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**REVISED
FISCAL NOTE**

(replaces fiscal note dated June 4, 2020)

Drafting Number:	LLS 20-1309	Date:	June 8, 2020
Prime Sponsors:	Sen. Garcia; Fields	Bill Status:	Senate Second Reading
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Bill Topic: **ENHANCE LAW ENFORCEMENT INTEGRITY**

- 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 state and local law enforcement, including: requiring the use of body-worn cameras; requiring data reporting on use of force and other incidents; and creating a new civil cause of action relating to constitutional rights violations by law enforcement officers. The bill also limits permissible uses of force; requires officers to track new information to justify traffic stops; and requires the POST board to track new data related to officer conduct. For local law enforcement, the bill establishes an automatic termination protocol when an officer is convicted for inappropriate use of force. Finally, the bill creates a unit to conduct post-investigation evaluation of all officer-involved deaths. The bill will increase state and local expenditures on an ongoing basis beginning in FY 2020-21.

Appropriation Summary: For FY 2020-21, the bill requires appropriations totaling \$9.0 million to multiple state agencies. The Parks and Wildlife Cash Funds are continuously appropriated to the Department of Natural Resources.

Fiscal Note Status: This preliminary fiscal note reflects the introduced bill, as amended by the Senate State, Veterans, and Military Affairs Committee. It will be updated as more information becomes available.

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

		FY 2020-21	FY 2021-22
Revenue		-	-
Expenditures	General Fund	\$6,029,815	\$4,210,032
	Cash Funds	\$4,215,619	\$2,612,695
	Centrally Appropriated	\$1,016,636	\$814,046
	Total	\$11,262,070	\$7,636,773
	Total FTE	23.4 FTE	24.8 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

The bill makes several policy changes related to state and local law enforcement including requiring the use of body-worn cameras; requiring data reporting on use of force and other incidents; and creating a new civil cause of action relating to constitutional rights violations by law enforcement officers. The bill also limits permissible uses of force; requires officers to track new information to justify traffic stops; and requires the POST board to track new data related to officer conduct. For local law enforcement, the bill establishes an automatic termination protocol when an officer is convicted for inappropriate use of force. Finally, the bill creates a unit to conduct post-investigation evaluation of all officer-involved deaths.

Body-worn camera requirements for state and local law enforcement agencies. The bill requires state and local law enforcement agencies to issue body-worn cameras to their officers by July 1, 2021. Law enforcement officers must wear and activate a body-worn camera at any time when interacting with the public. Local law enforcement agencies may apply to the Attorney General for a single one-year waiver to comply with this requirement.

For incidents in which there is an allegation of law enforcement officer misconduct, all unedited video and audio recordings of the incident must be released to the public within 14 days after the incident. All recordings depicting a death must be provided to the decedent's family at least 24 hours prior to public disclosure. In the event that the recording depicts nudity or other highly personal circumstances, the law enforcement agency must give a civilian victim the opportunity to have input on appropriate redactions.

Under the bill, if a law enforcement 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 officer.

Incident reporting to the Attorney General. Each state and local agency that employs law enforcement 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 law enforcement officers; and
- all data related to the use of an unannounced entry by a law enforcement officer.

The data required to be provided for each of these reporting requirements is outlined in the bill, and must not include unique personal identifying information. Any 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 law enforcement 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.

Local peace officer termination if convicted of inappropriate use of force. If a peace officer employed by a local law enforcement agency 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 officer's employing agency shall immediately terminate the officer's employment and the POST board shall permanently revoke the officer's certification. The POST board shall not, under any circumstances, reinstate or grant new certification to the officer.

Civil action for violation of constitutional rights by a law enforcement 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 law enforcement 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 law enforcement 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 law enforcement officer's authority to use a chokehold.

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

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

The bill allows the POST board to revoke law enforcement officer certification for an officer who has failed to complete required training.

Justification and reporting by law enforcement officers who make a stop. The bill requires a law enforcement 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 law enforcement 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 law enforcement officers to guide future officer behavior.

