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FISCAL NOTE

Drafting Number: LLS 20-0294
Prime Sponsors: Rep. Herod; Kennedy
Sen. Donovan; Priola

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Bill Status: House Appropriations
Fiscal Analyst: Erin Reynolds | 303-866-4146
erin.reynolds@state.co.us

Bill Topic: SUBSTANCE USE DISORDER TREATMENT CRIMINAL JUSTICE SYSTEM

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government, Statutory Public Entity

This bill makes several changes to state laws concerning substance use disorder treatment in the criminal justice system. Beginning in FY 2020-21, the bill increases state and local expenditures on an ongoing basis.

Appropriation Summary: For FY 2020-21, this bill requires an appropriation of \$2,059,872 to multiple state agencies.

Fiscal Note Status: The revised fiscal note reflects the introduced bill, as amended by the House Public Health Care and Human Services Committee. It has also been updated to reflect new information from the Department of Corrections.

Table 1
State Fiscal Impacts Under HB 20-1017

Table with 5 columns: Category, FY 2020-21, FY 2021-22, FY 2022-23. Rows include Revenue, Expenditures (General Fund, Centrally Appropriated, Total), Total FTE, Transfers, and TABOR Refund.

Summary of Legislation

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

Availability of opiate agonist and antagonists. This bill requires the Department of Corrections (DOC), private contract prisons, local jails, multijurisdictional jails, municipal jails, and the Department of Human Services (DHS) facilities to make available at least one opioid agonist and one opioid antagonist to a person in custody with an opioid use disorder throughout the duration of the person's incarceration or commitment.

Safe stations. The bill allows a person to dispose of any controlled substances at a safe station without being subject to arrest or prosecution. The person may also request assistance in gaining access to treatment for a substance use disorder. A safe station is defined as local law enforcement office or fire station. Safe station personnel must make a reasonable effort to determine if the individual is in need of immediate medical attention and facilitate transportation to an appropriate medical facility, if necessary.

Continuity of care planning. The bill requires the DOC and county jails to ensure that continuity of care is provided to inmates prior to release. This includes scheduling appointments with the person's health provider; ensuring treatment services are available; providing post-release resources (see below); ensuring the person's Medicaid is reinstated, where applicable; and, if the person has a history of opioid use disorder, developing a medication-assisted treatment plan and providing an opioid antagonist to the person.

Post-release resources for inmates. This bill requires the executive director of the DOC to consult with the DHS, the Department of Health Care Policy and Financing (HCPF), the Department of Local Affairs (DOLA), and local service providers to develop resources for inmates post-release that provide information to help prepare inmates for release and reintegration into their communities.

Criminal record sealing. If a person has entered into or successfully completed a substance use disorder treatment program in a case that is the subject of the petition to seal, this bill requires the courts to consider this factor favorably in determining whether to grant the petition to seal.

Contracting with local governments for criminal justice diversion programs. The bill codifies existing pilot programs. The Law Enforcement Assisted Diversion (LEAD) is a pre-booking diversion program that connects a defendant with a case manager instead of the defendant being charged and booked following an arrest. The defendant is presented with a harm reduction-based approach to connect them with substance use treatment and other services. The Co-Responder Program provides funding to local governments for a behavioral health specialist and law enforcement officer team that responds to mental health-related calls and de-escalates situations. Beginning November 1, 2021, the DHS is required to provide an update regarding the current status of funding and implementation of these programs as part of its annual SMART presentation. The State Board of Human Services may promulgate rules to implement this section.

Appropriation to criminal justice diversion programs. The bill appropriates \$1,150,000 from the General Fund to the DHS for the criminal justice diversion programs outlined above.

State Expenditures

This bill will increase state General Fund expenditures by \$2.3 million and 16.7 FTE in FY 2020-21, \$4.5 million and 35.5 FTE in FY 2021-22, and \$4.8 million and 37.0 FTE in FY 2022-23 and future years, as shown in Table 2. The bill will also increase workload for the Judicial Department, HCPF, and DOLA, as discussed below.

**Table 2
 Expenditures Under House Bill 20-1017**

	FY 2020-21	FY 2021-22	FY 2022-23
Department of Corrections			
Personal Services	\$1,343,457	\$2,547,737	\$2,920,700
Operating Expenses	\$22,815	\$49,950	\$35,150
Capital Outlay Costs	\$105,400	\$124,000	-
Leased Space	\$13,200	\$33,000	\$33,000
Centrally Appropriated Costs*	\$289,913	\$588,390	\$637,267
FTE – Personal Services	16.7 FTE	35.5 FTE	37.0 FTE
DOC Subtotal	\$1,774,785	\$3,343,077	\$3,626,117
Department of Human Services			
LEAD and Co-Responder Programs	\$575,000	\$1,150,000	\$1,150,000
DHS Subtotal	\$575,000	\$1,150,000	\$1,150,000
Total Cost	\$2,349,785	\$4,493,077	\$4,776,117
Total FTE	16.7 FTE	35.5 FTE	37.0 FTE

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

Department of Corrections. This bill increases expenditures in the DOC for the provision of medication-assisted treatment (MAT) services to all offenders with an opioid use disorder throughout the duration of their incarceration and to ensure the continuity of care for offenders with a substance use disorder that are released from a correctional facility. These changes expand the treatment that is currently offered to offenders and require additional staffing resources to implement. FTE costs include the General Fund paydate shift in the first year.

