SB 18-222

Legislative
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FINAL
FISCAL NOTE

Drafting Number:	LLS 18-1093	**Date:**	June 1, 2018
Prime Sponsors:	Sen. Cooke; Gardner	**Bill Status:**	Postponed Indefinitely
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Bill Topic: REIMBURSE AG OR DA FOR RULE 35 MOTION COSTS

Summary of Fiscal Impact:	☐ State Revenue	☐ TABOR Refund
	☒ State Expenditure	☒ Local Government
	☐ State Transfer	☐ Statutory Public Entity

This bill requires the Judicial Department to reimburse a district attorney for specified costs associated with litigating motions brought under Rule 35 of the Colorado Rules of Criminal Procedure. It increases state expenditures and revenue for local district attorneys offices.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The revised fiscal note reflects the reengrossed bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

**Table 1
State Fiscal Impacts Under SB 18-222**

		FY 2018-19	FY 2019-20
Revenue		-	-
Expenditures	General Fund	-	at least $2,557,600
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

This bill requires the Judicial Department to reimburse a district attorney for costs associated with litigating motions brought under Rule 35 of the Colorado Rules of Criminal Procedure from annual appropriations made by the General Assembly. Eligible expenses include: lay and expert witness expenses, travel expenses, subpoena expenses, the cost of any required transcripts, and attorney time. The district attorney must certify the costs to the Judicial Department. The hourly rate for attorney time is the same rate established each year by the General Assembly for payment of Alternate Defense Counsel contract attorneys.

Background

Rule 35 C motions concern post-conviction relief matters, commonly involving assertions of ineffective counsel, and, to a lesser extent, assertions of newly discovered material facts or a constitutional violation. Because the Office of the State Public Defender represents most criminal defendants, claims of ineffective counsel are an inherent conflict for that office and are instead handled by the Office of the Alternate Defense Counsel (OADC). In addition, there are some cases that are handled by private attorneys. The Judicial Department does not track Rule 35 C motions independently.

State Expenditures

This bill increases state General Fund expenditures for the Judicial Department by at least $2,557,600 in FY 2019-20 and future years. The costs presented in this fiscal note are estimates. If actual costs are lower or greater than the estimates below, the fiscal note assumes that the Judicial Department will request adjustments in appropriations through the annual budget process.

Initial post-conviction relief motions. The hourly reimbursement rate for attorney time is assumed to be $85 per hour. The fiscal note assumes:

- about 736 cases per year are handled by district attorneys;
- each of the 736 cases handled by district attorneys will require about 35 hours of work; and
- the average cost for lay and expert witnesses, travel expenses, subpoena expenses, and any required transcripts is $500 per case.

This results in reimbursements for district attorneys of $2,557,600 in FY 2019-20 and future years. Workload will increase for the Judicial Department to review expenditures and make reimbursements. This workload increase does not require an increase in appropriations.

Local Government

This bill increases reimbursements to district attorneys' offices by an estimated $2,557,600 per year beginning in FY 2019-20. These impacts are expected to vary by jurisdiction and the precise impact to any single jurisdiction has not been estimated.

Effective Date

The bill was postponed indefinitely by the House Judiciary Committee on May 8, 2018.

State and Local Government Contacts

District Attorneys   Information Technology   Judicial   Law