



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number:	LLS 18-1250	Date:	April 26, 2018
Prime Sponsors:	Sen. Gardner; Lambert Rep. Lee; Young	Bill Status:	Senate Judiciary
		Fiscal Analyst:	Chris Creighton 303-866-5834 Chris.Creighton@state.co.us

Bill Topic: COMPETENCY TO PROCEED EVALUATIONS AND SERVICES

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue (<i>potential and minimal</i>)	<input checked="" type="checkbox"/> TABOR Refund (<i>potential and minimal</i>)
<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 makes various changes regarding the process of conducting competency evaluations, determining the competency of a defendant, and reviewing cases of defendants determined to be incompetent. This bill both increases and decreases state and local government costs and workload on an ongoing basis.

Appropriation Summary: No appropriation is required.

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

Summary of Legislation

This bill makes various changes regarding the process of conducting competency evaluations, determining the competency of a defendant, and reviewing cases of defendants determined to be incompetent after specified periods of time. This bill also defines "intellectual and developmental disability" in the context of competency proceedings and updates related statutory references.

Bonds. When the court orders a competency evaluation for a defendant eligible for bond, this bill requires the court to include cooperation with the competency evaluation as a condition of being released on bond.

If a defendant is released on bond and competency restoration services are ordered, the agency responsible for the restoration services must notify the court within 45 days if the defendant is not cooperative. In this case, the court may order the defendant to be committed to the custody of the Department of Human Services (DHS) and have inpatient restoration services provided instead.

For defendants charged with a misdemeanor, petty offense, or traffic offense that did not involve a crime against a victim or witness, the court must grant the defendant bond without monetary conditions. Exceptions are provided for defendants that are a flight risk or pose a risk to another person including a victim or witness.

Competency evaluation procedures. If the court orders competency restoration services, this bill specifies where that restoration may take place, allows for the DHS to move a defendant to a less restrictive facility, and authorizes a defendant to be committed to the custody of DHS until outpatient services are available. The courts must review cases involving outpatient and inpatient restoration services every 30 days to assess the clinical status of the defendant.

Competency evaluation reports. Competency evaluation reports must include information on whether there is a substantial probability having competency restored for the defendant and a recommendation on whether inpatient restoration services are needed. If inpatient restoration services are not required, the report must detail outpatient and out-of-custody restoration service options available to the defendant. If available, the report must also include information on previous competency evaluation or restoration services and if the defendant meets the criteria for mental health treatment.

Defendant transport. For inpatient competency restoration services, the county sheriff in the jurisdiction where the defendant is jailed must pick up the defendant within 72 hours of receiving notice that the competency restoration is complete.

Second competency evaluation request. This bill reduces the timeframe for requesting a hearing or second competency evaluation to 7 days from 14 days after receipt of a court ordered report. The bill also clarifies that the DHS is not required to pay for conducting a second competency evaluation regardless of the source of the request.

Competency reviews and release from custody. An defendant in the custody of the DHS or in county jail may not remain in custody for a period that exceeds the maximum term of incarceration that could be imposed for the offense the defendant is charged with. This bill specifies that charges must be dismissed once the aggregate time spent in custody of the DHS and/or in county jail equals the maximum term of incarceration for the offense.

Consistent with current law, the court is required to review the case of any defendant who has been determined incompetent to proceed at least every three months to determine the probability that the defendant's competence can be restored. Prior to such court review, the entity responsible for evaluating the defendant must provide the courts with a report on the defendant's competency, probability of being restored to competency, and whether the defendant meets criteria for mental health disorder treatment. This bill specifies the timeframes and procedures for conducting such reviews and dismissing charges, if it is determined a defendant's competency cannot be restored. The DHS is authorized to promulgate rules to ensure the consistent application of procedures to determine competency or incompetency.

Background

Inpatient competency restoration services are currently provided by the DHS at the Colorado Mental Health Institute at Pueblo, the Mental Health Institute at Fort Logan, or through a contract with services provided at the Arapahoe County jail, known as the Rise Program. Defendants undergoing competency restoration services at these locations are considered to be in the custody of the DHS.

Outpatient competency restoration services are provided by the DHS through contract behavioral health providers. In some cases these services are provided on an in-custody basis to defendants in county jail. These services may also be provided in the community on an out-of-custody basis for defendants released on bond.

