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**SB19-008**

**FISCAL NOTE**

<b>Drafting Number:</b>	LLS 19-0230	<b>Date:</b>	March 27, 2019
<b>Prime Sponsors:</b>	Sen. Priola; Pettersen Rep. Kennedy; Singer	<b>Bill Status:</b>	House Judiciary
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**Bill Topic:** SUBSTANCE USE DISORDER TREATMENT IN CRIMINAL JUSTICE SYSTEM

**Summary of Fiscal Impact:**

<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill makes several changes to state law concerning substance use disorders and the criminal justice system. The bill will increase state revenue on net from fees and state and local government expenditures on an ongoing basis.

**Appropriation Summary:** For FY 2019-20, the bill requires an appropriation of \$7.1 million to multiple state agencies.

**Fiscal Note Status:** The fiscal note reflects the introduced bill, which was requested by the Opioid and Other Substance Use Disorders Study Committee.

**Table 1  
State Fiscal Impacts Under SB 19-008**

		FY 2019-20	FY 2020-21
<b>Revenue</b>	Cash Funds	\$55,000	\$35,000
	<b>Total</b>	<b>\$55,000</b>	<b>\$35,000</b>
<b>Expenditures</b>	General Fund	\$6,944,025	\$11,474,438
	Federal Funds	\$176,421	\$145,987
	Centrally Appropriated	\$275,484	\$330,749
	<b>Total</b>	<b>\$7,395,930</b>	<b>\$11,951,174</b>
	<b>Total FTE</b>	<b>15.9 FTE</b>	<b>19.1 FTE</b>
<b>Transfers</b>		-	-
<b>TABOR Refund</b>		-	-

## **Summary of Legislation**

This bill makes several changes to state law concerning substance use and the criminal justice system, as discussed below.

**Medication-assisted treatment in county jails and state prisons.** The bill requires county jails that accept state funding for jail-based behavioral health services to provide medication-assisted treatment to inmates as needed, to be administered by the Department of Human Services (DHS). It also requires the Department of Corrections (DOC) to allow medication-assisted treatment to continue in cases where an inmate was receiving treatment in a county jail prior to transfer into DOC custody. Sheriffs and the DOC may enter into agreements with community, behavioral health, and substance use disorder treatment organizations to assist in the development and administration of medication-assisted treatment in jails and prisons.

**Authorization for medication-assisted treatment for inmates through Medicaid.** The bill requires the Department of Health Care Policy and Financing (HCPF) to seek federal authorization no later than October 1, 2019, to provide substance use disorder treatment to inmates — including medication-assisted treatment and withdrawal management programs — with full federal financial participation.

**New process for sealing drug-related conviction records.** The bill establishes a new process for sealing convictions for certain drug-related offenses, including level 4 drug felonies and any drug misdemeanor; a felony or misdemeanor conviction prior to October 1, 2013, where the offense would be classified as a level 4 drug felony or drug misdemeanor if it had been committed on or after that date; and any municipal violation involving a controlled substance.

The defendant may petition the district or municipal court for the sealing of these records as long as the petition is filed at least three years after the final disposition of a criminal proceedings, any related supervision, or any new criminal charges. If a court determines a petition is sufficient, it must set a hearing date to make a final determination. When the court seals a conviction record, the defendant must pay a record sealing fee to the court and to the Colorado Bureau of Investigation in the Department of Public Safety (DPS).

**Expanded scope of the Substance Abuse Trend and Response Task Force.** Under current law, the Substance Abuse Trend and Response Task Force is tasked with examining prevention and treatment models and best practices, formulating a response to substance abuse problems, and making recommendations to the General Assembly. The bill adjusts task force duties to include in its response the use of drop-off treatment services; mobile and walk-in crisis centers; and withdrawal management programs for low-level drug offenders.

**Reporting from the Commission on Criminal and Juvenile Justice.** The bill requires the Commission on Criminal and Juvenile Justice (CCJJ) in DPS to study and make recommendations on various issues concerning the treatment of individuals with substance use disorders who come into contact with the criminal justice system, including alternatives to criminal charges, best practices for investigating unlawful opioid distribution, and sealing of criminal records, and to report to the General Assembly by July 1, 2020.

