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Final Fiscal Note

Drafting Number: LLS 21-0775 Date: September 16, 2021
Prime Sponsors: Rep. Herod; Gonzales-Gutierrez Bill Status: Signed into Law
Sen. Fields; Gardner Fiscal Analyst: Erin Reynolds | 303-866-4146
Erin.Reynolds@state.co.us

Bill Topic: MEASURES TO ADDRESS LAW ENFORCEMENT ACCOUNTABILITY

- Summary of Fiscal Impact:
State Revenue (checkbox)
State Expenditure (checked)
State Transfer (checkbox)
TABOR Refund (checkbox)
Local Government (checked)
Statutory Public Entity (checkbox)

This bill allows for a civil suit to be filed against Colorado State Patrol officers; requires multi-agency review of officer-involved civilian deaths; creates the no-knock and forced entry study group; requires a study of best practices in policing, and makes other adjustments to provisions of SB 20-217. It will increase state and local expenditures on an ongoing basis.

Appropriation Summary: The bill requires and includes an appropriation of \$4.3 million in FY 2021-22 to multiple state agencies. The Risk Management Fund is continuously appropriated to the Department of Personnel and Administration.

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

Table 1
State Fiscal Impacts Under HB 21-1250

Table with 3 columns: Category, Budget Year (FY 2021-22), and Out Year (FY 2022-23). Rows include Revenue, Expenditures (General Fund, Highway Users Tax Fund, Risk Management Fund, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and TABOR Refund.

1 First-year legal and settlement costs will be paid using available funds in the Risk Management Fund in the Department of Personnel and Administration. For FY 2022-23 and future years, these costs will be paid by the Department of Public Safety with Highway Users Tax Fund (HUTF) and General Fund money through common policy assessments based on actual legal and settlement costs incurred.

## Summary of Legislation

This bill makes adjustments to certain provisions of Senate Bill 20-217, as detailed below.

**Definitions.** The bill defines what "contact" does and does not mean, and also defines "exonerated" in the context of criminal, civil, and administrative proceedings, and internal investigations.

**Body-worn cameras.** The bill clarifies when body-worn cameras or dash cameras must be turned on and may be turned off and provisions related to the release of the footage.

**Contact reporting.** The bill moves up the deadline for local law enforcement and the Colorado State Patrol (CSP) to report on "contacts" to April 1, 2022. The bill also clarifies and adds information that must be reported to the Department of Public Safety.

**POST-certified peace officer suspensions.** SB 20-217 required the Peace Officer Standards and Training (POST) Board to permanently decertify a peace officer if the officer failed to intervene, as defined in the bill, and where serious bodily injury or death occurred. The bill changes the penalty to a suspension of the officer's certification for at least one year, and clarifies the process.

**Whistleblower protections.** The bill prohibits peace officer employers from retaliating against a peace officer for disclosure of information that shows a danger to public health or safety, or a violation of law or policy committed by another peace officer. Agencies employing peace officers must provide a training, a workplace posting, or both on this requirement by January 1, 2022. Violators of this policy must be disciplined by their employer.

**Civil action against Colorado State Patrol officers.** Senate Bill 20-217 allowed for a civil action to be taken against a local law enforcement officer for deprivation of an individual's rights. This bill expands the provision to allow this civil action to be taken against Colorado State Patrol officers in the Department of Public Safety. Statutory immunities and limitations on liabilities, damages, or attorney fees do not apply to these claims.

**Investigations into use of force.** The bill restricts local law enforcement and the CSP from presuming an officer's innocence in a use of force case and requires an investigation into these cases. If a person believes that a law enforcement agency has violated the investigation requirement, they must submit a complaint to the POST Board, which must refer the complaint to an administrative law judge to determine whether a violation occurred. Where a violation is found, the POST Board must discontinue providing POST Cash Fund money to the employer for one year from the date of the finding.

**Multi-agency review of use of force.** The bill applies multi-agency review protocols for peace officer-involved shooting investigations to any incident where a peace officer causes a death.

**Use of de-escalation techniques.** Beginning January 1, 2022, the bill requires a peace officer to use de-escalation techniques, as defined in the bill, prior to the use of physical force and requires the use of physical force to be limited to the duration necessary to accomplish the officer's legitimate law enforcement objective and to diminish situations involving imminent threats of serious physical injury

or death to the officer or another person, as defined in the bill. The bill also defines "imminent threat" and "totality of the circumstances."