Assumptions

The fiscal note assumes that the bill applies to both state and local law enforcement officers, except that the provision regarding automatic termination for peace officers who are convicted of inappropriate use of physical force, which is assumed to apply only to officers employed by a political subdivision of the state. For body-worn cameras, the fiscal note assumes a one-time cost of \$1,400 per camera and related equipment, plus annual costs of \$2,000 per camera on an ongoing basis for data storage and support. These costs will vary depending on the type of camera used, the length of time that video must be retained, details of service agreements with camera/storage providers, and other factors.

State Expenditures

The bill increases state expenditures by \$11.3 million in FY 2020-21 and \$7.6 million in FY 2021-22 and ongoing. Expenditures are paid from the General Fund, with the exception of Colorado Parks and Wildlife expenditures, which are paid from the Parks and Wildlife Cash Funds, and Colorado State Patrol expenditures, which are paid from the Highway Users Tax Fund. In addition, the bill may require General Fund backfill to the state Risk Management fund, managed by the Department of Personnel, and will increase Judicial Department trial court workload. These impacts are discussed below and estimated amounts are shown in Tables 2 and 3.

Body-worn cameras for state officers. Table 2 shows the costs of body-worn cameras for all state law enforcement officers who meet the bill's criteria. FY 2020-21 costs assume initial purchase of the body-worn camera estimated at \$1,400. First-year and ongoing costs also include an estimated \$2,000 for data storage and maintenance. These costs are preliminary estimates and will be updated as more information is known.

**Table 2
Preliminary Body-worn Camera Expenditure Estimate Under SB 20-217***

	Number of Officers	FY 20-21 \$3,400 per officer	FY 21-22 \$2,000 per officer
Corrections - Parole Ofcs., Ins. Gen. Staff, Public-facing COs	500	\$1,700,000	\$1,000,000
Human Services - Mental Health Institutes	100	\$340,000	\$200,000
Law - Criminal Investigators	27	\$91,800	\$54,000
Natural Resources - Parks and Wildlife Officers	350	\$1,190,000	\$700,000
Public Safety - Colorado State Patrol	780	\$2,652,000	\$1,560,000
Public Safety - CBI, Ports of Entry, etc.	180	\$612,000	\$360,000
Revenue - Enforcement and Investigations Officers	150	\$510,000	\$300,000
Totals	2,087	\$7,095,800	\$4,174,000

* These totals are included in the State Expenditure table (Table 3) below. The institutions of higher education are not included in this estimate, nor are investigators in the Department of Regulatory Agencies. The fiscal note will be updated as more information becomes available.

Expenditures by state agency. In addition to the body-worn camera costs in Table 2, costs will also be incurred for staff to support data analysis and reporting. Preliminarily, the fiscal note estimates this requires 0.5 FTE to 1.0 FTE for agencies with a small number of officers; 2.0 FTE for agencies with a mid-sized number of officers; and 3.0 FTE for agencies with large numbers of officers. Additional costs include legal services, the creation of a statewide database, and incident reporting. Total costs for each affected agency are shown in Table 3 and discussed further below. All first-year costs from the General Fund are prorated for the paydate shift.

Table 3
Total State Agency Expenditures Under SB 20-217

	FY 2020-21	FY 2021-22
Corrections (GF)	\$1,850,561	\$1,143,589
Total FTE	2.8 FTE	3.0 FTE
Human Services (GF)	\$519,302	\$282,799
Total FTE	1.4 FTE	1.5 FTE
Law (GF)	\$1,940,503	\$1,530,873
Total FTE	8.3 FTE	8.5 FTE
Natural Resources (CPW Cash Fund)	\$1,240,187	\$747,863
Total FTE	0.9 FTE	1.0 FTE
Public Safety - State Patrol (HUTF)	\$2,975,432	\$1,864,832
Total FTE	3.0 FTE	3.0 FTE
Public Safety (GF)	\$1,159,263	\$904,908
Total FTE	6.1 FTE	6.8 FTE
Revenue (GF)	\$560,187	\$347,863
Total FTE	0.9 FTE	1.0 FTE
Centrally Appropriated Costs (All)	\$1,016,636	\$814,046
Grand Total	\$11,262,071	\$7,636,773
<i>General Fund</i>	<i>\$6,029,816</i>	<i>\$4,210,032</i>
<i>Cash Funds</i>	<i>\$4,215,619</i>	<i>\$2,612,695</i>

