



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

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Prime Sponsors: Sen. Marble, Rep. Buentello

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Bill Status: Senate SVMA
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Bill Topic: FIREARMS RIGHTS OF MEDICAL MARIJUANA USERS

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

This bill allows medical marijuana users to own a firearm and get a concealed carry permit. Overall, the bill increases state and local revenue and state expenditures. The bill also decreases local expenditures on an ongoing basis.

Appropriation Summary: This bill requires an appropriation of \$126,380 in FY 2019-20.

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

Table 1
State Fiscal Impacts Under SB 19-093

Table with 4 columns: Category, Sub-category, FY 2019-20, FY 2020-21. Rows include Revenue, Expenditures, Total, Total FTE, Transfers, and TABOR Refund.

## **Summary of Legislation**

This bill allows medical marijuana patients to possess weapons and to get a concealed carry permit, as described below.

**Possession of a weapon by previous offender.** Under current law, an individual commits anywhere between a class 6 felony to a class 4 felony, depending on the circumstances of the crime, if he or she is in possession of a weapon and has been convicted of a felony or conspiracy to commit a felony under Colorado law, another state's law, or federal law. This bill clarifies a person is not prohibited from carrying a weapon if the person was convicted under federal law for possession or use of medical marijuana that would be legal under the Colorado Constitution.

**Concealed carry permits.** Under current law, a sheriff cannot issue a concealed carry permit if the applicant is not allowed to carry a gun under Colorado or federal law or if the person is an unlawful user of a controlled substance under federal law. The bill clarifies that the person is not considered to be ineligible under federal law to possess a firearm or considered to be an unlawful user of a controlled substance because of the possession or use of medical marijuana allowed under the Colorado Constitution.

**Confidentiality in background checks.** Finally, the bill clarifies that the Colorado Department of Public Health and Environment (CDPHE) cannot provide any confidential information from the medical marijuana registry to law enforcement agency for the purpose of a background check on the transfer of firearms.

## **Comparable Crime Analysis**

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 an existing crime. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions under the bill.

**Prior conviction data.** This bill allows a medical marijuana user to possess a firearm, which, under current law, would be a class 6 felony to a class 4 felony depending on the circumstances of the crime. From the last three fiscal years, 1,582 individuals have been convicted and sentenced for this existing offense. Of the persons convicted, 1,506 were male, and 76 were female. Demographically, 1,053 were White, 382 were African American, 120 were Hispanic, 11 were Asian, 5 were American Indian, 9 were classified as "Other", and 2 did not have a race identified. Offenders convicted for possession of a weapon by a previous offender may be sentenced to the Department of Corrections or sentenced to county jail with an additional sentence to probation. In the last three fiscal years, there were 983 cases sentenced to DOC and 210 cases sentenced to jail. The remaining cases received alternative sentences outside the DOC or county jail. It is unknown how many of these convictions were the result of only being convicted or adjudicated for possessing or using medical marijuana under federal law.

## Background and Assumptions

**Background checks for transfer of guns.** Under current law, a transfer of a firearm requires a background check before the transfer is completed through a federally licensed gun dealer, unless certain exemptions are met. Currently, the CDPHE does not provide any background information from the medical marijuana registry to law enforcement agencies for the purposes of criminal history checks, and background checks. Therefore, the CDPHE are currently compliant with the bill's requirements.

**Assumptions:** The fiscal note makes the following assumptions:

*Possession of weapons by a previous offender.* This bill will minimally decrease the number of cases, convictions, and sentences to the DOC or county jail for possession of a weapon by a previous offender.

*Number of concealed carry permits.* Of the Colorado population over the age of 21, about 6 percent have a concealed carry permit. It is assumed that out of the 82,971 currently registered individuals over the age of 21 on the medical marijuana registry, 5,226, or 6 percent, will apply for a new concealed carry permit in the first few fiscal years. Out of that, half will apply in FY 2019-20 and half will apply in FY 2020-21.

