



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number:	LLS 20-0961	Date:	March 6, 2020
Prime Sponsors:	Rep. Saine Sen. Cooke; Smallwood	Bill Status:	House Judiciary
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Bill Topic: REPEAL RED FLAG AND AMEND 72-HOUR HOLD

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" 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 repeals laws related to extreme risk protection orders and changes the criteria for a 72-hour mental health hold. Starting in FY 2020-21, the bill will reduce state and local revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2020-21, this bill requires a reduced appropriation of \$238,784 to the Judicial Department.

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

Table 1
State Fiscal Impacts Under HB 20-1271

		FY 2020-21	FY 2021-22
Revenue		-	-
Expenditures	General Fund	(\$238,784)	(\$238,784)
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

This bill repeals the laws related to extreme risk protection orders (ERPO) and changes the criteria for when a person can be held in a 72-hour behavioral health hold. Specifically, the criteria for a hold is changed from being an "imminent danger" to others or themselves to being an "extreme risk" to others or themselves.

Background

From January 1, 2020, to February 10, 2020, there were 12 civil cases for extreme risk protection orders filed statewide.

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 and assumptions. The bill removes a class 2 misdemeanor offense for an individual who does not surrender his or her firearm when subject to a temporary ERPO or ERPO. Because the crime classification has only been in effect for 2 months, to form an estimate on the prevalence of removing this crime, the fiscal note analyzed the existing offense of knowingly possessing an illegal weapon, which is a class 1 misdemeanor. In the last three fiscal years, 235 offenders have been convicted and sentenced for knowingly possessing an illegal weapon, of which 208 were male, 27 were female; 203 were Caucasian, 16 were African American; 14 were Hispanic, 1 was American Indian and 1 was listed as other. Based on the fiscal note for House Bill 19-1177, this analysis assumes that the bill will result in 10 fewer criminal sentences per year.

State Revenue

Starting in FY 2020-21, the bill will decrease state revenue by a minimal amount in the Judicial Department and may increase revenue to the Department of Public Safety (DPS), as described below.

Criminal fines and court fees. By removing a class 2 misdemeanor offense, the bill will decrease state revenue from criminal fines and court fees by a minimal amount, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. 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 is subject to TABOR.

Fee impact on concealed carry permit background checks. The bill may increase cash fund revenue from background checks for concealed carry permit applications and renewals starting in FY 2020-21. Under current law, any individual who is subject to an ERPO must surrender an existing permit and cannot apply or renew for a concealed carry permit while the ERPO is in effect. 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 unknown how many individuals would be able to apply for a concealed carry permit, who would not be able to under current law. However, it is assumed that any increase in revenue will be minimal. Background check-related fees are collected by the Department of Public Safety (DPS).

State Expenditures

This bill will decrease state expenditures in the Judicial Department by \$238,784 beginning in FY 2020-21 as shown in Table 3. The bill will also impact workload to a variety of state agencies as described below.

Table 2
Expenditures Under HB 20-1271

	FY 2020-21	FY 2021-22
Judicial Department		
Court Appointed Council	(\$141,077)	(\$141,077)
Mental Health Evaluations	(\$97,707)	(\$97,707)
Total Cost	(\$238,784)	(\$238,784)

Judicial Department. Based on the number of cases assumed in the fiscal note for HB 19-1177, costs in the Judicial Department will decrease as discussed below.

Appointment of counsel. This bill is expected to decrease costs in the Judicial Department by \$141,077 beginning in FY 2020-21 to no longer appoint counsel for respondents to an ERPO. This amount is based on the appropriation to the Judicial Department included in HB 19-1177.

Mental health evaluations. The bill will result in fewer court-appointed mental health evaluations, which will decrease costs by \$97,707 beginning in FY 2020-21. This amount is based on the appropriation to the Judicial Department in HB 19-1177.

Administrative workload. Starting in FY 2020-21, court clerk workload will decrease to no longer update brochures of available mental health and other resources available to petitioners and respondents. In addition, expenditures and workload will increase to update the judicial statewide information system to remove any work done to implement HB 19-1178. Workload will also decrease for the state court administrator to no longer collect statistics related to the number of ERPOs and the number of crimes committed by those with ERPOs and to notify law enforcement entities of the ERPOs. It is assumed that these workload impacts do not require a change in appropriations.

Trial courts and probation. This bill will decrease costs and workload for the trial courts in the Judicial Department related to ERPO hearings and additional criminal case filings. To the extent that offenders are no longer sentenced to probation, costs and workload in the Division of Probation will decrease. To the extent that there are more 72-hour mental health hold cases heard by the court, due to the new standard of being an "extreme risk", workload to the trial courts will increase. The fiscal note assumes that any caseload impact will be minimal and no change in appropriation is required. Overall, it is assumed that no change in appropriation is required.

Independent judicial agencies. 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, to the extent that the bill decreases the number of class 2 misdemeanor cases where an indigent defendant needs representation.

Department of Public Safety. Workload will increase to the extent that individuals who would not be able to apply or renew a concealed carry permit under current law can now apply for permits. Starting in FY 2020-21, workload for the DPS will decrease to no longer provide courts with requested background checks on the respondent to an ERPO. Workload will also decrease to no longer enter ERPOs into the National Instant Criminal Background Check System. In both cases, the impact is expected to be minimal and does not require a change in appropriations.

Department of Human Services. To the extent that the number of individuals referred to mental health institutes for a mental health evaluation or are referred to programs for mental health services following a court ordered evaluation during a 72-hour hold, costs in the Department of Human Services (DHS) will be impacted. It is unknown how this bill's criteria change will impact the number of individuals referred to DHS, but any impact is expected to be accomplished within existing appropriations.

TABOR refunds. The bill is expected to decrease state General Fund obligations for TABOR refunds by a minimal amount in FY 2020-21 and FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly decrease the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

Local Government

Beginning in FY 2020-21, this bill is expected to decrease local government revenue, costs, and workload as described below.

District attorneys. Workload to district attorney offices will decrease to no longer advise local law enforcement agencies on issuing ERPO orders. The bill will also decrease costs and workload for district attorneys to no longer prosecute a class 2 misdemeanor offense. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

County jails. The bill may decrease county jail costs to the extent that the class 2 misdemeanor resulted in convictions with county jail time sentences. However, because the courts have the discretion of incarceration or imposing a fine, the precise county impact cannot be determined.

Law enforcement agencies. Expenditures and workload will decrease 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, revenue and workload will increase to the extent there are more concealed carry permits. Currently, county sheriffs may charge a fee of no more than \$100 to apply for a new concealed carry permit and pay no more than \$50 to renew a concealed carry permit. Revenue from the fee is used to cover any local administrative and training costs associated with granting the permit.

Effective Date

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

State Appropriations

This bill requires a reduced General Fund appropriation of \$238,784 to the Judicial Department.

State and Local Government Contacts

Human Services
Law
Sheriffs

Information Technology
Municipalities

Judicial
Public Safety