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Fiscal Note

Drafting Number: LLS 24-0696 Date: March 28, 2024
Prime Sponsors: Rep. Woodrow; Herod Bill Status: House Judiciary
Sen. Fields; Gonzales Fiscal Analyst: Aaron Carpenter | 303-866-4918
aaron.carpenter@coleg.gov

Bill Topic: REGULATING LAW ENFORCEMENT USE OF PRONE RESTRAINT

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

The bill prohibits the use of prone restraint by peace officers and guards unless certain circumstances are met. The bill increases state and local expenditures on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under HB 24-1372

Table with 4 columns: Category, Budget Year FY 2024-25, Out Year FY 2025-26, Out Year FY 2026-27. Rows include Revenue, Expenditures (General Fund, Cash Funds, Reappropriated Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve).

Summary of Legislation

The bill prohibits a peace officer or detention facility guard from using prone restraint, either physical or mechanical, unless the officer is justified in using deadly physical force. If prone restraint is used, the officer must immediately move the person to a recovery position once a person is in handcuffs or hands are tied.

The bill requires the Colorado Department of Public Safety (CDPS) to create a model state policy on law enforcement use of physical restraints and the risks of positional asphyxia by July 1, 2025. On or before July 1, 2026, the bill requires all law enforcement agencies to adopt and train peace officers or guards on a written policy that incorporates the bill's prohibition of prone restraint.

A party injured by a peace officer or guard may sue an agency that fails to: adopt and enforce a written policy; begin training peace officers or guards within six months of adopting the policy; or report policy violations. An injured party may also sue the peace officer or guard who violates the policy. The bill waives any statutory immunity or limitation on damages including governmental and qualified immunity.

Finally, the bill requires agencies to report any violations of the written policy to the Division of Criminal Justice in CDPS.

State Expenditures

The bill increases state expenditures by \$686,000 in FY 2025-26 and \$1.6 million in FY 2026-27 in the Department of Human Services (CDHS), the Department of Law, and various state agencies employing peace officers for legal services, as shown in Table 2. Costs in CDHS will be paid from the General Fund, costs in the Department of Law will be paid from the POST Board Cash Fund, and agency legal services costs will be paid using reappropriated funds from various sources. Additionally, the bill will increase expenditures in the Department of Personnel and Administration (DPA) from additional lawsuits and workload in a variety of other state agencies, as described below.

Table 2
Expenditures Under HB 24-1372

	FY 2024-25	FY 2025-26	FY 2026-27
Department of Human Services			
Policy Development and Training	-	\$685,998	\$200,181
DHS Subtotal	-	\$685,998	\$200,181
Department of Law			
Personal Services	-	-	\$386,828
Operating Expenses	-	-	\$2,304
Capital Outlay Costs	-	-	\$13,340
Centrally Appropriated Costs ¹	-	-	\$59,629
FTE – Personal Services	-	-	1.8 FTE
Law Subtotal	-	-	\$462,101
State Agencies Employing Peace Officers			
Legal Services	-	-	\$921,744
FTE – Legal Services	-	-	4.0 FTE
Various State Agency Total	-	-	\$921,744
Total Costs	-	\$685,998	\$1,584,026
Total FTE	-	-	5.8 FTE

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

Department of Human Services. Starting in FY 2025-26, the bill increases expenditures in the CDHS to develop a new crisis and physical management system, as shown in Table 2. Because employees of the Division of Youth Services are not peace officers, the fiscal note assumes that the department cannot use the model policy adopted by CDPS and must purchase or establish its own. The fiscal note assumes that 1,250 employees will require training in FY 2025-26 to meet the bill’s deadline of July 1, 2026. Using a train-the-trainer model, and assuming a 1:12 instructor to staff ratio, costs will increase to purchase licenses for the trainers, develop new materials, and to pay consultation fees. Costs are lower in out years to train additional trainers when original trainers leave, and to recertify existing trainers on an ongoing basis.

