



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

HB 19-1177

**REVISED
FISCAL NOTE**

(replaces fiscal note dated February 20, 2019)

Drafting Number: LLS 19-0031
Prime Sponsors: Rep. Sullivan; Garnett
Sen. Court; Pettersen

Date: February 26, 2019
Bill Status: House Appropriations
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Bill Topic: EXTREME RISK PROTECTION ORDERS

Summary of Fiscal Impact:

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

This bill creates and establishes procedures to require an individual to surrender any firearms in his or her possession if the court issues an extreme risk protection order. The bill, on net, will increase state and local revenue, expenditures, and workload on an ongoing basis.

Appropriation Summary: For FY 2019-20, the bill requires an appropriation of \$119,392 to the Judicial Department.

Fiscal Note Status: This fiscal note has been revised to reflect the introduced bill, as amended by the House Judiciary Committee.

**Table 1
State Fiscal Impacts Under HB 19-1177**

		FY 2019-20	FY 2020-21
Revenue		-	-
Expenditure	General Fund	\$119,392	\$238,784
Transfer		-	-
TABOR Refund		-	-

Summary of Legislation

This bill creates procedures for courts to issue an extreme risk protection order (ERPO) to require an individual to surrender all firearms until the order expires or is terminated if the person is found to pose a significant risk of causing personal injury to themselves or others. A family or household member, as well as a law enforcement agency, may petition the court to issue an ERPO. The bill waives any fees associated with filing a petition. An ERPO has a 364 day duration and can be renewed within 63 days of the expiration of the order. When a petition is filed, the court is required to appoint and pay for an attorney to represent the respondent unless the respondent elects to select and pay for their own the attorney. The court must also consider whether the respondent meets the standard for a court-ordered evaluation or the standard for an emergency commitment when hearing a petition for an ERPO. Law enforcement must file for a search warrant to find any firearms that may be in possession of the individual but were not surrendered. During the 364 day duration of the ERPO, a respondent may file a one-time written request with the court to terminate the order if he or she shows that they do not pose a significant risk of causing injury. The state court administrator must develop a standard petition form and start accepting petitions on January 1, 2020.

Temporary extreme risk protection order. The bill allows family or household members or a law enforcement agency to petition the court for a temporary ERPO by signing an affidavit supporting the need for the temporary ERPO. If the court finds that the respondent poses a significant risk of causing personal injury to themselves or others by having firearms, the court must issue a temporary ERPO on the same day or the following court day and schedule a hearing for an ERPO within 14 days.

Surrender of firearms. When a respondent is issued a temporary ERPO or ERPO, the respondent must surrender his or her firearms by selling or transferring the firearms to a federally registered dealer or by surrendering them to law enforcement. A respondent must also surrender his or her concealed carry permit. If a respondent does not surrender his or her firearms, they commit a class 2 misdemeanor.

Return of firearms. If a temporary ERPO or ERPO is terminated or expires, the law enforcement agency must return the firearm within three days, after confirming, through a criminal history background check, that the respondent is eligible to own or possess a firearm. If the respondent surrendered a concealed carry permit, the sheriff who issued the permit must reissue the permit within three days. If a firearm remains unclaimed for at least one year, the firearm must be disposed of in accordance with the law enforcement agency's policies.

Reporting. Each year, the court administrator must present statistics related to the number of ERPOs to the General Assembly. These include, the number of petitions filed; the number of temporary ERPOs and ERPOs issued and denied; the number of ERPOs terminated; the number of ERPOs renewed; and the number of crimes committed by someone while the ERPO is in effect.

Comparable Crime Analysis

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 an existing crime. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions under the bill.

Prior conviction data. The bill creates a new class 2 misdemeanor offense for an individual who does not surrender his or her firearm when subject to a temporary ERPO or ERPO. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of knowingly possessing an illegal weapon, which is a class 1 misdemeanor. In the last three fiscal years, 237 offenders have been convicted and sentenced for knowingly possessing an illegal weapon, of which 212 were male, 25 were female; 211 were Caucasian, 13 were African American; 12 were Hispanic, and 1 was American Indian.

Background and Assumptions

Currently, there are 13 states with similar laws, which are also known as "red flag laws". Table 2 outlines the average number of ERPOs issued in eight of the states in the most recent year. The parties that may petition the court vary by state, with some states only allowing law enforcement agencies to petition and others allowing both family members and law enforcement agencies to petition the court. Other states, such as Maryland, allow medical professionals to petition the courts. Five states, California, Connecticut, Indiana, Oregon, and Washington all had "red flag laws" in effect prior to 2018. Delaware, Illinois, Maryland, Massachusetts, New Jersey, Florida, Rhode Island, and Vermont all passed a "red flag" law in 2018 so only partial year data is available for these states.

