



**Colorado
Legislative
Council
Staff**

HB16-1328

FISCAL NOTE

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-0464
Prime Sponsor(s): Rep. Lee; McCann

Date: April 6, 2016
Bill Status: House Judiciary
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BILL TOPIC: USE OF RESTRAINT AND SECLUSION ON INDIVIDUALS

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue		
State Expenditures	<u>\$1,220,820</u>	<u>\$1,119,900</u>
General Fund	1,220,820	1,119,900
Appropriation Required: \$1,220,820 - Department of Human Services (FY 2016-17).		
Future Year Impacts: Ongoing increase in state expenditures.		

Summary of Legislation

This bill expands the "Protection of Individuals from Restraint and Seclusion Act." The bill:

- adds seclusion wherever the use of restraint is limited, prohibited, or subject to specific requirements;
- adds that restraint and seclusion must never be used as punishment, as part of a treatment plan, as retaliation by staff, or for protection, unless ordered by the court or in an emergency; and
- expands the restrictions on use of restraint and seclusion to include youth, defined as anyone less than 21 years old.

The bill applies the statute outlining when restraint and seclusion may be used on a person with a mental illness or in a skilled nursing facility to youth. It defers to other sections of statute on when restraint or seclusion may be used on an adult or youth with a developmental disability. It specifies that the restrictions on use of restraint and seclusion do not apply when transporting a youth between facilities.

Division of Youth Corrections. The bill requires the Division of Youth Corrections (DYC) within the Department of Human Services (DHS) to meet certain requirements when holding a juvenile in seclusion. The room used must be clean; lit; properly heated, cooled, and ventilated; and at least sixty square feet with access to water and a toilet. Staff must check on the juvenile every 15 minutes. The bill limits this practice to not more than four hours in one day or eight hours in one week, unless certain exceptions are met or by court order. DYC must provide at least 40 hours of initial training and an additional 16 hours yearly on adolescent development, the effects of using seclusion and restraint, and methods to handle youth in crisis and youth with mental illnesses.

Documentation. Whenever DYC holds a youth in seclusion, it must document certain details surrounding the event, including background information on the youth, the reason for seclusion and justification for its continued use, confirmation that the parents or guardians were notified, and written approval from a qualified mental health professional for any seclusion that exceeded four hours in one day.

Reporting. DYC must report quarterly to the General Assembly on the use of seclusion and confinement. The report must include the number of youth held in seclusion due to an emergency for more than four consecutive hours or for more than eight hours in a week, the total number of youth held in seclusion, the average time held, and aggregate data on the race, ethnicity, age, gender, and the reason for the seclusion.

Working group. The bill establishes a Youth Seclusion Working Group (working group) in DYC. The working group consists of representatives from state agencies involved with juveniles in the justice system, representatives from nonprofit advocacy groups, and two experts in adolescent development or a related field. The working group must advise and monitor DYC related to its use of confinement and seclusion. They must meet no later than August 1, 2016, and at least semi-annually thereafter. The working group sunsets on September 1, 2026.

State Expenditures

The bill increases state General Fund expenditures by \$1,220,820 in FY 2016-17 and by \$1,119,900 in FY 2017-18 in DHS. The bill also increases workload in the Judicial Department and the Department of Public Safety by a minimal amount. Expenditures are listed in Table 1 and explained below.

Cost Components	FY 2016-17	FY 2017-18
On-Call Mental Health Services	\$765,000	\$765,000
On-Call Physician Services	350,000	350,000
Legal Services	4,900	4,900
Information Technology Services	100,920	0
TOTAL	\$1,220,820	\$1,119,900

Assumptions. The fiscal note makes the following assumptions:

- approximately 1,500 seclusion incidents will occur per year;
- DYC will hold a youth in seclusion for two hours or less, on average;
- seclusion events lasting four hours or more will occur no more than approximately once per month;
- youth will be held in seclusion for eight hours or more two days in a row no more than ten times per year; and
- contracts for on-call mental health services, on-call physician services, legal services, and information technology services will begin July 1, 2016.

Department of Human Services. DHS requires \$1,220,820 in FY 2016-17 and \$1,119,900 in FY 2017-18 to comply with the requirements under the bill. On-call mental health services provided through county mental health providers will ensure that a mental health professional can meet with any youth held in seclusion for an hour or more. The fiscal note assumes that on average DYC will require 1.5 hours of mental health services at approximately \$340 per hour for each seclusion event. On-call physicians are required to meet with any youth held for four hours or more. The above estimate represents the cost to hire DHS requires legal services to facilitate requests for a court order when a youth must be held in seclusion eight hours or more in two consecutive days. The fiscal note assumes this will be necessary ten times per year with each event, requiring five hours of legal services through the Department of Law at \$98 per hour. Finally, the department requires 1,250 hours of information technology services, provided by the Office of Information Technology (OIT), to upgrade the TRAILS computer system, which tracks incidents at DYC facilities.

The bill also increases workload within DYC to update policies and procedures, conduct trainings, participate in the working group, and to fulfill the reporting requirements mandated by the bill. This workload increase can be accomplished within existing appropriations.

Judicial Department. The bill may increase workload in trial courts by a minimal amount. The bill requires DYC to seek a court order whenever a youth is held in seclusion for more than eight total hours in two consecutive days. Also, parties may contest in court the circumstances of a seclusion incident. Any increase in workload in trial courts is expected to be minimal. The bill also increases workload in the Office of the State Public Defender (OSPD) or the Office of the Alternate Defense Counsel (OADC), as well as the Office of the Child's Representative (OCR). A representative from OCR and either OSPD or OADC must serve on the working group established by the bill, increasing workload in these departments by a minimal amount. No increase in appropriations for any agency within the Judicial Department is required.

Department of Public Safety (DPS). A representative from DPS must serve on the working group established by the bill, increasing workload by a minimal amount. No increase in appropriations is required.

Effective Date

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

State Appropriations

In FY 2016-17, the bill requires a General Fund appropriation of \$1,220,820 to DHS, of which \$100,920 is reappropriated to OIT and \$4,900 to the Department of Law.

Departmental Difference

DHS estimates a fiscal impact of \$3,454,721 and 33.2 FTE in FY 2016-17. The fiscal note disagrees with this assessment on four points. First, DHS estimates a cost of \$2,027,867 and 27.7 FTE to meet the requirement that a mental health professional be available to meet with any youth held in seclusion one hour or longer. The department argues that having full-time staff is a

more reliable way to meet the requirements of the bill than is contracting with county mental health providers. The fiscal note disagrees and finds that contracting for these services would be the most efficient way to meet the requirements of this provision. Second, DHS believes the bill requires an appropriation of \$632,000 to cover the costs of ensuring all NYC facility seclusion rooms are suicide resistant and protrusion free by 2020, while the fiscal note assumes that capital construction funds will be appropriated through the Long Bill. Third, DHS estimates costs of \$32,258 in legal services to redact confidential reports requested by the working group, whereas the fiscal note assumes these requests will be infrequent and will require no increase in appropriations. Finally, DHS does not believe that the Adolescent Behavioral Treatment Unit at the Colorado Mental Health Institute at Pueblo (CMHIP) is an adequate facility for accommodating juvenile offenders referred from other NYC facilities. The fiscal note finds this concern unrelated to the requirements of the bill and thus not relevant to the cost estimate for this legislation.

State and Local Government Contacts

Corrections

Education

Human Services

Judicial

Public Safety

Counties

Health Care Policy and Financing

Information Technology

Municipalities