

### Fiscal Estimate - 2019 Session

Original     
  Updated     
  Corrected     
  Supplemental

|                             |                                    |
|-----------------------------|------------------------------------|
| LRB Number <b>19-1617/1</b> | Introduction Number <b>AB-0011</b> |
|-----------------------------|------------------------------------|

**Description**  
 obtaining crime victim mental health treatment records

**Fiscal Effect**

**State:**

No State Fiscal Effect  
 Indeterminate

|  |  |   |
|--|--|---|
| <input type="checkbox"/> Increase Existing Appropriations<br><input type="checkbox"/> Decrease Existing Appropriations<br><input type="checkbox"/> Create New Appropriations | <input type="checkbox"/> Increase Existing Revenues<br><input type="checkbox"/> Decrease Existing Revenues | <input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget<br><input type="checkbox"/> Yes <input type="checkbox"/> No<br><input type="checkbox"/> Decrease Costs |
|--|--|---|

**Local:**

No Local Government Costs  
 Indeterminate

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|--|--|--|
| 1. <input type="checkbox"/> Increase Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory<br>2. <input type="checkbox"/> Decrease Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenue<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory<br>4. <input type="checkbox"/> Decrease Revenue<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of Local Government Units Affected<br><input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities<br><input type="checkbox"/> Counties <input type="checkbox"/> Others<br><input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts |
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|  |                                       |
|--|---------------------------------------|
| <b>Fund Sources Affected</b>   | <b>Affected Ch. 20 Appropriations</b> |
| <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS |                                       |

|   |   |                          |
|---|---|--------------------------|
| <b>Agency/Prepared By</b><br>DA/ Kasey Deiss (608) 267-2700 | <b>Authorized Signature</b><br>James Langdon (608) 264-6109 | <b>Date</b><br>3/11/2019 |
|---|---|--------------------------|

## Fiscal Estimate Narratives

DA 3/11/2019

|  |                             |                        |
|--|-----------------------------|------------------------|
| LRB Number 19-1617/1   | Introduction Number AB-0011 | Estimate Type Original |
| <b>Description</b><br>obtaining crime victim mental health treatment records |                             |                        |

### Assumptions Used in Arriving at Fiscal Estimate

This bill creates a procedure by which a defendant in a criminal case may seek access to the mental health treatment records of a crime victim that are not in the possession of or under the control of a government entity when he or she believes that those records contain information that is crucial to the defendant's defense.

Under the bill, if a defendant wishes to gain access to the mental health treatment records of a crime victim, he or she must file a motion describing the information sought and show that there are mental health treatment records that are reasonably likely to contain the information sought, that the information is necessary to formulate an articulated theory of defense, and that the information is not available from any other source. If the court finds that the defendant has made this showing and that the potential benefit to the defendant is greater than the harm to the crime victim from disclosure, and if the crime victim consents, the court may conduct an in camera review of the mental health treatment records. Upon reviewing the records, if the court determines both that the information in the mental health treatment records is necessary to an articulated theory of defense and that the benefit to the defendant from disclosure is greater than the harm to the crime victim from disclosure, or determines that the evidence is otherwise exculpatory, the court may order disclosure of the records. Following this order, the crime victim may review the records that the court has determined should be disclosed and may consent to disclose the records, may appeal the court's decision, or may decline to disclose the records and be barred from testifying at the trial.

If the crime victim declines to disclose his or her mental health treatment records for an in camera review, the court must abide by his or her declination and must permit the victim to testify at trial. The defendant, however, may then comment on the declination and question the victim about those records.

All filings and records pertinent to this process and the mental health treatment records of the victim are to be sealed by the court. Additionally, all decisions of the court during this process may be appealed at any time by the state or the crime victim as a matter of right.

This bill also adds enumerated rights to the basic bill of rights for victims describing the right of a victim to privacy in his or her mental health treatment records, in accordance with the new procedure that the bill creates.

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Responsive District Attorneys and other subject matter experts generally agree that this bill seeks to codify existing case law with only minor changes to the current procedures utilized statewide in similar situations. Fiscal impact to the District Attorney program as a result of this legislation is anticipated to be modest.

### Long-Range Fiscal Implications

The long range fiscal impact of this bill is listed as indeterminate as insufficient information is available to determine whether prosecutorial resources (mainly time spent litigating Shiffra Green Motions) would increase or decrease as a result of this legislation. As the bill seeks to codify existing case law with only minor tweaks, it is anticipated that any fiscal effect would be modest.