



## Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

# Fiscal Note

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<b>Drafting Number:</b>	LLS 22-0142	<b>Date:</b>	January 18, 2022
<b>Prime Sponsors:</b>	Sen. Simpson; Lee Rep. Benavidez; Amabile	<b>Bill Status:</b>	Senate Judiciary
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**Bill Topic:** PRETRIAL DIVERSION FOR PERSON WITH BEHAVIORAL HEALTH

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**Summary of Fiscal Impact:**

<input checked="" type="checkbox"/> State Revenue	<input checked="" 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 expands the scope of the pretrial adult diversion program to identify individuals with behavioral health disorders who committed a low-level offense in order to divert them from the criminal justice system and into community treatment programs. It will impact state and local workload and revenue on an ongoing basis.

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**Appropriation Summary:** No appropriation is required; see Background and Assumptions Section.

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**Fiscal Note Status:** The fiscal note reflects the introduced bill, which was recommended by the Legislative Oversight Committee Concerning the Treatment of Persons with Mental Health Disorders in the Criminal and Juvenile Justice Systems.

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## Summary of Legislation

This bill expands the scope of the pretrial adult diversion program to identify individuals with behavioral health disorders who committed a low-level offense in order to divert them from the criminal justice system and into community treatment programs. District attorney offices that use state money for diversion programs must consider whether a defendant has a mental health or other behavioral health disorder that may make them eligible for the program, and diversion agreements may include participation in treatment programs. This program expansion replaces the existing Mental Health Diversion Pilot Program that is currently set to repeal on July 1, 2022.

## Background and Assumptions

The Mental Health Diversion Program, a pilot program, was created by Senate Bill 18-249 with an appropriation of \$750,000 General Fund. It began operating in 2019 in the 6th (Archuleta, La Plata, and San Juan counties); 8th (Jackson and Larimer counties); 16th (Bent, Crowley, and Otero counties), and 20th (Boulder County) Judicial Districts. According to data from the Judicial Department, there were 88 program participants in the four pilot sites between January 2019 through June 2020. Senate Bill 19-211 extended the program, and appropriated approximately \$450,000 General Fund to the

program. House Bill 20-1393 allowed for the expansion of the pilot program to five or more judicial districts to increase participation in order for the General Assembly to conduct a valid assessment on whether the pilot program should continue; however, total program funding was reduced to \$100,000 General Fund.

The Judicial Department has submitted a decision item (R-10) to seek \$2.0 million from the Behavioral and Mental Health Cash Fund for the pretrial adult diversion program in order to allow this pilot program to sunset on July 1, 2022, and be absorbed within the adult diversion program. Therefore, the fiscal note assumes that program funding will occur through the annual budget process and is not required in this fiscal note.

## **State Revenue**

Beginning in FY 2022-23, the bill may reduce state revenue from court-imposed fees and fines credited to the Judicial Department if more individuals are diverted into community-based treatment rather than being convicted of criminal offenses. Since the courts have sentencing discretion, and it is unknown how many additional offenders will be diverted, the precise impact to state revenue cannot be determined, but is expected to be minimal.

## **State Expenditures**

Beginning in FY 2022-23, this bill may decrease workload for the trial courts and probation division within the Judicial Department if more individuals are diverted to treatment programs rather than being convicted of criminal offenses. No change in appropriations is required.

## **Other Budget Impacts**

**TABOR refunds.** The bill may reduce the amount of state revenue required to be refunded to taxpayers by a minimal amount, as discussed in the State Revenue section. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24.

## **Local Government**

The bill will impact a number of local agencies, as described below.

**District attorneys.** In participating judicial districts, this bill may increase district attorney workload to handle more diversion cases; however, these costs will be paid with state funds.

**Denver County Court.** For misdemeanor and petty offenses committed in Denver, criminal fine and court fee revenue is collected by Denver County Court. To the extent that this bill results in more individuals diverted out of the criminal justice system, revenue and workload will decrease.

**County jails.** This bill may result in fewer individuals being convicted of offenses and sentenced to a term of incarceration in county jail, decreasing county costs.

## **Effective Date**

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

## **State and Local Government Contacts**

District Attorneys

Judicial