



Legislative Council Staff *Nonpartisan Services for Colorado's Legislature*

Fiscal Note

Drafting Number:	LLS 22-0257	Date:	March 9, 2022
Prime Sponsors:	Rep. Amabile; McCluskie Sen. Moreno; Gardner	Bill Status:	House HHS
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Bill Topic: **MODIFICATIONS TO CIVIL INVOLUNTARY COMMITMENT**

Summary of Fiscal Impact:	<input 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

The bill makes numerous changes to the state's involuntary commitment system. It will increase state expenditures beginning in FY 2022-23.

Appropriation Summary: For FY 2022-23, the bill requires appropriations totaling \$143.7 million to the Department of Human Services and the Judicial Department.

Fiscal Note Status: The fiscal note reflects the introduced bill.

**Table 1
State Fiscal Impacts Under HB 22-1256**

		Budget Year FY 2022-23	Out Year FY 2023-24	Out Year FY 2024-25	Out Year FY 2025-26
Revenue		-	-	-	-
Expenditures	General Fund	\$143,778,255	\$144,474,344	\$201,601,390	\$108,123,456
	Centrally Approp.	-	-	\$19,374	\$72,491
	Total Expenditures	\$143,778,255	\$144,474,344	\$201,620,764	\$108,195,947
	Total FTE	218.1 FTE	237.3 FTE	239.0 FTE	240.6 FTE
Transfers		-	-	-	-
Other Budget Impacts	GF Reserve	\$21,566,738	\$21,671,152	\$30,240,208	\$16,218,518

Summary of Legislation

The bill transfers duties relating to the care and treatment of persons with mental health disorders from the Office of Behavioral Health to the Behavioral Health Administration (BHA) in the Department of Human Services (DHS). It creates new procedures relating to 72-hour treatment and evaluation of a person appearing to have a mental health crisis, as well as procedures to certify short-term or long-term care and treatment of a person who has a mental health crisis. The bill also outlines processes for engaging with an individual that may be experiencing a behavioral health crisis including transport, oversight, care, and access to legal representation. These provisions are detailed below.

Effective ninety days after signing, the administration for Article 65 of Title 27 is transferred to the Behavioral Health Administration from the Office of Behavioral Health. The bill expands the list of professionals that can place a mental health hold; updates the involuntary transportation hold; and requires court petitions to include recommendations for inpatient or outpatient services.

Effective July 1, 2023, the bill:

- subjects a person who files a malicious or false petition for an evaluation of a respondent to criminal prosecution;
- authorizes a certified peace officer to transport a person to an emergency medical services facility (EMS facility), even if a warrant has been issued for the person's arrest, if the certified peace officer believes it is in the best interest of the person;
- authorizes a secure transportation provider to take a respondent into custody and transport the person to an EMS facility or designated facility for an emergency mental health hold;
- expands the list of professionals who may terminate the emergency mental health hold;
- requires evaluations to be completed using a standardized form approved by the BHA commissioner;
- expands who can initiate a certification to include an advanced practice registered nurse with training in psychiatric nursing and prescriptive authority;
- requires an EMS facility to immediately notify the BHA if a person is evaluated and the evaluating professional determines that the person continues to meet the criteria for an emergency mental health hold and the initial emergency mental health hold is set to expire before an appropriate placement is located;
- requires the BHA to support the EMS facility in locating an appropriate placement option; and if an appropriate placement option cannot be located, the bill authorizes the EMS facility to place the person under a second emergency mental health hold and requires the court to immediately appoint an attorney; and
- requires the facility to provide the person with a discharge summary and a copy of the completed evaluation; facilitate a follow-up appointment within 7 calendar days after discharge, attempt to follow up with the person 48 hours after discharge, and encourage the person to designate a family member, friend, or lay person to participate in the person's discharge planning.

Effective January 1, 2025, the bill:

- authorizes the court to certify a respondent for not more than 3 months for short-term treatment and place the respondent in the BHA's custody without the need for an 72-hour emergency mental health hold upon a petition of certain individuals;
- requires the court to commit the respondent to the custody of the BHA if the court finds that grounds for certification for short-term treatment have been established;
- authorizes the judge or magistrate who certified the respondent for short-term treatment to sign the notice of certification;
- requires the notification of certification to include a recommendation whether the certification should take place on an inpatient or outpatient basis;
- authorizes the BHA to delegate physical custody of the respondent to a designated facility;
- requires an extended certification to be filed with the court at least 30 days prior to the expiration of the original certification;
- establishes requirements for a short-term or long-term certification on an outpatient basis; and
- requires the outpatient treatment provider, in collaboration with the BHA, to develop a treatment plan for the respondent and requiring the BHA to create a one-step grievance process for the respondent related to the respondent's treatment plan or provider.

