



Legislative
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FISCAL NOTE

Drafting Number: LLS 20-0141	Date: February 21, 2020
Prime Sponsors: Rep. Duran; Singer Sen. Fields	Bill Status: House Judiciary
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Bill Topic: PROTECTION ORDERS ISSUED AGAINST DOMESTIC ABUSERS

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 creates new procedures for firearm relinquishment related to civil and mandatory protection orders for domestic abuse cases. It will increase state and local government expenditures on an ongoing basis beginning in FY 2020-21.

Appropriation Summary: This bill requires a total five-year appropriation of \$712,709 to the Department of Corrections. In addition, capital construction funding of \$892,355 may be appropriated. See State Appropriations section.

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

Table 1
State Fiscal Impacts Under HB 20-1278

		FY 2020-21	FY 2021-22
Revenue		-	-
Expenditures	General Fund	-	\$85,330
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

This bill creates new procedures for firearm relinquishment related to civil and mandatory protection orders for domestic abuse cases, as described below.

Required disclosures and hearings. Under current law, when a court subjects a respondent to a protection order related to domestic abuse, the court must order the respondent to refrain from possessing or purchasing any firearm or ammunition and to relinquish any firearm or ammunition in the respondent's immediate possession or control for the duration of the order. Under this bill, upon issuance of a protection order, the court must:

- require the respondent to state for the record or via affidavit the number and location of firearms in the respondent's immediate possession or control;
- require the respondent to complete a firearm information form and provide information about the type of each firearm in the respondent's possession or control; and
- transmit a copy of the protection order and the firearm information form to the county sheriff of the person's residence.

The Office of the State Court Administrator is responsible for developing or acquiring the affidavit and the firearm information form no later than January 1, 2021.

If the respondent does not possess a firearm at the time the protection order is issued, the respondent must complete a declaration of non-possession form in court, which must be filed in the court record, and copied and provided to the sheriff. If the respondent possessed a firearm at the time of the qualifying incident giving rise to the duty to relinquish the firearm but sold or transferred the firearm to a private party prior to the issuance of the protection order, the respondent shall disclose the sale or transfer in court.

To ensure the respondent has complied with the relinquishment requirements, the court is required to conduct a hearing. A respondent's failure to appear at the hearing constitutes a violation of the protection order, and the court may issue a warrant for the respondent's arrest or a search warrant of the respondent's residence. Current law requires a copy of the written receipt and the written statement of the background check to be filed with the court as proof of relinquishment. The bill requires the signed affidavit to be filed with the court instead of the receipt.

Protections and penalties related to disclosures. The bill prohibits any full and truthful statements made to the court regarding the number and location of firearms in or subject to the respondent's possession or control from being used against the respondent in any other civil or criminal proceedings. Any untruthful statements made to the court subjects the respondent to penalties of perjury and attempting to influence a public servant.

Relinquishment compliance time period. The bill excludes legal holidays and weekends from the current time frame a person has to relinquish a firearm. A court may grant a respondent an additional 24 hours to relinquish a firearm if the person is unable to comply with the required time frame of relinquishment. If the respondent is incarcerated or otherwise in custody of a law enforcement agency, the respondent must relinquish the firearm within 24 hours after release.

Sheriff oversight of the relinquishment process. Current law requires a respondent to either sell or transfer possession of the firearm to a dealer, arrange for the storage of the firearm by a law enforcement agency, or sell or transfer the firearm to a private party who may legally possess the firearm. The bill requires sheriffs to oversee the relinquishment process and allows sheriffs to contract for the storage of transferred firearms. A private party that purchases a relinquished

firearm is required to complete a firearms acknowledgment form, of which the sheriff must keep a record. A respondent may not transfer the firearm to a private party living in the same residence as the person at the time of transfer. Sheriffs are required to prescribe the manner in which firearms are transferred to a private party and may charge a reasonable fee for overseeing the transfer.

Sheriff agreements with local law enforcement and incentive fees. Under current law, local law enforcement agencies may elect to store firearms or ammunition for a respondent. The bill allows sheriffs to enter into agreements with local law enforcement agencies to assume other duties ascribed to sheriffs under the bill. Agencies that elect to contract with a sheriff may seek a matching incentive fee from the Department of Public Safety (DPS) on an annual basis in an amount equal to the total amount charged by the agency or storage facility. Any money received from the DPS must be used to maintain or increase firearm storage capacity.

