



Legislative
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**REVISED
FISCAL NOTE**

(replaces fiscal note dated April 26, 2018)

Drafting Number:	LLS 18-1250	Date:	May 3, 2018
Prime Sponsors:	Sen. Gardner; Lambert Rep. Lee; Young	Bill Status:	House Judiciary
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Bill Topic: COMPETENCY TO PROCEED EVALUATIONS AND SERVICES

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<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 evaluation and restoration 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: This bill requires and includes General Fund appropriations to multiple departments totaling \$1,769,892.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill. This fiscal note has also been revised to include new information.

**Table 1
State Fiscal Impacts under SB 18-252**

		FY 2018-19	FY 2019-20
Revenue		-	-
Expenditures	General Fund	\$1,769,892	\$1,212,779
	Centrally Appropriated	\$129,684	\$170,915
	Total	\$1,899,576	\$1,383,694
	Total FTE	6.3 FTE	8.3 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

This bill makes various changes regarding the process of conducting competency evaluations to determine the competency of a defendant, providing competency restoration services to defendants deemed incompetent to proceed to trial, and reviewing cases of defendants determined to be incompetent after specified periods of time. This bill also defines "inpatient," "outpatient," and "intellectual and developmental disability" in the context of competency evaluation and restoration and updates related statutory references.

Bonds. When the court orders a competency evaluation for a defendant, such an order cannot be a barrier to the defendant being released on bond and bond must be set with the most appropriate and least restrictive conditions. For competency evaluations conducted on an outpatient and out-of-custody basis, cooperation with the competency evaluation must be included as a condition of bond. The court may also order the defendant to obtain outpatient treatment or rehabilitation services as a condition of bond. The agency responsible for providing outpatient competency restoration services must notify the court within 28 days if the defendant does not cooperate with such services.

Competency evaluation. Generally the court must order competency evaluations to be conducted on an out-of-custody basis. Inpatient competency evaluation can be ordered if:

- the Department of Human Services (DHS) provides a recommendation that conducting inpatient competency evaluation is clinically appropriate; or
- extraordinary circumstances relating to the case or the defendant make conducting inpatient competency evaluation necessary and appropriate.

When the court orders an inpatient competency evaluation, the court must advise the defendant that restoration services may start immediately if the evaluation determines the defendant is incompetent to proceed with trial. Either party to a case may object to the court order at the time of this advisement or within 72 hours of receiving the written competency evaluation. 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 evaluation is complete. The court must also be notified at this time. In-custody competency evaluations are to be conducted no later than 7 days after receipt of a court order or required documentation and must be complete within 45 days.

Competency evaluation reports. Competency evaluation reports for defendants deemed incompetent to proceed 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 clinically appropriate. If inpatient restoration services are not appropriate, 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.

Competency restoration procedures. This bill specifies the procedures to follow for inpatient competency restoration services. The DHS is authorized to move a defendant to a less restrictive facility and to conduct outpatient restoration services until an inpatient bed becomes available. The courts must review cases involving outpatient and in-custody restoration services every 30 days to assess the clinical status of the defendant and if the defendant should be released on bond.

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. If a second evaluation is allowed, court proceedings must be continued until the receipt of the evaluation report. This bill changes the timeframe for such report to be submitted to 42 days from 63 days.

Training. The DHS is responsible for the development of competency restoration curriculum and training to allow for outpatient restoration services in any setting. This bill requires training on competency evaluations and reports, services to restore competency, and mental health certification procedures for employees of the Judicial Department, the State Public Defender's Office, the Office of the Alternate Defense Counsel, and district attorneys. The Judicial Department is required to report on this training annually as part of its SMART Act hearing.

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 and mental health certification proceedings 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 Expenditures

This bill increases state General Fund expenditures by \$1.9 million and 6.3 FTE in FY 2018-19 and \$1.4 million and 8.3 FTE in FY 2019-20. These impacts are shown in Table 2 and discussed below.

