



Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Fiscal Note

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Prime Sponsors: Rep. Herod; Bacon Bill Status: House Judiciary
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Bill Topic: LAW ENFORCEMENT MISCONDUCT

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

The bill requires law enforcement agencies and peace officers to investigate allegations of misconduct and provides additional protections for whistleblowers from retaliation. The bill increases state and local expenditures, and may decrease local revenue.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill. Due to time constraints, this analysis is preliminary and will be updated following further review and any additional information received.

Table 1
State Fiscal Impacts Under HB 24-1460

Table with 3 columns: Category, Budget Year FY 2024-25, and Out Year FY 2025-26. Rows include Revenue, Expenditures (Cash Funds), Transfers, and Other Budget Impacts.

1 The bill potentially increases payments from the state's Risk Management Fund for legal services, damage awards, and settlement payments, preliminarily estimated at between \$500,000 and \$1,000,000 per year, on average. Costs may vary significantly between years. Costs are paid using reappropriated funds from affected agencies employing peace officers.

Summary of Legislation

The bill requires law enforcement agencies and peace officers to investigate allegations of misconduct and provides additional protections for whistleblowers from retaliation.

Investigation of misconduct required. The bill requires a law enforcement agency or peace officer who receives an allegation of misconduct, criminal conduct, or other unprofessional conduct under the duty to report statute to investigate the allegation and retain all reports and related investigation documentation for three years.

If the investigation does not occur, the person making the allegation may file a civil suit against the agency and, if applicable, the peace officer, and the peace officer is also subject to a class 2 misdemeanor. No immunities or limitations on liability, damages, or attorney fees apply in these cases.

Deprivation of rights. The bill clarifies that patterns and practices investigations may also be related to deprivation of rights by a peace officer against another peace officer.

Audits by the POST Board. Under current law, law enforcement agencies must [report](#) certain information regarding peace officer misconduct to the Peace Officer Standards and Training (POST) Board. The bill allows the board to audit and investigate law enforcement agencies to ensure compliance with this requirement, which includes making requests for information and issuing subpoenas. The Attorney General is required to annually notify all law enforcement agencies and peace officers in the state of the ability to make this report.

Fee prohibition. The bill prohibits law enforcement agencies from charging a fee to release unedited video and audio recordings of incidents of misconduct from body-worn cameras, dash cameras, or otherwise collected through investigation.

Whistleblower protections. The bill prohibits a law enforcement agency from imposing a requirement on an officer that is not applicable to similarly situated officers for disclosing information on misconduct. The bill allows a peace officer who was unlawfully retaliated against to appeal the action of the agency and to bring a civil suit against the agency. No immunities or limitations on liability, damages, or attorney fees apply in these cases.

Investigation documentation. In addition to retaining investigation documents for three years, an investigating law enforcement agency must provide a copy of the investigation file to the subject of the investigation once the investigation is complete.

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 creates a new factual basis for an existing crime. The following section outlines crimes that are comparable to the offense in this bill and discusses assumptions on future rates of criminal convictions resulting from the bill.

Prior conviction data. This bill creates the new offense of peace officers failing to report allegations of misconduct, a class 2 misdemeanor. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of failure of an on-duty peace officer to report use of excessive force as a comparable crime. From FY 2020-21 to FY 2022-23, zero individuals have been convicted and sentenced for this existing offense.

Criminal justice system impacts. Based on the low number of sentenced outlined above, the fiscal note assumes that there will be minimal or no additional case filings or convictions for the new offense under the bill. Because the bill is not expected to have a tangible impact on criminal justice-related expenditures or revenue at the state or local levels, these potential impacts are not discussed further in this fiscal note. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

Assumptions

The fiscal note assumes that allegations of peace officer misconduct are already being reported to law enforcement agencies and that agencies are following internal policies to investigate and respond to such complaints. The fiscal note also assumes that these internal policies meet the requirements of the bill. However, to the extent that there are law enforcement agencies or individual peace officers who do not follow relevant internal policies or comply with the requirements of the bill, costs may increase from litigation and liability costs. These impacts are discussed in more detail in the State Expenditures section below.

State Expenditures

Starting in FY 2024-25, the bill increases workload in the Department of Law and state agencies employing peace officers. The bill may also increase costs from litigation and liability costs, potentially up to \$1.0 million per year starting in FY 2025-26. However, these costs may vary significantly from year to year and depend on agency compliance with the requirements of the bill. These impacts are described in more detail below.

Department of Law. Workload for the POST Board in the Department of Law will increase to audit law enforcement agencies to ensure compliance with misconduct data submission and to investigate reports of noncompliant misconduct data submission. Because the bill gives permissive authority to audit and investigate reporting, the fiscal note assumes the department will prioritize requests within existing resources. No change in appropriation is required.

