropriation

For FY 2023-24, the bill requires a General Fund appropriation of \$139,437 to the Judicial Department and 1.1 FTE.

State and Local Government Contacts

Corrections
Judicial

District Attorneys
Public Defender

Information Technology
Public Safety