



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FINAL FISCAL NOTE

Drafting Number: LLS 18-0876 Date: August 24, 2018
Prime Sponsors: Sen. Gardner Bill Status: Signed into Law
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Bill Topic: OFFENSES AGAINST CIVIL WITNESSES

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

This bill clarifies that the prohibition against intimidating or retaliating against a witness or victim also applies to civil cases. The bill may minimally increase state revenue and state and local government workload and costs by a minimal amount on an ongoing basis.

Appropriation Summary: No appropriation is required.

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

Summary of Legislation

This bill clarifies that the prohibition against intimidating or retaliating against a witness or victim also applies to civil cases.

Background

Prior to a January 2017 decision by the Colorado Court of Appeals, district attorneys prosecuted cases of intimidation or retaliation against victims and witnesses in non-criminal proceedings. In The People of the State of Colorado v. Burnest Alvis Johnson, the court found that the statute criminalizing these actions only applied to criminal cases.

Comparable Crime and Assumptions

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.

Crime of intimidating a victim or witness. This crime is a class 4 felony, which may be penalized with a fine of \$2,000 to \$500,000, a term of incarceration of 2 to 6 years, or both. Over the past three years, there have been 105 convictions for this offense (35 per year). Of the

offenders, there were 88 males, 16 females, and 1 unspecified. The demographic composition of these offenders includes 81 Caucasians, 14 African Americans, 8 Hispanics, 1 Other, and 1 unspecified. A total of 57 offenders received a sentence to the Department of Corrections. It is not known how many of these convictions involved victims or witnesses from civil cases or administrative proceedings.

**Crime of retaliation against a victim or witness.** This crime is a class 3 felony, which may be penalized with a fine of \$3,000 to \$750,000, a term of incarceration of 4 to 16 years, or both. Over the past three years, there have been 58 convictions for this offense (about 20 per year). Of the offenders, there were 43 males and 15 females. The demographic composition of these offenders includes 43 Caucasians, 8 African Americans, 6 Hispanics, and 1 Other. No offenders received a sentence to the Department of Corrections. It is not known how many of these convictions involved victims or witnesses from civil cases or administrative proceedings.

**Assumptions.** Because there was only one year in which these offenses were not prosecuted for victims and witnesses of civil cases and administrative proceedings and based on the assumption that offenses involving these types of victims and witnesses are rare, the fiscal note assumes that impacts arising under the bill are minimal.

### **State Revenue**

Beginning in FY 2018-19, if the bill results in additional prosecutions for intimidating or retaliating against a victim or witness in a civil case, state revenue may increase. The fine penalty for a class 3 felony is \$3,000 to \$750,000, and the fine penalty for a class 4 felony is \$2,000 to \$500,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. State General Fund and cash fund revenue may also increase for any court-related fees. Based on the low number of fines imposed by the courts and the assumptions listed above, the fiscal note assumes any increase in revenue is minimal.

### **TABOR Refund**

The bill may increase state revenue subject to TABOR in FY 2018-19 or FY 2019-20. State revenue is not currently expected to exceed the TABOR limit in either year and no refund is required. Therefore, the bill is not expected to impact TABOR refunds in these years. However, refunds in future years when the state next collects a TABOR surplus will be increased.

### **State Expenditures**

Beginning in FY 2018-19, this bill may increase workload and state expenditures in the Judicial Department and agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of the Alternate Defense Counsel. It may also increase state General Fund expenditures in the Department of Corrections, as discussed below.

**Judicial Department.** The bill may result in new case filings; the extent to which this occurs will increase workload in the trial courts. Any increase in court workload is anticipated to be minimal and can be accomplished within existing appropriations.

**Agencies providing representation to indigent persons and the Office of the Child's Representative.** Workload and costs for the Office of the State Public Defender, the Office of the Alternate Defense Counsel, and the Office of the Child's Representative may increase under the bill. To the extent this occurs, this analysis assumes the affected offices will request an increase in appropriations through the annual budget process.

**Department of Corrections.** To the extent that this bill increases the number of persons sentenced to prison and then released to parole, costs will increase. Should additional convictions occur, the fiscal note assumes the Department of Corrections (DOC) will request additional appropriations through the annual budget process.

### **Local Government**

Beginning in FY 2018-19, the bill may increase workload for district attorneys by a minimal amount if the bill results in new case filings.

### **Effective Date**

The bill was signed into law by the Governor on April 25, 2018, and took effect July 1, 2018. It applies to offenses committed on or after this date.

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

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|-------------------------------|---------------------|
| Corrections                   | District Attorneys  |
| Information Technology        | Judicial            |
| Labor                         | Law                 |
| Natural Resources             | Personnel           |
| Public Health and Environment | Regulatory Agencies |
| Revenue                       | Sheriffs            |
| Transportation                |                     |