



Colorado Legislative Council Staff Fiscal Note
STATE and LOCAL
REVISED FISCAL IMPACT
 (replaces fiscal note dated March 25, 2013)

Drafting Number: LLS 13-0840 **Date:** April 4, 2013
Prime Sponsor(s): Sen. Hudak **Bill Status:** House Appropriations
 Rep. McCann; Fields **Fiscal Analyst:** Kerry White (303-866-3469)

TITLE: CONCERNING PREVENTING PERSONS WHO HAVE COMMITTED DOMESTIC VIOLENCE FROM POSSESSING FIREARMS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue		
Cash Funds		
Fines Collection Cash Fund	<\$5,000	<\$5,000
State Expenditures		
General Fund	at least \$45,742	at least \$44,658
FTE Position Change	at least 0.8 FTE	at least 0.8 FTE
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.		
Appropriation Summary for FY 2013-2014: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

As amended by the House Judiciary Committee, this reengrossed bill imposes new requirements on the transfer of firearms and ammunition (firearm) for persons subject to certain civil protection orders, mandatory protection orders, and persons convicted of offenses with an underlying domestic violence component.

Civil protection orders. When a court issues a civil protection order to prevent domestic abuse and it qualifies as an order subject to the federal Gun Control Act (see Background section below), the court is required to order the respondent (restricted person) to refrain from possessing or purchasing a firearm or ammunition. In addition, the restricted person must, for the duration of the order, relinquish any firearms in his or her immediate possession or control within 24 hours or 48 hours, depending on where the notification of the order occurs. If he or she is in custody, the court may require relinquishment for the duration of the order as a condition of bond.

Mandatory protection orders. When a court issues a mandatory protection order as a result of a criminal act, the defendant or offender, if convicted, (referred to herein as a restricted person) is also prohibited from possessing or purchasing a firearm and must, for the duration of the order, relinquish any firearms in his or her immediate possession or control within 24 hours. If he or she is in custody, the court may require relinquishment for the duration of the order as a condition of bond.

Domestic violence acts within other crimes. When a person is sentenced for a crime and the underlying factual basis for the crime is found by the court to include an act of domestic violence as defined in 18 U.S.C. §921 (a)(33), or a crime that is punishable by at least one year of incarceration and included an act of domestic violence under state law, he or she is also subject to firearm restrictions. The offender is required to relinquish any such items in his or her possession within 24 hours. If in custody, the court may require relinquishment for the duration of the order as a condition of bond.

Process for relinquishing firearms and ammunition. To satisfy the requirements for relinquishing a firearm, the restricted person must, within the bill's timeframes:

- sell or transfer possession of the firearm to a federally licensed firearms dealer;
- arrange for the storage of the firearm by a law enforcement agency; or
- sell or transfer the firearm to a private party who has been approved to possess or purchase a firearm by a background check conducted by the Colorado Bureau of Investigation (CBI), upon the request of a licensed firearms dealer.

If the restricted person cannot relinquish the firearm because he or she is incarcerated or in custody, the court shall require the restricted person to satisfy the requirement to relinquish within 24 hours of release or be held in contempt of court. The court may also require relinquishment in order to be released from custody. Failure to comply also constitutes contempt. In all cases, the court may allow 72 hours for compliance if the restricted person can demonstrate to the court's satisfaction that he or she was not able to comply with the lesser time frames.

Prior to returning a firearm to a restricted person, a firearms dealer or local law enforcement entity is required to contact the CBI to request a background check and obtain approval for the transfer after the background check.

Verification of compliance for relinquishing firearms and ammunition. A person who takes possession of a firearm from a restricted person is required to issue a receipt to the restricted person at the time of relinquishment. In addition, if the restricted person sells or transfers the firearm to a private party, he or she must obtain a written statement from the licensed firearms dealer containing information about the results of the background check. Within three business days of completing the relinquishment, the restricted person must file a copy of the receipt with the court, and, if applicable, the written statement describing the background check results.

Local law enforcement entities. If a local law enforcement agency opts to store firearms, it is authorized to charge fees to cover its direct and indirect costs. It may also establish policies for disposal of abandoned or stolen firearms. If an agency chooses to end its storage program, it is required to provide notice to each restricted person. A restricted person, or his or her representative who is legally able to possess a firearm, has 90 days within which to make arrangements for the collection, sale, or transfer of the stored items. If the restricted person fails to respond, the agency may dispose of the firearm. Local law enforcement agencies acting in good faith are exempted from civil and criminal liability for actions related to the firearms of restricted persons.

