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**SB19-008**

**REVISED  
FISCAL NOTE**

(replaces fiscal note dated March 27, 2019)

**Drafting Number:** LLS 19-0230  
**Prime Sponsors:** Sen. Priola; Pettersen  
Rep. Kennedy; Singer

**Date:** April 10, 2019  
**Bill Status:** Senate Finance  
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**Bill Topic:** SUBSTANCE USE DISORDER TREATMENT IN CRIMINAL JUSTICE SYSTEM

**Summary of Fiscal Impact:**

<input checked="" 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

This bill makes several changes to state law concerning substance use disorders and the criminal justice system. The bill will increase state revenue on net from fees and state and local government expenditures on an ongoing basis.

**Appropriation Summary:** For FY 2019-20, the bill requires an appropriation of \$5.2 million to multiple state agencies.

**Fiscal Note Status:** The fiscal note reflects the introduced bill, which was requested by the Opioid and Other Substance Use Disorders Study Committee and amended by the Senate Judiciary Committee.

**Table 1  
State Fiscal Impacts Under SB 19-008**

		FY 2019-20	FY 2020-21
<b>Revenue</b>	Cash Funds	\$55,000	\$35,000
	<b>Total</b>	<b>\$55,000</b>	<b>\$35,000</b>
<b>Expenditures</b>	General Fund	\$5,199,253	\$6,484,686
	Centrally Appropriated	\$292,641	\$351,576
	<b>Total</b>	<b>\$5,491,894</b>	<b>\$6,836,262</b>
	<b>Total FTE</b>	<b>15.1 FTE</b>	<b>18.1 FTE</b>
<b>Transfers</b>		-	-
<b>TABOR Refund</b>		-	-

## **Summary of Legislation**

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

**Medication-assisted treatment in county jails.** The bill requires county jails that accept state funding for jail-based behavioral health services to have a policy in place by January 1, 2020, that describes how medication-assisted treatment will be provided when necessary to confined individuals.

**Medication-assisted treatment in state prisons.** The bill requires the Department of Corrections (DOC) to allow medication-assisted treatment to continue in cases where an inmate was receiving treatment in a county jail prior to transfer into DOC custody. Sheriffs and the DOC may enter into agreements with treatment organizations to assist in the development and administration of medication-assisted treatment in jails and prisons.

**New process for sealing drug-related conviction records.** The bill establishes a new process for sealing convictions for certain drug-related offenses, including level 4 drug felonies and any drug misdemeanor; a felony or misdemeanor conviction prior to October 1, 2013, where the offense would be classified as a level 4 drug felony or drug misdemeanor if it had been committed on or after that date; and any municipal violation involving a controlled substance.

The defendant may petition the district or municipal court for the sealing of these records as long as the petition is filed at least three years after the final disposition of a criminal proceedings, any related supervision, or any new criminal charges. If a court determines a petition is sufficient, it must set a hearing date to make a final determination. When the court seals a conviction record, the defendant must pay a record sealing fee to the court and to the Colorado Bureau of Investigation in the Department of Public Safety (DPS).

**Expanded scope of the Substance Abuse Trend and Response Task Force.** Under current law, the Substance Abuse Trend and Response Task Force is tasked with examining prevention and treatment models and best practices, formulating a response to substance abuse problems, and making recommendations to the General Assembly. The bill adjusts task force duties to include in its response the use of drop-off treatment services; mobile and walk-in crisis centers; and withdrawal management programs for low-level drug offenders.

**Reporting from the Commission on Criminal and Juvenile Justice.** The bill requires the Commission on Criminal and Juvenile Justice (CCJJ) in DPS to study and make recommendations on various issues concerning the treatment of individuals with substance use disorders who come into contact with the criminal justice system, including alternatives to criminal charges, best practices for investigating unlawful opioid distribution, and sealing of criminal records, and to report to the General Assembly by July 1, 2020.

**Harm Reduction Grant Program.** The bill requires the Department of Public Health and Environment (CDPHE) to develop and implement the Harm Reduction Grant Program. The Harm Reduction Grant Program Cash Fund is created for the administration of the program and is subject to annual appropriation by the General Assembly. CDPHE may contract with an independent entity for the administration of the grant program. On or before November 1, 2019, CDPHE must develop eligibility criteria; the grant application process; and requirements for grantees related to performance metrics and data. Grant funds may be used to provide trainings; purchase equipment; facilitate coordination; and to provide direct services to individuals in contact

or at risk of contact with the criminal justice system. CDPHE may promulgate rules to implement the grant program. The grant program is repealed on September 1, 2024, pending a sunset review.

