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Revised Fiscal Note

(replaces fiscal note dated May 17, 2021)

Drafting Number:	LLS 21-0775	Date:	May 20, 2021
Prime Sponsors:	Rep. Herod; Gonzales-Gutierrez Sen. Fields	Bill Status:	Senate SVMA
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Bill Topic: MEASURES TO ADDRESS LAW ENFORCEMENT ACCOUNTABILITY

Summary of Fiscal Impact:

<input 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

This bill allows for a civil suit to be filed against Colorado State Patrol officers; requires multi-agency review of cases involving officer-involved civilian death; and makes other adjustments to provisions of SB 20-217. It will increase state expenditures on an ongoing basis.

Appropriation Summary: The bill requires an appropriation of \$4.0 million in FY 2021-22 to the Department of Public Safety. The Risk Management Fund is continuously appropriated to the Department of Personnel and Administration.

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

Table 1
State Fiscal Impacts Under HB 21-1250

	Budget Year	Out Year
	FY 2021-22	FY 2022-23
Revenue	-	-
Expenditures¹		
General Fund	\$3,065,448	\$1,975,269
Highway Users Tax Fund	\$907,175	\$2,410,773
Risk Management Fund	\$2,582,742	-
Centrally Appropriated	\$505,884	\$474,744
Total Expenditures	\$7,061,249	\$4,860,786
Total FTE	15.5 FTE	16.0 FTE
Transfers	-	-
TABOR Refund	-	-

¹ First-year legal and settlement costs will be paid using available funds in the Risk Management Fund in the Department of Personnel and Administration. For FY 2022-23 and future years, these costs will be paid by the Department of Public Safety with Highway Users Tax Fund (HUTF) and General Fund money through common policy assessments based on actual legal and settlement costs incurred.

Summary of Legislation

This bill makes adjustments to certain provisions of Senate Bill 20-217, as detailed below.

Definitions. The bill defines "contact" to mean an in-person interaction and expands the definition to include welfare checks. The bill also defines "exonerated" in the context of criminal, civil, and administrative proceedings, and internal investigations.

Body-worn cameras. The bill clarifies when body-worn cameras or dash cameras may be turned off and provisions related to the release of the footage. Effective July 1, 2022, officers wearing body-worn cameras are required to comply with SB 20-217's body-worn camera provisions.

Contact reporting. The bill moves up the deadline for local law enforcement and the Colorado State Patrol (CSP) to report on "contacts" by one year to January 1, 2022. The bill also clarifies and adds information that must be reported to the Department of Public Safety.

POST-certified peace officer suspensions. SB 20-217 required the Peace Officer Standards and Training (POST) Board to permanently decertify a peace officer if the officer failed to intervene, as defined in the bill, and where serious bodily injury or death occurred. The bill changes the penalty to a suspension of the officer's certification for one year, and clarifies the process.

Whistleblower protections. The bill prohibits peace officer employers from retaliating against a peace officer for disclosure of information that shows a danger to public health or safety, or a violation of law or policy committed by another peace officer. Agencies employing peace officers must provide a training, a workplace posting, or both on this requirement by January 1, 2022. Violators of this policy must be disciplined by their employer.

Civil action against State Patrol officers. Senate Bill 20-217 allowed for a civil action to be taken against a local law enforcement officer for deprivation of an individual's rights. This bill expands the provision to allow this civil action to be taken against Colorado State Patrol officers in the Department of Public Safety. Statutory immunities and limitations on liabilities, damages, or attorney fees do not apply to these claims.

Investigations into use of force. The bill restricts local law enforcement and the CSP from presuming an officer's innocence in a use of force case and requires an investigation into these cases. If a person believes that a law enforcement agency has violated the investigation requirement, they must submit a complaint to the POST Board, which must refer the complaint to an administrative law judge to determine whether a violation occurred. Where a violation is found, the POST Board must discontinue providing POST Cash Fund money to the employer for one year from the date of the finding.