Table 2
2018 Extreme Risk Protection Orders

	Maryland	Connecticut	Florida	Vermont	Oregon	Rhode Island	Washington	California
ERPO cases	1,212*	268	1,332*	27*	81*	15*	92*	424
per 100,000	20.0	7.47	6.35	4.33	1.96	1.4	1.25	1.07

*Source: Associated Press; Baltimore Sun; San Francisco Chronicle; Seattle Times; WCAX-Vermont; WPRI-Rhode Island.
* projected full-year amount based on partial year data.*

Assumption. Assuming 3.0 petitions per 100,000 persons in Colorado, the fiscal note assumes that there will be about 170 petitions filed per year. Due to the January 1 start date, the number of petitions in FY 2019-20 are prorated to 85. The fiscal note also assumes that 95 percent of petitions will be granted. Finally, it is also assumed that the most individuals who are subject to an extreme protection order will comply with the order. Assuming that 95 percent of respondents comply with an ERPO, it is estimated that there will be an increase of less than 10 criminal case filings and convictions per year.

State Revenue

Starting in FY 2019-20, the bill will increase state revenue by a minimal amount in the Judicial Department and decrease revenue to the Department of Public Safety (DPS), as described below.

Criminal fines and court fees. By creating a new misdemeanor offense, the bill will increase state revenue from criminal fines and court fees by a minimal amount, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund.

The fine penalty for a class 2 misdemeanor is \$250 to \$1,000. Additionally, court fees may be imposed on a case-by-case basis for a variety of court-related costs, such as probation supervision, drug surcharges, or late fees. Because the courts have the discretion of incarceration, imposing a fine, or both, a precise state revenue impact cannot be determined. Criminal fine and court fee revenue is subject to TABOR.

Fee impact on concealed carry permit background checks. The bill may decrease cash fund revenue from background checks for concealed carry permit applications and renewals starting in the current FY 2018-19. Any individual who is subject to an extreme protection order must surrender an existing and cannot apply or renew for a concealed carry permit while the ERPO is in effect. Currently, concealed carry permit applicants pay a \$52.50 background check fee, of which \$42.50 is credited to the CBI Identification Unit Cash Fund and \$10 is passed through to the Federal Bureau of Investigation (FBI). Concealed carry permit holders must renew their permit annually and pay a \$13 renewal fee. It is unknown how many individuals will have a concealed carry permit or would be unable to renew their permit because an ERPO is in effect. However, it is assumed that any decrease in revenue will be minimal. Background check related fees are collected by the Department of Public Safety (DPS).

State Expenditures

This bill will increase state expenditures in the Judicial Department by \$119,392 in FY 2019-20 and by \$238,784 in FY 2020-21 and future years as shown in Table 3. The bill will also increase workload to a variety of state agencies as described below.

**Table 3
Expenditures Under HB 19-1177**

	FY 2019-20	FY 2020-21
Judicial Department		
Court Appointed Counsel	\$70,538	\$141,077
Mental Health Evaluations	\$48,854	\$97,707
Total Cost	\$119,392	\$238,784

Judicial Department. Based on the number of cases assumed in the Background and Assumptions section, additional costs to the Judicial Department will be incurred as discussed below. If more petitions are filed, it is assumed that the Judicial Department will seek additional resources through the annual budget process.

Appointment of counsel. This bill is expected to increase costs in the Judicial Department by \$70,538 in FY 2019-20 and \$141,077 in FY 2020-21 and future years to appoint counsel for respondents to an ERPO. These costs assume that 90 percent of respondents (73 respondents in FY 2019-20 and 145 respondents in FY 2020-21) will elect to use their appointed attorney and that each case will take about 12 hours at \$80 an hour. This estimate also includes costs for mileage reimbursement and other administrative costs of \$1,515 in FY 2019-20 and by \$3,029 in FY 2020-21.

Mental health evaluations. The bill will result in more court-appointed mental health evaluations, which will increase costs by \$48,854 in FY 2019-20 and \$97,707 in FY 2020-21 and future years. This assumes that 50 percent of petitions (approximately 40 petitions in FY 2019-20 and 81 petitions in FY 2020-21) will require a mental health evaluation by the court. The fiscal note assumes an average cost of \$1,211 per evaluation.