**Program funding expansion.** The bill currently includes the following General Fund appropriations to expand funding for programs in the Office of Behavioral Health (OBH) in the DHS:

- \$1,700,000 to existing jail-based behavioral health services program to support medication-assisted treatment in jails and associated administrative expenses; and
- \$1,450,000 to increase the number of Co-Responder Programs from 8 to 12.

## **State Revenue**

On net, state cash fund revenue will increase by \$55,000 in FY 2019-20 and \$35,000 in FY 2020-21 and ongoing. The bill decreases revenue from probation-related fees and increases revenue from record sealing and court filing fees. These impacts are discussed below.

**Probation fees — revenue decrease.** The bill is expected to decrease state revenue from probation fees by up to \$20,000 in FY 2019-20 and up to \$40,000 per year starting in FY 2020-21 to the Offender Services Cash Fund. By increasing funding and use of criminal justice diversion programs, it is likely that the number of persons sentenced to probation will decrease. While the exact number of diversions is not known at this time, the fiscal note assumes up to 150 low-level drug offenders will be diverted annually once the bill is fully implemented. Each person on probation pays a \$50 per month supervision fee. The bill may also reduce other court fees to the Judicial Department that are collected for various criminal fees and surcharges. The estimated decrease in revenue accounts for historic indigency and collection rates. This revenue is subject to TABOR.

**Record sealing fee — revenue increase.** The bill will increase state revenue from record sealing fees by approximately \$32,500 per year beginning in FY 2019-20 to the Colorado Bureau of Investigation (CBI) Cash Fund. The fiscal note assumes that 500 record sealing requests will be received by the CBI per year. The record sealing permitted under the bill is subject to a record sealing fee of \$65. This revenue is subject to TABOR.

**Court filing fee — revenue increase.** The bill will increase filing fee revenue by at least \$42,500 per year assuming 500 request are filed and using the lowest amount in the fee range, \$85. The civil filing fee for county court ranges from \$85 to \$135 and the filing fee for district court is \$235. Civil filing fees are subject to TABOR, and are deposited primarily into the Judicial Stabilization Cash Fund, as well as other cash funds in the Judicial Department, and \$1 to the General Fund. For simplification purposes, the fiscal note shows this as cash fund revenue.

## **State Expenditures**

The bill is estimated to increase state General Fund expenditures by \$5.5 million and 15.1 FTE in FY 2019-20 and \$6.8 million and 18.1 FTE in FY 2020-21. This includes costs for the Departments of Corrections, Human Services, Public Health and Environment, and Public Safety. These impacts are summarized in Table 2 and detailed further below.

**Table 2  
 Expenditures Under Senate Bill 19-008**

<b>Cost Components</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
<b>Department of Human Services — MAT in County Jails</b>		
Personal Services	\$58,412	\$87,619
Operating Expenses and Capital Outlay Costs	\$5,368	\$950
MAT Services	\$735,000	\$1,470,000
Centrally Appropriated Costs*	\$11,509	\$16,823
FTE – Personal Services	0.7 FTE	1.0 FTE
<b>DHS — MAT in County Jails (Subtotal)</b>	<b>\$810,289</b>	<b>\$1,575,392</b>
Personal Services	\$1,135,220	\$1,362,265
Operating Expenses and Capital Outlay Costs	\$78,097	\$13,395
MAT Services	\$181,804	\$198,332
Centrally Appropriated Costs*	\$211,440	\$253,178
FTE – Personal Services	11.8 FTE	14.1 FTE
<b>DOC — MAT in Prison (Subtotal)</b>	<b>\$1,606,561</b>	<b>\$1,827,170</b>
<b>Department of Human Services — Co-Responder Program</b>		
Personal Services	\$67,196	\$100,794
Operating Expenses and Capital Outlay Costs	\$10,356	\$1,330
Co-Responder Program Expansion	\$1,087,500	\$1,450,000
Centrally Appropriated Costs*	\$14,962	\$21,559
FTE – Personal Services	0.8 FTE	1.0 FTE
<b>DHS — Co-Responder Program (Subtotal)</b>	<b>\$1,180,014</b>	<b>\$1,573,683</b>
<b>Department of Public Health — Harm Reduction Grant Program</b>		
Personal Services	\$121,050	\$139,059
Operating Expenses and Capital Outlay Costs	\$11,116	\$1,900
Grant Funding	\$1,667,834	\$1,659,041
Centrally Appropriated Costs*	\$54,730	\$60,017
FTE – Personal Services	1.8 FTE	2.0 FTE
<b>CDPHE — Harm Reduction Grant Program (Subtotal)</b>	<b>\$1,854,730</b>	<b>\$1,860,017</b>
<b>Department of Public Safety — CCJJ Study</b>		
Substance Use Disorders in the Criminal Justice System Study	\$40,300	-
<b>DPS — CCJJ Study (Subtotal)</b>	<b>\$40,300</b>	<b>-</b>
<b>Total</b>	<b>\$5,491,894</b>	<b>\$6,836,262</b>
<b>Total FTE</b>	<b>15.1 FTE</b>	<b>18.1 FTE</b>