Department of Corrections. As discussed above, the Department of Corrections will purchase body-worn cameras for its POST-certified officers, which include parole officers and Investigator General staff, as well as all public-facing correctional officers, estimated at 500 FTE. In addition, the fiscal note assumes the DOC will require 3.0 FTE to provide data management support for the body-worn cameras. Incident reporting costs and use of force training are tasks that will be accomplished within existing appropriations.

Department of Human Services. The Department of Human Services employs law enforcement 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. Body-worn cameras for an estimated 100 officers and associated 0.5 FTE data management support is also included.

Department of Law. The Department of Law will have three cost areas: performing data collection for the statewide database; purchasing body-worn cameras for its law enforcement staff; and providing advice and representation to all state law enforcement officers regarding the new civil action under the bill. As discussed in the Assumptions section, the fiscal note assumes that the provision regarding automatic termination for peace officers who are convicted of inappropriate use of physical force does not apply to state law enforcement. The Department of Law will also have increased workload in its support of the POST Board, which will require updated fields in its law enforcement 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.

- *Data collection for the statewide incident database.* The bill will increase expenditures in the Department of Law to develop, administer, and maintain databases for state and local law enforcement agencies to upload data and information required under the bill. Assuming the department has adequate 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.
- *Body-worn cameras.* The department will purchase body-worn cameras for its 27 POST-certified officers. In addition, the fiscal note assumes the department will require 0.5 FTE to provide data management support for the body-worn cameras. Incident reporting costs are assumed to be accomplished within existing appropriations.
- *Advising and representing state law enforcement.* The department will develop advice and protocols to train each state agency on the appropriate implementation and ongoing advice associated with this bill, at an assumed impact of 5,400 hours (3.0 FTE) per year. In addition, the department will represent state agencies and Risk Management in the Department of Personnel, at an assumed impact of 6,300 hours (3.5 FTE) per year.

Department of Natural Resources. The Department of Natural Resources will purchase body-worn cameras for its POST-certified wildlife and parks officers, estimated at 350 FTE. In addition, the fiscal note assumes the DNR will require 1.0 FTE to provide data management support for the body-worn cameras. Incident reporting costs and use of force training are tasks that will be accomplished within existing appropriations; however, if certain interactions, such as checking fishing and hunting licenses, classify as a stop under the bill, additional staff may be required 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 law enforcement officers is anticipated to be accomplished within existing resources of each department.

Department of Public Safety. Costs will increase in the DPS to issue body-worn cameras to its officers; 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; develop and maintain a statewide searchable database of this information on the DPS website; provide incident reporting to the database; and conduct, 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.

- *Body-worn cameras.* The department will purchase body-worn cameras for its 780 uniformed Colorado State Patrol officers and its 180 Colorado Bureau of Investigation, Ports of Entry, and other law enforcement professionals. In addition, the fiscal note assumes the department will require 2.0 FTE for CSP and 1.0 FTE for DPS to provide data management support for the body-worn cameras. Costs for body-worn cameras for DPS are shown in Table 2.
- *Data collection and statewide database.* 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,
- *Incident reporting.* 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.
- *Post-investigation review of officer-involved deaths.* 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.

Department of Revenue. The Department of Revenue will purchase body-worn cameras for its POST-certified officers, which include liquor and marijuana enforcement officers, as well as gaming and racing enforcement officers, estimated at 150 FTE. In addition, the fiscal note assumes the DOC will require 1.0 FTE to provide data management support for the body-worn cameras. Incident reporting costs and use of force training are tasks that will be accomplished within existing appropriations.