## State Revenue

Starting in FY 2019-20, this bill will increase state General Fund and Cash Fund revenue as described below.

**Fingerprint-based background checks — DPS.** Starting in FY 2019-20, this bill increases state cash fund revenue from fingerprint-based criminal history background checks credited to the CBI Identification Unit Cash Fund in the Department of Public Safety (DPS) by \$137,183 per year. This assumes 2,613 checks will be conducted each year in FY 2019-20 and FY 2020-21. The current fee for background checks is \$52.50, which includes \$22.00 for a Federal Bureau of Investigation (FBI) fingerprint based check, which is passed on to that federal agency. The federal portion of this fee is excluded from the state TABOR limit.

**Fee impact on SB19-093.** Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These are current fees set administratively by DPS based on cash fund balance, estimated program costs, and the estimated number of permits. subject to the fee. The table below identifies the fee impact of this bill. Table 2 below outlines the fee impact on the bill.

**Table 2**  
**Fee Impact on SB19-093**

| <b>Fiscal Year</b> | <b>Type of Fee</b>                    | <b>Current Fee</b> | <b>Number Affected</b>  | <b>Total Fee Impact</b> |
|--------------------|---------------------------------------|--------------------|-------------------------|-------------------------|
| FY 2019-20         | Conceal Carry Permit- New Application | \$52.50            | 2,613                   | \$137,183               |
|                    |                                       |                    | <b>FY 2019-20 Total</b> | <b>\$137,183</b>        |
| FY 2020-21         | Conceal Carry Permit- New Application | \$52.50            | 2,613                   | \$137,183               |
|                    |                                       |                    | <b>FY 2020-21 Total</b> | <b>\$137,183</b>        |

**Criminal fines and court fees.** By modifying an existing felony offense, the bill may decrease state revenue from criminal fines and court fees by a minimal amount beginning in FY 2019-20, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. Fine penalty for this offense may range from \$1,000 to \$500,000 depending on what felony level a person is convicted of. Additionally, court fees may be imposed on a case-by-case basis for a variety of court-related costs, such as probation supervision, drug surcharges, or late fees. Because the courts have the discretion of incarceration, imposing a fine, or both, a precise state revenue impact cannot be determined. Criminal fine and court fee revenue are subject to TABOR.

**State Expenditures**

Starting in FY 2019-20, overall this bill increases state cash fund expenditures. DPS expenditures will increase by \$140,915 and 0.8 FTE in FY 2019-20 and \$153,198 and 1.0 FTE in FY 2020-21. Additionally, Judicial Department and agencies that provide representation to indigent persons expenditures will minimally decrease. General Fund expenditures in the Department of Corrections, may also decrease. These impacts are shown in Table 3 and are discussed below.

**Table 3  
Expenditures Under SB 19-093**

|   | <b>FY 2019-20</b> | <b>FY 2020-21</b> |
|---|-------------------|-------------------|
| <b>Department of Public Safety</b>          |                   |                   |
| Personal Services                           | \$39,627          | \$52,267          |
| Operating Expenses and Capital Outlay Costs | \$5,463           | \$950             |
| Other Background Check Costs                | \$23,804          | \$23,804          |
| FBI Pass-Through Fee                        | \$57,486          | \$57,486          |
| Centrally Appropriated Costs*               | \$14,535          | \$18,691          |
| FTE – Personal Services                     | 0.8 FTE           | 1.0 FTE           |
| <b>Total Cost</b>                           | <b>\$140,915</b>  | <b>\$153,198</b>  |
| <b>Total FTE</b>                            | <b>0.8 FTE</b>    | <b>1.0 FTE</b>    |

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

**Personal services — DPS.** Beginning in FY 2019-20, DPS will require 0.3 FTE Fingerprint Examiner II and 0.2 FTE Data Specialist and 0.5 FTE Technician III to process the fingerprint background applications and concealed carry permit applications that the fiscal note assumes the bill will generate. These employees will undertake a one-time training session that costs \$1,000 per person. In FY 2019-20, the costs are prorated for an August 2 start date.

