



Legislative
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FISCAL NOTE

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Prime Sponsors:	Sen. Garcia; Fields	Bill Status:	Senate SVMA
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Bill Topic: **ENHANCE LAW ENFORCEMENT INTEGRITY**

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|----------------------------------|---|--|
| 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 |

The bill makes several policy changes related to peace officers, including mandating the use of body-worn cameras for local law enforcement; requiring data reporting on use of force and other incidents; prohibiting certification or hiring of peace officers convicted of certain offenses relating to use of force; modifying allowable use of force by peace officers; and creating a new civil cause of action relating to constitutional rights violations by peace officers. It will increase state and local expenditures on an ongoing basis beginning in FY 2020-21.

Appropriation Summary: The bill requires appropriations totaling \$1.4 million to the Departments of Law, Public Safety, and Human Services in FY 2020-21. See State Appropriations section for more detail.

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

**Table 1
State Fiscal Impacts Under SB 20-217**

		FY 2020-21	FY 2021-22
Revenue		-	-
Expenditures	General Fund	\$1,205,374	\$752,681
	Cash Funds	\$215,306	\$209,106
	Centrally Appropriated	\$236,790	\$249,743
	Total	\$1,657,470	\$1,211,530
	Total FTE	8.5 FTE	9.3 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

The bill makes several policy changes related to peace officers concerning use of force, data collection and reporting, and other matters, as described below

Body camera requirements for local law enforcement agencies. The bill requires local law enforcement agencies to issue body-worn cameras to their officers by July 1, 2021, and requires all recordings of an incident be released unedited to the public within 14 days after the incident. Local law enforcement officers must wear and activate a body-worn camera at any time when interacting with the public. Under the bill, if a peace officer fails to activate or tampers with body-worn or dash-mounted camera, there is a rebuttable presumption in any investigation and legal proceeding that the missing footage would have reflected misconduct by the peace officer.

Incident reporting to the Attorney General. Each state and local agency that employs peace officers shall report to the Attorney General in the Department of Law:

- all use of force by its officers that results in death or serious bodily injury;
- all instances when an officer resigned while under investigation for violating department policy;
- all data relating to stops conducted by its peace officers; and
- all data related to the use of an unannounced entry by a peace officer.

Any state and local law enforcement agency that fails to meet its reporting requirements is subject to suspension of its funding by its appropriating authority.

Incident reports and publicly accessible database. Beginning July 1, 2021, the Division of Criminal Justice in the Department of Public Safety (DPS) is required to create an annual report of the information that is reported to the Attorney General, aggregated and broken down by state or local agency that employs peace officers, along with the underlying data. The division must maintain a statewide database with data collected in a searchable format and publish the database on its website.

Peace officer termination if convicted of inappropriate use of force. If any peace officer is convicted of or pleads guilty or nolo contendere to any inappropriate use of physical force or a crime involving the unlawful use or threatened use of physical force, or for failing to intervene to prevent inappropriate use of physical force, the peace officer's employing agency shall immediately terminate the peace officer's employment and the POST board shall permanently revoke the peace officer's certification. The POST board shall not, under any circumstances, reinstate the peace officer's certification or grant new certification to the peace officer.

Civil action for violation of constitutional rights by a peace officer. The bill allows a person who has had their constitutional rights, as secured by the Bill of Rights of the Colorado Constitution, infringed upon by a peace officer to bring a civil action for the violation. A plaintiff who prevails in the lawsuit is entitled to reasonable attorney fees, and a defendant in an individual suit is entitled to reasonable attorney fees for defending any frivolous claims. Qualified immunity and a defendant's good faith but erroneous belief in the lawfulness of his or her conduct are not defenses to the civil action. The bill requires a political subdivision of the state to indemnify its employees for such a claim, except that the individual officer must pay either 5 percent or \$100,000 of the settlement, whichever is less. The bill also allows the Attorney General to take civil action against any governmental authority, or its agent, that engages in a practice or conduct of that deprives persons of rights, privileges, or immunities as granted under the federal and state constitutions.

Modifications to permissible uses of force. The bill allows a peace officer or correctional officer to use deadly physical force only when necessary to effect an arrest or prevent escape from custody when the person is using a deadly weapon or likely to imminently cause danger to life or serious bodily injury. The bill repeals a peace officer's authority to use a chokehold.

Peace officer data and updated procedures—POST Board. The bill requires the POST board to create and maintain a database containing information related to a peace officer's:

- untruthfulness;
- repeated failure to follow POST board training requirements;
- decertification; and
- termination for cause.

The bill allows the POST board to revoke peace officer certification for a peace officer who has failed to complete required peace officer training.

Justification and reporting by peace officers who make a stop. The bill requires a peace officer to have an objective justification for making a stop and to report the reason and result of the stop; the actions taken by the peace officer during the stop, including information about search and seizure; and perceived demographic information of the person stopped. This information must be reporting to the officer's department or agency, and included in the report to the Attorney General's office. The officer must also provide information to the individual being stopped about how to file a complaint.

