



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

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| Drafting Number: | LLS 21-0081 | Date: | September 14, 2021 |
| Prime Sponsors: | Rep. Caraveo; Herod Sen. Fields; Gonzales | Bill Status: | Signed into Law |
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Bill Topic: **APPROPRIATE USE OF CHEMICAL RESTRAINTS ON A PERSON**

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|----------------------------------|---|--|
| 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 limits the use of ketamine. It will increase state and local government expenditures beginning in FY 2021-22.

Appropriation Summary: For FY 2021-22, the bill requires and includes an appropriation of \$132,488 to the Colorado Department of Public Health and Environment.

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

**Table 1
State Fiscal Impacts Under HB 21-1251**

| | | Budget Year FY 2021-22 | Out Year FY 2022-23 |
|---------------------|---------------------------|---------------------------|------------------------|
| Revenue | | - | - |
| Expenditures | General Fund | \$132,488 | \$64,427 |
| | Centrally Appropriated | \$18,744 | \$27,927 |
| | Total Expenditures | \$151,232 | \$92,355 |
| | Total FTE | 1.2 FTE | 0.9 FTE |
| Transfers | | - | - |
| TABOR Refund | | - | - |

Summary of Legislation

The bill limits the use of ketamine, as detailed below.

Limits on use of ketamine. The bill limits the use of ketamine. First, absent of a justifiable medical emergency, an emergency medical (EMS) provider must not administer ketamine in a pre-hospital setting to subdue, sedate, or chemically incapacitate an individual suspected of committing a crime. Second, the bill also requires EMS providers who administer ketamine to provide urgent transportation for the individual receiving ketamine, and record any complaints arising from the administration of ketamine. Finally, if a peace officer is present at the scene of an emergency an EMS provider must only administer ketamine if the provider has:

- weighed the individual to ensure accurate dosage or estimates the individual's weight with the agreement of two other trained personnel and has attempted to obtain verbal order from the provider's medical director;
- training in the administration of ketamine;
- training in advanced airway support techniques;
- equipment available to manage respiratory depression; and
- equipment available to immediately monitor vital signs.

The medical director of an agency that has a waiver to administer ketamine must develop necessary training for EMS providers when administering ketamine in the presence of a peace officer. Failure to comply with the above requirements is considered misconduct for the EMS provider.

Peace officers use of chemical restraints. The bill prohibits peace officers—unless the officer is also certified as an EMS provider—from using, directing, or unduly influencing the use of chemical restraints upon another person. EMS providers must report to the POST Board within 10 days any instance when this occurs. A peace officer cannot influence medical decisions or diagnoses made by EMS providers and EMS providers cannot make medical decisions based solely on information from peace officers, except that a peace officer may provide critical medical information that may assist the EMS provider's assessment of the need to administer ketamine. A provider directed by a peace officer to assist a peace officer to effect an arrest; to prevent an escape from custody; or to facilitate the ease and convenience in law enforcement must not use ketamine.

Misdemeanors. The bill creates two class 1 misdemeanors. First, it is a class 1 misdemeanor for peace officers to not report to the POST Board if they see another peace officer use or direct the use of ketamine. Upon receipt of the report, the POST Board must submit the report to the peace officer's employing agency who must conduct an internal investigation. The employing agency must submit the findings of the investigation to the POST Board. Second, it is a class 1 misdemeanor for a peace officer to not intervene to prevent the use of ketamine. 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 involving chemical restraint 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 or directed the use of a chemical restraint that resulted in serious injury or death; or
- an ALJ, hearing officer, or internal investigation finds that a peace officer violated the provisions outlined above on peace officers use of chemical restraints.

If an incident did not result in serious injury or death, a peace officer's certification must be suspended at least one year. The POST Board shall reinstate the peace officer's certification if the officer is exonerated by an ALJ.

