



Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

# HB 20-1278

## FINAL FISCAL NOTE

<b>Drafting Number:</b> LLS 20-0141	<b>Date:</b> August 19, 2020
<b>Prime Sponsors:</b> Rep. Duran; Singer Sen. Fields	<b>Bill Status:</b> Postponed Indefinitely
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**Bill Topic:** PROTECTION ORDERS ISSUED AGAINST DOMESTIC ABUSERS

**Summary of Fiscal Impact:**

<input checked="" 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

This bill would have created new procedures for firearm relinquishment related to civil and mandatory protection orders for domestic abuse cases. It would have increased state and local government expenditures on an ongoing basis beginning in FY 2020-21.

**Appropriation Summary:** In FY 2020-21, this bill would have required an appropriation of \$251,720 to multiple state agencies. This bill also would have required a total five-year appropriation of \$3.6 million to the Department of Corrections. In addition, capital construction funding of \$4.5 million may have been appropriated. See State Appropriations section.

**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.

**Table 1  
State Fiscal Impacts Under HB 20-1278**

		FY 2020-21	FY 2021-22
<b>Revenue</b>	Cash Funds	\$103,152	\$103,152
		<b>\$103,152</b>	<b>\$103,152</b>
<b>Expenditures</b>	General Fund	\$216,234	\$648,718
	Cash Funds	\$35,486	\$29,286
	Centrally Appropriated	\$65,751	\$70,220
	<b>Total</b>	<b>\$317,471</b>	<b>\$748,224</b>
	<b>Total FTE</b>	<b>2.8 FTE</b>	<b>3.1 FTE</b>
<b>Transfers</b>		-	-
<b>TABOR Refund</b>		-	-

## Summary of Legislation

This bill creates new procedures for firearm relinquishment related to civil and mandatory protection orders for domestic abuse cases, as described below.

**Required disclosures and hearings.** Under current law, when a court subjects a respondent to a protection order related to domestic abuse, the court must order the respondent to refrain from possessing or purchasing any firearm or ammunition and to relinquish any firearm or ammunition in the respondent's immediate possession or control for the duration of the order. Under this bill, upon issuance of a protection order, the court must:

- require the respondent to state for the record or via affidavit the number and location of firearms in the respondent's immediate possession or control;
- require the respondent to complete a firearm information form and provide information about the type of each firearm in the respondent's possession or control; and
- transmit a copy of the protection order and the firearm information form to the county sheriff of the person's residence.

The Office of the State Court Administrator is responsible for developing or acquiring the affidavit and the firearm information form no later than January 1, 2021.

If the respondent does not possess a firearm at the time the protection order is issued, the respondent must complete a declaration of non-possession form in court, which must be filed in the court record, and copied and provided to the sheriff. If the respondent possessed a firearm at the time of the qualifying incident giving rise to the duty to relinquish the firearm but sold or transferred the firearm to a private party prior to the issuance of the protection order, the respondent shall disclose the sale or transfer in court.

To ensure the respondent has complied with the relinquishment requirements, the court is required to conduct a hearing. A respondent's failure to appear at the hearing constitutes a violation of the protection order, and the court may issue a warrant for the respondent's arrest or a search warrant of the respondent's residence. Current law requires a copy of the written receipt and the written statement of the background check to be filed with the court as proof of relinquishment. The bill requires the signed affidavit to be filed with the court instead of the receipt.

**Protections and penalties related to disclosures.** The bill prohibits any full and truthful statements made to the court regarding the number and location of firearms in or subject to the respondent's possession or control from being used against the respondent in any other civil or criminal proceedings. Any untruthful statements made to the court subjects the respondent to penalties of perjury and attempting to influence a public servant.

**Relinquishment compliance time period.** The bill excludes legal holidays and weekends from the current time frame a person has to relinquish a firearm. A court may grant a respondent an additional 24 hours to relinquish a firearm if the person is unable to comply with the required time frame of relinquishment. If the respondent is incarcerated or otherwise in custody of a law enforcement agency, the respondent must relinquish the firearm within 24 hours after release.

