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Final Fiscal Note

Drafting Number: LLS 23-0511 Date: June 21, 2023
Prime Sponsors: Sen. Sullivan; Fenberg Bill Status: Signed into Law
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Bill Topic: EXTREME RISK PROTECTION ORDER PETITIONS

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

The bill allows community members, educators, licensed health care professionals, mental health professionals, and district attorneys to petition for an extreme risk protection order. Starting in FY 2023-24, the bill increases state and local expenditures on an ongoing basis.

Appropriation Summary: The bill requires and includes an appropriation of \$379,308 to various state departments.

Fiscal Note Status: This fiscal note reflects the enacted bill.

Table 1
State Fiscal Impacts Under SB 23-170

Table with 4 columns: Category, Sub-category, Budget Year FY 2023-24, and Out Year FY 2024-25. Rows include Revenue, Expenditures (General Fund, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve).

Summary of Legislation

The bill repeals and reenacts state law regarding extreme risk protection orders (ERPOs). Under current law, a family or household member and a law enforcement officer or agency can petition for an ERPO. The bill expands eligible petitioners to community members, educators, licensed health care professionals, and mental health professionals, clarifies which law enforcement officers may petition for an order, to include district attorneys, and clarifies the venue where petitions may be filed. The bill also requires the Colorado Department of Public Health and Environment (CDPHE) to spend funds on a public education campaign regarding the availability of, and the process for requesting, an ERPO.

Finally, the bill requires the Department of Public Safety (DPS) to establish a hotline to receive and refer calls from the public about ERPOs, to provide callers with relevant resources, and to collaborate with other state agencies to obtain information necessary or beneficial for responding to requests. The hotline must not provide legal advice or advise a caller on the ramifications concerning the filing or false filing of an ERPO.

Background and Assumptions

To determine if there would be an increase in ERPO petitions, the fiscal note analyzed two states that currently allow medical professionals to petition for an ERPO: New York and Maryland.

New York. In 2022, the State of New York passed S.9113-A./A.10502 which expanded who can petition for an ERPO to include health care professionals and requires law enforcement to file ERPOs in certain situations. According to a [news release](#) from the New York Governor's Office on October 22, 2022, ERPOs more than doubled after the passage of the law.

Maryland. Maryland also allows health care professionals to petition for ERPOs. According to district court data from Maryland, the state saw 573 ERPO cases filed from January 2022 through September 2022, or about 64 cases per month. Maryland data for 2022 can be found [here](#).

Assumptions. Based on the data discussed above, the fiscal note assumes that by increasing the number of individuals who may petition for an ERPO, the number of ERPOs issued will increase. Because the New York law included a provision that required law enforcement petition for an ERPO in some cases, and because Maryland had more ERPO petitions than Colorado since its law was enacted in 2018, the fiscal note estimates a more conservative increase in Colorado than in those states. The fiscal note assumes that the number of ERPO petitions in Colorado will increase by 50 percent. From January 1, 2020, through December 31, 2022, there were 380 ERPO petitions filed, or about 127 cases per year. Assuming a 50 percent increase, this will result in an additional 64 cases per year.

State Expenditures

The bill increases state General Fund expenditures in the Judicial Department and the Department of Public Safety by about \$450,000 per year beginning in FY 2023-24. In addition, the bill increases workload to the CDPHE. Expenditures are shown in Table 2 and detailed below.

**Table 2
Expenditures Under SB 23-170**

	FY 2023-24	FY 2024-25
Judicial Department		
Personal Services	\$107,443	\$117,212
Operating Expenses	\$2,565	\$2,565
Capital Outlay Costs	\$30,454	\$480
Centrally Appropriated Costs ¹	\$22,187	\$24,204
FTE – Personal Services	1.1 FTE	1.2 FTE
Judicial Subtotal	\$162,649	\$144,461
Department of Public Safety		
Personal Services	\$164,786	\$203,192
Operating Expenses	\$4,050	\$4,050
Capital Outlay Costs	\$20,010	-
Phone Licenses	\$50,000	\$50,000
Centrally Appropriated Costs ¹	\$46,279	\$52,075
FTE – Personal Services	2.8 FTE	3.0 FTE
DPS Subtotal	\$285,125	\$309,317
Total Cost	\$447,774	\$453,778
Total FTE	3.9 FTE	4.2 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Judicial Department. Starting in FY 2023-24, expenditures in the Judicial Department will increase to hear additional ERPO petitions. Specifically, the bill will increase magistrate costs and attorney and mental evaluation workload as described below.

- **Magistrate costs.** Starting in FY 2023-24, the Judicial Department requires 1.2 FTE to hear the assumed increase in ERPO petitions. According to the Judicial Department, one judge can hear on average 250 ERPO cases per year. Using this standard, the trial courts will require 0.3 FTE magistrate to handle the increase in workload. Following the department's common policy, each magistrate needs support staff at a 1:3 ratio resulting in a need for 0.9 FTE support staff. Costs in FY 2023-24 are prorated for the General Fund pay date shift.
- **Attorney and mental evaluation costs.** Under current law, if a person cannot afford an attorney, the courts must provide one for the ERPO hearings. In addition, individuals may receive a mental evaluation during the course of the hearing. The bill will increase costs to provide additional attorneys and mental evaluations. Based on data from current ERPO cases, attorneys are appointed in about 65 percent of cases. Based on the projected increase in cases, this would mean about 40 additional appointments, which assuming 12 hours per case and the current attorney

rate of \$85 per hour, will result in about \$40,000 in additional costs. However, because the number of attorney appointments and the number of mental evaluations did not reach the assumed number in the appropriation for House Bill 19-1177, this increase in costs can be handled within existing appropriations.

Department of Public Safety. Starting in FY 2023-24, the DPS requires staff, a phone line, and tracking system software to operate an ERPO hotline.

- **Staff.** DPS requires 3.0 FTE to operate a hotline to receive and refer calls from the public about ERPOs, and to collaborate with other state agencies to obtain information necessary or beneficial for responding to requests. Staffing need assumes 24/7 hotline coverage based on the staffing arrangement for the Safe2Tell hotline. Staffing costs include personal services, operating expenses, and capital outlay costs. First-year costs are prorated for the General Fund pay date shift.
- **Phone licenses.** DPS requires one dedicated phone line and a software license for its reporting tracking system, estimated at \$50,000 per year.

Colorado Department of Public Health and Environment. Starting in FY 2023-24, the bill increases workload in the CDPHE to incorporate ERPO information into its current education campaign about gun safety developed under House Bill 21-1299. The Office of Gun Violence Prevention receives an annual appropriation of about \$3 million per year, of which \$2 million goes toward education campaigns. The fiscal note assumes this work and adding new information to education campaigns can be accomplished within existing appropriations.

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.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government

Starting in FY 2023-24, to the extent district attorneys file ERPO petitions, workload to district attorney offices will increase. District attorney offices are funded at the local level by the counties the office services.

Effective Date

This bill was signed into law by the Governor and took effect on April 28, 2023.

State Appropriations

The bill requires and includes General Fund appropriations totaling \$379,308 including:

- \$140,462 General Fund and 1.2 FTE to the Judicial Department; and
- \$238,846 and 2.8 FTE to the Department of Public Safety.

State and Local Government Contacts

District Attorneys
Public Health and Environment

Education
Public Safety

Judicial
Regulatory Agencies