



## Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

# Revised Fiscal Note

(replaces fiscal note dated April 6, 2021)

<b>Drafting Number:</b>	LLS 21-0021	<b>Date:</b>	May 20, 2021
<b>Prime Sponsors:</b>	Rep. Duran; Gray	<b>Bill Status:</b>	Senate SVMA
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**Bill Topic:** PROTECTION ORDER ISSUED AGAINST DOMESTIC ABUSER

<b>Summary of Fiscal Impact:</b>	<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

The bill modifies procedures relating to a respondent's firearms or ammunition following the issuance of a protection order. It will increase state revenue and expenditures, as well as local government workload, beginning in FY 2021-22.

**Appropriation Summary:** For FY 2021-22, the bill requires and includes an appropriation of \$101,050 to the Judicial Department.

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

**Table 1  
State Fiscal Impacts Under HB 21-1255**

		Budget Year FY 2021-22	Out Year FY 2022-23
<b>Revenue</b>		-	-
<b>Expenditures</b>	General Fund	\$101,050	\$97,130
	Centrally Appropriated	\$12,251	\$12,263
	<b>Total Expenditures</b>	<b>\$113,301</b>	<b>\$109,393</b>
	<b>Total FTE</b>	<b>0.5 FTE</b>	<b>0.5 FTE</b>
<b>Transfers</b>		-	-
<b>TABOR Refund</b>		-	-

## **Summary of Legislation**

The bill modifies procedures relating to firearm relinquishment following the issuance of a protection order, as described below.

**Firearm affidavit.** The bill requires a person to complete an affidavit—which must be filed in the court record within 7 business days after a protection order including an act of domestic violence involving the threat of use, use of, or attempted use of physical force is issued against them—stating the following information about firearms in the person’s immediate possession or control:

- the number of firearms,
- the make and model of each firearm,
- any reason the respondent is still in immediate possession of control of such firearm, and
- the location of each firearm.

If the person does not possess a firearm at the time the order is issued, the person shall indicate such non-possession in the affidavit.

**Compliance hearings.** The bill requires the court to conduct a compliance hearing not less than 8 but no more than 12 business days after the issuance of a protection order if the person has not completed the affidavit. The court may vacate this hearing if the court determines the respondent has complied with the affidavit described above. For criminal cases, the court may consider the compliance issue in another proceeding. Failure to appear at this hearing constitutes contempt of court. Information compelled or any information directly or indirectly derived from testimony, the affidavit, or other information may not be used against the defendant in any criminal case, except for prosecution of perjury.

Upon sworn statement or testimony of the petitioner or of any law enforcement officer alleging there is probable cause to believe the respondent has failed to comply with relinquishment provisions, the court is required to determine whether probable cause exists. Where probable cause exists, the court shall issue a search warrant that states with particularity the places to be searched and the items to be taken into custody.

**Requirements for firearm sales or transfers.** The bill requires a federally licensed firearms dealer, law enforcement agency, or private party to issue a signed declaration memorializing the sale or transfer of the firearm.

**Proof of relinquishment.** The bill requires a copy of the signed declaration and, where applicable, the written statement of the background check results to be filed with the court as proof of relinquishment at the same time the person files the signed affidavit. Both the signed declaration and written statement are only available for inspection by the court and the parties to the proceeding.

**Storage facilities and immunity.** A law enforcement agency may enter into an agreement with any other law enforcement agency or storage facility for the storage of transferred firearms. The bill requires a law enforcement agency that elects to store a firearm to obtain a search warrant to examine or test the firearm or facilitate any criminal investigation if the law enforcement agency has probable cause to believe the firearm has been used in the commission of a crime, is stolen, or is contraband.

A federally licensed firearms dealer, law enforcement agency, storage facility, or private party that elects to store a firearm is 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 person or agency storing the firearm.

**Prohibitions on firearm transfers within residences.** The bill prohibits the person from transferring the firearm to a private party living in the same residence as the person at the time of transfer. The bill prohibits a private party from returning a firearm to the person until the private party receives a written statement of the results of the background check conducted by the Colorado Bureau of Investigation authorizing the return of the firearm to the person.