Firearm forfeiture upon failure to pay storage fee. If a respondent refuses to pay outstanding storage fees to the sheriff within one year after the expiration the respondent's prohibition on possessing firearms under state and federal law, the sheriff may send the respondent a 90-days notice. If the respondent does not pay the outstanding fee to the sheriff within 90-day period, the sheriff may file a motion seeking a court order declaring that the firearms are forfeited to the sheriff, who may dispose of the firearm at the sheriff's discretion. Storage fees may be waived for indigency.

Stored firearms require warrant if used as evidence. The bill requires a sheriff who elects to store firearms to obtain a search warrant prior to testing or examining the firearm to facilitate any criminal investigation or prosecution.

Relinquishment affidavits, liability, and responsibility of private dealers. The bill requires firearms dealers, law enforcement agencies, and private parties to issue a signed affidavit memorializing the sale or transfer of the firearm. If these parties elect to store a firearm, they are not civilly liable for any resulting damages to the firearm, as long as such damage did not result from the willful and wrongful act or gross negligence of the respondent or agency storing the firearm. Private parties are prohibited from returning a firearm to the respondent until the private party receives a written statement of the results of a Colorado Bureau of Investigation (CBI) background check that authorizes the return of the firearm to the respondent.

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. Under the bill, failure to make truthful statements to the court is an offense subject to the existing penalties of perjury (a class 4 felony in the first degree and a class 1 misdemeanor in the second degree), and attempt to influence a public servant (a class 4 felony). To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of possession of weapons by previous offenders. From FY 2016-17 to FY 2018-19, 1,703 persons have been convicted and sentenced for this existing offense. Of the persons convicted, 1,595 were male, 107 were female, and 1 did not have a gender identified. Demographically, 1,199 were White, 355 were Black/African American, 117 were Hispanic, 15 were Asian, 7 were American Indian, and 10 were classified as "Other."

Protection orders for domestic abuse cases. In FY 2018-19, there were 6,065 civil protection orders for domestic abuse cases filed in the trial courts. According to the World Population Review, 34 percent of Coloradans own a firearm as of February 2020.

Assumptions. Given the gun ownership rate, it is anticipated that approximately 2,062 civil protection orders will involve firearm relinquishment. This analysis assumes that at least 1 percent of these cases will result in a class 4 felony penalty of perjury and/or attempt to influence a public servant, resulting in 20 criminal case filing. Of these, it is assumed that 10 percent, or 2 offenders per year, will be convicted and sentenced to the Department of Corrections (DOC). The average length of stay for a class 4 felony is 30.5 months with an average parole length of 26.2 months once the offender is released from prison.

Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

Criminal fines and court fees. By expanded a felony offense, the bill will increase state revenue from criminal fines and court fees by a minimal amount beginning in FY 2020-21, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. The fine penalty for a class 4 felony is \$2,000 to \$500,000. Additionally, court fees may be imposed on a case-by-case basis for a variety of court-related costs, such as probation supervision and 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 is subject to TABOR.

Background checks. Any increase in fee revenue from background checks is expected to be minimal. Except for the federal pass-through portion of background check fees, background check fee revenue is subject to TABOR.

State Expenditures

The bill will increase General Fund expenditures in the DOC by \$712,709 over a five-year period, and may increase capital construction costs in the DOC by up to \$892,355. The bill also increases workload for the Judicial Department and the Department of Public Safety (DPS) on an ongoing basis beginning in FY 2020-21. Additionally, expenditures in the DPS may increase if the department receives appropriations for the incentive fee created under the bill.

Department of Corrections operating and parole costs (five-year fiscal impact). Based on the assumptions provided in the Comparable Crime Analysis section, this bill increases prison and parole operating costs for the DOC by a total of \$712,709 over the five-year period beginning in FY 2020-21. The fiscal note assumes no prison operating impacts will occur in the first year due to the amount of time required for criminal filing, trial, disposition and sentencing of each case. Once an offender is released from prison, he or she is assigned to parole. Table 2 shows the estimated cost of the bill over the next five fiscal years.

