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FISCAL NOTE

Drafting Number: LLS 20-0294
Prime Sponsors: Rep. Herod; Kennedy
Sen. Donovan; Priola

Date: February 10, 2020
Bill Status: House Public Health
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Bill Topic: SUBSTANCE USE DISORDER TREATMENT IN CRIMINAL JUSTICE SYSTEM

- Summary of Fiscal Impact:
- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

This bill makes several changes to state laws concerning substance use disorder treatment in the criminal justice system. Beginning in FY 2020-21, the bill increases state and local expenditures on an ongoing basis.

Appropriation Summary: For FY 2020-21, this bill requires an appropriation of \$633,590 to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the introduced bill recommended by the Opioid and Other Substance Use Disorders Study Committee.

Table 1
State Fiscal Impacts Under HB 20-1017

Table with 3 columns: Category, FY 2020-21, FY 2021-22. Rows include Revenue, Expenditures (General Fund, Centrally Appropriated, Total), Total FTE, Transfers, and TABOR Refund.

Summary of Legislation

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

Availability of opiate agonist and antagonists. This bill requires the Department of Corrections (DOC), private contract prisons, local jails, multijurisdictional jails, municipal jails, and the Department of Human Services (DHS) facilities to make available at least one opioid agonist and one opioid antagonist to a person in custody with an opioid use disorder throughout the duration of the person's incarceration or commitment.

Safe stations. The bill allows a person to dispose of any controlled substances at a safe station without being subject to arrest or prosecution. The person may also request assistance in gaining access to treatment for a substance use disorder. A safe station is defined as local law enforcement office or fire station. Safe station personnel must make a reasonable effort to determine if the individual is in need of immediate medical attention and facilitate transportation to an appropriate medical facility, if necessary.

Continuity of care planning. The bill requires the DOC and county jails to ensure that continuity of care is provided to inmates prior to release. This includes scheduling appointments with the person's health provider; ensuring treatment services are available; providing post-release resources (see below); ensuring the person's Medicaid is reinstated, where applicable; and, if the person has a history of opioid use disorder, developing a medication-assisted treatment plan and providing an opioid antagonist to the person.

Post-release resources for inmates. This bill requires the executive director of the DOC to consult with the DHS, the Department of Health Care Policy and Financing (HCPF), the Department of Local Affairs (DOLA), and local service providers to develop resources for inmates post-release that provide information to help prepare inmates for release and reintegration into their communities.

Criminal record sealing. If a person has entered into or successfully completed a substance use disorder treatment program in a case that is the subject of the petition to seal, this bill requires the courts to consider this factor favorably in determining whether to grant the petition to seal.

Contracting with local governments for criminal justice diversion programs. The bill codifies existing pilot programs. The Law Enforcement Assisted Diversion (LEAD) is a pre-booking diversion program that connects a defendant with a case manager instead of the defendant being charged and booked following an arrest. The defendant is presented with a harm reduction-based approach to connect them with substance use treatment and other services. The Co-Responder Program provides funding to local governments for a behavioral health specialist and law enforcement officer team that responds to mental health-related calls and de-escalates situations. Beginning November 1, 2021, the DHS is required to provide an update regarding the current status of funding and implementation of these programs as part of its annual SMART presentation. The State Board of Human Services may promulgate rules to implement this section.

Appropriation to criminal justice diversion programs. The bill appropriates \$1,150,000 from the General Fund to the DHS for the criminal justice diversion programs outlined above.

State Expenditures

This bill will increase state General Fund expenditures by \$646,284 and 0.8 FTE in FY 2020-21 and \$1.2 million and 1.0 FTE in FY 2021-22 and future years. These costs are shown in Table 2 and discussed below.