**Program funding expansion.** The bill currently includes the following General Fund appropriations to expand funding for programs in the Office of Behavioral Health (OBH) in the DHS:

- \$1,700,000 to existing jail-based behavioral health services program to support medication-assisted treatment in jails and associated administrative expenses;

- \$3,450,000 to increase the number of Law Enforcement Assisted Diversion (LEAD) pilot programs from 4 to 10; and
- \$1,450,000 to increase the number of Co-Responder Programs from 8 to 12.

## **State Revenue**

On net, state cash fund revenue will increase by \$55,000 in FY 2019-20 and \$35,000 in FY 2020-21 and ongoing. The bill decreases revenue from probation-related fees and increases revenue from record sealing and court filing fees. These impacts are discussed below.

**Probation fees — revenue decrease.** The bill is expected to decrease state revenue from probation fees by up to \$20,000 in FY 2019-20 and up to \$40,000 per year starting in FY 2020-21 to the Offender Services Cash Fund. By increasing funding and use of criminal justice diversion programs, it is likely that the number of persons sentenced to probation will decrease. While the exact number of diversions is not known at this time, the fiscal note assumes up to 150 low-level drug offenders will be diverted annually once the bill is fully implemented. Each person on probation pays a \$50 per month supervision fee. The bill may also reduce other court fees to the Judicial Department that are collected for various criminal fees and surcharges. The estimated decrease in revenue accounts for historic indigency and collection rates. This revenue is subject to TABOR.

**Record sealing fee — revenue increase.** The bill will increase state revenue from record sealing fees by approximately \$32,500 per year beginning in FY 2019-20 to the Colorado Bureau of Investigation (CBI) Cash Fund. The fiscal note assumes that 500 record sealing requests will be received by the CBI per year. The record sealing permitted under the bill is subject to a record sealing fee of \$65. This revenue is subject to TABOR.

**Court filing fee — revenue increase.** The bill will increase filing fee revenue by at least \$42,500 per year assuming 500 request are filed and using the lowest amount in the fee range, \$85. The civil filing fee for county court ranges from \$85 to \$135 and the filing fee for district court is \$235. Civil filing fees are subject to TABOR, and are deposited primarily into the Judicial Stabilization Cash Fund, as well as other cash funds in the Judicial Department, and \$1 to the General Fund. For simplification purposes, the fiscal note shows this as cash fund revenue.

## **State Expenditures**

The bill is estimated to increase state General Fund expenditures by \$7.4 million and 15.9 FTE in FY 2019-20 and \$12.0 million and 19.1 FTE in FY 2020-21. This includes costs for the Departments of Corrections, Health Care Policy and Financing, Human Services, and Public Safety. These impacts are summarized in Table 2 and detailed further below.