Post-investigation review of officer-involved deaths. The bill requires the Division of Criminal Justice in the DPS to conduct, in coordination with the POST board, a post-investigation evaluation of all officer-involved deaths to determine and propose improvements and alterations to training of peace officers to guide future officer behavior.

State Expenditures

The bill increases state expenditures by \$1.7 million and 8.5 FTE in FY 2020-21 and \$1.2 million and 9.3 FTE in FY 2021-22. Expenditures are paid from the General Fund, with the exception of Colorado State Patrol expenditures, which are paid from the Highway Users Tax Fund. Amounts are shown in Table 2 and discussed further below.

**Table 2
Expenditures Under SB 20-217**

	FY 2020-21	FY 2021-22
Department of Law		
Personal Services	\$167,878	\$183,140
Operating Expenses and Capital Outlay Costs	\$11,306	\$2,560
Information Technology	\$400,000	\$35,000
Centrally Appropriated Costs*	\$34,742	\$38,296
Law Subtotal	\$613,926	\$258,996
Law FTE	1.8 FTE	2.0 FTE
Division of Criminal Justice, DPS		
Personal Services	\$452,046	\$489,215
Operating Expenses and Capital Outlay Costs	\$45,030	\$7,830
Centrally Appropriated Costs*	\$154,464	\$164,388
DCJ Subtotal	\$651,540	\$661,433
DCJ FTE	5.2 FTE	5.8 FTE
Colorado State Patrol, DPS (HUTF)		
Personal Services	\$57,756	\$57,756
Operating Expenses and Capital Outlay Costs	\$7,550	\$1,350
Information Technology	\$150,000	\$150,000
Centrally Appropriated Costs*	\$40,711	\$40,004
CSP Subtotal	\$256,017	\$249,110
CSP FTE	1.0 FTE	1.0 FTE
Department of Human Services		
Personal Services	\$22,240	\$24,261
Operating Expenses and Capital Outlay Costs	\$6,875	\$675
Information Technology	\$100,000	\$10,000
Centrally Appropriated Costs*	\$6,872	\$7,055
DHS Subtotal	\$135,987	\$41,991
DHS FTE	0.5 FTE	0.5 FTE
Total Cost	\$1,657,470	\$1,211,530
Total FTE	8.5 FTE	9.3 FTE

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

Department of Law. The bill will increase expenditures in the Department of Law to develop, administer, and maintain databases for local law enforcement agencies to upload data and information required under the bill. Assuming the department has implementation time, costs include 2.0 FTE Data Managers to develop and administer the databases, and \$400,000 in FY 2020-21 and \$35,000 per year starting in FY 2021-22 in information technology development and maintenance costs, respectively. If the department is required to collect local law enforcement reporting immediately on July 1, 2020, it would have higher expenditures, estimated at \$600,982 and 8.8 FTE in FY 2020-21, to collect and enter data from local law enforcement using a manual process; this estimate assumes the department will receive approximately 2.4 million emails of reports. See Technical Note.

The Department of Law will also have increased workload in its support of the POST Board, which will require updated fields in its peace officer database; however, since the POST Board already administers a database, additional data fields can be added within existing resources. In addition, the POST Board will conduct a post-investigation of all officer-involved deaths.

Finally, workload will also increase to the extent the Attorney General takes civil action against a public entity that has deprived residents of civil rights. The fiscal note assumes that actions against public entities will be minimal; therefore, no change in appropriations is required.

Department of Public Safety. Costs will increase in the DPS to work with the Department of Law in developing a data collection and sharing system; annually issuing a comprehensive analysis and report of these data every July 1; developing and maintaining a statewide searchable database of this information on the DPS website; and conducting, in coordination with the POST Board, a post-investigation of all officer-involved deaths to determine and propose improvements and changes to law enforcement training. To accomplish these purposes, the Division of Criminal Justice will add 0.8 FTE Statistical Analyst to develop the database with the Department of Law and to maintain data integrity on an ongoing basis, 2.0 FTE Criminal Investigators to review post-incident processes of local law enforcement; 1.0 FTE Legal Assistant to assist investigators, draft and review documents, and conduct other tasks; 1.0 FTE Administrative Technician to support daily operations; and 1.0 FTE Project Manager to supervise the team.

The Colorado State Patrol requires 1.0 FTE Analyst and \$150,000 for information technology on an ongoing basis to fulfill the bill's data tracking and reporting requirements, to be paid from the Highway Users Tax Fund. The analyst will join the data information team to ensure accurate and timely collection and reporting of data. The information technology costs are based on the current contract and rate agreement the CSP has with its vendor to implement the expanded scope to the current system to support the bill provisions.

Department of Human Services. The Department of Human Services employs peace officers at the Division of Youth Services (DYS) and at the Mental Health Institutes in Fort Logan and Pueblo. DYS officers are prohibited from using force and can accomplish the reporting requirements to the Attorney General within existing resources. For the Mental Health Institutes (MHIs) to meet the bill's reporting requirements, additional staff and information technology resources are required. It is estimated that the bill requires 0.5 FTE Administrative Assistant and the purchase of a commercial Computer Aided Dispatch system and a records management system estimated at \$100,000 annually. The IT purchases are required since the MHIs currently operate on a paper system and use an in-house records management system.