Department of Law. Starting in FY 2026-27, the Department of Law requires 1.8 FTE for an investigator to investigate additional complaints against peace officers for the use of prone restraint. Based on complaint data related to Senate Bill 20-217, the fiscal note assumes that 0.7 percent of arrests will result in a prone restraint complaint, resulting in 122 additional cases to investigate at an estimated 30 hours per complaint. Costs for POST investigations will be paid from the POST Board Cash Fund.

Legal services for agencies employing peace officers. Legal services expenditures will increase in various state departments due to additional complaints against state peace officers or guards. Based on the share of peace officers in Colorado who are employed by a state agency (12 percent), the fiscal note estimates that an additional 15 cases will be brought against state employees and the same amount, another 15 cases, will be brought against guards/officers in DOC and DYS facilities. Overall, legal services needs are estimated to increase by 7,200 hours per year at a rate of \$128 per hour beginning in FY 2026-27. Legal services costs are paid from reappropriated funds from affected state departments, which may include the Departments of Corrections, Higher Education, Human Services, Law, Natural Resources, Public Safety, and Revenue. The exact breakdown of these costs will be addressed through the annual budget process based on actual legal service needs and complaints filed.

Starting in FY 2024-25, workload for various state agencies will increase to create a new policy, and to train officers in the new policy. The fiscal note assumes that because departments have until July 1, 2026, and because the CDPS will develop a new policy, agencies will create their policy within existing resources or adopt the CDPS policy. In addition, because departments have until July 1, 2026, to train officers, departments will train officers within their current training programs.

Risk management and liability costs. Assuming one year is required to adjudicate any cases against the state brought under the bill, costs will increase in the DPA to make settlement and damage award payments from the Risk Management Fund. The exact increase in expenditures will depend on legal fees incurred and whether or not there is a settlement or judgement against the state. In the four years since the passage of Senate Bill 20-217, there have been 13 claims against the state resulting in a payment from the Risk Management Fund. Payments averaged \$266,700 per claim; however, this average includes one payment of \$3 million. Without this outlying claim, the average payment is \$34,000 per claim. Using the adjusted average, and assuming that 75 percent of the assumed 30 cases involving state employees under the bill (see above) result in a payment from the Risk Management Fund, costs to the fund are estimated to increase by \$764,000 per year. Similar to the Department of Law, the Risk Management Fund is funded through reappropriated funds paid by individual state departments based on actuarial analysis and actual claim data. It is assumed that adjustments to risk management payments will be adjusted as needed through the annual budget process.

Department of Public Safety. In FY 2024-25 only, the bill increases workload in the CDPS to develop a model policy. The CDPS will base its model policy on the Colorado State Patrol's Defensive Tactics manual, therefore, model development can be accomplished within existing appropriations. The Division of Criminal Justice will also have an increase in workload to receive reports of physical restraint policy violations.

Judicial Department. Starting in FY 2026-27, to the extent there are additional civil cases brought against the peace officers, workload to trial courts will increase. Any increase in workload for the trial courts is expected to be minimal.

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 and Statutory Public Entities

Similar to the state, costs to local governments, such as municipalities and counties, and statutory public entities, such as the Regional Transportation District, will increase to ensure that police and sheriff departments adopt a new policy and to train peace officers on that policy. In addition, starting in FY 2026-27, to the extent there are additional legal claims against police and sheriff departments for violations of the bill, costs to municipalities and counties will increase to pay legal costs, settlements, and potential damages.

Effective Date

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

Departmental Difference

The DPA estimates that in FY 2026-27, state expenditures will increase by \$6.4 million to pay legal defense fees, settlements, court awards, and attorney fees, based on average award amounts under Senate Bill 20-217 and the assumption that 30 cases will receive awards. The fiscal note estimates a lower risk management impact based on the assumption that there will be fewer cases resulting in settlements that estimated by the department and that the average settlement amount will be less than those awarded under SB 20-217.

State and Local Government Contacts

Corrections	District Attorneys	Higher Education
Human Services	Judicial	Law
Natural Resources	Personnel	
Public Safety	Revenue	

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the [General Assembly website](#).