



**Legislative Council Staff**  
*Nonpartisan Services for Colorado's Legislature*

# Fiscal Note

**Drafting Number:** LLS 21-0747  
**Prime Sponsors:** Sen. Lundeen

**Date:** April 06, 2021  
**Bill Status:** Senate SVMA  
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**Bill Topic:** **LAW ENFORCEMENT SUPPORT AND ACCOUNTABILITY**

**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 checked="" type="checkbox"/> Statutory Public Entity

The bill allows civil action to be taken against Department of Public Safety peace officers; requires Colorado Bureau of Investigation agents to use body-worn cameras; and makes other adjustments to provisions of Senate Bill 20-217. It will increase state expenditures on an ongoing basis.

**Appropriation Summary:** For FY 2021-22, the bill requires an appropriation of \$2.7 million to the Department of Personnel and Administration.

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

**Table 1**  
**State Fiscal Impacts Under SB 21-183**

	Budget Year FY 2021-22	Out Year FY 2022-23	Out Year FY 2023-24	Out Year FY 2024-25
<b>Revenue</b>	-	-	-	-
<b>Expenditures<sup>1</sup></b>				
General Fund	-	\$1,146,725	\$1,353,245	\$1,245,995
HUTF	-	\$1,520,077	\$1,520,077	\$1,520,077
Risk Mgmt. Fund	\$2,666,802	-	-	-
<b>Total Expenditures</b>	<b>\$2,666,802</b>	<b>\$2,666,802</b>	<b>\$2,873,322</b>	<b>\$2,766,072</b>
<b>Total FTE</b>	<b>5.1 FTE</b>	<b>5.1 FTE</b>	<b>5.1 FTE</b>	<b>5.1 FTE</b>
<b>Transfers</b>	-	-	-	-
<b>TABOR Refund</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 the actual legal and settlement costs incurred.

## **Summary of Legislation**

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

**Civil action against state law enforcement.** 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 and Colorado Bureau of Investigation agents in the Department of Public Safety. Statutory immunities and limitations on liabilities, damages, or attorney fees do not apply to these claims.

**Use of force.** Senate Bill 20-217 set certain limitations on the use of force by peace officers. This bill modifies these provisions to allow use of force if it prevents another person from using unlawful physical force against the officer or another person.

**Duty to intervene.** Senate Bill 20-217 created a duty to intervene when a peace officer uses excessive use of force. This bill defines "intervene" to mean that a peace officer, while engaged in an official capacity, acts to prevent another officer from subjecting a person to excessive physical force. The bill also provides additional detail on a peace officer's duty to intervene. Specifically, the duty arises when an officer observes the use of unlawful force, knows that the force another officer is using or is about to use is unlawful, has a reasonable opportunity to act to prevent the harm from occurring, and fails to intervene.

**Peace officer certification revocation.** Under Senate Bill 20-217, a revocation of a peace officer's certification may only be overturned if the peace officer is exonerated by a court. The bill removes this provision. Instead, any suspension or revocation of a peace officer's certification is not effective until the peace officer has exhausted all internal, contractual, and legal rights to review, challenge, and appeal the underlying finding or decision.

**POST Board.** By January 1, 2022, the bill requires the Peace Officer Standards and Training (POST) Board in the Department of Law to adopt procedures that allow a peace officer to seek a review of their status in the POST Board database.

**Definition of untruthfulness.** For purposes of POST Board database tracking, the bill defines "untruthfulness" to mean a peace officer made an untruthful statement concerning a material fact or knowingly omitted a material fact on an official criminal justice record, while testifying under oath, or during an internal affairs investigation or administration investigation and disciplinary process.

**Definition of contact.** SB 20-217 required local law enforcement and the Colorado State Patrol to report on all interactions with individuals, or "contacts." The bill adds the Colorado Bureau of Investigation to this reporting requirement and redefines "contact" to mean an interaction with an individual who is the subject of an investigation of a possible violation of the law, whether or not the person is in a motor vehicle. "Contact" is initiated by a peace officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating a possible violation of the law. "Contact" does not include a routine interaction with the public at the point of entry or exit from a controlled area or a non-investigatory and consensual interaction with the public.

**Body-worn cameras.** The bill adds Colorado Bureau of Investigation agents to the Senate Bill 20-217 provisions related to body-worn camera requirements.

The bill also modifies the provisions on when a body-worn camera may be turned off. A peace officer may turn off a body-worn camera if requested by a person whom the peace officer reasonably believes is a victim or a witness and if the request is documented on the body-worn camera recording or on a statement signed by the requestor. The peace officer is required to document the reason for the request from the victim or witness to turn off the body-worn camera if a reason is given.

