



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated April 22, 2022)

Drafting Number: LLS 22-1024 Date: April 30, 2022
Prime Sponsors: Rep. Amabile; Soper Bill Status: Senate Judiciary
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Bill Topic: COMPETENCY TO PROCEED & RESTORATION TO COMPETENCY

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

The bill clarifies and modifies state laws regarding competency evaluations and proceedings. It also requires funding for inpatient beds and a feasibility study related to facility renovation. It will increase state expenditures and may impact local government workload beginning in FY 2022-23.

Appropriation Summary: For FY 2022-23, the bill includes an appropriation of \$29.4 million to the Department of Human Services.

Fiscal Note Status: The revised fiscal note reflects the reengrossed bill.

Table 1
State Fiscal Impacts Under HB 22-1386

Table with 3 columns: Category, Budget Year FY 2022-23, and Out Year FY 2023-24. Rows include Revenue, Expenditures (Cash Funds), Transfers, and Other Budget Impacts.

## **Summary of Legislation**

The bill makes clarifications and modifications to competency evaluations and proceedings. It also appropriates \$29.4 million from the Economic Recovery and Relief Cash Fund to contract for additional inpatient beds as well as a feasibility study related to a potential inpatient bed facility.

**Availability of second evaluations.** Under current law, in a dispute over a defendant's competency, a party may request a second evaluation. The bill requires that if a second evaluation is completed and restoration is ordered, the court must make the second evaluation available to the Department of Human Services (CDHS).

**Court-ordered inpatient competency evaluations.** The bill permits the court to order a defendant to be placed in the CDHS's custody for the time necessary to conduct an inpatient competency evaluation if the court finds the department's initial competency evaluation and report to be insufficient in meeting statutory requirements.

**Procedures after competency determination.** For a defendant whose highest charge is a misdemeanor, with some exceptions, the bill requires the court to order outpatient restoration services and grant the defendant a personal recognizance bond, unless the defendant meets certification criteria or the court finds by clear and convincing evidence that extraordinary circumstances exist that make release inappropriate and that inpatient restoration services are appropriate. If the defendant is in custody and the court's recommendation is that inpatient restoration services are not clinically appropriate to restore the defendant to competency, the bill directs the court to consider releasing the defendant on bond. The bill limits outpatient restoration services to a defendant or juvenile who is a Colorado resident and requires the services be provided in Colorado. The bill also eliminates the requirement for an opinion on whether there is a substantial probability that the defendant will be restored to competency and remain competent with the use of medication or not remain competent without the use of forced medication.

**Court competency reviews.** After the court has conducted at least four competency reviews, the bill requires the court to conduct a competency review every 91 days, increased from 63 days in current law. The bill requires the court to dismiss the defendant's case if there is not a substantial probability that the defendant will be restored to competency in the reasonably foreseeable future.

**Juveniles.** Under current law, when a court determines that an adult defendant is incompetent to proceed and orders the defendant to undergo restoration treatment, any claim of privilege or confidentiality by the defendant is deemed waived. The bill creates the same waiver for a juvenile defendant who is determined to be incompetent to proceed and is ordered to undergo restoration treatment. A court may order a restoration progress review hearing for a juvenile defendant at any time on the motion of any party or the court. The bill requires that when a court orders a restoration to competency evaluation for a juvenile that the evaluation be completed by the department.

**Funding.** From the Economic Recovery and Relief Cash Fund, the bill appropriates \$28.6 million to the CDHS to contract for inpatient beds for competency services or mental health care and treatment, which is further appropriated in FY 2023-24. It also appropriates \$800,000 to contract for a feasibility study of renovating a hospital facility in Adams County to provide inpatient beds for competency services.

## State Expenditures

**Department of Human Services.** The CDHS will utilize \$29.4 million to contract for beds around the state and for a feasibility study. The department has existing bed contracts in place, with a daily rate ranging from \$950 to \$1000. It is assumed that the funding in the bill will provide for approximately 90 beds in FY 2022-23 through contracts with providers.

The CDHS can manage any additional inpatient competency evaluations and outpatient treatment services within its current budget utilizing existing contracts. The bill will not result in a change to any of CDHS's formal policies; however, workload will increase for the Office of Behavioral Health's Division of Forensics Services to ensure procedural alignment with the Judicial Department.

**Judicial Department.** The Judicial Department can manage the bill's procedural changes within existing appropriations. Any workload impact to the independent agencies of the Judicial Department, including the Office of the State Public Defender, the Office of Alternative Defense Counsel, and the Office of the Child's Representative, is similarly expected to be accomplished within existing appropriations.

## Local Government

The impact on county jails is expected to be neutral. If inpatient evaluation placement availability is unavailable, the bill may increase the amount of time defendants remain in jail. Conversely, the bill may result in defendants released on bond or to outpatient care, decreasing time spent in jail.

## Effective Date

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

## State Appropriations

For FY 2022-23, the bill includes an appropriation of \$29,362,828 to the CDHS from the Economic Recovery and Relief Cash Fund, including \$28,562,828 for contract beds and \$800,000 for a feasibility study. Any portion of the \$28.6 million that is unexpended in FY 2022-23 is further appropriated to the CDHS in FY 2023-24.

## State and Local Government Contacts

Counties  
Judicial

Human Services  
Law

Information Technology