Multi-agency review of use of force. The bill applies multi-agency review protocols for peace officer-involved shooting investigations to any incident where a peace officer causes a death.

Use of de-escalation techniques. Beginning January 1, 2022, the bill requires a peace officer to use de-escalation techniques, as defined in the bill, prior to the use of physical force and requires the use of physical force to be limited to the duration necessary to accomplish the officer's legitimate law

enforcement objective and to diminish situations involving imminent threats of serious physical injury or death to the officer or another person, as defined in the bill. The bill also defines "imminent threat" and "totality of the circumstances."

Attorney General subpoena power. The bill permits the Attorney General to issue subpoenas to conduct an investigation into patterns or practices of conduct by a government authority or its agent that deprives individuals of their rights.

New employee vetting for prior misconduct. The bill requires that prior to hiring a new employee, appointing a new employee, or transferring an existing employee to a position requiring POST certification, a law enforcement agency shall determine if the person has a record contained in the POST misconduct database. If the person is listed in the database and the law enforcement agency proceeds to employ the person in a position requiring POST certification, the agency shall notify the POST Board of the hire, appointment, or transfer.

Duty to report excessive force. The bill clarifies that local law enforcement and CSP officers have the duty to report the use of excessive force.

POST database. The bill clarifies and adds information required to be included in the POST Board database related to peace officer misconduct. Any person or law enforcement agency that provides inaccurate data is subject to a fine set in rule by the POST Board. By January 1, 2022, the POST Board is required to adopt procedures to allow a peace officer to seek review of their status based on new evidences or circumstances not previously provided to show the peace officer's record may be removed from the database.

Contacts – profiling. The bill defines "legal basis" as it pertains to making a contact.

Body-worn Camera Fund. The bill requires the General Assembly to appropriate \$2.0 million in FY 2021-22 from the General Fund to the Body-worn Camera Fund to make grants to local law enforcement agencies.

Radio encryption. The bill requires governmental entities that encrypt all radio communications to enact an encryption policy, which includes access to unencrypted radio transmissions for members of the media.

State Revenue

Beginning in FY 2021-22, to the extent the bill increases civil case filings or POST Board fines, state fee and fine revenue will increase. This revenue is subject to TABOR.

State Expenditures

The bill will increase Risk Management Fund costs in the Department of Personnel and Administration and in the Department of Public Safety. The bill may also increase costs in several state agencies related to encrypted radio access for the media. Finally, the bill increases workload in the Department of Law and the Judicial Department. Costs are shown in Table 2 and described below.

**Table 2
 Expenditures Under HB 21-1250**

Cost Components	FY 2021-22	FY 2022-23
Department of Personnel and Administration¹		
Risk Management – Legal Services	\$582,742	\$582,742
Risk Management – Settlements	\$2,000,000	\$2,000,000
FTE – Legal Services	3.0 FTE	3.0 FTE
DPA Subtotal	\$2,582,742	\$2,582,742
Colorado State Patrol (DPS)		
Personal Services	\$650,691	\$815,358
Operating Expenses	\$9,450	\$9,450
Capital Outlay Costs	\$43,400	-
CSP Academy/Training	\$126,612	-
Vehicle Leases	\$53,280	\$106,560
Body-worn Cameras and Cloud Storage	\$23,742	\$7,242
Centrally Appropriated Costs ²	\$231,015	\$249,148
FTE – Personal Services	7.0 FTE	7.0 FTE
CSP Subtotal	\$1,138,190	\$1,187,758
Colorado Bureau of Investigation (DPS)		
Personal Services	\$702,911	\$758,529
Operating Expenses	\$8,100	\$8,100
Capital Outlay Costs	\$37,200	-
Vehicle Lease and Mileage Costs	\$62,061	\$62,061
Training Costs	\$36,000	\$36,000
Field Agent and Crime Scene Equipment	\$219,176	-
Centrally Appropriated Costs ²	\$274,869	\$225,596
FTE – Personal Services	5.5 FTE	6.0 FTE
CBI Subtotal	\$1,340,317	\$1,090,286
Body-Worn Camera Fund (DPS)³		
Grants	\$2,000,000	-
BWC Subtotal	\$2,000,000	-
Total	\$7,061,249	\$4,860,786
Total FTE	15.5 FTE	16.0 FTE

