

Colorado Legislative Council Staff
**STATE AND LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 00-0012
Prime Sponsor(s): Sen. Hernandez

Date: October 14, 1999
Bill Status: Senate Judiciary
Fiscal Analyst: Geoff Barsch (303-866-4102)

TITLE: CONCERNING THE LAWFUL POSSESSION OF FIREARMS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Fiscal Impact Summary	FY 2000/2001	FY 2001/2002
State Revenues		
General Fund	Fine Revenue	Fine Revenue
Cash Fund	\$3,300,000	\$3,300,000
State Expenditures		
General Fund	\$910,018	\$832,302
Cash Fund	2,255,342	2,076,578
Cash Fund Exempt	47,431	47,431
FTE Position Change	52.0 FTE	52.0 FTE
Other State Impact: TABOR		
Effective Date: July 1, 2000		
Appropriation Summary for FY 2000-2001: \$2,255,342 CF, \$47,431 CFE and 52.0 FTE for the Department of Public Safety; \$910,018 GF for the Capital Construction Fund.		
Local Government Impact: County jail impact due to new misdemeanor penalties. Some additional information requirements for local law enforcement agencies.		

Summary of Legislation

This bill makes the following changes:

Section 1 creates a new Section 18-12-111, which makes it a class 1 misdemeanor to:

- knowingly transfer a firearm to any person prohibited from possessing a firearm pursuant to state or federal law;
- the transfer of a handgun or assault weapon to person under 21 years of age would be a class 4 felony;
- transfer a firearm without first receiving a transaction number from the Colorado Bureau of Investigation (CBI); and

- knowingly make a false oral or written statement or present false or misrepresented identification that is intended to deceive the transferor with respect to the lawfulness of the transfer of the firearm under federal or state law.

This section further requires:

- any transferor of a firearm to contact the CBI for the purpose of requesting a criminal background check on a prospective transferee;
- the CBI to perform a state and, if possible, federal criminal background check upon request of a transferor of a firearm;
- the CBI to provide a transaction number or, if the criminal background check shows that the prospective transferee is ineligible to possess a firearm under state or federal law, to deny authorization for the transfer;
- the prospective transferee to bear the cost of the criminal background check; and
- the CBI to purge the records, except transaction numbers, created in conducting criminal background checks under the act.

Section 2 authorizes the CBI to conduct criminal background checks as provided under proposed Section 18-12-111, C.R.S.

Section 3 raises the age for legal handgun possession from 18 to 21 years of age. It makes possession of a handgun or assault weapon by persons under 21 years of age a class 2 misdemeanor. A second or subsequent offense of possession of a handgun or assault weapon by a person under 21 years of age would be a class 5 felony.

Section 4 makes it a class 4 felony to provide or permit a person under 21 years of age to possess a handgun or assault weapon.

Sections 5, 6, and 7 make conforming amendments.

Section 8 defines assault weapon.

Background

From March 1994 to November 1998, the CBI operated the Instant Criminal Background Check system under the temporary provisions of the federal Brady Act. Under this program, a \$10.00 fee was charged per applicant and deposited into the Statewide Instant Criminal Background Check Cash Fund created by Section 12-26.5-107, C.R.S. On August 28, 1998, an executive order designated the CBI as Colorado's "point of contact for the (*National Instant Criminal Background Check System*) NICS until the 1999 Colorado General Assembly considers legislation...regarding the state's participation in NICS."

SB 99-58, "Concerning Implementation of the National Criminal Background Check System, and... authorizing the (CBI) to serve as the state point-of-contact..." provided that Colorado would continue conducting state background checks for gun purchases. The bill was postponed indefinitely,

and Colorado began using the Federal Bureau of Investigation as the background check point-of-contact.

An Executive Order dated July 1, 1999, re-established the CBI as the point-of-contact for background checks. The Joint Budget Committee approved an additional \$604,665 General Fund and 12.7 FTE to fund the program from August 1, 1999, through April 1, 2000. The CBI is not charging a fee for these checks.