**Attorney General subpoena power.** The bill permits the Attorney General to issue subpoenas to conduct an investigation into patterns or practices of conduct by a government authority or its agent that deprives individuals of their rights.

**New employee vetting for prior misconduct.** The bill requires that prior to hiring a new employee, appointing a new employee, or transferring an existing employee to a position requiring POST certification, a law enforcement agency shall determine if the person has a record contained in the POST misconduct database. If the person is listed in the database and the law enforcement agency proceeds to employ the person in a position requiring POST certification, the agency shall notify the POST Board of the hire, appointment, or transfer.

**Duty to report excessive force.** The bill clarifies that local law enforcement and CSP officers have the duty to report the use of excessive force.

**POST database.** The bill clarifies and adds information required to be included in the POST Board database related to peace officer misconduct. Any person or law enforcement agency that provides inaccurate data is subject to a fine set in rule by the POST Board. By January 1, 2022, the POST Board is required to adopt procedures to allow a peace officer to seek review of their status based on new evidences or circumstances not previously provided to show the peace officer's record may be removed from the database.

**Contacts – profiling.** The bill defines "legal basis" as it pertains to making a contact.

**Body-worn Camera Fund.** The bill requires the General Assembly to appropriate \$2.0 million in FY 2021-22 from the General Fund to the Body-worn Camera Fund to make grants to local law enforcement agencies.

**Radio encryption.** The bill requires municipal police departments and county sheriff's offices that encrypts all of its radio communications to create a policy, with input from members of the media based in Colorado, which includes a process for developing an agreement governing access to radio communications through commercially available radio receivers or scanners to the media. Such policy may include, but not limited to, verification of media credentials, reasonable restrictions on the use of the commercially available radio receivers or scanners, and financial or other costs related to the sale, lease or loan of the commercially available radio receivers or scanners.

**Records of official actions.** The bill expands public access internal investigation records upon completion of the investigation.

**No-knock and forced entry study group.** The bill requires the Attorney General to convene a 12-member study group to study procedures related to the use of no-knock entry warrants and forced entry. Members serve without compensation. The study group is required to report its finding and recommendations to the Attorney General by December 31, 2021, and the Attorney General must include these findings in its annual SMART Act report.

**Best practices in policing study.** The bill requires the Division of Local Government to contract with a nationally recognized research and consulting entity to assess and provide a report on evidence-based policing national best practices. The interim study is due December 30, 2021, and the final study is due July 1, 2022. In addition, the division is required to convene an advisory committee for the study, appointed by legislative leadership.

## State Revenue

Beginning in FY 2021-22, to the extent the bill increases civil case filings or POST Board fines, state fee and fine revenue will increase. This revenue is subject to TABOR.

## State Expenditures

Beginning in FY 2021-22, the bill will increase costs in the Department of Personnel and Administration, the Department of Public Safety, and the Department of Local Affairs. Workload will also increase in the Department of Law and the Judicial Department. Costs are shown in Table 2 and described below.

**Table 2**  
**Expenditures Under HB 21-1250**

| <b>Cost Components</b>  | <b>FY 2021-22</b>  | <b>FY 2022-23</b>  |
|---|--------------------|--------------------|
| <b>Department of Personnel and Administration<sup>1</sup></b> |                    |                    |
| Risk Management – Legal Services                              | \$582,742          | \$582,742          |
| Risk Management – Settlements                                 | \$2,000,000        | \$2,000,000        |
| FTE – Legal Services  | 3.0 FTE            | 3.0 FTE            |
| <b>DPA Subtotal</b>   | <b>\$2,582,742</b> | <b>\$2,582,742</b> |
| <b>Colorado State Patrol (DPS)</b>                            |                    |                    |
| Personal Services   | \$699,234          | \$863,901          |
| Operating Expenses  | \$10,800           | \$10,800           |
| Capital Outlay Costs  | \$49,600           | -                  |
| CSP Academy/Training  | \$126,612          | -                  |
| Vehicle Leases  | \$53,280           | \$106,560          |
| Body-worn Cameras and Cloud Storage                           | \$23,742           | \$7,242            |
| Centrally Appropriated Costs <sup>2</sup>                     | \$251,802          | \$269,228          |
| FTE – Personal Services                                       | 8.0 FTE            | 8.0 FTE            |
| <b>CSP Subtotal</b>   | <b>\$1,215,070</b> | <b>\$1,257,731</b> |

