

JOINT BUDGET COMMITTEE BILLS CONCERNING COMPETENCY

The Joint Budget Committee (JBC), in partnership with the Chairs of the Senate and House Judiciary Committees, are sponsoring four bills concerning court-ordered services for individuals who are charged with a crime but who are not mentally competent to proceed to trial. This document provides background information about the legal and financial issues that led to the JBC acting to introduce these bills.

The Problem

- The Department of Human Services (DHS) is responsible for evaluating the competency of individuals charged with a crime and for providing competency restoration services when an individual is determined to be incompetent to proceed to trial. The Colorado Mental Health Institute at Pueblo (CMHIP) provides these services unless the Court authorizes that these services be provided in jail or in the community. Due to significant increases in the number of court orders for evaluations and restoration services, the number of beds devoted to competency services at CMHIP has increased, squeezing out DHS' ability to serve other patients needing psychiatric hospitalization. As of April 30, 199 (44.3 percent) of the 449 CMHIP beds are utilized for patients requiring competency services.
- A legal challenge concerning the length of time individuals wait in jail to receive a competency evaluation or restoration services resulted in a 2012 Settlement Agreement that prescribes timeframes on DHS related to the length of time individuals wait for these services. Since June 2017, DHS has been out of compliance with the timeframes, and it is currently discussing a potential consent decree with the plaintiffs. The plaintiffs have discussed assessing fines for every day that a person waits beyond the prescribed timeframes. Based on the current backlog, DHS estimates that these fines could total \$50 million per year.
- DHS is subject to the Settlement Agreement, but the Agreement also directly affects or involves:
 - individual defendants who are waiting for competency services, and their families;
 - lawyers representing these defendants;
 - district attorneys;
 - courts;
 - sheriffs, jail staff, and law enforcement officers; and
 - behavioral health providers.

Recent JBC and General Assembly Actions

- In FY 2013-14, the General Assembly began funding a 22-bed jail-based competency restoration program called Restoring Individuals Safely and Effectively (RISE). RISE is housed in the Arapahoe County Detention Facility in Centennial, and it essentially expands capacity for CMHIP.
- In September 2015 the JBC approved an emergency supplemental request to expand RISE by 30 beds because DHS was not in compliance with Settlement Agreement timeframes.
- The JBC sponsored H.B. 16-1410, which limited the Court's discretion to order that a competency evaluation be conducted at CMHIP. This bill also prohibited the Court from considering the need for the defendant to receive a competency evaluation when setting bond, and it included funding for secure transport staff to facilitate the transportation of defendants between jails, CMHIP, and RISE.
- In September 2017, the JBC approved another emergency supplemental request to expand RISE. The JBC also provided funding for DHS to begin implementing S.B. 17-012, which requires DHS to develop models for providing outpatient competency restoration services. These new models must integrate competency restoration education with other case management and treatment, ensure continuation of ongoing treatment and services as appropriate, avoid duplication of services, and achieve efficiencies by coordinating with existing community resources and programs.

- The FY 2018-19 Long Bill includes \$22.6 million General Fund for competency services, including:
 - \$13.4 million for RISE (an increase of 62 beds for a total of 114 beds);
 - \$3.9 million for “court services”, the unit that administers and delivers services related to court-ordered mental evaluations and competency restoration education services (this is in addition to the operational costs related to CMHIP beds utilized by patients needing competency services);
 - \$3.2 million for DHS to contract for 10 beds in a psychiatric hospital;
 - \$1.2 million for the ongoing costs of some program relocations at CMHIP designed to improve the safety of the adolescent unit (thereby allowing DHS to operate closer to the 20-bed capacity) and add 20 beds for adult patients; and
 - \$0.9 million for outpatient competency restoration education services.

In total, the Long Bill funds an increase of 92 beds to cover the shortfall estimated by DHS based on projected ongoing increases in the number of competency-related court orders. This represents a 16.0 percent increase in beds compared to the 575 Institute and RISE beds that were available last Fall.

- In early March 2018, the JBC authorized one or more bills to be drafted to address systemic issues that are driving the continued increase in court orders for competency services and to increase the utilization of lower cost, clinically appropriate, community-based behavioral health services. The JBC has included as part of its FY 2018-19 budget package \$7,900,000 General Fund for implementation of these bills.

Bill Drafting Process

Since late January, there have been multiple meetings and discussions that have resulted in the four bills that have been introduced. Primarily, these discussions have involved staff from DHS, the State Court Administrator’s Office, the Office of the State Public Defender, and the Colorado Behavioral Healthcare Council. A number of organizations were asked to review bill drafts and provide feedback, including: the Office of the Alternate Defense Counsel; Disability Law Colorado; the Colorado District Attorneys’ Council; County Sheriffs of Colorado; Colorado Counties, Inc.; the Colorado Department of Public Safety; Mental Health Colorado; Colorado Mental Wellness Network; the Committee concerning Treatment of Persons with Mental Health Disorders in the Criminal Justice System; and the Governor’s Office.

Policy Objectives of the Bill Package

The four bills are intended to work together to:

- redirect individuals with behavioral health disorders from the criminal justice system into treatment;
- improve communication and collaboration between the courts, district attorneys, defense attorneys, DHS, the Department of Health Care Policy and Financing, local law enforcement agencies, and community-based behavioral health providers concerning the needs and available treatment options for individuals with behavioral health disorders;
- provide timely competency-related services based on clinical necessity;
- integrate competency restoration services with existing community-based behavioral health services and supports to address the underlying causes of incompetency;
- improve mental health services in jails to help identify individuals who could be redirected into treatment and reduce the likelihood of individuals decompensating while they are held in jail;
- free up capacity for CMHIP to provide jails and other agencies with access to inpatient psychiatric treatment for individuals based on clinical necessity, regardless of whether there is a court order concerning competency;
- reduce the maximum term of confinement for purposes of receiving competency restoration treatment, thereby addressing a potential constitutional issue and reducing the demand for restoration services;
- establish procedures for transitioning individuals to a civil commitment when warranted; and
- improve procedures related to individuals who are found permanently incompetent to proceed.