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

**Medication-assisted treatment in county jails — DHS.** The DHS will have costs of \$810,289 and 0.7 FTE in FY 2019-20 and \$1,575,392 and 1.0 FTE in FY 2020-21 to provide medication-assisted treatment to persons confined in county jails. These costs include service costs and administrative expenses for 1.0 FTE to manage the program, conduct outreach with counties and providers, and perform other administrative tasks. First-year costs are prorated for the an assumed October start date and the General Fund payday shift.

*Background and assumptions.* The DHS currently receives about \$13 million to provide a range of behavioral health services in county jails; any county funds used for these programs are optional. Of this amount, \$5.3 million is dedicated to substance use disorder treatment. Currently, three counties provide medication-assisted treatment to individuals in their jails. The fiscal note assumes that approximately 5 percent of the jail population has a substance use disorder and that one-third of this population will require medication-assisted treatment per year at a cost of \$350 per month, or \$1,470,000 per year in the first full implementation year. These costs assume that the state will operate a centralized program to contract with providers and starting medication-assisted treatment in January 2019.

**Medication-assisted treatment in prisons — DOC.** The DOC will have costs estimated at \$1.6 million and 11.8 FTE in FY 2019-20 and \$1.8 million and 14.1 FTE in FY 2020-21 to provide medication-assisted treatment to an assumed 150 inmates. Additional staff costs include a physician, two mid-level providers, a 24/7 nurse post, and six alcohol and drug treatment staff to provide therapy in a community treatment setting. Medication costs are estimated at \$29,160 for Naltrexone for incoming offenders, based on assumption of 150 eligible offenders per year; \$77,086 for Vivitrol for pre-release offenders, based on current average of 6.6 offenders per month; \$77,086 for post-release treatment while on parole, assuming a fraction of parolees would be eligible for medication-assisted treatment under Medicaid; and \$15,000 for Methadone assuming five pregnant offenders per year. First-year costs are prorated for the August effective date and the General Fund payday shift.

*Potential cost savings.* To the extent that providing medication-assisted treatment in state prisons provides greater access to needed services and medications, medical expenses for inmates with behavioral health disorders will decrease. This could include costs related to the provision of medical care, prescription drugs, and transport and staff costs for out-of-jail treatment services. To the extent that access to jail-based behavioral health services improves inmate behavior, this bill may further decrease state prison costs from the early release of inmates that previously served longer sentences as a result of behavioral health disorders. These costs have not been estimated.

**Co-responder criminal justice diversion programs — DHS.** The DHS will have costs of \$1.2 million and 0.8 FTE in FY 2019-20 and \$1.6 million and 1.0 FTE in FY 2020-21 to expand the co-responder criminal justice diversion program. Each of the additional program sites is estimated to have costs of \$362,500. In addition, the DHS will require 1.0 FTE for program management and contract administration to administer the expanded programs. It is assumed that staff will be hired in August 2019, the new Co-Responder Program sites will begin operating on October 1, 2019. First-year costs have been prorated to reflect this start dates and the General Fund payday shift.

*Background and assumptions.* The Co-Responder Program provides funding to local governments to establish co-responder teams consisting of a law enforcement officer and a behavioral health specialist to intervene on mental health-related police calls to de-escalate situations that have historically resulted in arrest and to assess whether the person should be referred for an immediate behavioral health assessment; it is currently operating in eight locations. Based on the appropriation in the current version of the bill and current program costs, the fiscal note assumes that the bill intends to expand the number of Co-Responder Program sites from 8 to 12.