- *Background.* The DOC received funding in SB 19-008 to establish a MAT program to provide continuity of treatment for individuals who were receiving MAT in a local jail prior to being placed in the custody of the DOC. The MAT program began on July 1, 2019, and provides medication-assisted and behavioral health treatment to this population. As of this writing, the MAT program has served 107 offenders, and DOC has over 1,000 offenders engaged in recommended alcohol and drug treatment programming. The DOC has also received funding through the State Opioid Response (SOR) grant program in the Department of Human Services Office of Behavioral Health, which has paid for initial start-up costs at five facilities, including facility modifications, pharmaceutical tracking software, medication storage vaults, and initial inventory of medications.

- *Nurses.* The DOC requires 3.4 FTE Nurse I in to provide MAT in three facilities, resulting in a total staff increase of 10.2 FTE in FY 2020-21 to cover all shifts. This increases to 17.0 FTE in FY 2021-22 to account for the addition of the Sterling Correctional Facility which must accommodate offenders at multiple classification levels.
- *Health professionals.* The Department requires 6.0 FTE Health Professional II in FY 2020-21 and 9.0 FTE in FY 2021-22 to provide MAT services. This staff will facilitate weekly and monthly group treatment sessions, complete intake assessments on offenders entering treatment, create and update treatment plans, and other relevant coordination and assessment tasks.
- *Social workers.* The DOC will require 2.0 FTE Social Worker III in FY 2020-21 and 3.0 FTE in FY 2021-22 to oversee continuity of care when an offender releases to parole, including scheduling appointments with the offender's behavioral health provider, providing post-release resources, and developing a MAT plan upon release. These are services the DOC does not provide currently.
- *Leased space.* The social worker staff also requires leased space in DOC parole offices, at a cost of \$6,600 per FTE annually.
- *Pharmaceutical costs.* The DOC will dispense additional pharmaceuticals because of the increasing offender population that will require MAT. DOC received \$121,246 for this purpose from SB 19-008. The Department is planning to utilize SOR grant funds to purchase the required treatment pharmaceuticals into FY 2020-21. DOC expects to need future increases in the Purchase of Pharmaceuticals appropriation as the population receiving MAT grows and will seek these increases either through future grant funding or, if grant funds are not available, the budget request cycle.

Department of Human Services. This bill increases expenditures in the DHS by \$575,000 in FY 2020-21 (half-year impact) and \$1,150,000 in FY 2021-22 for criminal justice diversion programs. The cost of a LEAD program site is \$575,000 per year, while the cost of a Co-Responder program is \$362,500 per team per year. The fiscal note assumes that the included appropriation in the bill will result in approximately three new programs in the first full implementation year in FY 2021-22. In FY 2020-21, the programs are assumed to start in January 1, 2021, to allow for procurement, contracting, and startup.

Judicial Department. This bill adds a factor for courts to consider when defendants request their criminal cases be sealed. The Judicial Department will need to amend forms to allow for a person to indicate whether they have entered into or successfully completed a substance use disorder treatment program in the case that is the subject of the petition to seal. This impact is expected to be minimal and can be accomplished within existing resources.

Departments of Local Affairs and Health Care Policy and Financing. There will be an increase in workload for DOLA and HCPF to work with the DOC to develop post-release resources for inmates. This impact is expected to be minimal and can be accomplished within existing resources. HCPF already supports county jails around the issue of Medicaid enrollment, so no change in appropriations is required.

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 and supplemental employee retirement payments, are estimated to be \$12,694 in FY 2020-21 and \$15,637 in FY 2021-22.

Local Government

Beginning in FY 2020-21, this bill will increase local government costs and workload in several ways, as described below. The exact impact to a particular local government will vary.

Provide opioid agonist and antagonist in jails. There will be an increase in costs to jails to make available at least one opioid agonist and one opioid antagonist to a person in custody with an opioid use disorder throughout the duration of the person's incarceration. Costs and workload will also increase to ensure continuity of care is provided for inmates who are treated for substance use disorder while incarcerated. These costs will vary by local jurisdiction depending on their jail population and current treatment practices. For informational purposes, two examples, from El Paso County and Boulder County, are offered below. Grant programs available to fund these programs include but are not limited to: the Comprehensive Opioid, Stimulant, and Substance Abuse Program in the U.S. Department of Justice; the State Opioid Response Grant Program in the DHS; and the Jail Based Behavioral Health Services Program in the DHS.

- *El Paso County.* El Paso County Sheriff's Office costs will increase by an estimated \$430,000 per year. This includes the addition of five staff, including three case managers and two addiction counselors, plus prescription drug costs estimated at \$71,000 per year.
- *Boulder County.* Boulder County Sheriff's Office costs to run a MAT program are \$490,000. This includes three staff performing assessment, counseling, and re-entry services in the jail; one case manager; and prescription drug costs. This cost does not include the overseeing physician, time spent on post-treatment coordination, nor resource materials provided upon release.

Safe stations. Municipal police stations, county sheriff's offices, and municipal, county, and fire protection district fire stations will have increased costs and workload to operate as a safe station. These impacts include disposing of controlled substances, which are currently transported out of state to be destroyed, assisting individuals in finding access to treatment for a substance use disorder, and facilitating transport to a medical facility if necessary.

Criminal justice diversion programs. 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. 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.

Effective Date

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

State Appropriations

This bill includes a General Fund appropriation of \$1,150,000 to the DHS for FY 2020-21; however, the fiscal note assumes this amount represents the cost of the ongoing operation of the criminal justice diversion programs beginning in FY 2021-22 and that for FY 2020-21 the bill requires a half-year appropriation of \$575,000 instead.

In addition, the bill requires a General Fund appropriation of \$1,484,872 and 16.7 FTE to the DOC.

State and Local Government Contacts

Corrections
Health Care Policy and Financing
Judicial
Municipalities

Counties
Human Services
Law
Sheriffs

Fire Chiefs
Information Technology
Local Affairs
Special Districts