**Table 2  
Expenditures Under HB 21-1250 (Cont.)**

| <b>Cost Components</b>                        | <b>FY 2021-22</b>  | <b>FY 2022-23</b>  |
|---|--------------------|--------------------|
| <b>Colorado Bureau of Investigation (DPS)</b> |                    |                    |
| Personal Services                             | \$702,911          | \$758,529          |
| Operating Expenses                            | \$8,100            | \$8,100            |
| Capital Outlay Costs                          | \$37,200           | -                  |
| Vehicle Lease and Mileage Costs               | \$62,061           | \$62,061           |
| Training Costs                                | \$36,000           | \$36,000           |
| Field Agent and Crime Scene Equipment         | \$219,176          | -                  |
| Leased Space                                  | \$36,300           | \$39,600           |
| Centrally Appropriated Costs <sup>2</sup>     | \$274,869          | \$225,596          |
| FTE – Personal Services                       | 5.5 FTE            | 6.0 FTE            |
| <b>CBI Subtotal</b>                           | <b>\$1,376,617</b> | <b>\$1,129,886</b> |
| <b>Body-Worn Camera Fund (DPS)</b>            |                    |                    |
| Grants  | \$2,000,000        | -                  |
| <b>BWC Subtotal</b>                           | <b>\$2,000,000</b> | <b>-</b>           |
| <b>Department of Local Affairs</b>            |                    |                    |
| Contract                                      | \$250,000          | -                  |
| <b>DOLA Subtotal</b>                          | <b>\$250,000</b>   | <b>-</b>           |
| <b>Total</b>                                  | <b>\$7,424,429</b> | <b>\$4,970,359</b> |
| <b>Total FTE</b>                              | <b>16.5 FTE</b>    | <b>17.0 FTE</b>    |

<sup>1</sup> First-year legal and settlement costs will be paid using available funds in the Risk Management Fund in the Department of Personnel and Administration. For FY 2022-23 and future years, these costs will be paid by the Department of Public Safety with Highway Users Tax Fund (HUTF) and General Fund money through common policy assessments based on actual legal and settlement costs incurred.

<sup>2</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Personnel and Administration.** Removing government immunity for Colorado State Patrol officers is expected to increase lawsuits filed against the state, which will increase costs in the state's Risk Management Program, administered by the DPA. Cost estimates are based on the data and assumptions detailed below, and include legal defense costs and settlement payments. First-year costs will be paid using available reappropriated funds in the Risk Management Fund. Out-year costs will be paid by the Department of Public Safety using 43 percent General Fund and 57 percent HUTF.

- **Data and assumptions.** Over the past five-year period, the state has received an average of 14 claims per year filed against peace officers employed by the Department of Public Safety. Of these, an average of 4 claims involved lawsuits and an average of 1 claim was awarded a settlement. This analysis assumes that the removal of government immunity will significantly increase the number of claims filed against the state, estimated at 5 times the current average, resulting in an increase of 56 claims, 15 lawsuits, and 4 settlements per year.

- **Legal services.** Assuming that of the approximately 56 new claims estimated to be filed against CSP officers per year, each will require initial legal services of 30 hours per case, and 15 will require adjudication in court requiring an additional 250 hours per case. Legal services will be provided by the Department of Law at a rate of \$106.34 per hour, and this cost will be fully reappropriated to the department with 3.0 FTE.
- **Settlements.** CSP-related settlements have averaged \$173,961 over the past five years. However, without the Colorado Governmental Immunity Act tort cap, currently set at \$387,000, settlements will likely exceed prior amounts. Assuming 4 new cases result in settlements per year, and that the average cost will be approximately \$500,000 per settlement, including attorney's fees, this will result in \$2.0 million paid from the Risk Management Fund each year.
- **Costs to be addressed through the annual budget process.** The state's actual costs will depend on a number of factors, including the number and complexity of cases, case outcomes, and the timing of cases and judgments. Depending on the number of cases annually, costs may vary from year to year or be spread out over a number of years. It is assumed that ongoing costs will be addressed through the annual budget process once more information on cases and settlements are known.

The state's liability policy, which is paid through DPA's State Liability Pool, is also expected to incur increased expenditures under the bill, which will be passed to state agencies through the operating common policies. This expenditure increase will be addressed through the annual budget process as actual insurance policy costs are known.

Finally, the DPA may have increased costs in the Office of Administrative Courts related to use of force investigations. This will be addressed through the annual budget process as the number of complaints are known.

- **Mitigating factors.** The policies, procedures, training requirements, and enforcement mechanisms created by this bill and Senate Bill 20-217 may reduce lawsuits filed against the Colorado State Patrol.

