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# Fiscal Note

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**Drafting Number:** LLS 23-0162  
**Prime Sponsors:**

**Date:** September 27, 2022  
**Bill Status:** Bill Request  
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**Bill Topic:** **USE OF RESTRICTIVE PRACTICES IN PRISONS**

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**Summary of Fiscal Impact:**

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

This bill modifies how clinical and chemical restraints may be used in correctional facilities. It increases state expenditures on an ongoing basis beginning in FY 2023-24.

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**Appropriation Summary:**

For FY 2023-24, the bill requires an appropriation of \$3.3 million to the Department of Corrections.

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**Fiscal Note Status:**

The fiscal note reflects the bill draft requested by the Legislative Oversight Committee Concerning the Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice Systems.

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**Table 1**  
**State Fiscal Impacts Under Bill 5**

		<b>Budget Year FY 2023-24</b>	<b>Out Year FY 2024-25</b>
<b>Revenue</b>		-	-
<b>Expenditures</b>	General Fund	\$3,262,473	\$3,176,925
	Total FTE	18.3 FTE	20.0 FTE
<b>Transfers</b>		-	-
<b>Other Budget Impacts</b>	General Fund Reserve	\$489,371	\$476,539

## **Summary of Legislation**

The bill makes several changes to the use of clinical restraints at correctional facilities in the state.

**Physical restraints, frequent assessments, and reporting.** The bill prohibits a correctional facility from using a clinical restraint on an inmate with limited exceptions. In cases where a restraint is used, a licensed psychiatrist or psychologist must order the restraint and the restraint material must be soft. The bill outlines requirements for frequent evaluations of a restrained inmate by health care providers, and documentation procedures that the Department of Corrections (DOC) must include in annual reporting to the legislature.

**Intake assessment.** The bill requires correctional facilities to have a qualified health-care provider, licensed psychiatrist, or licensed psychologist perform a behavior management assessment on every inmate upon intake to evaluate whether the inmate is an increased risk for behaviors that may result in the use of a clinical restraint. The qualified provider must document findings in the inmate's medical record, and a licensed psychiatrist or psychologist must develop and implement a behavioral management plan for the inmate with the inmate's input.

**Chemical restraints and involuntary medication committees.** The bill prohibits a correctional facility from using a chemical restraint on an inmate with limited exceptions. Each correctional facility must convene an involuntary medication committee consisting of a licensed psychiatrist, a licensed psychologist, a licensed mental health professional, and the facility superintendent. A chemical restraint may only be administered following a hearing of this committee, opportunity for review, and inmate's right to counsel.

## **Background and Assumptions**

Over the last eight months, the DOC logged approximately 47 four-point restraint events. The department does not currently track ambulatory restraints.

The DOC does not use chemical restraints on inmates. The fiscal note assumes that "chemical restraint" does not apply to medication prescribed through involuntary therapeutic treatment. If this term is meant to cover that type of treatment, the DOC requires an estimated \$978,060, which includes 4.0 FTE psychologists and contract psychiatrists to form involuntary medication committees and perform the hearing process required under the bill.

## **State Expenditures**

The bill increases state General Fund expenditures in the DOC by the amounts shown in Table 2. Any costs for the Department of Law will be addressed through the annual budget process.

**Table 2  
Expenditures Under Bill 5**

<b>Cost Components</b>	<b>FY 2023-24</b>	<b>FY 2024-25</b>
<b>Department of Corrections – Restraint Assessments</b>		
Personal Services	\$1,058,070	\$1,154,259
Operating Expenses	\$27,000	\$27,000
Capital Outlay Costs	\$174,400	-
Contract Psychiatrists	\$720,692	\$720,692
Laptops and Software	\$32,642	-
Soft Restraints	\$3,824	-
Employee Insurance and Supplemental Retirement	\$315,689	\$344,818
FTE – Personal Services	18.3 FTE	20.0 FTE
<b>Restraint Subtotal</b>	<b>\$2,332,317</b>	<b>\$2,246,769</b>
<b>Department of Corrections – Intake Assessments</b>		
Contract Psychiatrists	\$930,156	\$930,156
<b>Intake Subtotal</b>	<b>\$930,156</b>	<b>\$930,156</b>
<b>Total</b>	<b>\$3,262,473</b>	<b>\$3,176,925</b>
<b>Total FTE</b>	<b>18.3 FTE</b>	<b>20.0 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Corrections.** The department has costs in two areas—restraint assessment and intake assessment.

- **Restraint assessments.** The bill requires 5.0 FTE Health Professional I to meet the 15-minute intervals for observation at each of four facilities—Territorial, Denver Receipt and Diagnostic Center, Denver Women’s, and San Carlos—for 20 FTE total. Since the DOC is experiencing a critical workforce shortage in its clinical unit, the staff salary shown is between the minimum and the midpoint salary. Standard operating and capital outlay costs are included. Capital outlay costs also include one-time correctional training at \$2,050 per staff, or \$41,000 in FY 2023-24. First-year costs are prorated for the General Fund pay date shift.
- **Contract psychiatrists.** The bill’s requirement that clinical restraints be ordered and assessed hourly by a contract psychologist or psychiatrist requires the DOC to employ additional contract psychiatrist staff. The DOC contracts with on-call psychiatrists through the University of Colorado School of Medicine at a full-time rate of \$310,052 and an on-call rate of \$50,294 per psychiatrist per year. The fiscal note assumes two additional on-call psychiatrists to manage orders, and two full-time psychiatrists to cover clinical work.
- **Laptops.** Due to the frequency of required reassessments, it is assumed that each DOC facility requires a laptop to track assessment information in real time.

- **Soft restraints.** Soft restraints cost \$319 per set and the fiscal note includes three sets for four facilities.
- **Intake assessments.** The bill requires at least three full-time psychiatrists at the cost of \$310,052 each to perform intake assessments.
- **Centrally appropriated costs.** Pursuant to fiscal note and Joint Budget Committee policy, centrally appropriated costs for bills involving more than 20 FTE are appropriated in the bill, rather than through the annual budget process. These costs, which include employee insurance and supplemental employee retirement payments for DOC are shown in Table 2.

**Department of Law.** Because the bill creates no action for inmates related to damages or non-compliance, it is not anticipated to generate increased litigation. If claims arise, the departments will seek funding through the annual budget process.

## 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. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1 beginning in FY 2023-24, which will decrease the amount of General Fund available for other purposes.

## Effective Date

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

## State Appropriations

For FY 2023-23, the bill requires a General Fund appropriation of \$3,262,473 to the Department of Corrections, and 18.3 FTE.

## State and Local Government Contacts

Corrections

Information Technology

Law