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REVISED FISCAL NOTE

(replaces fiscal note dated June 8, 2020)

Drafting No.: LLS 20-1309 Date: June 10, 2020
Prime Sponsors: Sen. Garcia; Fields Bill Status: House Finance
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Bill Topic: ENHANCE LAW ENFORCEMENT INTEGRITY

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

This bill requires local law enforcement and the Colorado State Patrol to use body-worn cameras and release recordings to the public, and to conduct data reporting about certain incidents and contacts with the public. The Division of Criminal Justice must post this reporting on its website and summarize it in an annual report. The POST Board must revoke peace officer certification for certain violations. State and local law enforcement are prohibited from certain enforcement actions in response to public demonstrations. The bill removes immunity for local law enforcement peace officers and requires local law enforcement agencies to indemnify officers unless the officer did not act in good faith. The bill limits the acceptable use of force by all peace officers and creates a duty to report excessive use of force. Finally, the Attorney General may intervene in instance where a government authority engages in a pattern or practice that deprives persons of their constitutional rights. The bill will increase state and local expenditures on an ongoing basis beginning in FY 2020-21.

Appropriation Summary: For FY 2020-21, the bill requires an appropriation of \$617,478 to the DPS.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill.

Table 1 State Fiscal Impacts Under SB 20-217

Table with 5 columns: Category, FY 2020-21, FY 2021-22, FY 2022-23, FY 2023-24. Rows include Revenue, Expenditures (General Fund, Cash Funds, Centrally Approp., Total), Total FTE, Transfers, and TABOR.

## **Summary of Legislation**

This bill makes several policy changes related to law enforcement practices and peace officers, as discussed below. Under the bill, "peace officer" means any person employed by a local government that is required to be Peace Officer Standards and Training (POST)-certified, a Colorado State Patrol (CSP) officer, and noncertified deputy sheriffs. Unless otherwise specified, the fiscal note uses the term "peace officer" to describe this group.

**Body-worn camera requirements for peace officers.** The bill requires agencies employing peace officers to issue, over a three-year period, body-worn cameras to peace officers that interact with the public. Beginning July 1, 2023, these peace officers must wear and activate a body-worn camera when responding to a call for service or during any contact. Contact is defined as any interaction with an individual, whether or not the person is in a motor vehicle, initiated by the peace officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law; contacts do not include routine interactions with the public at the point of entry or exit from a controlled area. The bill outlines circumstances when peace officers may turn off cameras, such as to avoid the recording of personal information and in administrative, tactical, and management discussions. Undercover peace officers are not required to wear body-worn cameras.

If a peace officer fails to activate a camera or tampers with a body-worn or dash camera, there is permissive inference in any investigation or legal proceeding that the missing footage would reflect misconduct, for which the bill outlines related legal proceedings. Where there is a finding that a peace officer intentionally failed to activate or tampered with a body-worn camera, the bill requires specific administrative and POST Board disciplinary actions.

Agencies employing peace officers are required to establish a retention schedule for recordings in compliance with Colorado State Archives rules and direction.

**Release of footage.** For incidents in which there is a complaint of peace officer misconduct by another officer, a civilian, or a nonprofit organization, the peace officer's agency must release all unedited video and audio recordings of the incident to the public within 21 days from the complaint. The bill requires 24-hour advance release of footage that depicts a death to the decedent's family members, and outlines protocols of acceptable blurring or redaction for recordings that depict privacy concerns. A recording that would substantially interfere with or jeopardize an investigation may be temporarily withheld from the public, but must be released no later than 30 days after the complaint.

**Peace officer incident reporting.** Beginning January 1, 2023, agencies employing peace officers must report the following incidents to the Division of Criminal Justice (division) in the Department of Public Safety (DPS):

- all use of force by its peace officers that results in death or serious bodily injury, including: date, time, and location; perceived demographic of the person contacted (race, ethnicity, sex, and approximate age); names of officers at the scene; type of force used and injuries resulting; whether the peace officer was on duty; whether the force resulted in an investigation or complaint; and the results of the investigation or complaint;
- all instances when a peace officer resigned while under investigation for violating department policy;

- all data relating to contacts conducted by its peace officers, including: perceived demographics of person contacted; whether the contact was a traffic stop; the time, date, and location; the duration of the contact; the reason for the contact; the suspected crime; the result of the contact (actions, warnings, citations, property seizures, and/or arrests); and the actions taken by the peace officer during the contact (asking for consent to search and whether consent was provided, type of contraband or evidence discovered, if any, and type of property seized, basis for seizure, if applicable); and
- all instances of unannounced entry into a residence with or without a warrant, including date, time, and location, and perceived demographic of the subject of unannounced entry.

