



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated March 9, 2022)

Drafting Number: LLS 22-0257 **Date:** March 30, 2022
Prime Sponsors: Rep. Amabile; McCluskie **Bill Status:** House Appropriations
 Sen. Moreno; Gardner **Fiscal Analyst:** Erin Reynolds | 303-866-4146
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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 \$0.6 million to the Department of Human Services and the Judicial Department.

Fiscal Note Status: The revised fiscal note reflects the introduced bill, as amended by the House Public and Behavioral Health and Human Services Committee.

Table 1
State Fiscal Impacts Under HB 22-1256

		Budget Year FY 2022-23	Out Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-	-
Expenditures	General Fund	\$609,133	\$1,185,947	\$2,133,688
	Centrally Appropriated	\$72,638	\$144,421	\$149,992
	Total Expenditures	\$681,771	\$1,330,368	\$2,283,680
	Total FTE	5.5 FTE	10.7 FTE	10.6 FTE
Transfers		-	-	-
Other Budget Impacts	General Fund Reserve	\$91,370	\$177,892	\$320,053

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 creates new procedures for 72-hour emergency mental health holds, as well as short-term or long-term commitments. The bill also outlines processes related to transport, oversight, care coordination, and access to legal representation. These provisions are detailed below.

Effective ninety days after becoming law, the bill:

- transfers the administration for Article 65 of Title 27 to the BHA;
- expands the list of professionals that can place a mental health hold;
- modifies procedures for emergency transport, initial evaluations, and related grievance filings;
- requires an extended certification for treatment to be filed with the court at least 30 days prior to the expiration of the original certification for long-term care and treatment;
- requires court petitions to include recommendations for inpatient or outpatient services; and
- requires the BHA to take custody of those needing long-term care and treatment, which may be delegated to a designated facility.

Effective July 1, 2023, the bill:

- modifies the conditions under which an emergency mental health hold may be invoked to include when a certified peace officer has probable cause to believe, or an intervening professional reasonably believes that a person is a danger to themselves or others as a result of a mental health disorder or is gravely disabled;
- allows peace officers invoking a hold to take into protective custody and transport a person to a designated facility or emergency medical services facility and to request assistance from behavioral health crisis response teams or emergency medical services providers;
- allows intervening professionals invoking a hold to request assistance from peace officers, emergency medical services providers, secure transportation providers, and behavioral health crisis response teams for assistance in taking into custody and transporting persons to designated facilities or emergency medical services facilities;
- allows peace officers to invoke an emergency mental health hold 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;
- subjects a person who files a malicious or false petition for an evaluation of a respondent to criminal prosecution;
- allows the evaluating professional to terminate an emergency mental health hold;
- requires evaluations to be completed using a standardized form approved by the BHA commissioner;
- requires an emergency medical services facility to immediately notify the BHA if a 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; upon which time the BHA is required to support the emergency medical services facility in locating an appropriate placement option;

- if an appropriate placement option cannot be located, the bill authorizes the emergency medical services facility to place the person under a second emergency mental health hold and immediately notify the BHA, the person's lay person (as defined in the bill), and the court, which is required to immediately appoint an attorney;
- requires the facility to provide the person with detailed discharge instructions; discuss the statewide care coordination infrastructure to facilitate a follow-up appointment within 7 calendar days; attempt to follow up at least 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
- establishes rights for persons detained by an emergency mental health hold and persons certified for short- or long-term treatment on an inpatient basis, which include the right to file a complaint against the facility with the BHA and the Department of Public Health and Environment (CDPHE).

Effective July 1, 2024, the bill:

- requires the BHA to develop and provide care coordination services to persons certified for short-term and long-term treatment;
- creates a process to certify a person for both short-term and long-term care outpatient treatment;
- modifies short-term certification procedures and notification requirements;
- clarifies that the custody of the respondent is delegated to the designated short-term treatment facility; and
- modifies termination procedures for short- and long-term treatment.

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 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
Personal Services	\$307,257	\$527,186	\$544,640
Operating Expenses	\$6,750	\$13,635	\$13,635
Capital Outlay Costs	\$31,000	\$31,000	\$0
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
Judicial Department			
Court-appointed Attorneys	\$86,700	\$86,700	\$86,700
Judicial Subtotal	\$86,700	\$86,700	\$86,700
Grand Total	\$681,771	\$1,330,368	\$2,283,680
Total FTE	5.5 FTE	10.7 FTE	10.6 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 24/7/365 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.

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.

Department of Public Health and Environment. The CDPHE will have a workload increase to address any grievances filed under the bill. 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 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.

Effective Date

The bill 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 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:

- \$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	