State Revenue

Beginning in the current FY 2017-18, the elimination of cash bonds for misdemeanors, petty offenses, and traffic offenses may reduce state cash fund revenue from bond forfeitures by a minimal amount.

TABOR Refund

This bill reduces state revenue from cash bond forfeitures which will reduce the amount of money required to be refunded under TABOR by a minimal amount for FY 2018-19 and FY 2019-20. A TABOR refund obligation is not expected for the current FY 2017-18. 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. State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

State Expenditures

Beginning in the current FY 2017-18, this bill increases Judicial Department workload and decreases Department of Human Services workload as discussed below. No change in appropriations for either agency is required.

Judicial Department. This bill increases trial court workload by requiring that additional court reviews and hearings be held in cases where a defendant is determined incompetent to proceed. Workload also increases to make minor court case management system programming changes related to bonds. Workload could decrease to the extent that court reviews or the dismissal of charges decreases the number of cases that proceed to trial. Overall, these workload impacts are considered to be minimal and will be accomplished within existing appropriations.

This bill potentially increases court expenditures to pay for second competency evaluation costs as the DHS is not required to pay for these services. However, because, the Judicial Department already pays for these costs in many circumstances when such services are requested by a party and ordered by the court, any increase is expected to be minimal. Should additional funds be needed, they will be requested through the annual budget process.

Agencies providing representation to indigent persons. Workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel may increase or decrease to provide counsel to indigent offenders deemed incompetent to proceed. To the extent this occurs, this analysis assumes the affected offices will request an adjustment in appropriations through the annual budget process.

Department of Human Services. This bill shifts workload for the Division of Mental Health Institutes by increasing the number of competency evaluations that will be conducted on an outpatient basis, rather than on an inpatient basis. This will free up bed capacity for other forensic and civil patients. For informational purposes, it costs the division \$676 per day for housing inpatient defendants at the Mental Health Institute at Pueblo. However, because of the need for services is greater than the number of beds available, no bed or appropriation reduction is expected to result from this bill.

This bill may decrease the need for staff psychologists needed to conduct competency evaluations and the number of contracted Rise Program jail beds utilized by the department. However because these impacts are dependent on future competency evaluations and court orders, this impact has not been estimated. Any reduction in future appropriations occurring as a result of this bill will be requested through the annual budget process.

Beginning in FY 2017-18, workload increases by a minimal amount for the department to promulgate rules to ensure the consistent application of procedures to determine competency or incompetency.

Local Government

Beginning in current FY 2017-18, this bill both increases and decreases local government costs as described below. For counties, the exact impact will depend on the number of cases where a defendant is determined incompetent to proceed, the results of competency evaluations, and court decisions regarding the provision of competency restoration services or the dismissal of charges within the county's jurisdiction.

County jail. To the extent that court reviews of defendants charged with certain felony and misdemeanor crimes results in the dismissal of the charges because it is determined that a defendant cannot be restored to competency, county jail costs will decrease. County jail costs may further decrease to the extent that competency restoration services are provided on an out-of-custody basis. These savings will be offset to the extent that additional in-custody competency restoration services are provided and defendants remain in the county jail as a result. Overall, county jail savings are expected; however, these savings have not been estimated because they are conditional upon future competency evaluations and decisions made by the court. For informational purposes 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.

County sheriffs. This bill may increase county court sheriff offender transportation costs by requiring the defendant to be picked up within 72 hours of receiving notice that the competency evaluation is complete. Under current law, this is to be completed within a reasonable, but undefined timeframe. To the extent that increased out-of-custody competency restoration services are provided, transportation costs may decrease. These impacts have not been estimated.

District attorneys. This bill may increase district attorney workload to request competency evaluations, to attend competency evaluation hearings, to contest competency related decisions on the grounds that an offender presents a substantial and unacceptable risk to public safety, and to file civil commitment actions. To the extent that court reviews or the dismissal of charges decreases the number of cases that proceed to trial, district attorney workload will decrease. These impacts have not been estimated.

Denver County Court. Similar to the state, this bill increases workload in Denver County Court to conduct court reviews and hearings that will be held in cases where a defendant is determined incompetent to proceed. Workload could decrease to the extent that court reviews or the dismissal of charges decreases the number of cases that proceed to trial. Because such reviews and hearings are regularly conducted under current law, these impacts are assumed to be minimal.

Effective Date

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

State and Local Government Contacts

Corrections
Human Services
Sheriffs

Counties
Information Technology

District Attorneys
Judicial