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Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated January 20, 2023)

Drafting Number: LLS 23-0438 Date: January 25, 2023
Prime Sponsors: Rep. Daugherty Bill Status: House Judiciary
Fiscal Analyst: John Armstrong | 303-866-6289 john.armstrong@colego.gov

Bill Topic: MEASURES TO EXPAND POSTCONVICTION DNA TESTING

- Summary of Fiscal Impact: [X] State Revenue [X] State Expenditure [] State Transfer [] TABOR Refund [X] Local Government [] 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 the defendant would not have been convicted if a favorable result had been obtained through DNA testing. The bill may increase state revenue and state and local workload beginning in FY 2023-24.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This revised fiscal note reflects the introduced bill. It has been updated to reflect new information and revised caseload assumptions.

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 not have been convicted if DNA testing produced a favorable result at trial. 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

Felony case data. 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.

Petitions in other states. A Korey Wise Innocence Project study on five states that have recently implemented similar policies—Arizona, Iowa, New Mexico, Oregon, and Utah—indicates 2.7 initial petitions would be filed per year under the bill based on Colorado’s population.

Fiscal note assumptions. Based on the data above, the fiscal note assumes that around three additional petitions for DNA testing will be filed each year. Each petition is assumed to require, on average, 30 hours of court time.

State Revenue

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

State Expenditures

Beginning in FY 2023-24, the bill increases workload in the 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. Based on the assumed number of petitions and workload per petition, the bill will result in about 90 hours of work for district court judicial officers, which can be accomplished within existing resources. 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. This additional workload can be accomplished by the trial courts within existing appropriations. If the number of petitions exceeds 17 per year, additional appropriations to the Judicial Department may be requested through the annual budget process.

Local Government

Similar to the state, workload 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 and Local Government Contacts

Corrections
Judicial

District Attorneys
Public Defender

Information Technology
Public Safety