**Time periods not to include holidays and weekends.** The bill excludes legal holidays and weekends from the current time frame a person has to relinquish a firearm. The bill allows a court to grant a person an additional 24 hours to relinquish a firearm if the person is unable to comply with the required time frame of relinquishment.

## Assumptions

**Protection orders for domestic abuse cases.** In FY 2019-20, the trial courts saw 6,140 civil protection orders, 22,829 mandatory protection orders, and 1,504 unique cases with a domestic violence flag. According to a recent report from the RAND Corporation, about 39 percent of Coloradans are assumed to own a firearm. Given the gun ownership rate, it is anticipated that approximately 11,884 protection orders per year will involve firearm relinquishment.

## State Revenue

Beginning in FY 2021-22, criminal fines and court fees, which are subject to TABOR, may increase by a minimal amount due to the potential for additional criminal convictions under the bill.

## State Expenditures

The bill will increase costs for the Judicial Department by \$113,301 and 0.5 FTE in FY 2021-22 and \$109,393 and 0.5 FTE in FY 2022-23, as shown in Table 2, with first-year costs prorated for the General Fund pay date shift. The bill potentially increases workload in state departments that employ law enforcement. These impacts are detailed further below.

**Table 2  
 Expenditures Under HB 21-1255**

<b>Cost Components</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
<b>Judicial Department</b>		
Personal Services	\$25,074	\$27,354
Operating Expenses	\$675	\$675
Capital Outlay Costs	\$6,200	-
Contempt Appointments	\$69,101	\$69,101
Centrally Appropriated Costs <sup>1</sup>	\$12,251	\$12,263
<b>Total</b>	<b>\$113,301</b>	<b>\$109,393</b>
<b>Total FTE</b>	<b>0.5 FTE</b>	<b>0.5 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Judicial Department— trial courts.** Assuming 11,884 cases per year will require compliance hearings, and that administration work to schedule hearings will average 5 minutes, this bill requires 0.5 FTE clerk staff. Workload will also increase for judicial officers related to compliance hearings that are not handled within other proceedings or vacated, as well as cases with a failure to appear, resulting in 0.1 FTE increase; which can be accomplished within existing resources. Finally, trial court staff will process additional paperwork, schedule hearings, track affidavits and returns of service, and monitor cases where an individual is in custody within existing resources.

**Judicial Department— contempt hearings.** Assuming 1 percent of the 11,884 cases per year result in a contempt hearing, and that 60 percent of those cases involve a non-compliant party that qualifies for a state-paid attorney, the department requires \$69,101 per year to cover attorney fees and expenses. This estimate uses the department's average of 12.3 billable hours for contempt appointments, and includes attorney expense reimbursements for mileage, postage, and copies.

**Judicial Department— other potential workload and probation increases.** Other provisions of the bill may drive additional workload to the trial courts as well as increased 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 Counsel, to the extent the bill creates additional hearings. It is assumed that this workload can be accomplished within existing appropriations.

**State law enforcement agencies.** Workload to state law enforcement agencies may increase if departments choose to store firearms or enter into a storage agreement with local law enforcement agencies. Any impact can be accomplished within the normal course of business for these agencies.

**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 \$12,251 in FY 2021-22 and \$12,263 in FY 2022-23.

**TABOR refunds.** Under the December 2020 Legislative Council Staff Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2021-22 or FY 2022-23, 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 2021-22, this bill is expected to increase costs and workload to district attorney's offices related to compliance hearings. Because the large majority of compliance hearings are expected to occur in conjunction with another criminal proceeding, this impact is expected to be absorbable.

Local law enforcement agencies may see an increase in workload and costs to meet the bill's requirements regarding firearm transfer and storage.

## Effective Date

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

## State Appropriations

For FY 2021-22, the bill requires and includes a General Fund appropriation of \$101,050 and 0.5 FTE to the Judicial Department.

## State and Local Government Contacts

Counties	District Attorneys	Information Technology
Judicial	Law	Municipalities
Public Safety	Sheriffs	Special Districts