Administrative workload. Starting in the current FY 2018-19, workload to the state court administrator will increase to develop standard petitions and other forms. Court clerk workload will also increase to create a brochure of available mental health and other resources available to petitioners and respondents. In addition, expenditures and workload will increase to update the judicial statewide information system. Starting in FY 2019-20, workload will increase for the state court administrator to collect statistics related to the number of ERPOs and the number of crimes committed by those with ERPOs and to notify law enforcement entities of the ERPOs. It is assumed that these increases can be accomplished within existing appropriations.

Trial courts and probation. This bill will increase costs and workload for the trial courts in the Judicial Department to conduct ERPO hearings and process additional criminal case filings. To the extent that offenders are sentenced to probation, costs and workload in the Division of Probation will increase. Overall, it is assumed that this workload can be accomplished within existing appropriations. Should a change in funding be required for any agency or division with the Judicial Department, the fiscal note assumes it will be addressed through the annual budget process.

Independent judicial agencies. Costs and workload may also 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, to the extent that the bill increases the number of class 2 misdemeanor cases where an indigent defendant needs representation.

Department of Public Safety. Starting in FY 2019-20, workload for the DPS will increase to provide courts with requested background checks of the respondent during an ERPO hearing. Workload will also increase to enter ERPOs into the National Instant Criminal Background Check System. Workload will decrease to the extent that anyone issued an ERPO can no longer apply or renew a concealed carry permit. In both cases, the impact is expected to be minimal and does not require a change in appropriations.

Department of Law. Starting in FY 2018-19, workload for the Peace Officers Standards and Training Board, housed in the Department of Law, will increase to develop model policies and procedures for local law enforcement agencies on the acceptance, storage, and return of firearms surrendered. This increase in workload can be accomplished within existing appropriations.

Department of Human Services. To the extent that more individuals are referred to a mental health institute for a mental health evaluation or are referred to programs for mental health services following a court ordered evaluation, costs in the Department of Human Services (DHS) will increase. It is unknown how many people will be referred to DHS but based on the expected low number of cases, any increase in expenditures is expected to be addressed through the annual budget process.

TABOR refunds. The bill is expected to both increase and decrease state General Fund obligations for TABOR refunds by a minimal amount in FY 2019-20. Under current law and the December 2018 Legislative Council Staff forecast, the bill will correspondingly increase and decrease the amount refunded to taxpayers via sales tax refunds on income tax returns for tax year 2020. The state is not expected to collect a TABOR surplus in FY 2020-21.

Local Government Impact

Beginning in the current FY 2018-19, this bill is expected to increase local government revenue, costs, and workload as described below. The exact impact to a particular local government will vary depending on the number of ERPOs filed and the number of offenses committed within its jurisdiction.

District attorneys. To the extent that law enforcement officials file ERPO petitions, district attorney workload may increase to advise local law enforcement agencies. The bill will also increase costs and workload for district attorneys to prosecute a new class 2 misdemeanor offense. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

County jails. The bill may increase county jail costs, to the extent the new class 2 misdemeanor results in convictions with county jail time sentences. However, because the courts have the discretion of incarceration or imposing a fine, the precise county impact cannot be determined. Under current law, the state reimburses county jails for housing state inmates. Based on a 2018 Joint Budget Committee Staff county jail survey, the average cost to house an offender in a county jail is \$98.83 per day, but varies significantly from \$43.65 to \$350.21 per day depending on the county. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.93.

Law enforcement agencies. Expenditures and workload will increase for local law enforcement agencies to file petitions, file search warrant applications, serve protection orders to respondents, and store surrendered firearms, if requested. For county sheriffs, workload will increase to invalidate concealed carry permits, while revenue may decrease for concealed carry permits. Currently, county sheriffs may charge a fee of no more than \$100 to apply for a new concealed carry permit and pay no more than \$50 to renew a concealed carry permit. Revenue from the fee is used to cover any local administrative and training costs associated with granting the permit.

Denver County Court. For class 2 misdemeanors committed in Denver County, criminal fine, court fee, and to the extent that more individuals are sentenced to probation, probation fees, will increase, which increases revenue, expenditures, and workload for the Denver County Court. Because the court has discretion to impose a term of incarceration, a fine, or both, the precise impact to Denver County has not been estimated.

Effective Date

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

State Appropriations

For FY 2019-20, the bill requires a General Fund appropriation of \$119,392 to the Judicial Department.

State and Local Government Contacts

Counties
Judicial
Sheriffs

District Attorneys
Local Affairs
Public Safety

Human Services
Municipalities
Information Technology