**Table 2
 Expenditures Under SB 18-252**

Cost Components	FY 2018-19	FY 2019-20
DHS Personal Services for Competency Evaluations	\$551,689	\$727,488
DHS Operating Expenses and Capital Outlay Costs	\$34,203	\$17,291
DHS Jail Based Restoration Services	\$1,014,000	\$468,000
Judicial Department Training	\$120,000	-
District Attorney Training	\$50,000	-
DHS Centrally Appropriated Costs*	\$129,684	\$170,915
FTE – Personal Services (DHS)	6.3 FTE	8.3 FTE
Total	\$1,899,576	\$1,383,694
Total FTE (DHS)	6.3 FTE	8.3 FTE

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

Department of Human Services. The DHS requires 6.3 FTE in FY 2018-19 and 8.3 FTE in FY 2019-20. This is for staff to conduct additional competency evaluations within required timeframes. For FY 2018-19, this includes 5.0 FTE for psychologists to conduct additional competency evaluations and 1.3 FTE for support staff based on a projected competency evaluation caseload increase of 792. Staff costs assume a mid-range salary for the psychologists, a July 1, 2018 start date, and are prorated for the General Fund payday shift. For FY 2019-20, this includes 6.6 FTE for psychologists and 1.7 FTE for support staff based, on a projected competency evaluation caseload increase of 1,398.

This bill is expected to increase the provision of jail based restoration services which will increase DHS expenditures. For FY 2018-19, \$1,014,000 is needed to provide contract outpatient restoration services in jails and \$468,000 is needed in FY 2019-20. FY 2018-19 costs are based on the DHS being charged \$100 per restoration session with 3 sessions per week being provided to 130 defendants for 6 months (10,140 sessions x \$100 per session). FY 2019-20 costs are based on 3 sessions per week for 30 offenders for the entire year (4,680 sessions x \$100 per session). Appropriation adjustments will be requested through the annual budget process in the future to the extent they are needed to meet changes in jail-based restoration service caseload. Because demand for restoration services is greater than the number of beds available, no reduction in appropriations is expected for inpatient mental health institute or Rise program beds as a result of the increase in jail based restoration services.

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.

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.

Training. For FY 2018-19 only, this bill increases state expenditures for training on competency evaluations and reports, services to restore competency, and mental health certification procedures. This training will increase Judicial Department costs by \$120,000, which includes \$50,000 for judicial employee training, \$50,000 for public defender training, and \$20,000 for alternate defense counsel training. Additionally, \$50,000 is needed for district attorney training. These training funds will be provided to the district attorneys by the Department of Law. It is assumed that future training needs can be addressed within existing appropriations. Workload increases by a minimal amount for the Judicial Department to report on the provision of this training.

Local Government

Beginning in FY 2018-19, this bill both increases and decreases local government costs as described below.

County jail. Overall this bill is expected to increase the provision of jail-based restoration services which will increase county jail revenue and costs to house offenders while such services are being provided. 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. These impacts may be offset by decreased jail costs 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 may further decrease to the extent that competency restoration services are provided on an out-of-custody basis. This impact will vary by county depending on the provision of competency restoration services, location of such services, and amount of time it takes to restore a defendant to competency. These impacts have not been estimated.

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.

Technical Note

While the bill has an effective date of February 1, 2019, because an appropriation is included in this bill it is assumed that the General Assembly's intent is for this funding to be provided before this date so that training and staffing can be provided to implement the provisions of this bill prior to February 1, 2019.

Effective Date

This bill takes effect February 1, 2019.

State Appropriations

For FY 2018-19 this bill requires and includes the following General Fund appropriations:

- \$1,599,892 and an allocation of 6.3 FTE is appropriated to the Department of Human Services;
- \$120,000 to the Judicial Department; and
- \$50,000 to the Department of Law.

State and Local Government Contacts

Corrections
Human Services
Sheriffs

Counties
Information Technology

District Attorneys
Judicial