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Fiscal Note

Drafting Number: LLS 22-0141 Date: February 15, 2022
Prime Sponsors: Rep. Amabile; Benavidez Bill Status: House Judiciary
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Bill Topic: MODIFICATIONS TO NOT GUILTY BY REASON OF INSANITY

- Summary of Fiscal Impact:
- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

The bill allows the court to release certain individuals found not guilty for reason of insanity on bond, establishes new information to be included in evaluations, and requires annual evaluations for individuals found not guilty for reason of insanity in inpatient care. The bill increases state and local expenditures on an ongoing basis.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$1.9 million to the Department of Human Services.

Fiscal Note Status: This fiscal note is provided pursuant to Joint Rule 22 (b) (2) and reflects strike-below Amendment L.001. Due to time constraints, this analysis is preliminary and will be updated following further review and any additional information received. The bill was recommended by the Legislative Oversight Committee Concerning the Treatment of Persons with Mental Health Disorders in the Criminal and Juvenile Justice Systems.

Table 1
State Fiscal Impacts Under HB 22-1061

Table with 4 columns: Category, Sub-category, Budget Year FY 2022-23, and Out Year FY 2023-24. Rows include Revenue, Expenditures (General Fund, Centrally Appropriated, Total Costs, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve).

Summary of Legislation

Bond after being found not guilty for reason of insanity. After September 1, 2022, when an individual is found not guilty for reason of insanity, the bill allows the defendant to request the court to be released on bond and to stay the commitment of the defendant to the Department of Human Services until an initial release hearing is held; however, this provision does not apply if the crime is a class 1 or 2 felony, resulted in another person suffering serious bodily injury or death, involved the defendant using a deadly weapon, or involved felonious unlawful sexual behavior. In determining if bond is appropriate, the courts must consider the current criteria for setting bond, treatment needs, availability of treatment in the community, ability of the DHS to conduct a release evaluation in the community, whether the DHS can timely admit the defendant, and usefulness of an observed period. If the court permits a defendant to remain on bond, the court shall order the department to conduct a release examination on an outpatient basis, as well as any other appropriate conditions of release including outpatient treatment. The court may not delay the final disposition and entry of finding of not guilty by reason of insanity unless the defendant is at liberty and requests a delay. If the defendant is at liberty, the district attorney or a bonding commissioner may file a motion to revoke bond.

Order to commitment. If the court orders an individual not guilty by reason of insanity to be committed to the DHS, the DHS must arrange for the transport to admit the defendant.

Release from commitment. After September 1, 2022, upon initial commitment after being found not guilty for reason of insanity, the court must schedule an initial release hearing no later than 120 days and must order the DHS to complete a release examination no later than 30 days prior to the hearing. A defendant may request additional evaluations. If the court finds the defendant is eligible for conditional release, the court may impose such terms and conditions as it determines are in the best interest of the defendant and the community. If the court find the defendant ineligible, it must recommit the defendant to the physical custody of the DHS.

Release examinations. The bill adds additional requirements to what needs to be included in a release examination including: a summary of the materials reviewed to come up with the opinion; the defendant's current diagnosis; information about medications prescribed; a summary of the treatment provided since the last examination; an initial assessment of the defendant's risk of reoffending; a summary of the specific treatment available in the community; a summary of whether and how ongoing risks could be managed if the defendant was placed in the community; and an opinion as to whether the defendant meets the applicable test for release.

Annual reporting. After September 1, 2022, the chief officer of the institution where a defendant is committed must annually submit a report to the court, defendant, prosecuting attorney, and any other attorney of record certifying whether the defendant continues to require inpatient hospitalization. The report must be submitted each year by the date on which the defendant was initially committed for inpatient hospitalization. The report must include all the information required in release examinations. Upon review of the report, the court may order a release hearing.

Assumptions

The fiscal note assumes that the DHS receives 11 defendants found not guilty for reason of insanity per year who will require an evaluation. In addition, the fiscal note assumes that there are currently 130 defendants in inpatient care of the DHS that will require an annual evaluation, for a total of 141 evaluations per year. Finally, the fiscal note assumes that 10 individuals per year will be released from inpatient hospitalizations to community settings as a result of the bill, which will require transition services from the DHS.

State Expenditures

State General Fund expenditures within the DHS will increase by \$2.2 million in FY 2022-23 and \$2.7 million in FY 2023-24 as shown in Table 2 and described below. In addition, workload in the Judicial Department will increase, as described below.

**Table 2
Expenditures Under HB 22-1061**

	FY 2022-23	FY 2023-24
Department of Human Services		
Personal Services	\$1,360,551	\$1,814,068
Operating Expenses	\$20,250	\$24,300
Capital Outlay Costs	\$111,600	-
Transition Services	\$450,000	\$500,000
Centrally Appropriated Costs ¹	\$257,383	\$343,178
Total Cost	\$2,199,784	\$2,681,546
Total FTE	13.5 FTE	18.0 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Human Services. Starting in FY 2022-23, expenditures in the DHS will increase to provide additional evaluations and additional transition services.

- **Evaluations.** Based on the assumptions outlined above, the DHS will require 18.0 FTE to administer the various evaluations. The fiscal note assumes that 4.0 FTE are required to conduct initial evaluations when an individual is found not guilty by reason of insanity and that 14.0 FTE are required for the annual evaluations. Costs include personal services, operating expenses, and capital outlay costs as outlined in Table 2. Costs in FY 2022-23, are prorated for a September 1 start date and the General Fund pay date shift.

- **Transition services.** Starting in FY 2022-23, expenditures in the DHS will increase to provide transition services from inpatient to outpatient care. Based on the assumptions outlined above, the fiscal note estimates that transition services cost \$50,000 per year per individual released. Costs in FY 2022-23 are prorated for a September 1 start date. Additional releases may occur as a result of the bill, but will depend on the determinations of the courts. The fiscal note assumes that the DHS will request resources through the annual budget process as the bill's impact is better known.
- **Transportation services.** The DHS will have an increase in workload and potential expenditures to arrange transport for individuals ordered not guilty by reason of insanity from court to a DHS facility. These costs have not been estimated.

Judicial Department. The bill will require the court to hold additional hearings and court staff to do additional tracking of required evaluations and deadlines, set additional hearings, enter additional data into the case management system, and process additional forms. In addition, workload to independent judicial agencies that represent indigent persons will increase to attend additional hearings. Due to the low number of cases where a defendant is found not guilty for reason of insanity, this additional workload can be accomplished within existing appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve as shown in Table 1, which will decrease the amount of General Fund available for other purposes.

Local Government

Workload for local district attorney offices will increase to attend and to prepare for additional hearings. District attorney offices are funded by the counties within the office's judicial district.

Effective Date

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

State Appropriations

In FY 2022-23, the bill requires a General Fund appropriation of \$1,942,401 and 13.5 FTE to the Department of Human Services.

Departmental Difference

The DHS estimates that the bill will cost \$6.5 million in FY 2022-23 and \$6.8 million in FY 2023-24. The DHS estimates that around 100 individuals will be released from inpatient care requiring \$5.0 million in transition services. The fiscal note includes costs for 10 individuals being released from inpatient care requiring \$500,000 in transition services; and indicates that the annual budget process will be used as actual releases are known.

State and Local Government Contacts

District Attorneys
Judicial

Human Services
Law

Information Technology