Data provided to the division must not include unique personal identifying information. The division must maintain a statewide database with data collected and publish the data in a searchable format on its website. If an agency that employs peace officers fails to meet its reporting requirements, the agency is subject to suspension of its funding by its appropriating authority.

Beginning July 1, 2023, the division is required to create an annual report of incident reporting from agencies employing peace officers, aggregated and broken down by agency, along with the underlying data.

**POST-certification revocation when peace officer convicted of inappropriate use of force.**

If a peace officer is convicted of or pleads guilty or nolo contendere to a crime involving the unlawful use or threatened use of physical force, or is found civilly liable for using excessive force, the POST Board must permanently revoke the peace officer's certification. The POST Board may not, under any circumstances, reinstate the peace officer's certification or grant new certification to the peace officer unless the peace officer is exonerated by a court. The POST Board is required to record each decertified peace in its database.

**Prohibited law enforcement actions in response to protests or demonstrations.** In response to a protest or demonstration, a state or local law enforcement officer or agency must not:

- discharge kinetic impact projectiles and all other non- or less-lethal projectiles in a manner that targets the head, pelvis, or back;
- discharge kinetic impact projectiles indiscriminately into a crowd; or
- use chemical agents or irritants, including pepper spray and tear gas, prior to issuing an order to disperse in a sufficient manner to ensure the order is heard and repeated if necessary, followed by sufficient time and space to allow compliance with the order.

**Civil action for deprivation of rights by a local law enforcement officer.** POST-certified local law enforcement officers and non-certified deputy sheriffs are liable to an injured party for legal, equitable, or otherwise appropriate relief who, under the color of law, deprive another individual of their rights. Statutory immunities and statutory limitations on liability, damages, or attorney fees do not apply to these claims, nor is qualified immunity a defense. Civil actions must be commenced within two years after the cause of action accrues.

In these actions, a court shall award reasonable attorney fees and costs to a prevailing plaintiff. In actions for injunctive relief, a court must deem a plaintiff to have prevailed if the plaintiff's suit was a substantial factor or significant catalyst in obtaining the results sought by the litigation. When a judgment is entered in favor of a defendant, the court may award reasonable costs and attorney fees to the defendant for defending any claims the court finds frivolous.

A local government law enforcement agency must indemnify its officers for any liability the officers incur and for any judgment or settlement entered against the officers for claims arising pursuant to this section; except that if the officer's employer determines that the officer did not act upon a good faith and reasonable belief that the action was lawful, then the officer is personally liable and shall not be indemnified by the officer's employer for 5 percent of the judgment or settlement or \$25,000, whichever is less. If an officer's portion of the judgment is uncollectible, the officer's employer or insurance must satisfy the full amount of the judgment or settlement.

**Limitations on use of force by all state and local law enforcement officers.** The bill repeals and reenacts the section of state law related to use of force by POST-certified law enforcement officers. The bill requires that all state and local POST-certified law enforcement officers apply nonviolent means before resorting to the use of physical force. Physical force may only be used if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the officer or another person. Chokeholds are prohibited.

Whenever physical force is used, a state or local POST-certified law enforcement officer shall:

- not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;
- use only a degree of force consistent with the minimization of injury to others;
- ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and
- ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

A state or local POST-certified law enforcement officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are impractical given the circumstances and:

- the arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
- there is substantial risk that the person to be arrested will cause death or serious bodily injury if the person's apprehension is delayed; and
- the force employed does not create a substantial risk of injury to innocent persons.

A state or local POST-certified law enforcement officer must identify themselves as a law enforcement officer and give clear verbal warning of their intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place officers at risk of injury, would create a risk of death or injury to other persons, or would be clearly inappropriate or ineffective under the circumstances.

