



**Colorado
Legislative
Council
Staff**

SB16-019

**REVISED
FISCAL NOTE**

(replaces fiscal note dated April 19, 2016)

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-0262

Date: May 4, 2016

Prime Sponsor(s): Sen. Cooke
Rep. Saine; Foote

Bill Status: House Judiciary

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BILL TOPIC: VIDEOTAPE MENTAL CONDITION EVALUATIONS

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue		
State Expenditures	<u>\$70,372</u>	<u>\$48,834</u>
General Fund	62,831	39,549
Centrally Appropriated Costs	7,541	9,285
FTE Position Change	0.4 FTE	0.8 FTE
Appropriation Required: \$62,831 - Department of Human Services (FY 2016-17).		
Future Year Impacts: Ongoing state expenditure and workload increases.		

Summary of Legislation

This *reengrossed* bill requires audio-visual recording of court-ordered mental condition examinations for individuals charged with class 1 or 2 felonies and felony sex offenses under sections 18-3-402, 18-3-404, 18-3-405, and 18-3-405.5, C.R.S. The court is required to notify a defendant that any examination with a psychiatrist or forensic psychologist may be audio and video recorded. The recordings must be preserved and provided with the examination report to all parties to the case and to the court.

A jail or other facility where the court orders an examination to take place must permit the recording to occur and must provide the space and equipment necessary to make the recording. In cases where space and equipment are not available, the sheriff or facility director is required to coordinate a location and equipment with the court, which may order the examination to take place at any location including the Colorado Mental Health Institute at Pueblo (CMHIP).

Exceptions to the recording requirement are made on a case-by-case basis at the determination of the examiner, who is required to assess whether the recording of the examination is likely to cause or is causing mental or physical harm to the defendant or others, or will make the examination not useful to the expert forensic opinion. The court will determine the admissibility of any recording or partial recording and instruct the jury regarding the consequences of failing to record the examination. The examiner is not required to record the administration of copyrighted psychometric tests.

Background

Two different types of mental condition examinations are covered by the bill. A sanity examination is ordered by a court in a criminal case where the defendant enters a plea of not guilty by reason of insanity (NGRI). An impaired mental condition examination occurs when the defendant asserts the defense of impaired mental condition. Both types of examinations may take place at a state-run mental health facility, the place where the defendant is being held in custody, or another place designated by the court, with preference being given to the place where the defendant is being held.

The bill does not apply to competency evaluations, which determine, prior to entering a plea in a criminal case, whether a defendant is competent to proceed.

State Expenditures

This bill increases General Fund expenditures by \$70,372 and 0.4 FTE in FY 2016-17 and by \$48,834 and 0.8 FTE in FY 2017-18 and future years in the Department of Human Services (DHS), as explained in Table 1 and the narrative below.

Table 1. Expenditures Under SB 16-019		
Cost Components	FY 2016-17	FY 2017-18
Personal Services	\$18,292	\$36,586
FTE	0.4 FTE	0.8 FTE
Operating Expenses and Capital Outlay Costs	5,083	713
Modification of A/V Room at CMHIP	37,206	0
Memory Cards for Storage of Recordings	2,250	2,250
Centrally Appropriated Costs*	7,541	9,285
TOTAL	\$70,372	\$48,834

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

Assumptions. This fiscal notes makes the following assumptions:

- approximately 67 mental condition examinations covered by the bill are projected for each of the next four fiscal years;
- a little over half of those examinations take place at CMHIP, with the rest occurring in county jails;
- the vast majority of jails will make space and equipment available for conducting and recording examinations;
- the examinations are time-intensive (an average of 10 hours each);
- the recordings are likely to be meticulously scrutinized in court and, therefore, need to be of reasonably high quality and carefully preserved; and
- the personal services and operating expenditures for FY 2016-17 have been prorated to account for the January 1, 2017, effective date.

Recordings. Examinations are conducted by certified psychiatrists, but they are neither qualified to make recordings, nor do they have the time during the exam to devote to audio-visual (A/V) concerns. In order to record all inpatient examinations, DHS will retrofit a room at CMHIP with recording and monitoring equipment. This equipment will be operated by a media specialist (0.3 FTE) and scheduled by a program assistant (0.2 FTE). The recordings will be stored on high-quality memory cards for preservation purposes.

Security staff. Examinations are currently conducted on the patient's unit. The bill would require patients to be escorted to the A/V room, which presents a security risk for the patient and staff. As such, the department will need to hire an additional 0.3 FTE correctional officer to escort patients and remain present for the duration of the examination.

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. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Cost Components	FY 2016-17	FY 2017-18
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$5,976	\$6,007
Supplemental Employee Retirement Payments	1,565	3,278
TOTAL	\$7,541	\$9,285

Local Government Impact

The bill requires jails to make space and equipment available for conducting court-ordered examinations. This fiscal note assumes that the vast majority of sheriff's offices will be able to set aside the requisite space and purchase the necessary equipment to facilitate the examinations. The exact amount needed for each of the state's 64 county jails cannot be determined at this time, but is expected to be less than \$1,000.

Effective Date

The bill takes effect January 1, 2017, and applies to court-ordered mental condition examinations conducted on or after that date.

State Appropriations

For FY 2016-17, the bill requires a General Fund appropriation of \$62,831 and an allocation of 0.4 FTE to DHS.

Departmental Difference

The bill will increase the workload of forensic evaluators who conduct court-ordered examinations. Such evaluators are currently paid \$2,000 per examination. Because the bill will require more preparation and increased review of the recorded evaluations in order to answer questions at trial, the department believes that it will need to begin paying evaluators on an hourly basis rather than a flat rate. The new way of compensating evaluators would represent an increase of approximately \$150,000 annually over current expenditures. If the department chooses to change to an hourly rate, the increase will be requested through the annual budget process.

Additionally, the department requested \$18,237 and additional staff for a mobile A/V unit to record outpatient examinations; however, the amended bill requires jails to make equipment and space available. The fiscal note assumes that staff in the jails will be qualified to set up the camera and press the record button.

State and Local Government Contacts

Corrections
Judicial

District Attorneys
Sheriffs

Human Services

Research Note Available

An LCS Research Note for SB16-019 is available online and through the iLegislate app. Research notes provide additional policy and background information about the bill and summarize action taken by the General Assembly concerning the bill.