¹ First-year legal and settlement costs will be paid using available funds in the Risk Management Fund in the Department of Personnel and Administration. For FY 2022-23 and future years, these costs will be paid by the Department of Public Safety with Highway Users Tax Fund (HUTF) and General Fund money through common policy assessments based on actual legal and settlement costs incurred.

² Centrally appropriated costs are not included in the bill's appropriation.

³ See Technical Note.

Department of Personnel and Administration. Removing government immunity for Colorado State Patrol officers is expected to increase lawsuits filed against the state, which will increase costs in the state's Risk Management Program, administered by DPA. Cost estimates are based on the data and assumptions detailed below, and include legal defense costs and settlement payments. First-year costs will be paid using available reappropriated funds in the Risk Management Fund. Out-year costs will be paid by the Department of Public Safety using 43 percent General Fund and 57 percent HUTF.

- **Data and assumptions.** Over the past five-year period, the state has received an average of 14 claims per year filed against peace officers employed by the DPS. Of these, an average of 4 claims involved lawsuits and an average of 1 claim was awarded a settlement. This analysis assumes that the removal of government immunity will significantly increase the number of claims filed against the state, estimated at 5 times the current average, resulting in an increase of 56 claims, 15 lawsuits, and 4 settlements per year.
- **Legal services.** Assuming that of the approximately 56 new claims estimated to be filed against CSP officers per year, each will require initial legal services of 30 hours per case, and 15 will require adjudication in court requiring an additional 250 hours per case. Legal services will be provided by the Department of Law at a rate of \$106.34 per hour, and this cost will be fully reappropriated to the department with 3.0 FTE.
- **Settlements.** CSP-related settlements have averaged \$173,961 over the past five years. However, without the Colorado Governmental Immunity Act tort cap, currently set at \$387,000, settlements will likely exceed prior amounts. Assuming 4 new cases result in settlements per year, and that the average cost will be approximately \$500,000 per settlement, including attorney's fees, this will result in \$2.0 million paid from the Risk Management Fund each year.
- **Costs to be addressed through the annual budget process.** The state's actual costs will depend on a number of factors, including the number and complexity of cases, case outcomes, and the timing of cases and judgments. Depending on the number of cases annually, costs may vary from year to year or be spread out over a number of years. It is assumed that ongoing costs will be addressed through the annual budget process once more information on cases and settlements are known.

The state's liability policy, which is paid through DPA's State Liability Pool, is also expected to incur increased expenditures under the bill, which will be passed to state agencies through the operating common policies. This expenditure increase will be addressed through the annual budget process as actual insurance policy costs are known.

Finally, the DPA may have increased costs in the Office of Administrative Courts related to use of force investigations. This will be addressed through the annual budget process as the number of complaints are known.

- **Mitigating factors.** The policies, procedures, training requirements, and enforcement mechanisms created by this bill and Senate Bill 20-217 may reduce lawsuits filed against the Colorado State Patrol.

Department of Public Safety. Current law requires multi-agency investigations into any officer-involved civilian deaths by shooting. The bill expands this definition to all officer-involved civilian deaths. Data on officer-involved civilian deaths and injuries from January 1, 2010, through July 1, 2020, show 329 cases involved a firearm and 112 did not over the past ten years. As a result, it is expected that the Department of Public Safety will be called to assist Critical Incident Response Teams around the state, particularly in areas of the state that do not have adequate resources to meet the investigation requirements under the bill, for all life-threatening injuries. The department requires 13.0 FTE split between the Colorado State Patrol and the Colorado Bureau of Investigation, as it is currently unable to absorb any additional workload.

