



**Colorado
Legislative
Council
Staff**

**HB16-1328
REVISED
FISCAL NOTE**

(replaces fiscal note dated April 25, 2016)

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-0464 **Date:** May 5, 2016
Prime Sponsor(s): Rep. Lee; McCann **Bill Status:** Senate Finance
 Sen. Lambert; Lundberg **Fiscal Analyst:** Amanda Hayden (303-866-4918)

BILL TOPIC: USE OF RESTRAINT AND SECLUSION ON INDIVIDUALS

| Fiscal Impact Summary | FY 2016-2017 | FY 2017-2018 |
|---|-----------------------|-----------------------|
| State Revenue | | |
| State Expenditures | <u>\$4,900</u> | <u>\$4,900</u> |
| General Fund | 4,900 | 4,900 |
| Appropriation Required: \$4,900 - Department of Human Services (FY 2016-17). | | |
| Future Year Impacts: Ongoing increase in state expenditures. | | |

Summary of Legislation

This **reengrossed** bill expands the "Protection of Individuals from Restraint and Seclusion Act." The bill:

- adds seclusion wherever the use of restraint is limited, prohibited, or subject to specific requirements;
- adds that restraint and seclusion must never be used as punishment, as part of a treatment plan, as retaliation by staff, or for protection, unless ordered by the court or in an emergency; and
- expands the restrictions on use of restraint and seclusion to include youth, defined as anyone less than 21 years old.

The bill applies the statute outlining when restraint and seclusion may be used on a person with a mental illness or in a skilled nursing facility to youth. It defers to other sections of statute on when restraint or seclusion may be used on an adult or youth with a developmental disability. It specifies that the restrictions on use of restraint and seclusion do not apply when transporting a youth between facilities.

Division of Youth Corrections. The bill requires the Division of Youth Corrections (DYC) within the Department of Human Services (DHS) to meet certain requirements when holding a youth in seclusion. Staff must check on the youth every 15 minutes, and within one hour after the seclusion period begins, a staff member must notify and receive written approval from the facility director or his or her designee. The bill limits this practice to not more than four hours in one day unless a qualified mental health professional or the facility director determines that a referral to a mental health facility is not warranted and the director of DYC approves the continued use of seclusion. A youth may not be held in seclusion for more than eight total hours in two consecutive

days, unless by court order. The bill specifies that administrative seclusion is permitted only as long as necessary to complete administrative tasks. DYC must provide training on the effects of using seclusion and restraint, methods to handle youths in crisis and youths with mental illnesses, effective de-escalation techniques, and the value of positive over negative reinforcement.

Documentation. Whenever DYC holds a youth in seclusion for an emergency, it must document certain details surrounding the event, including background information on the youth, the reason for seclusion and justification for its continued use, confirmation that the parents or guardians were notified, and written approval from the director of DYC for any seclusion that exceeded four hours in one day. Whenever DYC holds youths in seclusion for administrative reasons, it must document the number of youths confined and the length of time of and reasons for the confinement.

Reporting. DYC must report biannually to the working group described below on the use of seclusion and confinement. The report must include an incident report on any emergency seclusion of youths lasting four hours or more or for more than eight total hours in two consecutive days. DYC must also provide an aggregate report of the total number of youths held in seclusion due to an emergency, the total number of incidents of emergency seclusion, the average time in seclusion per incident, and an aggregate summary on the race, age, and gender of youths held in seclusion. DYC must also report biannually on the number of times youths were confined for administrative purposes, the average amount of time youths spent per day in administrative seclusion, and an aggregate summary of the reasons for administrative seclusion. These reports must be redacted to protect the confidentiality of all youth and must be made public upon request. DHS must meet the provisions of this section to the extent it is able using its current reporting mechanisms, and DYC must submit a report to the General Assembly on or before January 1, 2017, with detailed recommendations and a plan to automate the reporting requirements no later than January 1, 2018.

Working group. The bill establishes a Youth Seclusion Working Group (working group) in DYC. The working group consists of representatives from DHS, representatives from nonprofit advocacy groups, and two experts in adolescent development or a related field. The working group must advise and monitor DYC related to its use of confinement and seclusion. They must meet no later than August 1, 2016, and at least twice per year thereafter. The working group sunsets on September 1, 2024.

State Expenditures

Beginning in FY 2016-17, the bill increases state General Fund expenditures by \$4,900 per year in DHS. The bill also increases workload in the Judicial Department by a minimal amount.

Department of Human Services. DHS requires \$4,900 in FY 2016-17 and future years to comply with the requirements under the bill. DHS requires legal services to facilitate requests for a court order when a youth must be held in seclusion eight hours or more in two consecutive days. The fiscal note assumes this will be necessary ten times per year, with each event requiring five hours of legal services through the Department of Law at \$98 per hour.

The bill also increases workload within DYC to update policies and procedures, conduct trainings, participate in the working group, and to fulfill the bill's reporting requirements. This workload increase can be accomplished within existing appropriations.

Judicial Department. The bill may increase workload in trial courts by a minimal amount. The bill requires DYC to seek a court order whenever a youth is held in seclusion for more than eight total hours in two consecutive days. Also, parties may contest in court the circumstances of a seclusion incident. Any increase in workload in trial courts is expected to be minimal and requires no increase in appropriations for the Judicial Department.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

In FY 2016-17, the bill requires and includes a General Fund appropriation of \$4,900 to DHS, to be reappropriated to the Department of Law.

Departmental Difference

DHS estimates a fiscal impact of \$900,674 and 5.5 FTE in FY 2016-17. The fiscal note disagrees with this assessment on two points. First, DHS estimates costs of \$32,258 in legal services to redact confidential reports requested by the working group, whereas the fiscal note assumes that redacting a report with aggregate data twice per year will require no increase in appropriations. Second, DHS estimates a need for \$762,596 and 5.5 FTE for renovations and staffing of youth facilities at the Colorado Mental Health Institute at Pueblo (CMHIP). The department believes that current accommodations for youth offenders referred from other DYC facilities are inadequate. The fiscal note finds this concern unrelated to the requirements of the bill and thus not relevant to the cost estimate for this legislation. The fiscal note assumes that any capital expenditures should be requested through the annual budget process.

State and Local Government Contacts

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