



Legislative
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HB 20-1307

FINAL FISCAL NOTE

Drafting Number: LLS 20-1062
Prime Sponsors: Rep. Herod; Soper
Sen. Tate; Bridges

Date: July 20, 2020
Bill Status: Postponed Indefinitely
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Bill Topic: **GAY PANIC OR TRANSGENDER PANIC DEFENSE**

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input 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

The bill would have eliminated the discovery of a victim's sexual orientation or gender identity as a defense in criminal cases and created a hearing if a party claims that the evidence is relevant and wants to use it in a criminal case. Beginning in the current FY 2019-20, the bill would have increased state and local workloads on an ongoing basis and may have impacted sentencing-related costs.

Appropriation Summary: No appropriation was required.

Fiscal Note Status: The fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect. However, Senate Bill 20-221 was signed into law with the same provisions as this bill.

Summary of Legislation

The bill states that certain evidence related to a victim's sexual orientation or gender identity is irrelevant in a criminal case, and creates a protective hearing if a party claims that such evidence is relevant and wants to use it in a criminal case.

Specifically, evidence relating to the discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstances in which the victim made an unwanted non-forcible romantic or sexual advance toward the defendant, or if the defendant and victim are or have been involved in an intimate relationship, is irrelevant. An act following such discovery does not constitute an act committed in the sudden heat of passion in a criminal case.

State Expenditures

Beginning in the current FY 2019-20, this bill increases workload in the Judicial Department and agencies that provide representation to indigent persons. Additionally, the bill may impact sentencing, which affects the Department of Corrections and the Division of Probation.

- *Trial courts.* The bill will minimally increase workload for trial courts in the Judicial Department. The bill creates a new process regarding court review of an evidentiary motion, which may require an in-camera hearing under certain circumstances. The bill also requires all motions and supporting documents filed to be under seal, which may increase redaction workload when a court determines that only part of the evidence contained in the motion is admissible. In both cases, it is assumed that cases affected by the bill will be limited given the specific circumstances and the workload increase can be accomplished within existing appropriations.
- *Independent agencies in the Judicial Department.* Workload may increase in the agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of Alternate Defense Council. Overall, it is assumed that this workload can be accomplished within existing appropriations. Should a change in funding be required for these agencies due to caseload, this will be addressed through the annual budget process.
- *Sentencing impacts.* The bill eliminates a potential defense, which may result in higher level felony convictions. To the extent this occurs, this may result in an increase in time served, which would increase costs for the Department of Corrections and reduce or delay costs for the Division of Probation. Additionally, the bill's expanded protection order violations may increase probationary periods. Should a change in funding be required for these agencies due to caseload, this will be addressed through the annual budget process.

Local Government

Workload may minimally increase for district attorneys to the extent the additional hearing under the bill impacts a case, and a higher level conviction may result in a minimal offset to county jails.

Effective Date

The bill was postponed indefinitely by the Senate Judiciary Committee on May 26, 2020.

State and Local Government Contacts

District Attorneys Judicial Law