Additionally, the bill:

- establishes a right to an attorney for a person certified for short-term or long-term care and treatment, regardless of income;
- requires the BHA to annually submit a report to the legislature every January 1 on the outcomes and effectiveness of the involuntary commitment system, disaggregated by region, including any recommendations to improve the system and outcomes for persons involuntarily committed or certified; and
- makes conforming amendments.

Comparable Crime Analysis

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 creates a new factual basis for an existing crime. This section outlines data on crimes comparable to the offense in this bill and discusses assumptions on future rates of criminal conviction for those offense.

Prior conviction data and assumptions. This bill creates a new offense of retaliating or discriminating against any person or entity involved in a grievance procedure, an unclassified misdemeanor subject to a fine of not more than \$1,000. The bill also subjects persons filing a malicious or false petition for an evaluation subject to criminal prosecution. To form an estimate on the prevalence of these new crimes, the fiscal note analyzed the existing offense of violating confidentiality of public health records as a comparable crime. From FY 2018-19 to FY 2020-21, zero offenders have been sentenced and convicted for this existing offense; therefore, the fiscal note assumes that there will be minimal or no additional case filings or convictions for the new offense under the bill. Because the bill is not expected to have a tangible impact on criminal justice-related expenditures or revenue at the state or local levels, these potential impacts are not discussed further in this fiscal note. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Expenditures

The bill increases state General Fund expenditures in the DHS and the Judicial Department by the amounts shown in Table 2. For costs in the DHS, the fiscal note groups them into three parts—parts A through C—based on their effective dates. These costs are explained further below.

**Table 2
Expenditures Under HB 22-1256**

Cost Components	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26
Part A – Statewide Technical Training, Individual Care Coordination, Facility Designation				
Personal Services	\$372,871	\$689,156	\$774,050	\$780,181
Operating Expenses	\$7,965	\$16,335	\$17,685	\$17,685
Capital Outlay Costs	\$43,400	\$31,000	\$6,200	-
Legal Services	\$177,426	\$177,426	\$88,713	\$88,713
Insurance/Supplemental Retirement ¹	\$86,540	\$178,990	\$199,626	\$201,178
FTE – Personal Services	5.3 FTE	11.7 FTE	13 FTE	13.1 FTE
FTE – Legal Services	1.0 FTE	1.0 FTE	0.5 FTE	0.5 FTE
Part A Subtotal	\$688,202	\$1,092,907	\$1,086,274	\$1,087,757
Part B – Short-term Certification and Community-based Treatment				
Personal Services	\$18,927,395	\$20,164,730	\$20,164,730	\$20,164,730
Operating Expenses	\$297,810	\$303,210	\$303,210	\$303,210
Capital Outlay Costs	\$1,395,000	-	-	-
Contracted Community Beds	\$4,999,040	\$4,999,040	\$4,999,040	\$4,999,040
Contracted Hospital Beds	\$8,760,000	\$8,760,000	\$8,760,000	\$8,760,000
Housing Assistance	\$2,830,750	\$2,830,750	\$2,830,750	\$2,830,750
Transitional Services	\$7,576,200	\$7,576,200	\$7,576,200	\$7,576,200
ACT Team Overhead	\$724,640	\$724,640	\$724,640	\$724,640
Insurance/Supplemental Retirement ¹	\$3,892,518	\$4,136,167	\$4,136,167	\$4,136,167
FTE – Personal Services	211.8 FTE	224.6 FTE	224.6 FTE	224.6 FTE
Part B Subtotal	\$49,403,353	\$49,494,737	\$49,494,737	\$49,494,737
Part C – Mental Health Institute Inpatient Services for Long-term Certifications				
Bed Construction	\$93,600,000	\$93,600,000	\$93,600,000	-
Information Technology	-	\$200,000	\$25,000	\$25,000
Bed Operating Costs	-	-	\$56,940,000	\$56,940,000
Part C Subtotal	\$93,600,000	\$93,800,000	\$150,565,000	\$56,965,000
DHS Subtotal	\$143,691,555	\$144,387,644	\$201,146,011	\$107,547,494
Total DHS FTE	218.1 FTE	237.3 FTE	237.9 FTE	238.2 FTE

Table 2
Expenditures Under HB 22-1256 (Cont.)

Cost Components	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26
Judicial Department				
Personal Services	-	-	\$93,089	\$223,412
Operating Expenses	-	-	\$2,470	\$5,130
Capital Outlay Costs	-	-	\$13,120	\$720
Court-appointed Attorneys	\$86,700	\$86,700	\$86,700	\$86,700
Guardians Ad Litem	-	-	\$156,000	\$156,000
Mental Health Evaluations	-	-	\$104,000	\$104,000
Centrally Appropriated Costs ¹	-	-	\$19,374	\$72,491
FTE – Personal Services	-	-	1.1 FTE	2.4 FTE
Judicial Subtotal	\$86,700	\$86,700	\$474,753	\$648,453
Grand Total	\$143,778,255	\$144,474,344	\$201,620,764	\$108,195,947
Total FTE	218.1 FTE	237.3 FTE	239.0 FTE	240.6 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation, unless the bill requires 20 FTE or more.

