



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated April 20, 2024)

Table with 2 columns: Field (Drafting Number, Prime Sponsors, Date, Bill Status, Fiscal Analyst) and Value (LLS 24-0945, Rep. Herod; Bacon, April 29, 2024, House Second Reading, Aaron Carpenter | 303-866-4918, aaron.carpenter@coleg.gov)

Bill Topic: LAW ENFORCEMENT MISCONDUCT

Table with 2 columns: Category (Summary of Fiscal Impact) and Options (State Revenue, State Transfer, Local Government, State Expenditure, TABOR Refund, Statutory Public Entity)

The bill requires law enforcement agencies and peace officers to investigate allegations of unlawful conduct and provides additional protections for whistleblowers from retaliation. The bill increases state and local workload and decreases local revenue.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This revised fiscal note reflects the introduced bill, as amended by the House Judiciary Committee.

Summary of Legislation

The bill requires law enforcement agencies and peace officers to investigate allegations of unlawful conduct and provides additional protections for whistleblowers from retaliation.

Investigation of unlawful conduct required. The bill requires a law enforcement agency or peace officer who receives an allegation of unlawful conduct under the duty to report statute to investigate the allegation and retain all reports and related investigation documentation for ten years, or the length of the officer's employment, whichever is longer. If the investigation does not occur, the person making the allegation may file a discrimination complaint with the Colorado Civil Rights Division in the Department of Regulatory Agencies (DORA). If a peace officer in a supervisory capacity fails to report unlawful conduct, the Peace Officer Standards and Training (POST) Board may revoke the officer's POST certification and the Attorney General may add the peace officer to its peace officer misconduct database.

Audits by the Attorney General. Under current law, law enforcement agencies must report certain information regarding peace officer misconduct to the POST Board for posting on its officer misconduct database. The bill requires the Attorney General to annually notify all law enforcement agencies and peace officers in the state of this reporting requirement. The bill allows the Attorney General to audit law enforcement agencies to ensure compliance with this reporting requirement, accept and investigate reports of noncompliance, and to make requests

for information or issue subpoenas as necessary. If an audit reflects that a peace officer should be added or removed from the misconduct database, the Attorney General may make that change.

**Fee prohibition.** The bill prohibits law enforcement agencies from charging a fee to release unedited video and/or audio recordings of officer-involved shootings or incidents involving alleged misconduct from body-worn cameras, dash cameras, or otherwise collected through investigation. The bill requires recordings to be released within 45 days of the request.

**Whistleblower protections.** The bill expands the list of actions that constitute retaliation against a whistleblower and allows a peace officer who was retaliated against to file a discrimination complaint with the Colorado Civil Rights Division.

**Investigation documentation.** In addition to retaining investigation documents for ten years or the length of an officer's employment, an investigating law enforcement agency must provide a copy of the investigation file to the subject of the investigation once the investigation is complete.

## Assumptions

The fiscal note assumes that "unlawful conduct" means conduct that is against the law. It assumes that allegations of peace officer unlawful misconduct are already being reported to law enforcement agencies and that agencies are following internal policies to investigate and respond to such complaints, and reporting certain findings to the POST Board. To the extent that there are law enforcement agencies or individual peace officers who do not follow the law, workload will increase for internal investigations in that agency.

## State Expenditures

Starting in FY 2024-25, the bill increases workload in the Department of Law and state agencies employing peace officers.

**Department of Law.** Workload for the Attorney General will increase to audit law enforcement agencies to ensure compliance with misconduct reporting requirements and to investigate reports of noncompliance. Because the bill gives permissive authority to audit and investigate reporting, the fiscal note assumes the department will prioritize requests within existing resources. However, if the General Assembly intends for the Attorney General to perform regular auditing and investigate every report of noncompliance, the department requires 2.0 FTE at a cost of about \$150,000 per year.

Workload for the POST Board will increase to the extent determinations are required on whether a POST certification should be revoked for failure to report unlawful conduct. The fiscal note assumes that this workload can be accomplished within existing appropriations.

Finally, the Department of Law will advise agencies employing peace officers on the bill's requirements. No change in appropriations is required.

**Civil Rights Division – Department of Regulatory Agencies.** By designating failure to investigate unlawful conduct and retaliating against a whistleblower as actions eligible for an employment discrimination claim, the bill may increase workload to the Civil Rights Division. The fiscal note estimates that any increased workload will be minimal, as whistleblower complaints can be brought under current employment law and law enforcement agencies are assumed to follow the law.