**Duty to report excessive use of force.** A state or local POST-certified law enforcement officer must intervene to prevent or stop another officer from using physical force that exceeds the degree of force permitted, if any, in the other officer's law enforcement duties in carrying out an arrest of any person, placing any person under detention, taking any person into custody, booking any person, or in the process of crowd control or riot control, without regard for chain of command. A state or local POST-certified law enforcement officer who intervenes must report the intervention to the officer's immediate supervisor within 10 days following the reporting requirements outlined in the bill.

No member of a state or local law enforcement agency may discipline or retaliate in any way against an officer who intervenes to prevent excessive force, who reports unconstitutional conduct, or who does not follow what the officer reasonably believes is an unconstitutional directive.

Any law enforcement officer who fails to intervene in an incident resulting in serious bodily injury or death to any person is subject to administrative discipline and the POST Board must permanently revoke that officer's certification.

**Database on individual law enforcement officer misconduct.** Beginning January 1, 2022, the POST Board must create and maintain a database containing information related to all individual POST-certified law enforcement officers':

- untruthfulness;
- repeated failure to follow POST Board training requirements;
- decertification by the POST Board; and
- termination for cause.

**Attorney General action where pattern of individual rights infringement.** The bill allows the Attorney General to take civil action against any governmental authority that engages in a pattern or practice of conduct by its law enforcement officers, officials, or employees that deprives persons of rights, privileges, or immunities as granted under the federal and state constitutions. Before filing an action, the Attorney General must notify the governmental authority and provide it with a factual basis that supports the reasonable cause to believe a violation occurred. Upon receipt of the factual basis, the authority has 60 days to change or eliminate the identified pattern or practice. If the pattern or practice is not changed, the Attorney General may file a civil lawsuit.

**Revocation of POST certification for failure to complete training.** A state or local POST-certified law enforcement officer who fails to complete required POST training will be notified by the POST Board and granted 30 calendar days to complete the required training, after which the POST Board may revoke the officer's POST certification.

**Justification and reporting by peace officers making a contact.** The bill requires peace officers to have a legal basis for making contact. After making a contact, the peace officer must report: perceived demographic of the person contacted; whether the contact was a traffic stop; the time, date, and location; the reason for the contact; the suspected crime; the result of the contact; and the actions taken by the peace officer. The officer must also provide information to the person contacted about how to file a complaint related to the contact.

## **State Expenditures**

The bill increases state expenditures from the Highway Users Tax Fund and the General Fund by the amounts shown in Table 2. The bill will also increase workload in the Department of Law, the Department of Corrections, and the Judicial Department. Additionally, the bill may increase future costs for the Department of Personnel and Administration (DPA). These impacts are discussed below.

**Table 2  
Expenditures Under SB 20-217**

<b>Cost Components</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>	<b>FY 2023-24</b>
<b>Colorado State Patrol, DPS</b>				
Personal Services	\$50,288	\$100,576	\$216,090	\$216,090
Operating/Capital Outlay	\$7,550	\$8,900	\$17,800	\$5,400
Legal Services	\$95,940	\$95,940	-	-
Body-worn Cameras/Contract	\$395,700	\$1,465,080	\$1,872,060	\$933,660
<i>Camera Issuance</i>	<i>100</i>	<i>340</i>	<i>340</i>	<i>-</i>
Information Technology	\$68,000	\$50,000	\$125,000	\$200,000
Centrally Appropriated Costs*	\$85,882	\$227,117	\$317,641	\$217,800
FTE – Personal Services	1.0 FTE	2.0 FTE	4.0 FTE	4.0 FTE
FTE – Legal Services	0.5 FTE	0.5 FTE	-	-
<b>CSP (Subtotal) - HUTF</b>	<b>\$703,360</b>	<b>\$1,947,613</b>	<b>\$2,548,591</b>	<b>\$1,572,950</b>
<b>Division of Criminal Justice, DPS</b>				
Personal Services	-	\$164,590	\$179,553	\$179,553
Operating/Capital Outlay	-	\$15,100	\$2,700	\$2,700
Computer Programming	-	\$400,000	\$35,000	\$35,000
Centrally Appropriated Costs*	-	\$100,672	\$62,896	\$62,896
FTE – Personal Services	-	1.8 FTE	2.0 FTE	2.0 FTE
<b>DCJ (Subtotal) - General Fund</b>	<b>\$0</b>	<b>\$680,362</b>	<b>\$280,149</b>	<b>\$280,149</b>
<b>Total</b>	<b>\$703,360</b>	<b>\$2,627,975</b>	<b>\$2,828,740</b>	<b>\$1,853,099</b>
<b>Total FTE</b>	<b>1.5 FTE</b>	<b>4.3 FTE</b>	<b>6.0 FTE</b>	<b>6.0 FTE</b>

