



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

HB 18-1436

FINAL FISCAL NOTE

Drafting Number: LLS 18-1144
Prime Sponsors: Rep. Garnett; Wist Sen. Court

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Bill Status: Postponed Indefinitely
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Bill Topic: EXTREME RISK PROTECTION ORDERS

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

This bill creates procedures to require an individual to surrender any firearms in his or her possession if the court issues an extreme risk protection order. The bill, on net, will increase state and local revenue, expenditures, and workload on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This fiscal note reflects the introduced bill, as amended by the House Judiciary Committee. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Table 1. State Fiscal Impacts Under HB18-1436

Table with 5 columns: Category, Sub-category, FY 2017-18, FY 2018-19, FY 2019-20. Rows include Revenue, Expenditures, Transfers, and TABOR Refund.

Summary of Legislation

This bill creates procedures for courts to issue an extreme risk protection order to require an individual to surrender all firearms until the order expires or is terminated. A family or household member, as well as a law enforcement agency, may petition the court to issue an extreme risk protection order. The bill waives any fees associated with filing a petition. An extreme risk protection order has a 182 day duration and can be renewed within 63 days of the expiration of the order. The bill allows law enforcement to also file for a search warrant to find any firearms that may be in possession of the individual but were not surrendered. During the 182 day duration of the extreme risk protection order, a respondent may file a one-time written request with the court to terminate the order to show that he or she does not pose a significant risk of causing injury. The state court administrator must develop a standard petition form by January 1, 2019.

Temporary extreme risk protection order. The bill allows family or household members or a law enforcement agency to petition the court for a temporary extreme risk protection order without notice to the respondent. If the court finds that the respondent poses a significant risk of causing personal injury to themselves or others by having firearms, the court must issue a temporary extreme risk protection order and schedule a hearing for an extreme risk protection order within 7 days.

Surrender of firearms. When a respondent is issued a temporary extreme risk protection order or extreme risk protection order, the respondent must surrender his or her firearms by selling or transferring the firearms to a federally registered dealer or by surrendering it to law enforcement, which must store the firearm. A respondent must also surrender his or her concealed carry permit. If a respondent does not surrender his or her firearms, they commit a class 2 misdemeanor.

Comparable Crime

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 the existing crime that creates a new factual basis for the offense. The bill creates a new class 2 misdemeanor offense for an individual who does not surrender his or her firearm when subject to a temporary or extreme risk protection order. For comparison purposes, under current law, it is a class 3 misdemeanor for an individual to violate a restraining order and it is a class 1 misdemeanor for a person who knowingly possesses an illegal weapon. From May 2015 to May 2018, there were 12 convictions of violating a restraining order, of which 7 were male, 5 were female; 11 were Caucasian and 1 was African American. In the same period of time, there were 1,200 convictions of knowingly possessing an illegal weapon, of which 1,066 were male, 133 were female, 1 where gender was not available; 990 were Caucasian, 123 were African American; 65 were Hispanic, 7 were Asian, 6 were American Indian, 8 were listed as other, and 1 where race was not known.

Background and Assumptions

Currently, there are nine states with so-called "red flag laws." These include California, Connecticut, Delaware, Florida, Indiana, Maryland, Oregon, Vermont, and Washington. At the time of this writing, Rhode Island's General Assembly also passed a "red flag bill" but has not been enacted into law. According to a 2018 New York Times article, California had 86 new cases in 2014, Connecticut had 1,519 cases since 1999 (with about two-thirds occurring since 2012) and Washington had 65 cases since 2016.

Based on data this data, it is assumed that less than 100 petitions will be filed with the courts per year. It is also assumed that the majority of individuals who are subject to an extreme protection order will comply with the order and therefore convictions under the new penalties will be minimal.

State Revenue

Beginning in the current FY 2017-18, this bill is anticipated to both increase and decrease state revenue. On net, revenue is anticipated to increase by a minimal amount as discussed below.

Criminal fines. The bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department starting in the current FY 2017-18. The fine penalty for a class 2 misdemeanor offense is \$250 to \$1,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of fines imposed by the courts, and the expected low number of convictions, the fiscal note assumes that any revenue generated is likely to be less than \$5,000.

Court and administrative fees. The bill will also increase state fee revenue by a minimal amount. In criminal cases, fees are imposed for a variety of court-related costs, which vary based on the offense but may include probation supervision, drug or sex offender surcharges, victim compensation, and late fees, among others. Some fee revenue is shared with local governments; refer to the Local Government Impact section for additional information. For petitioners filing an extreme risk protection order, the bill states that a fee will not be charged for seeking the order.

Fee impact on concealed carry permit background checks. The bill may decrease revenue from background checks for concealed carry permit applications and renewals starting in the current FY 2017-18. Any individual who is subject to an extreme protection order must surrender an existing and can no longer apply or renew for a concealed carry permit. Currently, concealed carry permit applicants pay a \$52.50 background check fee, of which \$42.50 is credited to the CBI Identification Unit Cash Fund and \$10 is passed through to the Federal Bureau of Investigation (FBI). Concealed carry permit holders must renew their permit annually and pay a \$13 renewal fee. It is assumed that any decrease in revenue will be minimal. Background check related fees are collected by the Department of Public Safety.