Department of Human Services—Part A. Part A of the bill requires the DHS to provide technical training on emergency transportation holds, individual care coordination for individuals experiencing a mental health crisis, a one-step grievance process, facility-level designation, and reporting, as detailed below.

- **Technical training.** The DHS requires 2.0 FTE to develop, oversee, and administer profession-specific trainings for peace officers and emergency medical services personnel and provide technical assistance to facilities, programs, and counties regarding emergency transportation holds.
- **Individual care coordination.** The DHS will require a total of 6.1 FTE to implement individual care coordination. This includes 1.0 FTE to facilitate individual care coordination, including providing tracking and notifications at all steps in the process as well as evaluating an individual's long-term certification for treatment and managing the related court petitioning process. Starting in FY 2023-24, 5.1 FTE is required to respond to notifications from emergency medical services facilities 24/7 and support the emergency medical services facility in locating an appropriate placement option on an inpatient or outpatient basis.

These costs assume that the BHA will not maintain patient treatment records nor patient specific forms, instead it will create a form template to be maintained in an individual's treatment record at a facility. Any records requests pursuant to this provision would be a responsibility of the facility or program providing the hold services.

- **One-step grievance process.** The DHS requires 1.0 FTE to create and oversee the one-step grievance process.

- **Facility designation.** The DHS will require 3.0 FTE to provide facility-level annual tiered designation, compliance checks, and technical assistance for 147 facilities. This assumes a ratio of one staff per 50 facilities.
- **Reporting.** Starting in FY 2024-25, 1.0 FTE is required to collect and report program data, and make recommendations to the legislature.
- **Legal services.** The DHS requires 1800 hours of legal services in FY 2022-23 and FY 2023-24, and 900 hours per year starting in FY 2024-25. Legal services are provided by the Department of Law at a cost of \$98.57 per hour. The Department of Law will use 1.0 FTE in the first two years and 0.5 FTE in third and subsequent years for this work.

Department of Human Services—Part B. Part B of the bill establishes a new procedure that allows the court to certify a respondent for up to three months for short-term treatment in the custody of the BHA without a petition, which is assumed to require the BHA to provide custodial oversight of these certified individuals. Costs to provide custodial oversight are detailed below.

- **Case managers.** In CY 2019, there were 6,587 short-term certifications. Using the substance use disorder involuntary commitment system caseload as a proxy, each BHA staff can manage 62 cases per year, resulting in a need of 106.2 FTE case managers.
- **Assertive Community Treatment teams.** Assuming that the Assertive Community Treatment (ACT) model will be used to provide treatment to individuals under short-term certification; that about half of short-term certifications, or 3,294, will require their services per year, which is 824 individuals at any given time assuming three month certification; the DHS requires eight ACT teams of 14.8 FTE per team.
- **Contracted beds.** Further, some individuals will require direct treatment. There were 7,189 total certifications (short-term and long-term certifications) in CY 2019. Assuming the state must create a system of stable mental health services for this population while in its custody, and that up to one percent of individuals will require a bed over the course of each year, the DHS requires 32 contracted community beds at a cost of \$156,220 per bed per year; and 20 contracted hospital beds at a cost of \$438,000 per bed per year.
- **Housing assistance.** In addition, the bill requires a treatment plan to be developed for each individual in BHA custody. Assuming that housing will be part of treatment plans for individuals that are unhoused and/or transitioning from inpatient care, and that the average length of stay will be six months, the DHS requires 60 beds in transitional housing. Costs assume \$100 per bed day, plus one contracted case manager per 20 beds, a supervisor, and contract administrator costs.
- **Transitional services.** Using the DHS transitional specialist program as a proxy, the DHS requires \$2,300 per individual, assuming 3,294 per year, for individually based wrap-around services.

- **Medicaid reimbursement.** Some persons served by the BHA will be eligible for Medicaid and services provided under the bill will qualify for Medicaid reimbursement. However, an estimate of the amount of potential Medicaid reimbursements is not available at this time. To the extent Medicaid reimbursement is available, the amount of General Fund required will decrease and be offset by an increase in federal funds. It is assumed that this funding shift will be addressed through the annual budget process.