State Revenues

This bill would authorize the CBI to collect fee revenue for performing criminal background checks on firearm transfers. The fee is to be paid by the transferee. The CBI estimates 165,000 transactions under this bill. The estimate is based upon a 10 percent increase over current volume to account for the inclusion of private sales. The CBI has estimated a fee of \$20 would be necessary to cover program costs. This would result in \$3.3 million cash fund revenue collected. Legislative Council staff has estimated lower program costs than the department, which would allow for lower per transaction fee.

Since the bill creates a new class 2 misdemeanor, class 1 misdemeanors, and a class 4 felony, there will be an impact on the State General Fund due to fine revenue collected:

- a class 2 misdemeanor carries a penalty of a \$250 to \$1,000 fine;
- a class 1 misdemeanor carries a penalty of a \$500 to \$5,000 fine;
- a class 4 felony carries a penalty of a \$2,000 to \$500,000 fine; and
- a class 5 felony carries a penalty of a \$1,000 to \$100,000 fine.

Any fine assessed is deposited into the General Fund. It is at the discretion of the court whether to impose a fine, a jail sentence, or both, therefore the amount of fine revenue cannot be determined.

State Expenditures

Section 1 creates a fiscal impact for program costs in the Department of Public Safety as well as a Department of Corrections bed impact resulting from the penalty provisions. The costs are estimated as follows:

Department of Public Safety: The bill would require criminal background checks on the transfer of any firearm. Current program parameters include only firearms sold by Federal Firearm Licensees. Because the current program has no statutory authority and is funded through April 1, 2000, only, it is assumed that this bill will be the sole authority for providing criminal background checks on gun purchases. Due to the scope of the bill, program costs include health, life and dental insurance, short-term disability insurance, and leased space. The identified program costs are listed below.

Cash Fund Expenditure	FY 2000/2001	FY 2001/2002
Personal Services (52.0 FTE) 1.0 FTE Criminal Investigator 9.0 FTE Data Supervisor 20.0 FTE Data Specialist I - Phone center positions 20.0 FTE Data Specialist I - Support positions 1.0 FTE General Professional 1.0 FTE Information Technician Professional 4 temporary FTE for phone center peak periods	\$1,753,243	\$1,753,243
Operating Expenses	219,605	219,605
Leased Space	151,160	151,160
Capital Outlay	178,764	0
TOTAL	\$2,302,772	\$2,124,008

The following assumptions have been made to calculate the fiscal impact:

- there is no statutory authority for the criminal background check program other than the authority granted by this bill;
- the disposition of unmatched criminal records must be determined by CBI staff. (approximately 80 percent of criminal records will remain unmatched);
- the CBI will attempt to approve transfers within three days, although there is no time limit specified in statute;
- private sales represent a 10 percent increase over current sales volume; and
- existing program costs will continue at their current level (all new program and staff costs are calculated at the standardized level).

The NICS was used as the model in determining an appropriate level of resources needed to implement the bill's provisions. The NICS employs 500 staff to conduct criminal background checks. Of these, 481 staff are direct analyst and examiner positions, which support 269 call center positions. Colorado's higher rejection rate per applicant (6.3% Colorado to 1.9% NICS) and higher volume per analyst (12,420 per Colorado analyst to 5,972 per NICS analyst) indicate a greater need for support positions. Therefore, a one to one ratio of call center positions to support center positions is assumed.

Department of Corrections: This bill creates a new class 4 felony penalty for the transfer of a handgun or assault weapon to a person under 21 years of age. Because this is a new crime, the number of offenders must be estimated. In FY 1998-99, 2 offenders were sentenced to the DOC under a class 4 felony weapons charge, and 26 offenders were sentenced to the DOC under a class 5 felony weapons charge. Of those sentenced, 34 percent were under 21 years of age. It is assumed that the same proportion of offenders under 21 years of age will seek illegal weapons in the future, and that the primary weapon is a handgun, automatic, or semi-automatic weapon. For each offender

in possession of an illegal weapon, there will be a new offender who provides the weapon. It is estimated that:

