



Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number: LLS 22-0257 Date: July 28, 2022
Prime Sponsors: Rep. Amabile; McCluskie Sen. Moreno; Gardner Bill Status: Signed into Law
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Bill Topic: MODIFICATIONS TO CIVIL INVOLUNTARY COMMITMENT

- Summary of Fiscal Impact:
- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- 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 includes appropriations totaling \$0.6 million to multiple state agencies.

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

Table 1
State Fiscal Impacts Under HB 22-1256

Table with 4 columns: Category, Budget Year FY 2022-23, Out Year FY 2023-24, Out Year FY 2024-25. Rows include Revenue, Expenditures (General Fund, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve).

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 (CDHS). It modifies procedures for 72-hour emergency mental health holds, and outlines processes related to transport, oversight, care coordination, and access to legal representation. These provisions are detailed below.

Effective August 9, 2022, the bill:

- transfers the administration for Article 65 of Title 27 to the BHA;
- modifies 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 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 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;
- requires the evaluation to be completed using a BHA-approved standardized form;
- 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. 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;
- 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; and
- allows grievance filings related to mental health holds to be filed with the Department of Public Health and Environment (CDPHE), in addition to the BHA and the Office of the Ombudsman for Behavioral Health Access to Care.

Effective July 1, 2024, the bill:

- 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 requires 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 provide periodic updates to the BHA advisory board related to the bill's implementation from January 1, 2023, through July 1, 2025;
- requires the BHA to annually submit a report to the legislature beginning January 1, 2025, on the outcomes and effectiveness of the involuntary civil commitment system, including recommendations for improvement; 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. 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 CDHS and the Judicial Department by the amounts shown in Table 2. These costs are explained further below.

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

Cost Components	FY 2022-23	FY 2023-24	FY 2024-25
Department of Human Services			
Personal Services	\$307,257	\$527,186	\$544,640
Operating Expenses	\$6,750	\$13,635	\$13,635
Capital Outlay Costs	\$31,000	\$31,000	-
Legal Services	\$177,426	\$177,426	\$88,713
Care Coordination	-	\$350,000	\$1,400,000
Centrally Appropriated Costs ¹	\$72,638	\$144,421	\$149,992
FTE – Personal Services	4.5 FTE	9.7 FTE	10.1 FTE
FTE – Legal Services	1.0 FTE	1.0 FTE	0.5 FTE
CDHS Subtotal	\$595,071	\$1,243,668	\$2,196,980
Department of Public Health and Environment			
Personal Services	-	\$132,155	\$125,277
Operating Expenses	-	\$3,105	\$2,700
Capital Outlay Costs	-	\$12,400	-
Travel Costs	-	\$50,000	\$36,000
Centrally Appropriated Costs ¹	-	\$32,887	\$31,268
FTE – Personal Services	-	2.1 FTE	2.0 FTE
CDPHE Subtotal	-	\$230,547	\$195,245
Judicial Department			
Court-appointed Attorneys	\$86,700	\$86,700	\$86,700
Judicial Subtotal	\$86,700	\$86,700	\$86,700
Grand Total	\$681,771	\$1,560,915	\$2,478,925
Total FTE	5.5 FTE	12.8 FTE	12.6 FTE

Department of Human Services. The bill requires the BHA to provide oversight and notifications related to involuntary civil commitments, care coordination for individuals and coordination assistance to emergency medical services facilities, technical training on emergency transportation holds, and evaluation and reporting, as detailed below.

- **Program management and coordination.** The BHA requires 1.0 FTE Program Manager responsible for the direct oversight of involuntary civil commitments, including rule development and enforcement, staff management, contract oversight, and determinations of when sufficient treatment was received. The BHA also requires 1.0 FTE Program Coordinator to provide notification upon discharge; track and evaluate certifications for treatment; and review and determine whether to file a petition with the court for long-term certifications.
- **Care coordination for emergency medical services facilities.** Starting in FY 2023-24, the BHA requires 5.1 FTE to respond to notifications from emergency medical services facilities 24 hours a day and support the emergency medical services facility in locating an appropriate placement option on an inpatient or outpatient basis.
- **Technical training.** The BHA 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.
- **Evaluation and reporting.** Starting in FY 2022-23, the BHA requires 1.0 FTE to collect and report program data. Beginning January 1, 2025, this position will also make program improvement recommendations to the legislature.
- **Legal services.** The BHA 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.
- **Care coordination for certified persons.** Beginning in the last three months of FY 2023-24, the BHA requires contracted services estimated at \$200,000 for each of the seven regions to provide care coordination services to certified individuals, or \$1.4 million per year. FY 2023-24 are prorated for three months, assuming contracts will be hired in advance of the section going into effect on July 1, 2024.
- **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 Public Health and Environment. The CDPHE require staff to address its new responsibility address grievances related to facilities, which take effect FY 2023-24. Grievances related to transport, which take effect FY 2022-23, are expected to be minimal.

- **Staff.** Assuming that the CDPHE receives approximately 0.8 percent complaints from each hospital (116) and behavioral health facility (18), based on the average hospital-related complaint rate from the past four years, and that each complaint requires 40 hours to investigate, the department requires 2.3 FTE in FY 2023-24, prorated for the General Fund pay date shift. In

FY 2024-25, when the CDPHE no longer has oversight over behavioral health facilities, the FTE is reduced to 2.0 FTE. After FY 2024-25, if CDHPE has received more grievances than anticipated, additional resources will be sought through the annual budget process.

- **Travel.** Travel costs assume half of the complaint investigation surveys will be outside the Denver metro area and that overnight travel will be needed, requiring travel day and full day per diem payments and hotel costs at an assumed three nights per trip.

Judicial Department. Costs will increase for the Judicial Department to provide court-appointed representation to respondents in certain cases, estimated at \$86,700 per year. Workload will also increase related to potential new caseloads established in the bill. These impacts are detailed below.

- **Court-appointed counsel.** 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 additional 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.
- **Respondent rights.** Trial court workload may increase from engaging the respondent proactively in their treatment and affording various respondent rights that may be challenged in court. In FY 2020-21, there were 6,957 short-term and 109 long-term mental health cases filed in the trial courts. Based on the avenues created in the legislation, and assuming additional hearing time is required in 5 percent of cases, this would create the need for 0.1 FTE Magistrate and support staff. This increase can be absorbed by trial courts.
- **Other potential caseload increases.** Additional provisions of the bill may result in caseload increases for the trial courts, including criminal prosecution for any person who files a malicious or false petition for a respondent evaluation or for facilities who violate whistleblower protections. As discussed in the Comparable Crime section, these impacts can be absorbed by the trial courts.

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 CDHS and the Judicial Department will be in consultation about any guardian ad litem and mental health evaluation costs.

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 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 decreases 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.

Effective Date

The bill was signed into law by the Governor on June 8, 2022, and has the following effective dates:

- sections 2 and 5 take effect July 1, 2023;
- sections 27-65-108 and 27-65-111 as enacted in section 1, and sections 3 and 4 take effect July 1, 2024; and
- the remainder of this act takes effect August 9, 2022, assuming no referendum petition is filed.

State Appropriations

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

- \$522,433 to the Department of Human Services and 5.5 FTE;
- of this amount, \$177,426 is reappropriated to the Department of Law and with an additional 1.0 FTE; and
- \$86,700 to the Judicial Department.

State and Local Government Contacts

Counties	District Attorneys	Higher Education
Human Services	Information Technology	Judicial
Law	Public Health and Environment	Public Safety
Regulatory Agencies	Sheriffs	