Emergency Medical Practice Advisory Council. The bill adds two members to the Emergency Medical Practice Advisory Council, a clinical psychiatrist who is recommended by a statewide association of psychiatrists and appointed by the Governor, and an anesthesiologist recommended by a statewide association of anesthesiologists and appointed by the Governor. In addition, the council must submit to the General Assembly any time the council advises or recommends authorizing the administration of a new chemical restraint.

Report on use of ketamine. Beginning January 1, 2022, and for each January 1 thereafter, the Colorado Department of Public Health and Environment (CDPHE) must submit a report to the General Assembly on the statewide use of ketamine by EMS providers and any complications that arise from its use. The report must be made publicly available.

Background

The CDPHE currently submits information to the Emergency Medical Practice Advisory Council regarding the number of times ketamine was administered by paramedics requiring a waiver. The report does not capture all uses of ketamine across the state and all complications. If the administration of ketamine is within the scope of practice of an EMS provider, or if an EMS provider is not under the jurisdiction of the CDPHE, the administration of ketamine will not show up in this report.

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 or directs the use of 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 will increase state expenditures by \$151,232 and 1.2 FTE FY 2021-22 and by \$92,355 and 0.9 FTE in FY 2022-23 in the Colorado Department of Public Health and Environment (CDPHE) and increase workload in the Department of Law, as shown in Table 2 and described below.

Table 2
Expenditures Under HB 21-1251

| | FY 2021-22 | FY 2022-23 |
|--|------------------|-----------------|
| Department of Public Health and Environment | | |
| Personal Services | \$74,533 | \$63,212 |
| Operating Costs | \$1,755 | \$1,215 |
| Capital Outlay | \$6,200 | - |
| Computer Programming | \$50,000 | - |
| Centrally Appropriated Costs ¹ | \$18,744 | \$27,927 |
| Total Cost | \$151,232 | \$92,355 |
| Total FTE | 1.2 FTE | 0.9 FTE |

¹ Centrally appropriated costs are not included in the bill's appropriation.

Public Health and Environment—staffing. The CDPHE will require 1.2 FTE in FY 2021-22 and 0.9 FTE in FY 2022-23. Of the staff, 0.9 FTE in FY 2021-22 and 0.6 FTE in FY 2022-23 is required to collect data on the use of ketamine, review the data, offer technical assistance, and report the data. Workload in FY 2021-22 also includes developing reporting policies and to help oversee computer programming upgrades. The remaining staff, 0.3 FTE each year starting in FY 2021-22, will investigate EMS provider misconduct complaints. The fiscal note assumes there will be 5 complaints per year requiring 120 hours per complaint. Costs in FY 2021-22 assume a July 1, 2021, start date and are prorated for a General Fund pay date shift.

Public Health and Environment—computer programing. In FY 2021-22, expenditures in the CDPHE will increase by \$50,000 to update the Image Trend Information Technology System to collect data on the use of ketamine.

Public Health and Environment—per diem and travel. The bill will increase expenditures to reimburse two 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 \$2,960. The fiscal note assumes that this cost can be absorbed within current appropriations.

Public Health and Environment—rulemaking. Finally, workload will increase in the CDPHE to update rules. The fiscal note assumes this work can be accomplished within existing appropriations

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 ketamine, 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.

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 \$18,744 in FY 2021-22 and \$27,927 in FY 2022-23.

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

This bill was signed into law by the Governor and took effect on July 6, 2021.

State Appropriation

For FY 2021-22, the bill requires and includes a General Fund appropriation of \$132,488 and 1.2 FTE to the Colorado Department of Public Health and Environment.

Departmental Difference

The Colorado Department of Public Health and Environment estimates that the bill requires an additional \$54,477 and 0.5 FTE in FY 2021-22 and \$3,287 and 0.2 FTE in FY 2022-23 from the General Fund for staff to conduct rulemaking. The fiscal note expects a less extensive rulemaking process that can be accomplished within existing rulemaking and legal services appropriations.

State and Local Government Contacts

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