- **Colorado State Patrol.** The Colorado State Patrol will provide Critical Incident Response Team support in conducting use of force investigations for up to 222 law enforcement agencies in Colorado, particularly in rural areas. Staff includes 4.0 FTE sergeants to cover the four corners of the state, and 2.0 FTE sergeants to cover the Denver metro area, with 1.0 administrative assistant in support. Per-case workload will include investigation assignment and classification; video and audio review; report and documentation review; witness interview; policy, training, and law review; subject matter expert interview; officer interview; report completion; transcription; and administrative responsibilities. These costs are paid from the HUTF.
- **Colorado Bureau of Investigation.** Costs in the CBI will increase by 6.0 FTE. Whether directly requested or involved through a community's incident response team, caseload in the CBI will increase to meet the bill's requirement for multi-agency review for peace officer-involved incidents resulting in death. Additional CBI staff will be distributed between CBI's regional offices in Denver, Grand Junction, and Pueblo.
- **Body-worn Camera Grants.** The bill appropriates \$2.0 million to the Body-worn Camera Fund in the Division of Public Safety. It is expected that any administrative costs related to grant-making can either be absorbed or paid from the fund.

State agencies that utilize radio that may be encrypted. The Department of Agriculture, the Department of Corrections, institutions of Higher Education, the Division of Youth Services and the Mental Health Institute at Pueblo in the Department of Human Services, the Department of Military and Veterans Affairs, the Colorado Parks and Wildlife in the Department of Natural Resources, and the Colorado State Patrol in the Department of Public Safety use radio in the course of regular operations. Due to the transmission of sensitive information, these agencies typically encrypt radio communications, or use one-to-one or talkgroup calling features. These agencies will have an increase in workload to develop an encryption policy and establish a media access process. Costs may increase to purchase additional radios to be provided to the media, to provide a listening room, to transcribe radio communications, to reprogram radios, and for the Office of Information Technology and the Department of Law to advise on encryption policies. These costs will be addressed through the annual budget process as encryption policies are established by each agency.

Department of Law. In addition to legal services provided to the DPA by the department, the POST Board will have a minimal workload increase under the bill. As resources were provided for the POST Board in SB 20-217, no change in appropriations is required.

Judicial Department. The bill is expected to increase civil case filings, which will increase trial court workload. This workload increase can be accomplished within existing resources.

TABOR refunds. The bill may increase state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

Local Government

Costs and workload will increase for local law enforcement agencies to conduct investigations into all officer-involved deaths. Local government agencies involved in Critical Incident Response Teams include police departments, sheriff's offices, and district attorney's offices. Workload includes investigating, evaluating, and reviewing any incident where injury or death occurred. District attorney's offices are also required to write and release a written report explaining the district attorney's findings when no charges are being brought against the officer. In addition, the bill may also increase local government workload and costs as a result of its radio encryption policy and policy implementation.

Technical Note

Under current law, the Body-worn Camera Fund is authorized only to receive gifts, grants, or donations to administer the Body-worn Camera Grant Program to award grants to law enforcement agencies to purchase body-worn cameras, for associated data retention and management costs, and to train law enforcement officers on the use of body-worn cameras.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, except that Section 8 of the bill applies to use of force conduct on or after January 1, 2022.

State Appropriations

For FY 2021-22, the bill requires the following appropriations:

- \$907,175 from the Highway Users Tax Fund to the Colorado State Patrol and 7.0 FTE;
- \$1,065,448 from the General Fund to the Colorado Bureau of Investigation and 5.5 FTE;
- \$2,000,000 from the General Fund to the Body-worn Camera Fund in the Department of Public Safety (see Technical Note); and
- \$582,742 in reappropriated funds to the Department of Law from the continuously appropriated Risk Management Fund with 3.0 FTE.

State and Local Government Contacts

Counties
Judicial
Personnel

District Attorneys
Law
Public Safety

Information Technology
Municipalities
Sheriffs