Department of Personnel and Administration. To the extent that there are new judgements against peace officers employed by state agencies for violations of constitutional rights, the Department of Personnel and Administration will be required to make additional payments from the state's Liability Fund. The state self-insures against various potential liabilities, with state agencies making payments to the fund through common policies based on an actuarial assessment. In the last five years, there have been 15 officer-involved shootings where a CSP Trooper was present, either at a CSP event or while assisting a local agency. With no immunity or per incident maximum liability threshold, individual claims could reach \$1 million, including plaintiff attorney fees as well as settlement amounts, defense costs, and the indemnification of officers that will be charged to the pool. Costs may also include covering additional officers that responded and failed to intervene in an excessive force issue, or another event where constitutional rights were violated. As a result, costs to the Liability Fund may range from \$5 million to \$10 million in the first two fiscal years, for which the actuary has not included in the contribution assignments to the agencies for FY 2020-21

and FY 2021-22. However, the bill may also have a mitigating effect on these circumstances and costs. The fiscal note assumes that General Fund backfill will be sought through the annual budget process as necessary.

Judicial Department. The bill will increase trial court workload in the Judicial Department. 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 that any increase in filings can be handled within existing trial court appropriations; for informational purposes, civil court cases would have to increase by 549 case filings to necessitate an additional 1.0 FTE District Court Judicial Officer for the trial courts.

Additionally, with local law enforcement officers using body worn cameras, additional recordings will enter criminal court records. Review of footage causes longer hearings, resulting in additional workload. Any increase in appropriations will be addressed through the annual budget process.

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 \$1,016,636 in FY 2020-21 and \$814,046 in FY 2021-22.

Local Government

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

- body-worn 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-worn cameras. These cost drivers are discussed in more detail below.

Body-worn cameras. Under the bill, local law enforcement agencies that do not currently use body-worn 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 law enforcement officers requiring body-worn camera, current policies regarding their use, and the details of the body-worn 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-worn camera with an initial cost of \$1,400 for the camera and dock, and an ongoing annual cost of \$2,000 per camera for data storage services. For an agency requiring 100 cameras, first-year costs would total \$340,000 and second and future year costs would be \$200,000. Additional staff would be required to manage the camera program, process and release videos, and provide technical support and training to law enforcement officers. For an agency requiring 1,000 or more cameras, costs may exceed \$2.0 million per year on an ongoing basis.

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-worn cameras, the use of force by officers, and data and information that law enforcement officers must collect, among other things. Training for new and current law enforcement 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 law enforcement 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 law enforcement 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 \$6.0 million as follows:

- \$1,850,561 and 2.8 FTE to the DOC
- \$519,302 and 1.4 FTE to the DHS;
- \$1,940,503 and 8.3 FTE to DOL;
- \$1,159,263 and 6.1 FTE to DPS; and
- \$560,187 and 0.9 FTE to DOR.

The bill also requires a Highway Users Tax Fund appropriation of \$2,975,432 to the Colorado State Patrol in DPS.

The Parks Cash Fund and the Wildlife Cash Fund are continuously appropriated to DNR.

Departmental Difference

As discussed in the State Expenditures section, the Department of Personnel and Administration may have costs ranging from \$5 million to \$10 million to the state's Liability Fund in the first year based solely on data related to officer-involved shootings, not including other issues that are identified in the bill. The department assumes that it will require a General Fund appropriation of at least \$5 million in FY 2020-21 to cover these anticipated costs to the state. The fiscal note assumes that any appropriation adjustment to the Liability Fund should be addressed through the annual budget process once these costs are better known and actuarially assessed, including any mitigating effects that the bill may have on these incidents compared to previous years.

State and Local Government Contacts

Corrections
Human Services
Law
Personnel
Sheriffs

Counties
Information Technology
Municipalities
Public Safety

District Attorneys
Judicial
Natural Resources
Revenue