**Table 2
Expenditures Under House Bill 20-1017**

	FY 2020-21	FY 2021-22
Department of Human Services		
LEAD and Co-Responder Programs	\$575,000	\$1,150,000
DHS Subtotal	\$575,000	\$1,150,000
Department of Corrections		
Personal Services	\$51,175	\$61,411
Operating Expenses	\$1,215	\$1,350
Capital Outlay Costs	\$6,200	-
Centrally Appropriated Costs*	\$12,694	\$15,637
FTE – Personal Services	0.8 FTE	1.0 FTE
DOC Subtotal	\$71,284	\$78,398
Total Cost	\$646,284	\$1,228,398
Total FTE	0.8 FTE	1.0 FTE

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

Department of Human Services. This bill increases expenditures in the DHS by \$575,000 in FY 2020-21 (half-year impact) and \$1,150,000 in FY 2021-22 for criminal justice diversion programs. The cost of a LEAD program site is \$575,000 per year, while the cost of a Co-Responder program is \$362,500 per team per year. The fiscal note assumes that the included appropriation in the bill will result in approximately three new programs in the first full implementation year in FY 2021-22. In FY 2020-21, the programs are assumed to start in January 1, 2021, to allow for procurement, contracting, and startup.

Department of Corrections. This bill increases expenditures in the DOC by \$71,284 and 0.8 FTE in FY 2020-21 and \$78,398 and 1.0 FTE in FY 2021-22 and future years. DOC requires a social worker to provide continuity of care to inmates, including scheduling appointments with the offender's behavioral health provider, providing post-release resources, and developing a MAT plan upon release. First-year costs include the General Fund paydate shift. The DOC was appropriated funding through SB 19-008 related to MAT treatment, so no additional funding is required.

Judicial Department. This bill adds a factor for courts to consider when defendants request their criminal cases be sealed. The Judicial Department will need to amend forms to allow for a person to indicate whether they have entered into or successfully completed a substance use disorder treatment program in the case that is the subject of the petition to seal. This impact is expected to be minimal and can be accomplished within existing resources.

Departments of Local Affairs and Health Care Policy and Financing. There will be an increase in workload for DOLA and HCPF to work with the DOC to develop post-release resources for inmates. This impact is expected to be minimal and can be accomplished within existing resources. HCPF already supports county jails around the issue of Medicaid enrollment, so 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 estimated to be \$12,694 in FY 2020-21 and \$15,637 in FY 2021-22.

Local Government

Beginning in FY 2020-21, this bill will increase local government costs and workload in several ways, as described below. The exact impact to a particular local government will vary.

Provide opioid agonist and antagonist in jails. There will be an increase in costs to jails to make available at least one opioid agonist and one opioid antagonist to a person in custody with an opioid use disorder throughout the duration of the person's incarceration. Costs and workload will also increase to ensure continuity of care is provided for inmates who are treated for substance use disorder while incarcerated. These costs will vary by local jurisdiction depending on their jail population and current treatment practices.

Safe stations. Municipal police stations, county sheriff's offices, and municipal, county, and fire protection district fire stations will have increased costs and workload to operate as a safe station. These impacts include disposing of controlled substances, which are currently transported out of state to be destroyed, assisting individuals in finding access to treatment for a substance use disorder, and facilitating transport to a medical facility if necessary.

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. It is assumed that costs for participating local governments will be offset by LEAD program funding provided by the state. Some costs may be reduced if offenders are diverted from jail or the criminal justice system altogether. Local government participation is voluntary.

Effective Date

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

State Appropriations

This bill includes a General Fund appropriation of \$1,150,000 to the DHS for FY 2020-21; however, the fiscal note assumes this amount represents the cost of the ongoing operation of the criminal justice diversion programs beginning in FY 2021-22 and that for FY 2020-21 the bill requires a half-year appropriation of \$575,000 instead.

In addition, the bill requires a General Fund appropriation of \$58,590 and 0.8 FTE to the DOC.

State and Local Government Contacts

Corrections
Health Care Policy and Financing
Judicial
Municipalities

Counties
Human Services
Law
Sheriffs

Fire Chiefs
Information Technology
Local Affairs
Special Districts