**Sheriff oversight of the relinquishment process.** Current law requires a respondent to either sell or transfer possession of the firearm to a dealer, arrange for the storage of the firearm by a law enforcement agency, or sell or transfer the firearm to a private party who may legally possess the firearm. The bill requires sheriffs to oversee the relinquishment process and allows sheriffs to contract for the storage of transferred firearms. A private party that purchases a relinquished

firearm is required to complete a firearms acknowledgment form, of which the sheriff must keep a record. A respondent may not transfer the firearm to a private party living in the same residence as the person at the time of transfer. Sheriffs are required to prescribe the manner in which firearms are transferred to a private party and may charge a reasonable fee for overseeing the transfer.

**Sheriff agreements with local law enforcement and incentive fees.** Under current law, local law enforcement agencies may elect to store firearms or ammunition for a respondent. The bill allows sheriffs to enter into agreements with local law enforcement agencies to assume other duties ascribed to sheriffs under the bill. Agencies that elect to contract with a sheriff may seek a matching incentive fee from the Department of Public Safety (DPS) on an annual basis in an amount equal to the total amount charged by the agency or storage facility. Any money received from the DPS must be used to maintain or increase firearm storage capacity.

**Firearm forfeiture upon failure to pay storage fee.** If a respondent refuses to pay outstanding storage fees to the sheriff within one year after the expiration the respondent's prohibition on possessing firearms under state and federal law, the sheriff may send the respondent a 90-days notice. If the respondent does not pay the outstanding fee to the sheriff within 90-day period, the sheriff may file a motion seeking a court order declaring that the firearms are forfeited to the sheriff, who may dispose of the firearm at the sheriff's discretion. Storage fees may be waived for indigency.

**Stored firearms require warrant if used as evidence.** The bill requires a sheriff who elects to store firearms to obtain a search warrant prior to testing or examining the firearm to facilitate any criminal investigation or prosecution.

**Relinquishment affidavits, liability, and responsibility of private dealers.** The bill requires firearms dealers, law enforcement agencies, and private parties to issue a signed affidavit memorializing the sale or transfer of the firearm. If these parties elect to store a firearm, they are not civilly liable for any resulting damages to the firearm, as long as such damage did not result from the willful and wrongful act or gross negligence of the respondent or agency storing the firearm. Private parties are prohibited from returning a firearm to the respondent until the private party receives a written statement of the results of a Colorado Bureau of Investigation (CBI) background check that authorizes the return of the firearm to the respondent.

## 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.** Under the bill, failure to make truthful statements to the court is an offense subject to the existing penalties of perjury (a class 4 felony in the first degree and a class 1 misdemeanor in the second degree), and attempt to influence a public servant (a class 4 felony). To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of possession of weapons by previous offenders. From FY 2016-17 to FY 2018-19, 1,703 persons have been convicted and sentenced for this existing offense. Of the persons convicted, 1,595 were male, 107 were female, and 1 did not have a gender identified. Demographically, 1,199 were White, 355 were Black/African American, 117 were Hispanic, 15 were Asian, 7 were American Indian, and 10 were classified as "Other."

**Protection orders for domestic abuse cases.** In FY 2018-19, there were 6,065 civil protection orders for domestic abuse cases filed in the trial courts, and 22,829 mandatory protection orders set in relation to cases involving proven or alleged domestic violence.

**General assumptions.** According to the World Population Review, 34 percent of Coloradans own a firearm as of February 2020. Given the gun ownership rate, it is anticipated that approximately 9,824 protection orders per year will involve firearm relinquishment.

**Criminal impact assumptions.** This analysis assumes that at least 1 percent of the 9,824 protection order cases will result in a class 4 felony penalty of perjury and/or attempt to influence a public servant, resulting in 98 criminal case filings. Of these, it is assumed that 10 percent, or 10 offenders per year, will be convicted and sentenced to the Department of Corrections (DOC). The average length of stay for a class 4 felony is 30.5 months with an average parole length of 26.2 months once the offender is released from prison.

Visit [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes) for more information about criminal justice costs in fiscal notes.

## State Revenue

The bill will increase fee revenue from criminal fines and court fees and firearm transfer background check fees.

**Criminal fines and court fees.** By expanding a felony offense, the bill will increase state revenue from criminal fines and court fees by a minimal amount beginning in FY 2020-21, 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 4 felony is \$2,000 to \$500,000. Additionally, court fees may be imposed on a case-by-case basis for a variety of court-related costs, such as probation supervision and 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.