**State Revenue**

To the extent the bill increases civil case filings, state revenue from civil filing fees will increase beginning in FY 2021-22. This fee revenue is subject to TABOR.

**State Expenditures**

The bill will increase Risk Management Fund costs in the Department of Personnel and Administration (DPA), and General Fund and HUTF costs in the Department of Public Safety (DPS). 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 SB 21-183<sup>1</sup>**

<b>Cost Components</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>	<b>FY 2023-24</b>	<b>FY 2024-25</b>
<b>Department of Personnel and Administration</b>				
Risk Management – Legal Services	\$975,112	\$975,112	\$975,112	\$975,112
Risk Management – Settlements	\$1,691,690	\$1,691,690	\$1,691,690	\$1,691,690
FTE – Legal Services	5.1 FTE	5.1 FTE	5.1 FTE	5.1 FTE
<b>DPA Subtotal</b>	<b>\$2,666,802</b>	<b>\$2,666,802</b>	<b>\$2,666,802</b>	<b>\$2,666,802</b>
<b>Department of Public Safety</b>				
Body-Worn Cameras/Contract	-	-	\$138,520	\$49,270
Centralized Software	-	-	\$68,000	\$50,000
<b>DPS Subtotal</b>	<b>-</b>	<b>-</b>	<b>\$206,520</b>	<b>\$99,270</b>
<b>Total</b>	<b>\$2,666,802</b>	<b>\$2,666,802</b>	<b>\$2,873,322</b>	<b>\$2,766,072</b>
<b>Total FTE</b>	<b>5.1 FTE</b>	<b>5.1 FTE</b>	<b>5.1 FTE</b>	<b>5.1 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 the actual legal and settlement costs incurred.

**Department of Personnel and Administration.** Costs will increase in the state's Risk Management Program, administered by DPA. Cost estimates are based on the data and assumptions detailed below, and include legal defense costs and settlement payments. First-year costs are will be paid using available money in the Risk Management Fund.

- **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 DPS. Of these, an average of 4 claims involved lawsuits and an average of 1 claim was awarded a settlement. This analysis assumes that the bill will significantly increase the number of claims received by the state, estimated at 5 times the current average (shown as 4 times the current average, to represent the incremental increase).
- **Legal services.** The bill is expected to increase legal services by 9,170 hours per year at a rate of \$106.34 per hour. This assumes that approximately 56 new claims are filed against DPS officers and agents per year requiring initial legal services at 75 hours per claim. Further, it is assumed that 15 of these claims will be adjudicated in court per year requiring an additional 325 hours per case. Legal services will be provided by the Department of Law, and this cost will be fully reappropriated to the department with 5.1 FTE.
- **Settlements.** Assuming approximately 4 cases result in settlements per year, and that each settlement will be paid out at double the current average cost, which is about \$350,000 per settlement, \$1.4 million will be paid from the Risk Management Fund each year. In addition, the cost to cover plaintiff's attorney fees are estimated at \$75,000 per settled case, or \$300,000 per year, also paid from the Risk Management Fund.
- **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.

**Department of Public Safety.** Beginning in FY 2023-24, the DPS will purchase 35 body-worn cameras for its Colorado Bureau of Investigation agents. The per-unit cost per camera is \$3,957, including \$2,550 for one-time camera and training costs, with the remaining \$1,407 representing an ongoing cost for cloud-based camera support and services. In addition, centralized software costs of \$68,000 are required, including \$18,000 for one-time tracking software and \$50,000 ongoing for video redaction software. Cameras will be replaced on a 4-year cycle.

**Department of Law.** In addition to legal services provided to the DPA by the department, the POST Board will have a minimal workload increase to adopt procedures to allow review of database information by peace officers. As resources were provided for POST database updates in SB 20-217, no change in appropriations is required.

**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 state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

## **Effective Date**

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed; except that Section 7 of the act concerning body-worn camera requirements for the Colorado Bureau of Investigation takes effect on July 1, 2023.

## **State Appropriations**

For FY 2021-22, the bill requires an appropriation of \$2,666,802 from the Risk Management Fund to the Department of Personnel and Administration, of which \$975,112 is reappropriated to the Department of Law with 5.1 FTE.

## **State and Local Government Contacts**

Counties	Information Technology	Judicial
Law	Municipalities	Personnel
Public Safety	Sheriffs	