**All state agencies.** All state agencies that employ POST-certified law enforcement officers will have a minimal workload increase to train officers on the bill's provisions, respond to reporting audits from the Attorney General, and expedite the release of recordings. These agencies include the Departments of Corrections, Human Services, Law, Natural Resources, Public Safety, Regulatory Agencies, and Revenue and institutions of higher education. The fiscal note assumes these agencies currently comply with the law and conduct investigations involving unlawful conduct by a peace officer.

## Local Government and Statutory Public Entity

Similar to the state, local and statutory public entity law enforcement will have a minimal workload increase to train officers on the bill's provisions, respond to reporting audits from the Attorney General, and expedite the release of recordings. In addition, costs may increase to the extent there are additional investigations by law enforcement agencies or district attorney offices. The fiscal note assumes these agencies currently comply with the law and conduct investigations involving unlawful conduct by a peace officer; however, workload may increase in agencies that are not following this practice.

To the extent local law enforcement agencies are charging requestors for recordings, the bill will decrease revenue to those agencies. Estimates of lost revenue are in the tens of thousands.

## Effective Date

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

## Departmental Difference

Some departments canvassed for this bill estimate that the bill will result in increased expenditures to investigate unlawful conduct. As discussed in the Assumptions section, the fiscal note does not include these costs because "unlawful conduct" is something that law enforcement agencies are already charged with investigating.

**Law.** As discussed above, if the bill's intent is to have the Attorney General perform regular audits of misconduct reporting requirements, the department requires about \$150,000 and 2.0 FTE per year. The fiscal note interprets that the department's audit and investigation authority under the bill are permissive and will be prioritized within existing resources, and has not included these costs.

The department also estimates costs of about \$230,000 and 1.0 FTE per year to provide legal services to the Department of Corrections and the Department of Public Safety in implementing the bill. The Department of Corrections has responded that it has no fiscal impact under the amended bill, and the Department of Public Safety is assumed to perform investigations of unlawful conduct under current law. As a result, the fiscal note has not included these additional legal services hours.

**Natural Resources.** The Department of Natural Resources estimates that the bill increases cash fund expenditures by \$133,000 in FY 2024-25 and \$123,000 in FY 2025-26 to hire 1.3 FTE to investigate complaints. The fiscal note assumes the department performs investigations of unlawful conduct under current law and has not included costs for an investigator.

**Public Safety.** The Department of Public Safety estimates that the bill will increase General Fund expenditures by about \$4.3 million and 24.0 FTE in FY 2024-25 and \$3.7 million and 24.0 FTE in FY 2025-26. This estimate includes 4.0 FTE troopers and 4.0 FTE technicians for investigations at the Colorado State Patrol (CSP), and 16.0 FTE agents for the Colorado Bureau of Investigation to assist local law enforcement in investigations. First-year costs also include an information technology system update.

The fiscal note does not include the CSP's costs because they are largely based on allegations of misconduct that are already investigated under current law. Last year, the CSP received 331 allegations of misconduct, which resulted in 317 unique investigations, of which 68 were investigated by the Professional Standards Unit in DPS and the remainder where investigated locally. The fiscal note assumes that the CSP's current practices meet the standards of the bill.

The fiscal note does not include the CBI's costs because they are discretionary. Under current law, local law enforcement agencies can request CBI's assistance in criminal investigations, at the discretion of CBI's director. The bill does not require the CBI to assist local law enforcement in investigations of peace officer unlawful conduct. The fiscal note assumes that if a peace officer is being accused of committing a crime and a local law enforcement agency needs assistance, the CBI will prioritize providing services within its appropriations.

**Revenue.** The Department of Revenue estimates the bill increases General Fund expenditures by \$98,000 in FY 2024-25 and \$79,000 to hire an additional 1.0 FTE to investigate complaints. The fiscal note assumes the department performs investigations of unlawful conduct under current law and has not included costs for an investigator.

## State and Local Government Contacts

Corrections	Counties	Higher Education
Human Services	Judicial	Law
Municipalities	Natural Resources	Personnel
Public Safety	Regulatory Agencies	Revenue

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The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the [General Assembly website](#).