

  
*Colorado Legislative Council Staff Fiscal Note*  
**STATE and LOCAL**  
**REVISED FISCAL IMPACT**  
 (replaces fiscal note dated March 1, 2013)

**Drafting Number:** LLS 13-0043 **Date:** March 8, 2013  
**Prime Sponsor(s):** Rep. Fields; McCann **Bill Status:** Senate Second Reading  
 Sen. Carroll **Fiscal Analyst:** Hillary Smith (303-866-3277)

**TITLE:** CONCERNING CRIMINAL BACKGROUND CHECKS PERFORMED PURSUANT TO THE TRANSFER OF A FIREARM, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014	FY 2014-2015
<b>State Revenue</b>			
Cash Funds			
Fines Collection Cash Fund		<\$5,000	<\$5,000
<b>State Transfers</b>			
Transfer from the General Fund to the: State Education Fund		(\$362,467)	
<b>State Expenditures</b>			
General Fund*	\$362,467	\$1,415,932	\$1,529,033
<b>FTE Position Change</b>	4.0 FTE	24.7 FTE	26.3 FTE
<b>Effective Date:</b> Upon signature of the Governor, or upon becoming law without his signature.			
<b>Appropriation Summary for FY 2013-2014:</b> See State Appropriations section.			
<b>Local Government Impact:</b> See Local Government Impact section.			

\* If House Bill 13-1228 becomes law, any appropriations required for this bill would come from the Instant Criminal Background Check Cash Fund, although sufficient funds may not be available in this cash fund for a period of time.

**Summary of Legislation**

This bill, **as amended**, 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. On and after July 1, 2013, 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. If a firearm is transferred to a corporation, association, partnership, limited liability company, or trust, a background check is required to be conducted on all members of the entity.

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 immediate 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 report such information to the CBI, rather than to the NICS maintained by the Federal Bureau of Investigation (FBI). The State Court Administrator must send the information electronically within 48 hours after receiving notification that an individual has been found incapacitated, has been committed, or has been involuntarily certified for treatment of mental illness. 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 FBI 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 Transfers**

House Bill 12-1338 transfers any General Fund surplus in FY 2012-13 to the State Education Fund. By increasing General Fund expenditures in FY 2012-13 by \$362,467, this bill will reduce the amount transferred to the State Education Fund in FY 2013-14 by a corresponding amount.

**State Expenditures**

*Department of Public Safety.* This bill will increase state expenditures in the Department of Public Safety (DPS) 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>Table 1. Expenditures Under HB13-1229</b>			
<b>Cost Components</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Personal Services	\$172,454	\$989,072	\$1,143,371
FTE	4.0	24.7	26.3
Operating Expenses and Capital Outlay	\$121,533	\$22,054	\$24,985
Information Technology Costs to allow data transfer from Judicial	\$0	\$80,000	\$0
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$27,894	\$163,613	\$174,211
Supplemental Employee Retirement Payments	\$10,586	\$62,393	\$81,265
Leased Space	\$30,000	\$98,800	\$105,200
<b>TOTAL</b>	<b>\$362,467</b>	<b>\$1,415,932</b>	<b>\$1,529,033</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 330,000 background checks will occur in FY 2013-14 under current law, and this number represents 62 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, 19.0 additional technicians will be required as a result of the bill, and this increase in technicians will result in an estimated need for 5.7 FTE in supervisory and administrative staff, for a total FTE increase of 24.7 in FY 2013-14. The FTE need for the department will increase to 26.3 FTE in FY 2014-15 based on an estimated increase in private gun transfers and appeals, consisting of 20.4 technicians and 5.9 FTE in administrative and supervisory staff. As amended, the DPS will receive \$362,467 General Fund and 4.0 FTE in FY 2012-13 in order to prepare for the anticipated workload increase on July 1, 2013. This amount includes \$117,575 in one-time operating costs.

Finally, the bill requires the State Court Administrator to electronically send judicial orders of incapacitation, commitment, or involuntary certification for treatment of mental illness orders to the CBI within 48 hours of entry. This fiscal notes assumes that the Colorado Judicial Branch will load this data into the Colorado Integrated Crime Justice Information System (CICJIS) database and the DPS will extract the data through the Colorado Crime Information Center (CCIC) database, which is one of the databases checked during a background check. In order to accomplish this data transfer, the DPS requires up to \$80,000 in one-time information technology costs to reprogram the CCIC in order to create new fields to hold the data from district and probate courts concerning mental-health-related orders and to update notification processes. These costs are estimated by the Computer Projects of Illinois, Inc., a third-party vendor responsible for programming changes to the CCIC.

**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. The costs to update CICJIS database to reflect orders concerning incapacitation, commitment, or involuntary certification 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 38 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 estimated that it would need \$306,000 in FY 2013-14 to modernize its information technology system by upgrading its website for firearms dealers, increasing security, and improving its ability to manage the queue of background checks. 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 \$1,834,294 General Fund and 24.7 FTE in FY 2013-14, and \$1,580,525 General Fund and 26.3 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 2012-13, the Department of Public Safety requires an appropriation of \$362,467 General Fund and 4.0 FTE. For FY 2013-14, the Department of Public Safety requires an appropriation of \$1,415,932 General Fund and 24.7 FTE. However, if House Bill 13-1228 becomes law, the Department of Public Safety requires an appropriation of \$1,415,932 and 24.7 FTE from the Instant Criminal Background Check Cash Fund created by HB 13-1228. The bill contains provisions to address both of these possibilities.

### **Departments Contacted**

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