**Table 2  
 Expenditures Under Senate Bill 19-008**

<b>Cost Components</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
<b>Department of Human Services — MAT in Jails</b>		
Personal Services	\$73,016	\$87,619
Operating Expenses and Capital Outlay Costs	\$5,558	\$950
MAT Services	\$2,100,000	\$4,200,000
Centrally Appropriated Costs*	\$13,724	\$16,823
FTE – Personal Services	0.8 FTE	1.0 FTE
<b>DHS — MAT in Jails (Subtotal)</b>	<b>\$2,192,298</b>	<b>\$4,305,392</b>
<b>Department of Corrections — MAT in Prisons</b>		
Personal Services	\$1,135,220	\$1,362,265
Operating Expenses and Capital Outlay Costs	\$78,097	\$13,395
MAT Services	\$181,804	\$198,332
Centrally Appropriated Costs*	\$211,440	\$253,178
FTE – Personal Services	11.8 FTE	14.1 FTE
<b>DOC — MAT in Prison (Subtotal)</b>	<b>\$1,606,561</b>	<b>\$1,827,170</b>
<b>Department of Health Care Policy and Financing — Waiver</b>		
Personal Services	\$116,726	\$140,072
Operating Expenses and Capital Outlay Costs	\$11,116	\$1,900
Contractor Costs	\$225,000	\$150,000
Centrally Appropriated Costs*	\$25,244	\$29,949
FTE – Personal Services	1.7 FTE	2.0 FTE
<b>HCPF — Waiver (Subtotal)</b>	<b>\$378,086</b>	<b>\$321,921</b>
<b>Department of Human Services — LEAD/Co-Responder Program</b>		
Personal Services	\$119,993	\$143,992
Operating Expenses and Capital Outlay Costs	\$11,116	\$1,900
Technical Assistance and Program Evaluation	\$210,000	\$420,000
LEAD Pilot Program Expansion	\$1,725,000	\$3,450,000
Co-Responder Program Expansion	\$1,087,500	\$1,450,000
Centrally Appropriated Costs*	\$25,076	\$30,799
FTE – Personal Services	1.6 FTE	2.0 FTE
<b>DHS — LEAD/Co-Responder Program (Subtotal)</b>	<b>\$3,178,685</b>	<b>\$5,496,691</b>
<b>Department of Public Safety — Study</b>		
Substance Use Disorders in the Criminal Justice System Study	\$40,300	-
<b>DPS — Study (Subtotal)</b>	<b>\$40,300</b>	<b>-</b>
<b>Total</b>	<b>\$7,395,930</b>	<b>\$11,951,174</b>
<b>Total FTE</b>	<b>15.9 FTE</b>	<b>19.1 FTE</b>

\* Centrally appropriated costs are not included in the bill's appropriation.

**Medication-assisted treatment in county jails — DHS.** The DHS will have costs of \$2.2 million in FY 2019-20 and \$4.3 million in FY 2020-21 to contract with providers to provide medication-assisted treatment to persons confined in county jails. These costs include service costs and administrative expenses for 1.0 FTE to manage the program, conduct outreach with counties and providers, and perform other administrative tasks. First-year costs are prorated for the August effective date and the General Fund payday shift.

*Background and assumptions.* The DHS currently receives about \$13 million to provide a range of behavioral health services in county jails; any county funds used for these programs are optional. Of this amount, \$5.3 million is dedicated to substance use disorder treatment. Currently, three counties provide medication-assisted treatment to individuals in their jails. The fiscal note assumes that each month approximately 1,000 persons in jail (about 5 percent of the jail population) will require medication-assisted treatment at an average cost of \$350 per month, or \$4.2 million per year in the first full implementation year. These costs assume that the state will operate a centralized program to contract with providers and starting medication-assisted treatment in January 2019. It is also assumed that the program will serve all persons in county jails estimated to have an opioid use disorder (see the Technical Note section for additional detail on the level of service provided under the bill).

**Medication-assisted treatment in prisons — DOC.** The DOC will have costs estimated at \$1.6 million in FY 2019-20 and \$1.8 million in FY 2020-21 to provide medication-assisted treatment to an assumed 150 inmates. Additional staff costs include a physician, two mid-level providers, a 24/7 nurse post, and six alcohol and drug treatment staff to provide therapy in a community treatment setting. Medication costs are estimated at \$29,160 for Naltrexone for incoming offenders, based on assumption of 150 eligible offenders per year; \$77,086 for Vivitrol for pre-release offenders, based on current average of 6.6 offenders per month; \$77,086 for post-release treatment while on parole, assuming a fraction of parolees would be eligible for medication-assisted treatment under Medicaid; and \$15,000 for Methadone assuming five pregnant offenders per year. First-year costs are prorated for the August effective date and the General Fund payday shift.

*Potential cost savings.* To the extent that providing medication-assisted treatment in state prisons provides greater access to needed services and medications, medical expenses for inmates with behavioral health disorders will decrease. This could include costs related to the provision of medical care, prescription drugs, and transport and staff costs for out-of-jail treatment services. To the extent that access to jail-based behavioral health services improves inmate behavior, this bill may further decrease state prison costs from the early release of inmates that previously served longer sentences as a result of behavioral health disorders. These costs have not been estimated.

