

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Joint Budget Committee Members
FROM Carolyn Kampman, JBC Staff (303-866-4959)
DATE April 10, 2019
SUBJECT Request for Long Bill Appropriations for Competency-related Lawsuit

Summary and Requested Action

The Department of Human Services (DHS) requests that the Committee include appropriations in the Long Bill (S.B. 19-207) for payments anticipated to be required pursuant to a consent decree recently approved by the U.S. District Court. These appropriations would come from the \$15.4 million General Fund placeholder the Committee established for this purpose.

Staff recommends that the Committee appropriate a total of \$10,983,000 General Fund to cover anticipated court fines for pretrial detainees who wait for court-ordered competency services longer than prescribed time frames, and for compensation of a Special Master appointed by the Court to monitor Department compliance with the consent decree. The recommended dollar amount is based on DHS projections of payments that will be required from June 2019 through June 2020. Staff recommends making this appropriation for FY 2018-19, with an associated footnote stating that the appropriations shall remain available through June 30, 2020.

Budget Package Placeholder

The Committee previously voted to include as part of its FY 2019-20 budget package a \$15.4 million General Fund placeholder for expenditures related to a lawsuit filed by Disability Law Colorado concerning the length of time that pre-trial detainees wait for court-ordered competency services. On March 15, 2019, DHS reached an agreement with the plaintiffs and the parties filed a consent decree with the U.S. District Court. The Court approved the consent decree on April 2, so the consent decree replaces the existing Settlement Agreement and is legally binding and judicially enforceable through December 1, 2025.

The Committee established this placeholder anticipating that funding will be appropriated in one or more bills to:

- implement statutory changes consistent with the consent decree;
- pay court fines for pre-trial detainees who wait longer than the prescribed timeframes; and
- cover the Special Master's expenses.

The original estimates provided by DHS indicated the need for a total of \$16.6 million for the above purposes through June 2020, including the following components:

- \$10.4 million for fines;
- \$2.4 million for community-based competency restoration services;
- \$1.8 million for a Forensic Support Team;
- \$1.0 million for jail-based behavioral health services;
- \$0.5 million for the Special Master's expenses; and
- \$0.5 million for a Data Management Team.

Department Request

DHS requests that the Committee include appropriations in the Long Bill (S.B. 19-207) for court fines and the Special Master's expenses. The DHS request is based on reserving \$6.7 million of the \$15.4 million placeholder to cover the estimated DHS costs of implementing provisions in S.B. 19-223 (Concerning actions related to competency to proceed) that directly relate to the consent decree. The Department thus requests Long Bill appropriations totaling \$8.7 million, including \$8.2 million for fines and \$500,000 for Special Master expenses. DHS indicates that this amount would likely fall \$2.3 million short of covering the fines it anticipates paying through June 2019. Specifically, DHS estimates the following fines to be assessed:

- June 2019: \$1,323,000
- July 2019 – June 2020: \$9,160,000
- July – September 2020: \$663,000

Any fines will be submitted to the Special Master and deposited into a trust account for the purpose of funding “non-Department mental health services”. A court-appointed administrator will manage the account, and a committee consisting of representatives from Disability Law Colorado, DHS, and the Special Master will make decisions concerning payments from the account.

Staff Recommendation

If the Committee approves the DHS proposal, it appears likely that DHS will submit a supplemental request in January 2020 for an additional \$2.3 million for fines. To avoid the potential need to make a mid-year adjustment of this magnitude, staff recommends appropriating the full \$10,483,000 General Fund anticipated to be required to pay fines through June 2020. This appropriation, along with a \$500,000 General Fund appropriation for Special Master expenses, should be appropriated for FY 2018-19, with an associated footnote stating that these amounts will remain available for appropriation through June 2020.

If the Committee approves this recommendation, \$4,417,000 General Fund will remain available from the placeholder to support appropriations in S.B. 19-223. Based on the initial Legislative Council Staff Fiscal Note for this bill, \$7.0 million General Fund will be required for implementation in FY 2019-20. Thus, staff currently estimates that \$2.6 million General Fund would be required over and above the placeholder for DHS and the Judicial Department to implement the bill. This additional amount would need to come from the excess General Fund reserve that is available for FY 2019-20.