All state agencies. All state agencies that employ POST-certified law enforcement officers will have a minimal increase in workload to train officers on the bill's provisions. These agencies include the Departments of Corrections, Human Services, Law, Natural Resources, Public Safety, Regulatory Agencies, and Revenue and institutions of higher education. To the extent the bill increases investigation or documentation requirements for these agencies beyond current level when complaints or allegations of criminal or professional misconduct, workload will increase.

Liability and litigation costs. To the extent the bill increases the number of civil claims brought against the state, expenditures in the Department of Law and the Department of Personnel and Administration will increase to defend state law enforcement agencies and peace officers in any subsequent litigation and to pay any settlements, damage awards, and attorney fees. In addition, removing government immunity limits may also increase costs, to the extent behavior under the bill was captured in current claims involving state law enforcement agencies or officers and would now be subject to higher limits for damages. Based on the time necessary for conduct covered in the bill to occur, complaints to be filed, and for lawsuits to be filed and make their way through the legal process, it is assumed any increase in liability and litigation costs, paid from the state's Risk Management Fund, will occur starting in FY 2025-26. Preliminarily, these costs are estimated to average between \$500,000 and \$1,000,000 per year.

Assuming that agencies are largely meeting the bill's mandates, and based on the state's experience in cases brought under Senate Bill 20-217, the fiscal note assumes any costs for liability and litigation can be addressed through the annual budget process as cases and costs are incurred. Costs are likely to vary significantly from year to year, with minimal costs in some years, and potentially large awards in others. For example, under SB 20-217, there has been one large damage award in four years since the bill took effect. Costs will be addressed through the annual budget process based on actuarial risk analysis and actual claims experienced and paid through common policy billing for risk management by affected agencies.

Local Government and Statutory Public Entity

Similar to the state, to the extent the bill increases litigation against local or statutory public entity law enforcement, including district attorney offices, costs to those agencies will increase. Exact increases in costs depends upon the number of cases filed against an agency, their level of compliance with the bill's requirement to conduct investigations and to not retaliate against whistleblowers, and similar factors. Lastly, to the extent local law enforcement agencies are charging requestors for unedited body camera footage, the bill will decrease revenue to those agencies.

Technical Note

Unprofessional conduct. The bill requires an agency to investigate a complaint of "unprofessional conduct" but does not define this term. The fiscal note assumes that "unprofessional conduct" is conduct that results in violation of policies of the individual agency; however, this term could be broadly applied, increasing the risk of litigation.

Effective Date

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

Departmental Difference

Departments canvassed for this bill estimate that state expenditures will increase by \$12 million in FY 2024-25 and \$11 million in FY 2025-26 and ongoing. More detail about each department's estimate can be found below.

Corrections. The Department of Corrections estimates the bill increases General Fund expenditures by up to \$2.2 million in FY 2024-25 and \$1.8 million in FY 2025-26 to hire 19 FTE to conduct additional investigations. The fiscal note assumes that the department is already receiving complaints and that its current process for investigations are already compliant with the bill.

Law. The Department of Law estimates the bill increases General Fund expenditures by \$970,000 in FY 2024-25 and \$980,000 in FY 2025-26 to provide legal services to state agencies including defending agencies in litigation, and to hire 2 FTE to audit and investigate law enforcement data submission. The fiscal note assumes high compliance with the bill, limiting potential legal services costs and allowing them to be addressed through the annual budget process. In addition, the fiscal note interprets that the departments audit and investigation authority under the bill are permissive and will be prioritized within existing resources.

Natural Resources. The Department of Natural Resources estimates that the bill increases cash fund expenditures by \$265,000 in FY 2024-25 and \$245,000 in FY 2025-26 to hire 2.5 FTE to investigate complaints. The fiscal note assumes that the department's current process in investigating complaints is already compliant with the bill.

Personnel and Administration. The Department of Personnel and Administration estimates the bill will increase General Fund expenditures by \$4.1 million in FY 2024-25 and cash fund expenditures in FY 2025-26 to pay claims and damages under the bill. The fiscal note assumes high compliance with the bill and that litigation costs will be lower than estimated by the department. In addition, the fiscal note assumes a year lag before any potential impact is incurred.

Public Safety. The Department of Public Safety estimates that the bill will increase General Fund expenditures by \$4.3 million and 28 FTE in FY 2024-25 and \$3.7 million and 24 FTE in FY 2025-26. The estimate includes hiring 16.0 Colorado Bureau of Investigation Agents, 4.0 sergeants and state trooper cadets, and 4.0 technicians to assist local law enforcement in investigations and to investigate internal complaints in State Patrol. The cost also includes an IT system update. The fiscal note assumes the department is already receiving and investigating complaints and assisting local law enforcement within its existing authority.

Revenue. The Department of Revenue estimates the bill increases General Fund expenditures by \$248,000 in FY 2024-25 and \$222,000 to hire an additional 3.0 FTE to investigate complaints. The fiscal note assumes the department is already receiving these complaints and additional staff for investigations are not required.

State and Local Government Contacts

Corrections
Law
Public Safety

Higher Education
Natural Resources
Revenue

Judicial
Personnel

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](#).