**Firearm transfer background check fees.** The bill will increase firearm transfer background check fee revenue to the Instant Criminal Background Check (Instacheck) Cash Fund in the Department of Public Safety by an estimated \$103,152 per year. The transfer fee is currently \$10.50, and the fiscal note assumes that 9,824 individuals will pay this fee per year, as shown in Table 2. Firearm transfer fee revenue is subject to TABOR.

**Table 2**  
**Criminal Background Check for Firearm Transfer Fee Under HB 20-1278**

<b>FY</b>	<b>Type of Fee</b>	<b>Fee</b>	<b>Number Affected</b>	<b>Total Fee Impact</b>
FY 2020-21	Criminal Background Check for			\$103,152
FY 2021-22	Firearm Transfer Fee	\$10.50	9,824	\$103,152

**State Expenditures**

The bill will increase General Fund expenditures in the Judicial Department by \$267,717 and 2.1 FTE in FY 2020-21 and \$278,727 and 2.4 FTE in FY 2021-22. It will also increase InstaCheck Cash Fund expenditures in the Department of Public Safety (DPS) by \$49,754 and 0.7 FTE and \$42,847 and 0.7 FTE. Finally, the bill will increase General Fund expenditures in the Department of Corrections (DOC) by \$3.6 million over a five-year period, and may increase capital construction costs in the DOC by up to \$4.5 million. These costs are shown in Table 3 and 4 and discussed below.

**Table 3  
Expenditures Under HB 20-1278**

<b>Cost Components</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>
<b>Judicial Department</b>		
Personal Services	\$200,594	\$218,829
Operating Expenses	\$3,240	\$3,240
Capital Outlay Costs	\$12,400	-
Centrally Appropriated Costs*	\$51,483	\$56,658
FTE – Personal Services	2.1 FTE	2.4 FTE
<b>Judicial (Subtotal)</b>	<b>\$267,717</b>	<b>\$278,727</b>
<b>Department of Public Safety</b>		
Personal Services	\$28,341	\$28,341
Operating Expenses	\$945	\$945
Capital Outlay Costs	\$6,200	-
Centrally Appropriated Costs*	\$14,268	\$13,561
FTE – Personal Services	0.7 FTE	0.7 FTE
<b>DPS (Subtotal)</b>	<b>\$49,754</b>	<b>\$42,847</b>
<b>Department of Corrections</b>		
Prison and Parole Costs ( <i>see Table 4</i> )	-	\$426,649
<b>DOC (Subtotal)</b>	<b>-</b>	<b>\$426,649</b>
<b>Total</b>	<b>\$317,471</b>	<b>\$748,223</b>
<b>Total FTE</b>	<b>2.8 FTE</b>	<b>3.1 FTE</b>

\* Centrally appropriated costs are not included in the bill's appropriation.

**Judicial Department.** The bill will increase General Fund costs and workload in the Judicial Department, as discussed below.

- *Hearings and forms and affidavit tracking.* Trial courts are required to hold a hearing to ensure that a respondent has complied with the relinquishment of the firearms or ammunition, and may issue either an arrest or search warrant for the respondent for failure to appear. Assuming

9,824 protection orders per year will require these hearings, and that hearings will average 10 minutes, this creates an additional 1,637 hours of hearing time, which requires 0.8 FTE Judicial Officer and 1.6 FTE support staff. Trial court staff will also process the required paperwork for each case, set additional hearings, track affidavits and returns of service, and monitor cases where an individual is in custody.

- *Other potential workload and probation increases.* Several other provisions of the bill may drive additional workload to the trial courts as well as periods of probation, such as penalties related to false statements, motions related to firearm forfeiture, search warrants related to an examination of a firearm in a storage for use as evidence, and penalties related to private dealer failure to comply with provisions of the bill. Overall, the fiscal note assumes these elements will have a minimal fiscal impact. If additional appropriations are required, these will be requested through the annual budget process.
- *Independent agencies within the Judicial Department.* Costs and 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 any agency within the Judicial Department, this will be addressed through the annual budget process.

**Department of Public Safety.** Workload in the DPS will increase to process additional firearm transfers created by the bill. A Technician II can process up to 13,356 firearm transfer requests per year. Assuming that each of the 9,824 protection orders has one firearm transfer, this requires 0.7 FTE. Expenditures are paid from the Instant Criminal Background Check (Instacheck) Cash Fund. Costs for this staff are shown in Table 3 above. In addition, expenditures may increase to the extent the DPS receives an appropriation to provide an incentive fee to local governments.