Department of Corrections. The Department of Corrections will have increased workload to train correctional officers on new procedures under the bill related to use of force. No change in appropriations is required.

Other POST-certified state law enforcement officials. Other state departments, such as the Departments of Natural Resources or Revenue, that employ POST-certified law enforcement officials may have to report certain interactions, such as checking fishing and hunting licenses, if those interactions classify as a stop under the bill. If these interactions constitute a stop, the bill will require these officers to collect additional data points and perform additional documentation and reporting, resulting in additional staffing and administrative- or technology-related costs. The fiscal note assumes these costs will be addressed through the annual budget process. Training for these peace officers is anticipated to be accomplished within existing resources of each department.

Judicial Department. The bill may impact trial court workload. Workload will depend on how many individuals bring a civil action against a peace officer and the frequency of civil actions brought by the Attorney General under the bill. The fiscal note assumes compliance with the law and that any increase in filings can be handled within existing trial court appropriations. For informational purposes, the trial courts have to see over 549 civil cases filed to necessitate an additional 1.0 FTE District Court Judicial Officer. Lastly, it is assumed that incident reporting requirements under the bill do not apply to certain peace officers in the Judicial Branch, such as probation officers or the Head of Judicial Security; otherwise, additional costs would be incurred.

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 \$236,790 in FY 2020-21 and \$249,743 in FY 2021-22.

Local Government

The bill increases workload and costs in several areas for cities, counties, and other local governments that employ peace officers in local law enforcement agencies. These cost drivers include:

- body camera equipment and video data storage;
- staff and software to manage video collection, processing, and public distribution;
- staff and software for data collection and reporting;
- policy updates and training; and
- potential payments for judgements and attorney fees in civil actions alleging violations of constitutional rights.

Costs for these various items will vary depending on the size of the law enforcement agency; its current policies, procedures, and staffing; and its current use or non-use of body cameras. These cost drivers are discussed in more detail below.

Body cameras. Under the bill, local law enforcement agencies that do not currently use body cameras will have increased costs. These costs will include the cameras themselves, other equipment such as docking and charging stations, as well the associated data storage, processing and staffing costs. Costs will vary depending on the number of peace officers requiring body camera, current policies regarding their use, and the details of the body camera procurement and service agreements (cameras purchased outright vs leased, in-house data storage vs a contracted storage service provider, etc.).

For illustrative purposes, the fiscal note provides the example of a body camera with an initial cost of \$400 for the camera and dock, and an ongoing annual cost of \$800 per camera for data storage services. For an agency requiring 100 cameras, first-year costs would total \$120,000 and second and future year costs would be \$80,000. Additional staff would be required to manage the camera program, process and release videos, and provide technical support and training to peace officers. For an agency requiring 1,000 or more cameras, costs may approach or exceed \$1.0 million per year.

Data reporting and collection. Local law enforcement agencies will require additional staff and software for data reporting. The bill requires that various data on use of force, stops, unannounced entry, and officer resignations be reported to the Attorney General. Depending on current practices, agencies will be required to develop processes to collect the data, and report it to the Attorney General's Office. Software will likely be required for officers to capture certain data during or following their shift. Other software may be required to prepare data for reporting to the Attorney General if a centralized tool is not provided by the Department of Law.

Policy and training. Law enforcement agencies will have additional workload and costs to update procedures and policies to align with the bill, including on the use of body cameras, the use of force by officers, and data and information that peace officers must collect, among other things. Training for new and current peace officers will be required to convey the new policy changes and requirements under the bill.

Civil liability. Local governments may be required to pay judgements and attorney fees for violations of constitutional rights under the new civil action created by the bill. It is unknown whether judgements under the new civil action will be in place of, or in addition to, judgements and settlements involving law enforcement agencies that would have otherwise occurred under current law. Any additional judgements, if incurred, would result in increased costs for local governments employing peace officers, whether for the immediate payment of the judgement and fees, or for increased liability insurance costs in subsequent years if paid via an insurance policy. The bill specifies that peace officers are personally liable for 5 percent of the judgement amount, or \$100,000, whichever is less. This would reduce the local government share for these costs.

Technical Note

Assuming the bill is signed into law by July 1, 2020, this date does not afford affected state agencies, specifically the Department of Law, adequate implementation time for information technology projects.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, except that Section 24-31-902, C.R.S., related to incident recordings, as enacted in Section 1 of the bill, takes effect July 1, 2021.

State Appropriations

For FY 2020-21, the bill requires General Fund appropriations of \$1.2 million as follows:

- \$579,184 and 1.8 FTE to the Department of Law from the General Fund;
- \$497,076 and 5.2 FTE to the Division of Criminal Justice in DPS from the General Fund; and
- \$129,115 and 0.5 FTE to the Division of Mental Institutes in DHS from the General Fund.

In addition, the Colorado State Patrol in DPS requires an appropriation of \$215,306 and 1.0 FTE from the Highway Users Tax Fund.

State and Local Government Contacts

Corrections
Human Services
Law
Public Safety

Counties
Information Technology
Municipalities
Revenue

District Attorneys
Judicial
Natural Resources
Sheriffs