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Revised Fiscal Note

(replaces fiscal note dated April 6, 2021)

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

Date: April 19, 2021
Bill Status: Senate SVMA
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Bill Topic: LAW ENFORCEMENT SUPPORT AND ACCOUNTABILITY

- Summary of Fiscal Impact:
- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- 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: The Risk Management Fund is continuously appropriated to the Department of Personnel and Administration. See State Appropriations section.

Fiscal Note Status: The revised fiscal note reflects the introduced bill. It has been updated to reflect modified assumptions about legal and settlement costs.

Table 1
State Fiscal Impacts Under SB 21-183

Table with 5 columns: Category, Budget Year (FY 2021-22), Out Year (FY 2022-23), Out Year (FY 2023-24), Out Year (FY 2024-25). Rows include Revenue, Expenditures (General Fund, HUTF, Risk Mgmt. Fund, 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.

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 21-183¹**

Cost Components	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
Department of Personnel and Administration				
Risk Management – Legal Services	\$582,742	\$582,742	\$582,742	\$582,742
Risk Management – Settlements	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
FTE – Legal Services	3.0 FTE	3.0 FTE	3.0 FTE	3.0 FTE
DPA Subtotal	\$2,582,742	\$2,582,742	\$2,582,742	\$2,582,742
Department of Public Safety				
Body-Worn Cameras/Contract	-	-	\$138,520	\$49,270
Centralized Software	-	-	\$68,000	\$50,000
DPS Subtotal	-	-	\$206,520	\$99,270
Total	\$2,582,742	\$2,582,742	\$2,789,262	\$2,682,012
Total FTE	3.0 FTE	3.0 FTE	3.0 FTE	3.0 FTE

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.

Department of Personnel and Administration. Removing government immunity for Colorado State Patrol officers and Colorado Bureau of Investigation agents is expected to increase lawsuits filed against the state, which will increase costs 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 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 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 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 are expected to mitigate serious lawsuits against the Colorado State Patrol.

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 a reappropriation of \$582,742 to the Department of Law from the continuously appropriated Risk Management Fund with 3.0 FTE.

State and Local Government Contacts

Counties	Information Technology	Judicial
Law	Municipalities	Personnel
Public Safety	Sheriffs	