- 0.7 offenders will be convicted and sentenced as a class 4 felony annually (2 class 4 felony weapon offenders x 34% = 0.7 offenders). The estimated length of stay for these offenders is 31.0 months, resulting in an average daily attendance (ADA) of 0.7 after one year, 1.4 after two years, and 1.81 thereafter.
- 8.8 offenders will be convicted and sentenced as a class 5 felony annually (26 class 5 felony weapon offenders x 34% = 8.8 offenders). The estimated length of stay for these offenders is 17.0 months, resulting in an ADA of 8.8 after one year, and 12.5 thereafter.

Section 3 prohibits possession of a handgun or assault weapon by persons under 21 years of age. A second or subsequent offense of possession of a handgun or assault weapon by a person under 21 years of age would be a class 5 felony. Because this is a new crime, the number of offenders convicted must be estimated. It is assumed that parolees are representative of a second offender population. In FY 1998-99, 63 parolees were returned to the DOC for possession of a weapon. At least half of the parolees were in possession of a handgun, automatic, or semi-automatic weapon (some of the weapons were not identified and may have been guns, increasing the number of parolees identified). Five percent of the parolees returned to the DOC were less than 21 years of age. Therefore, it is estimated that 1.6 offenders will be convicted of this charge annually (63 x 50% x 5% = 1.6 offenders) with an average length of stay of 17.0 months. This would generate an ADA of 1.6 after one year and 2.3 thereafter.

Section 4 raises the age under which it is illegal to provide or permit a person to possess a handgun or assault weapon from 18 to 21 years of age. In FY 1998-99, there were 8 offenders charged with providing a juvenile with a handgun. Of these, 2 were convicted, 1 as a class 4 felony. It is estimated that the expanded prohibition of assault weapons would add 1 additional offender (based on the weapons held by parolees returned to the DOC). It is estimated that the expanded age range would add 1 additional offender (based on the addition of a 3 year age range of prohibition). The projected length of stay for this offense is 31.0 months. This would generate an ADA of 2.0 after one year, 4.0 after two years, and 5.2 thereafter.

Five-Year Fiscal Impact on Correctional Facilities

Section 2-2-703, C.R.S., requires that bills resulting in a net increase in periods of imprisonment not be passed without five years of appropriations for prison bed construction and operating costs. Construction costs are estimated to be \$69,467 per bed and operating costs \$26,238 per bed. It should be noted that the construction costs reflect the funding needed to construct the beds in the fiscal year prior to when the additional offenders would enter the system.

FIVE-YEAR FISCAL IMPACT ON CORRECTIONAL FACILITIES				
Fiscal Year	ADA Impact	Construction Cost	Operating Cost	Total Cost
FY 2000-2001	0.0	\$910,018	\$0	\$910,018
FY 2001-2002	13.1	488,585	343,718	832,302
FY 2002-2003	20.1	109,411	528,258	637,669
FY 2003-2004	21.7	0	569,583	569,583
FY 2004-2005	21.7	0	569,583	569,583
TOTAL		\$1,508,013	\$2,011,143	\$3,519,155

State Appropriations

This fiscal note indicates the following appropriations are required:

- the Department of Public Safety will require a cash fund appropriation of \$2,255,342, and \$47,431 cash funds exempt from indirect cost recoveries to implement the provisions of the bill.
- the Capital Construction Fund will require a General Fund appropriation of \$910,018 in FY 2000-01 and a five-year appropriation of \$1,508,013.
- the Department of Corrections will require a five-year General Fund appropriation of \$3,519,155.

Local Government Impact

This bill would have a fiscal impact on local government due to the projected increase in county court filings for misdemeanor offenses and the associated county jail sentences. According to a 1993 report from the State Auditor's Office, the average daily cost to house an offender in a county jail is \$54. Because the sentencing court has the discretion to impose a fine, a jail sentence, or both, the impact upon local governments is unknown at this time.

Departments Contacted

Public Safety Corrections