Penalties. Failure to file information verifying compliance with the relinquishment of firearms in a timely manner among persons subject to a civil or mandatory protection order constitutes a violation of the order. As described in the Background section below, a violation of a protection order is either a class 1 or a class 2 misdemeanor. For domestic violence-related offenses, the bill creates a new class 2 misdemeanor for failure to relinquish after issuance of the sentencing order. In all such cases, the court must issue a warrant for the restricted person's arrest if he or she does not file the paperwork within the required time frames. In any subsequent violation of a protection order, the court shall take judicial notice of the restricted person's failure to file the paperwork verifying compliance with relinquishment.

Background

According to the Colorado Criminal Information Center, between calendar years 2010 and 2012, there were a total of 41,244 victims of domestic violence in Colorado, averaging 13,748 victims per year. However, the data show that the increase between calendar years 2011 and 2012 was 11.6 percent, compared to the 3.6 percent increase between calendar years 2010 and 2011. There were 190,263 active protection orders in Colorado as of January 31, 2013. Only a portion of these protection orders meet the criteria of this bill, although the exact number was not available as of this writing.

In certain instances, Colorado law allows a court to restrict possession of firearms. For example, persons convicted of a felony are subject to such restrictions. Persons subject to a mandatory (criminal) or civil protection order may also be restricted if the protection order is issued to prevent domestic abuse.

Federal restrictions. Under 18 U.S.C. §922 (d)(8) and (g)(8), a person may not possess or transfer a firearm if he or she is subject to a court order that restrains that person from harassing, stalking, or threatening an intimate partner or his or her child, or engaging in other conduct that places an intimate partner or child in reasonable fear of bodily injury. This court order must have been issued after a show cause hearing was held in which the restrained person was provided notice and allowed to participate. In addition, the court must find the restrained person represents a credible threat or the protected person has reason to fear serious bodily injury, or that the restrained person has been convicted in a court of a prior misdemeanor crime of domestic violence. Violations affecting commerce may constitute a felony under federal law.

Colorado restrictions. When issuing a mandatory or civil protection order for applicable cases, Colorado courts notify the restrained person of federal requirements by checking a box on the "other provisions" section of the protection order. In addition to any federal penalty, failure to comply with any of the civil protection order's requirements, including the prohibition against firearms, is a class 2 misdemeanor for a first offense. Second and subsequent violations of a civil protection order or first violations of a mandatory protection order are a class 1 misdemeanor. A second or subsequent violation of any protection order is subject to modified sentencing as an extraordinary risk crime. In these cases, the restrained person would be subject to a class 1 misdemeanor with a maximum sentence of 24 months in jail, if incarceration is imposed as a part of the sentence.

State Revenue

Beginning in FY 2013-14, the bill may increase state revenue from fines or a finding of contempt, although less than \$5,000 in new state revenue is expected per year. If a person fails to timely file evidence that he or she has relinquished firearms and/or ammunition, it constitutes a violation of the protection order. As described in the Background section above, depending on the type of protection order and whether there was a previous offense, the offense is either a class 1 or a class 2 misdemeanor. According to Section 18-1.3-501, C.R.S., the fine penalty for a class 1 misdemeanor is \$500 to \$5,000, if imposed. The fine penalty for a class 2 misdemeanor is \$250 to \$1,000, if imposed. Fine revenue that is not otherwise appropriated is deposited into the Fines Collection Cash Fund in the Judicial Branch. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined. Given their infrequency, revenue from a finding of contempt is anticipated to be minimal.

State Expenditures

Overall, this bill will increase state General Fund expenditures by at least \$45,742 and 0.8 FTE in FY 2013-14 and \$44,658 and 0.8 FTE in FY 2014-15 within the Judicial Branch. All costs are based on the following assumptions:

Restricted persons

- there are about 22,000 new cases per year which meet the criteria of this bill, the further breakout of which is not available as of this writing;
- the rate of firearm ownership among restricted persons is assumed to be 50 percent or 11,000 persons, as compared to the estimated 33 percent rate among all Colorado adults;
- all persons currently subject to civil and mandatory protection orders for domestic abuse that meet the requirements of this bill already have a firearms restriction in place; and
- all persons currently convicted of crimes where the underlying factual basis for the crime is found by the court to include an act of misdemeanor domestic violence are assumed to be subject to a mandatory protection order and have a firearms restriction in place.

Relinquishment

- of the 11,000 persons required to relinquish a firearm, 50 percent will comply with the order to relinquish firearms and follow the process established by this bill; and
- of the non-compliant persons, only about 10 percent will be identified as such and have an arrest warrant issued.

Sales, transfers, and surrender of restricted firearms

- of the 50 percent or 5,500 persons who relinquish firearms, 75 percent, or 4,125 restricted persons will sell or transfer firearms and the other 25 percent, or 1,375 persons will surrender firearms to a local law enforcement agency, regardless of whether the agency has a storage program;
- of the 4,125 restricted persons who sell or transfer firearms, about 75 percent, or 3,095 persons, will sell or transfer the items to a licensed firearms dealer that does not require a background check or to a private party who has already completed a background check within 30 days;
- of the 4,125 restricted persons who sell or transfer firearms, about 25 percent, or 1,030 persons, will sell or transfer the items to a private party that will require a new background check from the CBI; and
- based on current denials, of the 1,030 new background checks, 2.3 percent or 24 people will fail and, of this number, 54 percent, or 13 people will request an appeal of the CBI.