Department of Human Services—Part C. In CY 2019, there were 602 long-term certifications. It is assumed that individuals on long-term certification will require institute level of care, and will receive treatment services for approximately four months and then transition to long-term care in a community setting, equating to 1,806 individuals served per fiscal year at the Mental Health Institutes. To serve this population, a new facility with 120 beds is required. It is assumed the new facility will be built over three years at the cost of \$2.3 million per bed, which is the 2017 cost to build beds at MHI-Fort Logan plus 30 percent to account for changes in construction prices and labor since that previous project. Operating bed costs of \$1,300 per day starting in FY 2024-25, plus IT costs to support system modifications for the civilly committed population estimated at \$200,000 in FY 2023-24 and \$25,000 in FY 2024-25 and ongoing.

Judicial Department. The Judicial Department will have costs for court-appointed attorneys and guardians, as well as increased workload in the trial courts.

- **Court-appointed attorneys.** Beginning in FY 2022-23, costs for court-appointed attorneys are expected to increase due to the bill's absolute right to counsel. Costs are estimated based on the difference between the number of short-term mental health cases filed in FY 2020-21, 6,957 cases, and mental health cases where court-appointed counsel was provided, 6,718 cases, which equates to 221 appointments per year at an average rate of \$340 per appointment, or \$75,140 per year. In addition, the bill requires the court to immediately appoint an attorney in cases where an appropriate placement option cannot be located and the person continues to meet the criteria for an emergency mental health hold. Assuming 34 cases receive a second emergency hold, the cost is \$11,560 per year.
- **Trial courts.** Beginning January 1, 2025, the bill allows anyone to directly petition the court for certification, allows the respondent to request a jury trial, and requires the court to appoint a guardian ad litem to represent the respondent in certain cases, largely within 10-day timeframes. In FY 2020-21, there were 6,957 short-term mental health cases filed statewide. Assuming 30 percent of the 6,957 short-term cases, or approximately 2,087 cases, will petition the courts, and the district court standard for mental health cases is 4,880 cases per judicial officer, an additional 0.4 FTE judicial officer and 1.2 FTE support staff is required.

Further, the bill's one-step grievance process, the allowance for anyone to contest a respondent's treatment regimen, a respondent's right to judicial review on restrictive placements and to file motions to contest certification, and right to waive counsel will all increase hearing time. Assuming that 45 minutes of additional hearing time will be required in 5 percent of cases (353 cases) and assuming that 15 minutes of additional hearing time will be required in 3 percent of cases where the right to counsel has been waived, 209 cases, an additional 0.2 FTE judicial officer and 0.6 FTE support staff is required.

- **Guardian Ad Litem appointments.** Beginning January 1, 2025, assuming about 2,000 cases are filed as a result of the legislation, and that 5 percent of cases will have a GAL appointed, the Judicial Department requires 104 new appointments at an average cost of \$1,500 per appointment.
- **Mental health evaluations.** Beginning January 1, 2025, and using the same assumption for GAL appointments, the Judicial Department requires 104 mental health evaluations ordered at an average cost of \$1,000 per evaluation.

The fiscal note assumes the Judicial Department will use the annual budget process to account for other provisions of the bill or outcomes that differ from these assumptions. The fiscal note also anticipates that the DHS and the Judicial Department will be in consultation about guardian ad litem and mental health evaluation costs.

Other state agencies. Impacts to other state agencies—including, but not limited to, the Departments of Higher Education, Public Safety, and Regulatory Agencies—have not been estimated and will be addressed through the annual budget process as needed.

Centrally appropriated costs. Pursuant to fiscal note and Joint Budget Committee policy, centrally appropriated costs for bills involving more than 20 FTE are appropriated in the bill, rather than through the annual budget process. Employee insurance and supplemental employee insurance costs for new staff under the bill are shown in Table 2 above.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by amounts shown in Table 1, which will decrease the amount of General Fund available for other purposes.

Local Government

County attorneys. County attorneys are required to handle civil commitments in court when the respondent lives in a county with a population less than 50,000. These costs have not been estimated.

Local law enforcement. Workload will increase for local law enforcement to provide support and transportation services in emergency mental health matters. This involvement may also increase officer liability related to use of force in a civil matter, which will increase litigation costs. These costs have not been estimated.

Technical Note

The Behavioral Health Administration is in the process of being established, initially through House Bill 21-1097, and further through House Bill 22-1278.

Effective Date

The bill has the following effective dates:

- sections 2, 5, and 40 of this act take effect July 1, 2023;
- sections 27-65-108 and 27-65-111, as enacted in section 1 of this act, and sections 3 and 4 of this act take effect January 1, 2025; and
- the remainder of this act takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For FY 2022-23, the following General Fund appropriations are required:

- \$143,691,555 to the Department of Human Services and 211.8 FTE; of this amount, \$177,426 is reappropriated to the Department of Law and with an additional 1.0 FTE.
- \$86,700 to the Judicial Department.

State and Local Government Contacts

Counties
Human Services
Law
Sheriffs

District Attorneys
Information Technology
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