**Other costs.** The following costs are associated with each background check application: \$6.10 dedicated to equipment maintenance; \$1.55 for print digitization; \$0.88 to access the Colorado Crime Information Center for information pertinent to the background check; and \$0.58 printing and postage costs. Multiplied by the 2,613 concealed carry applications, this increases cost in the DPS by \$23,804 in FY 2019-20 and FY 2020-21.

**Federal Bureau of Investigation Pass-through — DPS.** The DPS passes \$22.00 of every application fee on to the federal government. Based on the number of applications estimated above, this equates to \$57,486 in FY 2019-20 and FY 2020-21.

**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 \$14,535 in FY 2019-20 and \$18,691 in FY 2020-21.

**Judicial Department.** This bill will decrease costs and workload for the trial courts in the Judicial Department to process fewer criminal case filings for possession of a weapon. To the extent that the number of offenders sentenced to probation decreases, costs and workload in the Division of Probation will decrease. Costs and workload may also decrease in the agencies that provide representation to indigent persons, including the Office of the State Public Defender and the Office of Alternate Defense Council. Overall, these impacts are assumed to be minimal and a reduction in existing appropriations is not necessary.

**Department of Corrections.** To the extent that this bill decreases the number of persons sentenced to prison for the possession of a weapon by a previous offender, costs will decrease. However, based on the assumption section above, any decrease in expenditures is expected to be minimal.

**TABOR refunds.** The bill is expected to increase state General Fund obligations for TABOR refunds by \$79697, in FY 2019-20. Under current law and the December 2018 Legislative Council Staff forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds on income tax returns for tax year 2020. Only \$30.50 of the \$52.50 background check fee revenue is subject to TABOR as the rest is passed through to the federal government. The state is not expected to collect a TABOR surplus in FY 2020-21.

## **Local Government**

Beginning in FY 2019-20, this bill is expected to increase local government revenue and decrease costs and workload as described below. The exact impact to a particular local government will vary as described below.

**Sheriff departments.** The bill increases fee revenue and workload for county sheriffs to process additional concealed carry permit requests. Currently, an individual pays a fee of no more than \$100 to apply for a new concealed carry permit and no more than \$50 to renew a concealed carry permit, not including the background check fee. Revenue from the fee is used to cover any administrative and training costs associated with granting the permit. The amount of the increase will vary by county depending on the increase in applications and the exact fees charged by that county.

**District attorneys.** By reducing the number of cases of possession of a weapon by a previous offender, the bill may decrease costs and workload for district attorneys. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

**County jails.** Based on the assumptions listed above, the bill may decrease county jail costs. In the last three fiscal years, 210 cases of possession of a weapon by a previous offender had a jail sentence. However, because it is unknown how many of these cases happened because the individual was convicted or adjudicated by federal law for the use of medical marijuana, and that the courts have the discretion of incarceration or imposing a fine, the precise county impact cannot be determined. Under current law, the state reimburses county jails for housing state inmates. Based on a 2018 Joint Budget Committee Staff county jail survey, the average cost to house an offender in a county jail is \$98.83 per day, but varies significantly from \$43.65 to \$350.21 per day depending on the county. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.93.

### **Technical Note**

Under current federal law, anyone who uses medical marijuana is considered an unlawful user of a controlled substance. Since federal law does not allow a medical marijuana user to possess a concealed carry permit, impacts outlined in this fiscal note may not occur prior to a change in federal law.

### **Effective Date**

The bill takes effect August 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed.

### **State Appropriations**

This bill requires a \$126,380 cash fund appropriation from the CBI Identification Unit Cash Fund to the Department of Public Safety.

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

Corrections  
Judicial  
Sheriffs

Counties  
Municipalities  
Public Safety

District Attorneys  
Information Technology  
Public Health and Environment