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REVISED FISCAL NOTE

(replaces fiscal note dated April 26, 2018)

Drafting Number: LLS 18-1253
Prime Sponsors: Sen. Gardner; Lambert
Rep. Lee; Young

Date: May 3, 2018
Bill Status: House Judiciary
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Bill Topic: DIVERT INDIVIDUALS WITH MENTAL HEALTH CONDITIONS TO COMMUNITY TREATMENT

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

This bill creates pre-plea mental health pilot programs in four judicial districts to divert individuals who have been charged with a low-level criminal offense and have a mental health condition into community treatment. It reduces state and local government revenue, increases state and local government expenditures, and may reduce state and local government expenditures on an ongoing basis.

Appropriation Summary: For FY 2018-19, the bill includes an appropriation of \$750,000 to the Judicial Department.

Fiscal Note Status: The revised fiscal note reflects the reengrossed bill.

Table 1
State Fiscal Impacts Under SB 18-249

Table with 3 columns: Category, FY 2018-19, FY 2019-20. Rows include Revenue, Expenditures (General Fund, Centrally Appropriated, Total, Total FTE), Transfers, and TABOR Refund.

Summary of Legislation

This bill allows judicial districts to develop and administer up to four pre-plea mental health pilot grant programs to divert individuals with mental health conditions involved with the criminal justice system for low-level offenses into community treatment. The pilot program sites are to be identified by the State Court Administrator and Colorado District Attorneys' Council, with the agreement of the elected district attorneys and chief judges in a judicial district, and taking into account geographic diversity. The bill defines a low-level offense as any misdemeanor or petty offense, except for those offenses that trigger the rights for crime victims and witnesses, and any additional offenses that the district attorney of the judicial district agrees may be categorized as such. These additional offenses may be any class 4, 5, or 6 felony, or any class 3 or class 4 felony drug offense.

Program development. The district attorney and chief judge of a judicial district selected to be a pilot program site are responsible for developing a local program with input from stakeholders. The chief judge must establish and facilitate the program in accordance with the model recommended by the Colorado Commission on Criminal and Juvenile Justice (CCJJ) in January 2018. The chief judge is also required to:

- establish policies for the pilot program;
- facilitate any formal agreements or memoranda of understanding required to create the pilot program;
- broker services through contracts with local community treatment programs or providing additional grant funding to district attorneys to contract with providers; and
- administering the pilot program once it is implemented.

Program administration. The State Court Administrator is responsible for administration of the pilot programs, including

- establishing program procedures and timelines;
- establishing grant funding guidelines;
- awarding annual grants to the pilot programs in an amount not to exceed \$750,000 per year; and
- disbursing grant money.

Programs must be in place by January 1, 2019, and are funded through December 1, 2021, when the program repeals.

Program funding. Each district attorney's office participating in the pilot program must receive \$50,000 per year for each of the two years of the grant program. The Judicial Department is appropriated \$750,000 General Fund for FY 2018-19.

State Revenue

Beginning in FY 2018-19, the bill will reduce state revenue from criminal fees and fines credited to the Judicial Department if more individuals are diverted into community-based treatment rather than being convicted of criminal offenses. Fine penalties for most misdemeanors and petty offenses range from \$50 to \$5,000 depending on the offense. Fees are also imposed for a variety of court-related costs, which vary based on the offense but may include probation supervision,

victim compensation, and late fees, among others. Because the courts have the discretion of incarceration, imposing a fine, or both, and it is unknown how many offenders will be diverted, the precise impact to state revenue cannot be determined.

TABOR Impact

This bill is expected to reduce state revenue from criminal fines and fees, which will reduce the amount of money required to be refunded under TABOR for FY 2018-19 and FY 2019-20. Since the bill reduces the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will increase by an identical amount. These amounts have not been estimated. State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

State Expenditures

This bill increases state General Fund expenditures by \$764,684 in FY 2018-19 and by \$766,168 in FY 2019-20. A total of 1.0 FTE is required in the Judicial Department. The bill may also result in future cost savings. Table 2 and the discussion that follows present the costs of the bill.

