

**STATE and LOCAL  
FISCAL IMPACT**

**Drafting Number:** LLS 13-0043  
**Prime Sponsor(s):** Rep. Fields; McCann  
 Sen. Carroll

**Date:** February 12, 2013  
**Bill Status:** House Judiciary  
**Fiscal Analyst:** Hillary Smith (303-866-3277)

**TITLE:** CONCERNING CRIMINAL BACKGROUND CHECKS PERFORMED PURSUANT TO THE TRANSFER OF A FIREARM.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
<b>State Revenue</b>		
Cash Funds		
Fines Collection Cash Fund	<\$5,000	<\$5,000
<b>State Expenditures</b>		
General Fund	\$1,563,387	\$1,660,877
<b>FTE Position Change</b>	24.9 FTE	29.9 FTE
<b>Effective Date:</b> July 1, 2013.		
<b>Appropriation Summary for FY 2013-2014:</b> The Department of Public Safety Requires \$1,563,387 General Fund and 24.9 FTE.		
<b>Local Government Impact:</b> See Local Government Impact section.		

**Note:** While affected state agencies were canvassed, not all agencies were able to respond with complete information in the time provided. Therefore, this fiscal note should be considered preliminary. It will be updated if new information becomes available.

**Summary of Legislation**

This bill expands situations in which background checks are required prior to the transfer of a firearm and changes the process for reporting and updating the records on which background checks are based. The bill also creates a judicial process for petitioning for relief from federal firearms prohibitions pursuant to the federal National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007. Further detail on these changes is provided below.

**Background check requirements.** Current state and federal law requires a licensed gun dealer to obtain a background check prior to transferring possession of a firearm. State law also requires a gun show vendor to obtain a background check and the approval of the Colorado Bureau of Investigation (CBI) within the Department of Public Safety prior to transferring possession of a firearm. This bill requires any person who is not a licensed gun dealer to obtain a background check and the approval of the CBI prior to transferring possession of a firearm.

Under the bill, individuals who are not licensed gun dealers must arrange for a licensed gun dealer to obtain the necessary background check. The dealer may charge a fee of up to \$10 for this service. A person who transfers a firearm to an individual in violation of the bill may be liable for any civil damages proximately caused by that individual's subsequent use of the firearm. In addition, anyone who violates the background check requirements of the bill commits a class 1 misdemeanor and is prohibited from possessing a firearm for two years. The bill creates several exemptions to its requirements, including the transfer of an antique firearm, a transfer that is a gift between family members, and certain temporary transfers.

***Court records.*** Under current law, district and probate courts must report information to the NICS concerning individuals:

- whom the court has found to be incapacitated;
- who have been committed by the court to the Department of Human Services; and
- for whom the court has entered an order for involuntary certification for treatment of mental illness.

This bill requires district and probate courts to also report such information to the CBI. In addition, a court, upon becoming aware that such a record does not apply or no longer applies, must notify the Attorney General and update, correct, modify, or remove the record from any federal or state database.

***Petition for relief from federal firearms prohibitions.*** The bill establishes a relief from disabilities program in accordance with the NICS Improvement Amendments Act of 2007. Under the bill, a person may petition for relief if, as a result of court action, he or she was: found incapacitated; committed to the Department of Human Services; or involuntarily certified for treatment for mental illness, and would be prohibited from shipping, transporting, possessing, or receiving a firearm by federal law. The bill specifies the procedures for a court proceeding concerning a petition for relief, and states that the court must consider the circumstances surrounding the firearms prohibitions, the petitioner's record, including mental health and criminal records, and the petitioner's reputation. Prior to granting relief, the court must find that the petitioner is not likely to act in a manner that is dangerous to public safety and granting relief is not contrary to the public interest. If a petition is denied, the petitioner may appeal to the Court of Appeals.

If the request for relief is granted, the adjudication or commitment that prevented the individual from buying or possessing a firearm is deemed not to have occurred for the purposes of the federal firearm prohibition. In addition, if a record of such an adjudication or commitment is removed by the Federal Bureau of Investigation or by the state in order to update or correct the NICS database, the individual concerned will also be granted relief from disabilities. Previously, any person who had been adjudicated as a mental defective or who had been committed to a mental institution was effectively banned from possessing a firearm for life under federal law.

**State Revenue**

The bill may increase state revenue from fines, although less than \$5,000 in new state revenue is expected per year. According to Section 18-1.3-501, C.R.S., 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. Fine revenue that is not otherwise appropriated is deposited into the Fines Collection Cash Fund. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue is expected to be minimal.

**State Expenditures**

*Department of Public Safety.* This bill will increase state expenditures in the Department of Public Safety by the amounts shown in Table 1. These costs would be paid from the General Fund and are described in greater detail below. Please note that because the bill requires more than 20 FTE, costs that are generally centrally appropriated are shown in Table 1 as well.