**Table 2
Prison and Parole Costs Under HB 20-1278**

Fiscal Year	Prison	Parole	Operating Cost
FY 2020-21	-	-	-
FY 2021-22	2.00	-	\$85,330
FY 2022-23	4.00	-	\$170,659
FY 2023-24	5.09	0.91	\$222,498
FY 2024-25	5.09	2.91	\$234,222
FIVE-YEAR TOTAL			\$712,709

** Per offender, state-run prisons cost an average of \$116.89 per day or \$42,664.85 per year, and parole costs an average of \$16.06 per day or \$5,861.90 per year.*

Department of Corrections capital construction costs. In addition to the five-year operating and parole impacts discussed above, Section 2-2-703, C.R.S. requires that the General Assembly consider increased capital construction costs for the DOC to house additional inmates. Based on the average per bed construction costs of previous prison facilities (\$178,471), capital construction costs of \$892,355 would be required to increase prison bed space in line with the estimated increase in prison population under this bill. If the General Assembly determines that additional prison bed space is needed, this bill should include a transfer of General Fund to the Capital Construction Fund and a reappropriation of this funding to the Corrections Expansion Reserve Fund. Money in the Corrections Expansion Reserve Fund is available for future DOC construction projects, which would be identified and funded through the annual budget process based on the state's overall prison needs.

Judicial Department. Several provisions of the bill will increase trial court workloads for both judicial officers and court staff, as discussed below. No change in appropriations is required. If these cases result in more workload than anticipated, the department will seek additional resources through the annual budget process.

- *Hearings.* Trial courts are required to hold a hearing to ensure that a respondent has complied with the relinquishment of the firearms or ammunition, and may issue either an arrest or search warrant for the respondent for failure to appear. Assuming these hearings require an average of 10 minutes per case, this creates an additional 344 hours of work, which is under 0.2 FTE Judicial Officer, and can be accomplished within existing appropriations.
- *Forms and affidavit tracking.* Trial court staff will process the required paperwork for each case, set additional hearings, track affidavits and returns of service, and monitor cases where an individual is in custody. Assuming these processes require an average of 20 minutes per case, this creates an additional 688 hours of work, which is 0.3 FTE court staff, and can be accomplished within existing appropriations.
- *Other potential workload and probation increases.* Several other provisions of the bill may drive additional workload to the trial courts as well as periods of probation, such as penalties related to false statements, motions related to firearm forfeiture, search warrants related to an examination of a firearm in a storage for use as evidence, and penalties related to private dealer failure to comply with provisions of the bill. Overall, the fiscal note assumes these elements will have a minimal fiscal impact.

Independent agencies within the Judicial Department. Costs and workload may increase 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, it is assumed that this workload can be accomplished within existing appropriations. Should a change in funding be required for any agency within the Judicial Department, this will be addressed through the annual budget process.

Department of Public Safety. Workload in the DPS will increase to perform any additional background checks under the bill. Expenditures will increase to the extent the DPS receives an appropriation to provide an incentive fee to local governments.

Local Government

Beginning in FY 2020-21, this bill is expected to increase local government costs and workload as described below. The exact impact to a particular local government will vary depending on the number of offenses committed within its jurisdiction.

District attorneys. To the extent that the affidavit and firearm response form remedy the current situation of respondents refusing to answer the court about firearms in their possession, workload for district attorneys will increase related to the relinquishment hearing and any warrant-related legal activity, up to 0.5 FTE per office. This workload may be offset depending on cooperation with the sheriff's department. Additionally, district attorneys will have additional workload and costs to prosecute the class 4 felony offense under the bill. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

County sheriffs. Sheriffs, as well as local law enforcement agencies that opt-in to assist sheriffs, will have an increase in workload to oversee the relinquishment process and either store or contract for the storage of relinquished firearms.

Effective Date

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

State Appropriations

Starting in FY 2020-21, this bill requires a General Fund appropriation of \$712,710 for the five-year DOC operating impacts identified in Table 2. As discussed in the DOC capital construction costs section above, the General Assembly may appropriate \$892,355 for prison bed construction, if needed.

State and Local Government Contacts

Corrections
Human Services
Law
Sheriffs

Counties
Information Technology
Municipalities

District Attorneys
Judicial
Public Safety