Table 1 and the discussion that follows describe the costs of SB13-197.

Table 1. Expenditures Under SB13-197		
Cost Components	FY 2013-14	FY 2014-15
Personal Services	at least \$39,804	at least \$43,423
FTE	0.8	0.8
Operating Expenses and Capital Outlay	5,938	1,235
TOTAL	at least \$45,742	at least \$44,658

Judicial Branch. Of the 5,500 restricted persons who comply with the relinquishment requirements, an additional 15 minutes of clerk time is required to review each case record. Of the restricted persons who fail to comply with the relinquishment requirements, 10 percent, or 550 persons, will be identified as non-compliant. For each of the 550 non-compliant restricted persons identified, 15 minutes of a judicial officer's time is required to review the case record and issue an arrest warrant. As a result, the Judicial Branch requires at least 0.7 FTE division clerk and 0.1 FTE judicial officer (magistrate), at a cost of \$43,423 per year. First year costs are prorated for the General Fund payday shift and include capital outlay for the division clerk and operating costs for all FTE.

The analysis above assumes that the court will have contact with 6,050 of the total 11,000 restrained persons that are assumed to possess firearms and none of the 11,000 persons assumed to not possess firearms. However, to the extent that the court determines there is reason to suspect that

any of these persons are not in compliance with SB13-197, court costs will increase to set and review cases. This amount has not been estimated. Further, it is assumed that some of the restricted persons will be tried and convicted of a misdemeanor for failure to timely file proof of relinquishment. As discussed above, this crime is either a class 1 or a class 2 misdemeanor, depending on the circumstances of the case and number of prior offenses. The fiscal note assumes that case filings could increase by at least 550 (the number of persons assumed to have an arrest warrant issued) and the Judicial Branch will request additional appropriations through the annual budget process as necessary.

Office of the State Public Defender (OSPD). The OSPD may experience an increase in workload due to new case filings. These costs have not been estimated as of this writing.

Office of the Alternate Defense Counsel (ADC). The ADC represents clients when the OSPD has a conflict and, therefore, may incur costs under the bill. These costs have not been estimated but are anticipated to be minimal.

Expenditures Not Included

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. The centrally appropriated costs subject to this policy are summarized in Table 2.

Table 2. Expenditures Not Included Under SB13-197*		
Cost Components	FY 2013-14	FY 2014-15
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$5,373	\$5,373
Supplemental Employee Retirement Payments	2,665	3,015
TOTAL	\$8,038	\$8,388

*More information is available at: <http://colorado.gov/fiscalnotes>

Local Government Impact

Overall, this bill is anticipated to increase costs for local governments to investigate and prosecute new offenses under the bill and to house restricted persons identified as noncompliant with the bill's requirements or convicted of the new misdemeanor. Conditional upon the decision of a local government, costs may also increase for providing firearms storage.

New crime. The bill creates a new misdemeanor for an offender who fails to provide the court with proof of compliance with the requirement to relinquish any firearms or ammunition within established time frames. Depending on the case, this crime is a class 1 or a class 2 misdemeanor. The addition of a new crime will increase workload and expenditures in district attorneys' offices, county sheriffs' offices, and municipal police departments to investigate and prosecute offenses. The amount will vary by jurisdiction with the number of local cases.

Jail costs. When a restricted person is convicted of failing to provide the court with proof of compliance with the requirement to relinquish firearms or issues a warrant for non-compliance, county jail costs may increase. The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. The penalty for a class 2 misdemeanor is 3 to 12 months imprisonment in a county jail, a fine of \$250 to \$1,000, or both. In addition, costs could increase if a court issues a finding of contempt and sentences a restricted person to jail. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails.

Firearms storage. The bill creates the option for local law enforcement agencies to store firearms or ammunition on behalf of restricted persons. Conditional upon a local law enforcement agency choosing to offer this service, costs will increase. However, this analysis assumes that because the bill also authorizes a local law enforcement agency to charge fees, the increased costs will be offset by cash fund revenue from restricted persons.

State Appropriations

For FY 2013-14, the Judicial Branch is appropriated \$45,742 General Fund and 0.8 FTE.

The bill appropriates \$3,746 General Fund and 0.1 FTE in FY 2013-14 to the Colorado Bureau of Investigation within the Department of Public Safety. However, due to the passage of House Bill 13-1229, this appropriation should be removed.

Departments Contacted

Corrections
Judicial
Public Safety

Counties
Local Affairs
Sheriffs

District Attorneys
Municipalities