<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Personal Services	\$1,088,849	\$1,222,553
FTE	24.9	29.9
Operating Expenses and Capital Outlay	\$140,952	\$28,405
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$165,163	\$198,058
Supplemental Employee Retirement Payments	\$68,687	\$92,261
Leased Space	\$99,736	\$119,600
<b>TOTAL</b>	<b>\$1,563,387</b>	<b>\$1,660,877</b>

The need to process additional background checks will increase workload for the CBI within the Department of Public Safety. This fiscal note is based on the following assumptions:

- approximately 400,000 background checks will occur in FY 2013-14 under current law, and this number represents 67 percent of all gun transfers;
- approximately 200,000 background checks for private firearms transfers will occur in FY 2013-14;
- background checks for private firearms transfers will increase by 10 percent between FY 2013-14 and FY 2014-15, to a total of 220,000;
- the rate of transfer denials for private sales will be 5 percent, and 54 percent of those denied will appeal, resulting in 5,400 appeals in FY 2013-14 and 5,940 appeals in FY 2014-15; and

- this note only attempts to account for the growth in private gun transfers, because any increase in the number of transfers or appeals occurring under current law would be addressed during the annual budget process.

In addition, this fiscal note assumes that one technician can process 1,483 firearm transfer background checks per month, and that each appeal requires three hours of FTE time to research. Based on these assumptions, 18.5 additional technicians will be required as a result of the bill, and this increase in technicians will result in an estimated need for 6.4 FTE in supervisory and administrative staff, for a total FTE increase of 24.9 in FY 2013-14. The FTE need for the department will increase to 29.9 FTE in FY 2014-15 based on an estimated increase in private gun transfers and appeals, consisting of 22.4 technicians and 7.5 FTE in administrative and supervisory staff.

**Judicial Branch.** Workload will increase for trial courts and the Court of Appeals due to the relief from disabilities program, the new cause of civil action, and the new misdemeanor created by the bill. This fiscal note assumes that the number of new petition, civil action, and criminal filings will be addressed within existing resources and will not require additional appropriations. In addition, the Office of the State Public Defender and the Office of the Alternate Defense Counsel may be required to serve as defense counsel for individuals charged with the new misdemeanor created by the bill. However, this note assumes that many of those individuals would be facing other charges under current law, and any new clients can be served within existing appropriations.

### **Comparable Crime**

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. House Bill 13-1229 creates a new class 1 misdemeanor for failing to comply with the requirement that any person who is not a licensed gun dealer obtain a background check and the approval of the CBI prior to transferring possession of a firearm. In 2000, a voter-approved initiative made it a class 1 misdemeanor for a gun show vendor to fail to obtain a background check and the approval of CBI prior to a firearms transfer. Since that time, zero individuals have been charged with this crime.

This fiscal note assumes that approximately 33 percent of total firearm transfers in Colorado occur between private individuals who are not subject to background check requirements under current law. The fiscal note assumes that 200,000 firearm transfers will occur in FY 2013-14 between private individuals. Although no gun show vendors have been charged with a class 1 misdemeanor for failure to conduct a background check as required by law, it is expected that at least 5 percent, or 10,000 private transactions will be conducted without a background check, and that 5 percent, or 500 of those transactions may be involved in law enforcement investigations. If those assumptions are correct, there is the potential for 1,000 new charges of class 1 misdemeanors (one charge for the person who transferred the firearm, and one charge for the person who received the firearm). However, it is likely that many of the individuals subject to this new charge would already be facing other charges.

### **Local Government Impact**

The new misdemeanor created by the bill will increase workload and expenditures in district attorneys' and county sheriffs' offices. The amount will vary by the jurisdiction and the number of cases. 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. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. In addition, it is likely that some proportion of individuals charged with transferring or receiving a firearm in violation of the bill may be subject to other charges. 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. It is assumed that the impact of this new misdemeanor will be minimal and will not create the need for additional county jail space, because the majority of offenders charged with the class 1 misdemeanor created by the bill would be facing other charges under current law, and would therefore already be likely to be imprisoned in a county jail for some length of time.

### **Departmental Differences**

The Department of Public Safety made several different assumptions concerning the number of private gun transfer background checks that would result from the bill and the information technology needs driven by the bill. Specifically, the department estimated that it would need \$406,000 in FY 2013-14 to modernize its information technology system by upgrading its website for firearms dealers, increasing security, improving its ability to manage the queue of background checks, and more fully automating its court record search process. In addition, the department identified a need for annual maintenance costs for the system equal to 15 percent of the total cost, beginning in FY 2014-15. In total, the department estimated that the bill would require \$3,471,328 General Fund and 49.4 FTE in FY 2013-14, and \$3,176,283 General Fund and 56.3 FTE in FY 2014-15. Costs for upgrading the system were not included in the fiscal note because existing systems can be used to perform the background checks for private transactions and it is not clear that the update is required by the bill; it seems more likely that such a request would be addressed during the annual budget process.

### **State Appropriations**

For FY 2013-14, the Department of Public Safety requires an appropriation of \$1,563,387 General Fund and 24.9 FTE.

### **Departments Contacted**

Corrections	Counties	District Attorneys
Human Services	Judicial	Law
Local Affairs	Municipalities	Office of Information Technology
Public Safety	Sheriffs	