



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 21-0081	Date:	April 16, 2021
Prime Sponsors:	Rep. Caraveo; Herod	Bill Status:	House Judiciary
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Bill Topic: **APPROPRIATE USE OF CHEMICAL RESTRAINTS ON A PERSON**

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

This bill prohibits peace officers from using chemical restraints and limits its use by government agencies. It will impact state and local government workloads beginning in FY 2021-22.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Summary of Legislation

Government agency use of chemical restraints. The bill limits the use of chemical restraints by state and local agencies unless alternative de-escalation methods have failed. In addition, state and local agencies may only use ketamine, haloperidol, or other medication that depends on the weight of the individual or may result in a severe or adverse reaction when staff trained in the administration of the medication can monitor vital signs and weigh the individual to ensure accurate dosage. State agencies cannot punish or facilitate a person's arrest or detention with a chemical restraint in a non-hospital setting unless there is a justifiable emergency.

Peace officers use of chemical restraints. The bill prohibits peace officers from using, requesting, causing, directing, or influencing the use of chemical restraints upon another person, including telling an emergency medical service (EMS) provider or another person to administer one. EMS providers must report to the POST Board any instance when this occurs. In addition, a peace officer cannot influence medical decisions or diagnosis made by EMS providers and EMS providers cannot make medical decisions based solely on information from peace officers. Finally, a peace officer must report the use of chemical restraints to POST Board; failure to do so is a class 1 misdemeanor.

Peace officer intervention. Peace officers must intervene to prevent the use of chemical restraints and to report the intervention to a supervisor; failure to intervene is a class 1 misdemeanor. If an administrative law judge (ALJ) finds that an officer failed to intervene, they must forward the findings to the district attorney. If a district attorney chooses not to file charges, they must write an explanatory report.

POST certification revocation. The POST Board shall permanently revoke certification if:

- an incident resulted in serious bodily injury or death; and
- an ALJ, hearing officer, or investigation finds that a peace officer failed to intervene when an officer used a chemical restraint that resulted in serious injury or death.

If an incident didn't result in serious injury or death, a peace officer's certification must be suspended at least one year.

Emergency Medical Practice Advisory Council. The bill adds one member to the Emergency Medical Practice Advisory Council and changes its membership by:

- adding one clinical psychiatrist appointed by the Department of Human Services;
- adding one medical service provider practicing in urban counties;
- removing one physician;
- requiring that one EMS provider be practicing in a rural or frontier county search and rescue team;
- replacing one physician with an anesthesiologist;
- replacing one EMS provider with a nurse practitioner or physician's assistance; and
- replacing one EMS provider with a clinical pharmacist.

In addition, the bill requires that members of the council have no conflict of interest and that no more than 5 members be a part of the National Association of EMS Physicians. The council must submit a report to the General Assembly any time the council advises or recommends authorizing the administration of chemical restraint.

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 changes an element of an existing crime. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions under the bill.

Failure to report. This bill creates the new offense of failing to report the use of chemical restraints to the POST Board, a class 1 misdemeanor. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of failure to report excessive force as a comparable crime. From FY 2017-18 to FY 2019-20, zero individuals have been convicted and sentenced for this existing offense.

Failure to intervene. This bill creates the new offense of failing to intervene when a peace officer uses a chemical restraint, a class 1 misdemeanor. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of failing to report child abuse by a mandatory reporter as a comparable crime. From FY 2017-18 to FY 2019-20, four individuals have been convicted and sentenced for this existing offense. Of the persons convicted, three were male and one was female. Demographically, all four were White.

Assumptions. This analysis assumes that the majority of peace officers will comply with current law, and therefore the bill will have a minimal impact on the criminal justice system. Because the bill is not expected to have a tangible impact on criminal justice-related revenue or expenditures at the state or local levels, these potential impacts are not discussed further in this fiscal note. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Expenditures

The bill may increase state cash fund expenditures in FY 2022-23 in the Colorado Department of Public Health and Environment (CDPHE) and increases workload in the Department of Law, as described below.

Public Health and Environment. Expenditures in the CDPHE will increase to reimburse one additional member of the Emergency Medical Practice Advisory Council. The fiscal note assumes that meetings in FY 2021-22 will be held virtually, therefore reimbursement is not required. Costs in FY 2022-23 may include reimbursement for mileage, hotels, and food for up to 4 meetings, resulting in an expenditure of up to \$1,480, paid from the Emergency Medical Service Account within the Highway Users Tax Fund as necessary. In addition, workload will increase in the CDPHE to update rules and to submit a report to the General Assembly.

POST Board. Starting in FY 2021-22, workload in the POST Board within the Department of Law will increase to receive and document reports of the use of chemical restraints. In addition, to the extent the board must initiate revocation and suspension proceedings, workload will increase to follow any court cases, conduct hearings, make recommendation to the board, and hear any appeals. Assuming these hearings will be minimal, no change in appropriation is required.

State agency use of chemical restraints. To the extent state agencies need to update policies to conform to the requirements of the bill regarding the administration of chemical restraints, workload will increase. The fiscal note assumes that the majority of state agencies already comply with the bill's requirements and therefore, no change in appropriations is required.

Local Government

To the extent local governments need to update chemical restraint policies to conform to the bill, workload will increase. In addition, workload to district attorney offices will increase to write an explanatory report if the district attorney chooses not to file charges against an officer who failed to intervene.

Effective Date

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

Departmental Difference

The Colorado Department of Public Health and Environment estimates that the bill will require \$62,658 and 0.5 FTE in FY 2021-22 and \$24,300 and 0.2 FTE in FY 2022-23 from the Emergency Medical Service Account within the Highway Users Tax Fund. This amount includes FTE to conduct rulemaking and to reimburse the additional member to the Emergency Medical Practice Advisory Council. The fiscal note believes that the bill does not require an extensive rulemaking process and that meetings of the Emergency Medical Practice Advisory Council will be held virtually in FY 202-22; therefore, the fiscal note does not include these costs.

State and Local Government Contacts

Corrections	Higher Education	Human Services
Information Technology	Judicial	Law
Municipalities	Personnel	Public Health and Environment
Public Safety	Regulatory Agencies	Sheriffs