**Department of Public Safety.** Current law requires multi-agency investigations into any officer-involved civilian deaths by shooting. The bill expands this definition to all officer-involved civilian deaths. Data on officer-involved civilian deaths and injuries from January 1, 2010, through July 1, 2020, show 329 cases involved a firearm and 112 did not over the past ten years. As a result, it is expected that the Department of Public Safety will be called to assist Critical Incident Response Teams around the state, particularly in areas of the state that do not have adequate resources to meet the investigation requirements under the bill, for all life-threatening injuries. The department requires 13.0 FTE split between the Colorado State Patrol and the Colorado Bureau of Investigation, as it is currently unable to absorb any additional workload.

- **Colorado State Patrol.** The Colorado State Patrol will provide Critical Incident Response Team support in conducting use of force investigations for up to 222 law enforcement agencies in Colorado, particularly in rural areas. Staff includes 4.0 FTE sergeants to cover the four corners of the state, and 2.0 FTE sergeants to cover the Denver metro area, with 1.0 administrative assistant in support. Per-case workload will include investigation assignment and classification; video and

audio review; report and documentation review; witness interview; policy, training, and law review; subject matter expert interview; officer interview; report completion; transcription; and administrative responsibilities. Finally, the bill's increased access to internal affairs records requires 1.0 FTE Administrative Assistant III. These costs are paid from the HUTF.

- **Colorado Bureau of Investigation.** Costs in the CBI will increase by 6.0 FTE. Whether directly requested or involved through a community's incident response team, caseload in the CBI will increase to meet the bill's requirement for multi-agency review for peace officer-involved incidents resulting in death. Additional CBI staff will be distributed between CBI's regional offices in Denver, Grand Junction, and Pueblo.
- **Body-worn Camera Grants.** The bill appropriates \$2.0 million to the Body-worn Camera Fund in the Division of Public Safety. It is expected that any administrative costs related to grant-making can either be absorbed or paid from the fund.

**Department of Local Affairs.** In FY 2021-22, the Division of Local Government requires \$250,000 one-time to contract with an entity to perform analysis and reporting on best policing practices.

**Department of Law.** In addition to legal services provided to the DPA by the department, the POST Board will have a minimal workload increase under the bill. As resources were provided for the POST Board in SB 20-217, no change in appropriations is required. The Office of the Attorney General will also have an increase in workload to support the work of the no-knock and forced entry study group; it is assumed this workload can be accomplished within existing appropriations.

**Judicial Department.** The bill is expected to increase civil case filings, which will increase trial court workload. This workload increase can be accomplished within existing resources.

**TABOR refunds.** The bill may increase the amount of state revenue required to be refunded to taxpayers. TABOR refunds are paid from the General Fund. This estimate is based on the June 2021 LCS revenue forecast, which incorporates the revenue impacts of bills passed during the 2021 session. A forecast of state revenue subject to TABOR is not available beyond FY 2022-23.

## Local Government

Costs and workload will increase for local law enforcement agencies to conduct investigations into all officer-involved civilian deaths. Local government agencies involved in Critical Incident Response Teams include police departments, sheriff's offices, and district attorney's offices. Workload includes investigating, evaluating, and reviewing any incident where injury or death occurred. District attorney's offices are also required to write and release a written report explaining the district attorney's findings when no charges are being brought against the officer. In addition, the bill will increase workload and potential costs for local law enforcement agencies to create policies and procedures to allow media access where radios are currently encrypted.

## Effective Date

The bill was signed into law by the Governor on July 6, 2021, and took effect on that date, except that Section 8 of the bill applies to use of force conduct on or after January 1, 2022.

## State Appropriations

For FY 2021-22, the bill requires and includes the following appropriations:

- \$963,268 from the Highway Users Tax Fund to the Colorado State Patrol and 8.0 FTE;
- \$1,101,748 from the General Fund to the Colorado Bureau of Investigation and 5.5 FTE;
- \$2,000,000 from the General Fund to the Body-worn Camera Fund in the Department of Public Safety;
- \$582,742 in reappropriated funds to the Department of Law from the continuously appropriated Risk Management Fund with 3.0 FTE; and
- \$250,000 from the General Fund to the Department of Local Affairs.

## State and Local Government Contacts

|           |                    |                        |
|-----------|--------------------|------------------------|
| Counties  | District Attorneys | Information Technology |
| Judicial  | Law                | Municipalities         |
| Personnel | Public Safety      | Sheriffs               |