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

**Colorado State Patrol, DPS.** Costs will increase for the CSP to issue body-worn cameras to its officers over three-years to meet the July 1, 2023 effective date, and to make the contact and incident reporting effective January 1, 2023. Costs are paid from the Highway Users Tax Fund.

- *Body-worn cameras and support staff.* The CSP will purchase body-worn cameras for its 780 uniformed CSP officers and hire 2.0 FTE Technician III to provide in-house technical support for the equipment. It is assumed that CSP will roll out cameras to its officers over a three-year period, as shown in Table 2. The one-time cost for the body-worn cameras and related equipment is estimated at \$2,250, and cameras will likely require replacement on a four-year cycle; one-time camera training is estimated at \$510 per officer; and ongoing cloud access, storage, and licensing costs are estimated at \$1,197 per camera per year once online. Finally, costs for video redaction software, estimated at \$50,000 per year beginning in FY 2020-21, and a one-time FY 2020-21 tracking software purchase of \$18,000 are included. Costs are estimates only; actual costs will be determined through the vendor contract.

- *Contact and incident reporting.* The CSP requires 2.0 Analyst III to support the requirements for contact and incident reporting, its database vendor requires \$150,000 per year beginning in mid-FY 2022-23 to support the additional information required to be tracked under the bill. The analysts will join the data information team to ensure accurate and timely collection and reporting of data. The information technology costs are based on the current contract and rate agreement the CSP has with its vendor to implement the expanded scope to the current system to support the bill provisions.
- *Legal services.* The Department of Law will receive reappropriated funds to provide advice and representation the CSP in the first two fiscal years. Legal service hours are calculated at a rate of \$106.60 per hour for 900 hours and 0.5 FTE in FY 2020-21 and FY 2021-22. In the bill's third implementation year, the fiscal note assumes any increased legal services costs will be incorporated into the three-year average for legal services costs used during the annual budget process.

**Division of Criminal Justice, DPS.** General Fund expenditures will increase to develop a data collection system for local law enforcement and CSP contact and incident reporting; to develop and maintain a statewide searchable database of this information on the DPS website; and to annually issue a comprehensive analysis and report of these data beginning July 1, 2023. Costs include 2.0 FTE Data Managers beginning in FY 2021-22, \$400,000 in initial information technology costs, and \$35,000 in ongoing IT costs.

**Department of Law.** In addition to its work with the CSP, the department will have increased workload to support the POST Board in implementing the bill, for which no change in appropriations is required. The POST Board will track new individual officer information in its law enforcement officer database, and perform the additional notifications and actions required under the bill within existing resources. Workload will also increase to the extent the Attorney General brings civil action against a government entity.

**Department of Corrections.** The Department of Corrections will have an increase in workload to train its staff on the bill's modifications to acceptable use of force. To the extent additional training or legal resources are required, these will be requested through the annual budget process.

**Judicial Department.** The bill will increase trial court workload in the Judicial Department. Workload will depend on how many individuals bring a civil action against a peace officer and the frequency of civil actions brought by the Attorney General under the bill. The fiscal note assumes that any increase in filings can be handled within existing trial court appropriations; for informational purposes, civil court cases would have to increase by 549 case filings to necessitate an additional 1.0 FTE District Court Judicial Officer for the trial courts. Additionally, with local law enforcement officers using body worn cameras, additional recordings will enter criminal court records. Review of footage causes longer hearings, resulting in additional workload. Any increase in appropriations will be addressed through the annual budget process.

**Department of Personnel and Administration.** If a significant number of legal claims related to the bill's provisions are filed against the CSP or its officers, the department may require additional funding to keep the state's liability fund solvent to cover initial legal representation in these matters, which are anticipated to be mitigated by the state governmental immunity act. The department's risk management program's actuary will capture any legal costs in the actuarial analysis of the state's experience, which will form the basis for any General Fund adjustments through annual budget process for the state's common policies.