**Department of Public Health and Environment.** The CDPHE will have costs of \$1.9 million and 1.8 FTE in FY 2019-20 and \$1.9 million and 2.0 FTE in FY 2020-21 to implement the grant program. The amount of funding appropriated to this grant program is at the discretion of the General Assembly; the fiscal note assumes the amount is \$1.8 million per year. Assuming this amount, it is estimated that 2.0 FTE is required to promulgate rules; develop eligibility criteria; create a grant application process and schedule; award grants; and track metrics.

**Department of Public Safety.** The DPS will have costs of \$40,300 in FY 2019-20 only to study substance use disorders in the criminal justice system. Workload will also increase in the DPS to process new criminal record sealing requests.

*Study of substance use disorder in the criminal justice system.* The bill requires the CCJJ to study issues concerning individuals with substance use disorders who come into contact with the criminal justice system, for which DPS will hire a contractor estimated to cost \$32,500. This cost assumes a study period of ten weeks at \$650 per day (or \$81.25 per hour), based on the cost of similar studies performed by the U.S. Department of Justice. As part of the study, law enforcement experts will travel to various criminal justice facilities and be reimbursed for mileage. Mileage is estimated to average 300 miles per round-trip for an assumed five vehicles on ten trips at the standard rate of \$0.52 per mile.

*Record sealing.* DPS will also have increased workload to seal records. Assuming that approximately 500 record sealing requests will be received by the department each fiscal year, representing 41 per month, the department can accomplish this workload increase within existing appropriations. For informational purposes, the department processes approximately 900 requests per month.

**Judicial Department.** The bill requires individuals seeking to seal drug-related conviction records using the simplified process under the bill to petition the court. As a result, hearings-related workload in the trial courts of the Judicial Department will increase by a minimal amount. The trial courts can accomplish an increase of up to 500 hearings per year within existing appropriations.

**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, supplemental employee retirement payments and indirect cost assessments, are estimated to be \$292,641 in FY 2019-20 and \$351,576 in FY 2020-21.

## **Local Government**

The bill increases costs and workload for local governments in several ways, as discussed below.

**Medication-assisted treatment in jails.** The bill requires that county jails put in place policies related to medication-assisted treatment. Counties will have an increase in workload to coordinate services with the DHS and treatment providers. Counties that do not comply with this may lose existing state funding for jail-based behavioral health services.

**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. Some costs may be reduced if offenders are diverted from jail or the criminal justice system altogether. Local government participation is voluntary.

**Potential cost savings.** To the extent that access to medication-assisted treatment in county jails provides greater access to needed medications, jail medical expenses for inmates with behavioral health disorders will decrease. This could include costs related to the provision of medical care, prescription drugs, and transport and staff costs for out-of-jail treatment services. To the extent that access to medication-assisted treatment improves inmate behavior, this bill may further decrease county jail costs from the early release of inmates that previously served longer sentences as a result of behavioral health disorders. These costs have not been estimated. For informational purposes estimated costs to house an offender in a county jail vary from \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.39 to house state inmates.

### **Technical Note**

Concerning the appropriations included in the bill, the medication-assisted treatment services and additional criminal diversion program sites do not account for various administrative costs or the likely implementation timeline assumed in this fiscal note. The differences between the existing appropriation and the fiscal note's estimates are delineated in the State Appropriations section below.

### **Effective Date**

The bill takes effect August 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed.

### **State Appropriations**

For FY 2019-20, the bill currently includes the following appropriations to the DHS:

- \$1,700,000 General Fund for medication-assisted treatment services in county jails; and
- \$1,450,000 General Fund for the Co-Responder criminal justice diversion program.

However, for FY 2019-20, the bill requires the following appropriations to the DHS instead:

- \$798,780 General Fund and an allocation of 0.7 FTE for medication-assisted treatment services in county jails; and
- \$1,165,053 General Fund and an allocation of 0.8 FTE for additional Co-Responder Programs.

(As described in the Technical Note section, the DHS appropriations are less than those currently included in the bill because the fiscal note assumes a January 2020 implementation date for medication-assisted treatment in county jails and an October 2019 implementation date for the Co-Responder program. FY 2020-21 cost estimates include the full appropriation amount.)

For FY 2019-20, the bill requires the following appropriations to other agencies:

- \$1,395,121 General Fund to DOC and an allocation of 11.8 FTE for medication-assisted treatment in state prisons;

- \$1,800,000 General Fund to CDPHE and an allocation of 1.8 FTE for the Harm Reduction Grant Program; and
- \$40,300 General Fund to DPS for the CCJJ to conduct the required study.

**State and Local Government Contacts**

Counties  
Information Technology  
Sheriffs

District Attorneys  
Judicial

Human Services  
Public Safety