TABOR Refund

This bill, on net, minimally increases state revenue, which will increase the amount of money required to be refunded under TABOR for FY 2018-19 and FY 2019-20. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount. A TABOR refund obligation is not expected for the current FY 2017-18.

State Expenditures

Starting in the current FY 2017-18, net state expenditures and workload will minimally increase, as discussed below.

Trial courts. Starting in the current FY 2017-18, workload will increase for trial courts to hear the different types of petitions outlined in the bill. Hearings may be longer if law enforcement agencies seek a search warrant in connection with the protection order. Because petitions must be heard in a certain amount of time, docket schedules may need to be updated. However, based on the number of cases in other states, it is expected that the volume of new cases will not reach the threshold for additional FTE and can be accomplished within existing appropriations. If more cases are filed than expected, it is assumed that the department will seek funding through the annual budget process.

Probation. To the extent that more individuals are convicted of a class 2 misdemeanor and sentenced to probation, workload will increase in the Judicial Department. The increase in workload is expected to be minimal and can be accomplished within existing appropriations.

Petition forms and data. Starting in the current FY 2017-18, workload will increase for the state court administrator to collect statistics related to the number of extreme risk protection orders and to develop standard petitions and order forms. Court clerk workload will also increase to notify law enforcement entities of the extreme risk protection orders and to create a brochure of available mental health and other resources available to petitioners and respondents. It is assumed that these increases in workload can be accomplished within existing appropriations.

Judicial statewide information system. Starting in the current FY 2017-18, expenditures to the Judicial Department will increase to update the judicial statewide information system. The bill requires that extreme risk protection orders be entered into the system and therefore programming costs will increase to include it. The modifications necessary to the information system can be accomplished within existing appropriations.

Agencies providing representation to indigent persons. Workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel may increase under the bill to represent any indigent persons charged with the class 2 misdemeanor. To the extent this occurs, this analysis assumes the affected offices will request an increase in appropriations through the annual budget process.

Department of Public Safety. Starting in the current FY 2017-18, workload for the Department of Public Safety will increase to provide courts with requested background checks of the respondent during an extreme risk protection order hearing. Workload will also decrease to the extent that anyone issued an extreme risk protection order can no longer apply or renew a concealed carry permit. In both cases, the effect on workload is expected to be minimal and does not require a change in appropriations.

Department of Law. Starting in the current FY 2017-18, workload for the Peace Officers Standards and Training Board, housed in the Department of Law, will increase to develop model policies and procedures for the acceptance, storage, and return of firearms surrendered. This increase in workload can be accomplished within existing appropriations.

Department of Human Services. To the extent that more individuals are referred to programs for mental health services or an evaluation within the Department of Human Services (DHS), expenditures will increase. It is unknown how many people will be referred to DHS but based on the expected low number of cases, the increase in expenditures is expected to be minimal and does not currently require an appropriation.

Local Government

The bill will effect local government revenue, expenditures and workload starting in the current FY 2017-18. The exact impact to a particular local government will vary depending on the number of protection orders issued, offenses committed, and concealed carry permits issued within its jurisdiction.

District attorneys. To the extent that law enforcement officials file extreme risk protection order petitions, district attorney workload will increase to represent the law enforcement agency. Workload may also increase to prosecute new class 2 misdemeanor offense created by the bill.

County jails. Under current law, a court may sentence an offender to jail for a class 2 misdemeanor for a period of between 3 and 12 months. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. Estimated costs to house an offender in a county jail vary from \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.39 to house state inmates.

Law enforcement agencies. Expenditures and workload will increase for local law enforcement agencies to file petitions, file search warrant applications, serve protection orders to respondents, and store surrendered firearms if requested. For county sheriffs, workload will increase to invalidate concealed carry permits, while revenue may decrease for concealed carry permits. Currently, an individual pays a fee of no more than \$100 to county sheriffs to apply for a new concealed carry permit and pays no more than \$50 to renew a concealed carry permit. Revenue from the fee is used to cover any administrative and training costs associated with granting the permit.

Denver County Court. For class 2 misdemeanors committed in Denver County, criminal fine, court fee, and to the extent that more individuals are sentenced to probation, probation fees, will increase, which increases revenue collected by Denver County Court. Because the court has discretion to impose a term of incarceration, a fine, or both, the precise impact to Denver County has not been estimated. The bill will also result in an increase in workload for the Denver County Court, managed and funded by the City and County of Denver. The court may try more misdemeanor cases under the bill and hear extreme risk protection orders. Any increase in sentencing to probation will also increase expenditures and workload to Denver County Court.

Effective Date

The bill was postponed indefinitely by the Senate State, Veterans, and Military Affairs Committee on May 7, 2018.

State and Local Government Contacts

Judiciary
Human Services
Counties

District Attorneys
Sheriffs
Public Safety

Municipalities
Information Technology
Local Affairs