In addition, State Archives may have an increase in costs to store footage that becomes permanent legal record. These future costs will be addressed during the annual budget process.

**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 shown in Table 2.

## **Local Government**

The bill increases workload and costs in several areas for cities, counties, and other local governments that employ law enforcement officers in local law enforcement agencies. These cost drivers include:

- body-worn camera equipment and video data storage;
- staff and software to manage video collection, processing, and public distribution;
- staff and software for data collection and reporting;
- policy updates and training; and
- potential payments for judgements and attorney fees in civil actions alleging violations of constitutional rights.

Costs for these various items will vary depending on the size of the law enforcement agency; its current policies, procedures, and staffing; and its current use or non-use of body-worn cameras. These cost drivers are discussed in more detail below.

**Body-worn cameras.** Under the bill, local law enforcement agencies that do not currently use body-worn cameras will have increased costs. These costs will include the cameras themselves, other equipment such as docking and charging stations, as well the associated data storage, processing and staffing costs. Costs will vary depending on the number of law enforcement officers requiring body-worn camera, current policies regarding their use, and the details of the body-worn camera procurement and service agreements (cameras purchased outright vs leased, in-house data storage vs a contracted storage service provider, etc.).

For illustrative purposes, the fiscal note provides the example of a body-worn camera with an initial cost of \$2,250 for the camera and dock, and an ongoing annual cost of \$1,200 per camera for data storage services and licensing. For an agency requiring 100 cameras, first-year costs would total \$345,000 and second and future year costs would be \$120,000. Additional staff would be required to manage the camera program, process and release videos, and provide technical support and training to law enforcement officers. For an agency requiring 1,000 or more cameras, costs may exceed \$3.0 million per year on an ongoing basis.

**Data reporting and collection.** Local law enforcement agencies will require additional staff and software for data reporting. The bill requires that various data on use of force, stops, unannounced entry, and officer resignations be reported to the Attorney General. Depending on current practices, agencies will be required to develop processes to collect the data, and report it to the DPS. Software will likely be required for officers to capture certain data during or following their shift.

**Policy and training.** Law enforcement agencies will have additional workload and costs to update procedures and policies to align with the bill, including on the use of body-worn cameras, the use of force by officers, and data and information that law enforcement officers must collect, among other things. Training for new and current law enforcement officers will be required to convey the new policy changes and requirements under the bill.

**Civil liability.** Local governments may be required to pay judgements and attorney fees for violations of constitutional rights under the new civil action created by the bill. It is unknown whether judgements under the new civil action will be in place of, or in addition to, judgements and settlements involving law enforcement agencies that would have otherwise occurred under current law. Any additional judgements, if incurred, would result in increased costs for local governments employing law enforcement officers, whether for the immediate payment of the judgement and fees, or for increased liability insurance costs in subsequent years if paid via an insurance policy. The bill specifies that law enforcement officers are personally liable for 5 percent of the judgement amount, or \$25,000, whichever is less, if the officer's employer determines that the officer did not act upon a good faith and reasonable belief that the action was lawful. This would reduce the local government share for these costs.

### **Technical Note**

Currently, one of the bill's provision related to contact reporting applies to all state and local law enforcement officers. The fiscal note has assumed this was unintentional and has not included contact reporting costs for the state departments that employ law enforcement officers, including the Departments of Corrections, Human Services, Law, Natural Resources, Public Safety (apart from CSP), Regulatory Agencies, and Revenue.

### **Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, except that Section 24-31-902, C.R.S., related to incident recordings, as enacted in Section 1 of the bill, takes effect July 1, 2021.

### **State Appropriations**

For FY 2020-21, the bill requires an appropriation from the Highway Users Tax Fund to the Colorado State Patrol in the Department of Public Safety of \$617,478 and 1.0 FTE. Of this amount, \$95,940 is reappropriated to the Department of Law, with 0.5 FTE.

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

Corrections  
Human Services  
Law  
Personnel  
Sheriffs

Counties  
Information Technology  
Municipalities  
Public Safety

District Attorneys  
Judicial  
Natural Resources  
Revenue