**Medicaid waiver application — HCPF.** HCPF will have costs of \$378,086 in FY 2019-20 and \$321,921 in FY 2021-22 to work on the 1115 waiver, using the adults without dependent children expansion waiver as a proxy. Costs are for 2.0 FTE staff to work on developing and writing the comprehensive program description required for the waiver to prove that the benefit will improve health outcomes for Medicaid and other low-income populations in the state. This work includes budget-setting, actuarial analysis, and public outreach. To assist the staff, a contractor will be required beginning in FY 2019-20 for 750 hours at \$200 per hour, totaling \$150,000 per year, and an actuarial contractor will be hired in FY 2019-20 only at a one-time cost of \$75,000. The federal government does not currently allow the use of Medicaid for anyone who is incarcerated, therefore the fiscal note has not estimated service costs for implementation as federal approval is uncertain. If approved, these costs will be addressed during the annual budget process and through future legislation.

**LEAD and Co-Responder criminal justice diversion programs — DHS.** The DHS will have costs of \$3.2 million in FY 2019-20 and \$5.5 million in FY 2020-21 to expand the LEAD and Co-Responder criminal justice diversion programs. For the LEAD Program, it is assumed that each of the additional six program sites will have similar costs as the existing LEAD pilot sites, with per-site operational costs of \$575,000, evaluation costs of \$55,000, and technical assistance costs of \$15,000. For the Co-Responder Program, each of the additional four sites is estimated to have costs of \$362,500. In addition, the DHS will require 2.0 FTE for program management and contract administration to administer the expanded programs. It is assumed that staff will be hired in August 2019, the new Co-Responder Program sites will begin operating on October 1, 2019, and the new LEAD sites will begin operating on January 1, 2020. First-year costs have been prorated to reflect these start dates and the General Fund paydate shift.

*Background and assumptions.* The LEAD Program is a pre-booking diversion program currently being piloted in four locations; instead of being charged and booked following an arrest, the arresting officer may identify an arrestee as a potential participant in the diversion program and connect him or her with a case manager. The Co-Responder Program provides funding to local governments to establish co-responder teams consisting of a law enforcement officer and a behavioral health specialist to intervene on mental health-related police calls to de-escalate situations that have historically resulted in arrest and to assess whether the person should be referred for an immediate behavioral health assessment; it is currently operating in eight locations. Based on the appropriations in the current version of the bill and current program costs, the fiscal note assumes that the bill intends to expand the number of LEAD sites from 4 to 10 locations, and the number of Co-Responder Program sites from 8 to 12. Further, it is assumed that, at full implementation, up to 150 persons involved in the diversion programs will avoid probation.

**Department of Public Safety.** The DPS will have costs of \$40,300 in FY 2019-20 only to study substance use disorders in the criminal justice system. Workload will also increase in the DPS to process new criminal record sealing requests.

*Study of substance use disorder in the criminal justice system.* The bill requires the CCJJ to study issues concerning individuals with substance use disorders who come into contact with the criminal justice system, for which DPS will hire a contractor estimated to cost \$32,500. This cost assumes a study period of ten weeks at \$650 per day (or \$81.25 per hour), based on the cost of similar studies performed by the U.S. Department of Justice. As part of the study, law enforcement experts will travel to various criminal justice facilities and be reimbursed for mileage. Mileage is estimated to average 300 miles per round-trip for an assumed five vehicles on ten trips at the standard rate of \$0.52 per mile.

*Record sealing.* DPS will also have increased workload to seal records. Assuming that approximately 500 record sealing requests will be received by the department each fiscal year, representing 41 per month, the department can accomplish this workload increase within existing appropriations. For informational purposes, the department processes approximately 900 requests per month.

**Judicial Department.** The bill requires individuals seeking to seal drug-related conviction records using the simplified process under the bill to petition the court. As a result, hearings-related workload in the trial courts of the Judicial Department will increase by a minimal amount. The trial courts can accomplish an increase of up to 500 hearings per year within existing appropriations.