**Department of Corrections operating and parole costs (five-year fiscal impact).** Based on the assumptions provided in the Comparable Crime Analysis section, this bill increases prison and parole operating costs for the DOC by a total of \$3.6 million over the five-year period beginning in FY 2020-21. The fiscal note assumes no prison operating impacts will occur in the first year due to the amount of time required for criminal filing, trial, disposition and sentencing of each case. Once an offender is released from prison, he or she is assigned to parole. Table 4 shows the estimated cost of the bill over the next five fiscal years.

**Table 4  
Prison and Parole Costs Under HB 20-1278**

<b>Fiscal Year</b>	<b>Prison</b>	<b>Parole</b>	<b>Operating Cost</b>
FY 2020-21	-	-	-
FY 2021-22	10.00	-	\$426,649
FY 2022-23	20.00	-	\$853,297
FY 2023-24	25.45	4.55	\$1,112,492
FY 2024-25	25.45	14.55	\$1,171,111
<b>FIVE-YEAR TOTAL</b>			<b>\$3,563,549</b>

\* Per offender, state-run prisons cost an average of \$116.89 per day or \$42,664.85 per year, and parole costs an average of \$16.06 per day or \$5,861.90 per year.

**Department of Corrections capital construction costs.** In addition to the five-year operating and parole impacts discussed above, Section 2-2-703, C.R.S. requires that the General Assembly consider increased capital construction costs for the DOC to house additional inmates. Based on the average per bed construction costs of previous prison facilities (\$178,471), capital construction costs of \$4,461,775 would be required to increase prison bed space in line with the estimated increase in prison population under this bill. If the General Assembly determines that additional prison bed space is needed, this bill should include a transfer of General Fund to the Capital Construction Fund and a reappropriation of this funding to the Corrections Expansion Reserve Fund. Money in the Corrections Expansion Reserve Fund is available for future DOC construction projects, which would be identified and funded through the annual budget process based on the state's overall prison needs.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$65,751 in FY 2020-21 and \$70,220 in FY 2021-22.

**TABOR refunds.** Under the March 2020 LCS Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2020-21 or FY 2021-22, and refund obligations are not anticipated for these years. This bill does not change these expectations concerning refunds to taxpayers.

## Local Government

Beginning in FY 2020-21, this bill is expected to increase local government costs and workload as described below. The exact impact to a particular local government will vary depending on the number of offenses committed within its jurisdiction.

**District attorneys.** To the extent that the affidavit and firearm response form remedy the current situation of respondents refusing to answer the court about firearms in their possession, workload for district attorneys will increase related to the relinquishment hearing and any warrant-related legal activity, up to 0.5 FTE per office. This workload may be offset depending on cooperation with the sheriff's department. Additionally, district attorneys will have additional workload and costs to prosecute the class 1 misdemeanor under the bill. The state's 22 district attorney's offices are funded by counties, with each county in a judicial district contributing based on its population.

**County sheriffs.** Sheriffs, as well as local law enforcement agencies that opt-in to assist sheriffs, will have an increase in workload and costs to oversee the relinquishment process and either store or contract for the storage of relinquished firearms.

**County jails.** Based on the assumptions listed in the Comparable Crime Analysis section, the bill may increase county jail costs. 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 2019 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 \$58.56.

**Denver County Court.** The bill increases revenue, costs and workload for the Denver County Court, which is managed and funded by the City and County of Denver, to try misdemeanor cases under the bill. Probation services in the Denver County Courts may also experience an increase in revenue, costs, and workload revenue to supervise persons convicted under the bill within Denver County.

## Effective Date

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

## State Appropriations

Starting in FY 2020-21, this bill requires the following appropriations:

- a General Fund appropriation of \$216,234 and 2.1 FTE to the Judicial Department;
- an Instacheck Cash Fund appropriation of \$35,486 and 0.7 FTE to the Department of Public Safety; and
- a General Fund appropriation of \$3,563,549 for the five-year DOC operating impacts identified in Table 4. The General Assembly may appropriate \$4,461,775 for prison bed construction, if needed.

## State and Local Government Contacts

Corrections  
Human Services  
Law  
Sheriffs

Counties  
Information Technology  
Municipalities

District Attorneys  
Judicial  
Public Safety