**Table 2
 Expenditures Under SB 18-249**

	FY 2018-19	FY 2019-20
Judicial Department		
Personal Services	\$79,376	\$86,593
Operating Expenses and Capital Outlay Costs	\$5,653	\$950
Grant and Diversion Pilot Program Funding	\$664,971	\$662,457
Centrally Appropriated Costs*	\$14,684	\$16,168
FTE – Personal Services	0.9 FTE	1.0 FTE
Total Cost	\$764,684	\$766,168
Total FTE	0.9 FTE	1.0 FTE

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

Judicial Department. The bill affects several areas within the Judicial Department as described below.

Court liaison program administration. The bill requires 1.0 FTE for a courts program analyst position to administer the program, including drafting program policies and procedures, and overseeing overall implementation and operation of the program. This position is assumed to start on July 1, 2018. FY 2018-19 salary costs are prorated to account for the General Fund paydate shift.

Grant and diversion pilot program funding. The bill requires that each of the four judicial district pilot sites provide \$50,000 per year for each of FY 2018-19 and FY 2019-20 (a total of \$200,000 per year) to the district attorney to offset administrative costs. The remaining funds will be used to contract for services or issue grants to community-based treatment programs.

Trial courts. The bill is expected to reduce trial court workload in judicial districts with a pilot program as individuals are diverted into community-based treatment and charges are dismissed. The chief judge of each judicial district with a pilot program will have increased workload to assist in its development.

Resource and cost savings. To the extent that the diversion pilot program identifies resources in the community that would have otherwise been paid for by the Judicial Department, cost savings will occur. If fewer individuals are convicted of a misdemeanor and therefore not sentenced to probation, workload for the Probation Division will decrease. Finally, if fewer individuals proceed to trial, workload and costs for agencies that provide representation to indigent offenders, including the Office of the State Public Defender and Office of the Alternate Defense Counsel, will be reduced. Because it is not known how many individuals will be diverted into community-based treatment in lieu of the criminal justice system, these impacts have not been estimated. If savings are substantial, reductions in appropriations will be requested through the annual budget process by the affected agency.

Local Government

This bill affects local governments in several ways, as described below. The exact impact to any particular jurisdiction will depend on the amount of work required to develop the local redirection program and the number of individuals who participate in it.

District attorneys. The bill increases district attorney workload to participate in the development of the pilot programs and to handle more diversion cases. The bill increases funding by \$50,000 for each year of the two-year grant pilot program for each of the four judicial districts that are selected to operate a program. Because it is not known how many individuals will be diverted into community-based treatment in lieu of the criminal justice system, these impacts have not been estimated.

Denver County Court. For misdemeanors and petty offenses committed in Denver County, criminal fine and court fee revenue is collected by Denver County Court, and probation supervision is provided by the court. To the extent that this bill results in more individuals diverted out of the criminal justice system, revenue and workload will decrease. Because the court has discretion when sentencing misdemeanors and petty offenses, the precise reduction to Denver County has not been estimated. Please refer to the State Revenue section above for information about fine penalty ranges and court fees.

County jails. Under current law, a court may sentence an offender to jail for a class 1 petty offense and most misdemeanors. The range of the term of incarceration generally ranges from 0 to 18 months. This bill may result in fewer individuals being convicted of these offenses and sentenced to a term of incarceration in county jail. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. 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.

Effective Date

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

State Appropriations

For FY 2018-19, the bill includes an appropriation of \$750,000 General Fund to the Judicial Department. The Judicial Department also requires an allocation of 0.9 FTE.

State and Local Government Contacts

Counties
Health Care Policy and Financing
Judicial
Municipalities
Public Safety

District Attorneys
Human Services
Local Affairs
Public Health and Environment
Sheriffs