**Centrally appropriated costs.** 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. These costs, which include employee insurance, supplemental employee retirement payments and indirect cost assessments, are estimated to be \$275,484 in FY 2019-20 and \$330,749 in FY 2020-21.

## **Local Government**

The bill increases costs and workload for local governments in several ways, as discussed below.

**Medication-assisted treatment in jails.** First, the bill requires that medication-assisted treatment be provided to all persons confined in county jails requiring such treatment. Counties will have an increase in workload to coordinate services with the DHS and treatment providers. Counties that do not comply with this may lose existing state funding for jail-based behavioral health services. In addition, if the state does not fully fund the provision of medication-assisted treatment as estimated in this fiscal note, counties would be required to pay for these services in order to comply with the bill.

**Criminal justice diversion programs.** Second, certain local governments, including municipalities, counties, and district attorneys, will have additional costs and workload to participate in the expanded criminal justice diversion programs under the bill. For the district attorneys, this will require up to 1.0 FTE additional staff in each of the six additional locations. It is assumed that costs for participating local governments will be offset by LEAD program funding provided by the state. Some costs may be reduced if offenders are diverted from jail or the criminal justice system altogether. Local government participation is voluntary.

**Potential cost savings.** To the extent that providing medication-assisted treatment in county jails provides greater access to needed medications, jail medical expenses for inmates with behavioral health disorders will decrease. This could include costs related to the provision of medical care, prescription drugs, and transport and staff costs for out-of-jail treatment services. To the extent that access to medication-assisted treatment improves inmate behavior, this bill may further decrease county jail costs from the early release of inmates that previously served longer sentences as a result of behavioral health disorders. These costs have not been estimated. For informational purposes estimated costs to house an offender in a county jail vary from \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.39 to house state inmates.

## **Technical Note**

As described in the Local Government section, the bill may impact funding to counties for jail-based behavioral health services if medication-assisted treatment is not provided to all persons in jails requiring such treatment. However, the bill does not clearly separate out the expectations for funding medication-assisted treatment between the state and counties. Based on the estimated need, the included appropriation is likely not enough to provide services to all persons. If the state does not fully fund this, then counties may be responsible for making up the difference.

Concerning the criminal justice diversion programs, the appropriations included in the bill are intended to reflect the additional number of program sites described in the fiscal note Assumptions section. However, the included appropriations do not account for various administrative costs or the likely implementation timeline assumed in this fiscal note.

**Effective Date**

The bill takes effect August 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed.

**State Appropriations**

For FY 2019-20, the bill currently includes the following appropriations to the DHS:

- \$1,700,000 General Fund for medication-assisted treatment services in county jails; and
- \$4,900,000 General Fund for criminal justice diversion programs, including \$3,450,000 for the LEAD Program and \$1,450,000 for the Co-Response Program).

For FY 2019-20, the bill requires the following appropriations to the DHS:

- \$2,178,574 General Fund and an allocation of 0.8 FTE for medication-assisted treatment services in county jails; and
- \$3,153,609 General Fund and an allocation of 1.7 FTE for criminal justice diversion programs, (As described in the Technical Note section, this appropriation is less than the \$4.9 million appropriation currently included in the bill because the fiscal note assumes a January 2019 implementation date for the LEAD program and an October 2019 implementation date for the Co-Responder program in the first year; starting in the second year, the fiscal note estimate includes the \$3,450,000 and \$1,450,000 amounts to reflect the program's intended costs when fully implemented).

For FY 2019-20, the bill requires the following appropriations to other agencies:

- \$1,395,121 General Fund to DOC and an allocation of 11.8 FTE for medication-assisted treatment in state prisons;
- \$352,842, including \$176,421 General Fund, \$176,421 federal funds, and an allocation of 1.7 FTE to HCPF to apply for the federal waiver; and
- \$40,300 General Fund to DPS for the CCJJ to conduct the required study.

**State and Local Government Contacts**

Counties  
Information Technology  
Sheriffs

District Attorneys  
Judicial

Human Services  
Public Safety