

MEMORANDUM



JOINT BUDGET COMMITTEE

TO JBC Members
FROM JBC Staff
DATE March 18, 2019
SUBJECT Comeback Packet 6

Included in this packet are staff comeback memos for the following items:

Corrections (Vance Roper): Five-year Sentencing Placeholder

Higher Education (Amanda Bickel): History Colorado Informational Funds Adjustment

Human Services (Carolyn Kampman): Community-based Competency Restoration Services, Status of Related Lawsuit, and Recommended Reduction in FY 2018-19 Appropriation

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Joint Budget Committee
FROM Vance Roper, JBC Staff (303-866-3147)
DATE March 18, 2019
SUBJECT Five-Year Sentencing Bills Placeholder

As part of the Department of Corrections figure setting, the fiscal impact of five-year sentencing bills are estimated. These are bills that have been passed in previous sessions that have a fiscal impact for five additional years. This year's estimations has a five-year cost of \$10,584,303. Staff recommends a placeholder of \$10,584,303 General Fund to account for these costs.

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Joint Budget Committee
FROM Amanda Bickel, JBC Staff ((303) 866-4960)
DATE March 18, 2019
SUBJECT History Colorado Informational Funds adjustments

Staff recommends adjustments to two informational funds amounts previously approved in the History Colorado section of the Department of Higher Education Long Bill.

- **Cumbres and Toltec Railroad:** Staff has been informed that the New Mexico legislature has approved \$261,000 General Fund for operating expenses for the Cumbres and Toltec railroad and \$1,000,000 for capital funding. In light of this, staff recommends increasing the informational amount shown in the Long Bill line item for the Cumbres and Toltec railroad. **The line item currently includes \$645,000 cash funds (information only) based on estimated New Mexico appropriations. Staff recommends increasing this to \$1,261,000 cash funds.** While a line item veto in New Mexico remains possible, this does not appear to be likely.
- **State Historical Fund Program, Statewide Preservation Grants:** During figure setting for the Department of Higher Education, staff recommended increasing the amount for Preservation Grants from \$8,250,000 to \$8,750,000 based on gaming money anticipated to be available. However, the Capital Development Committee sent a letter to the Joint Budget Committee on March 7, 2019, indicating that it requests an appropriation of \$1,000,000 cash funds from this funding source for Capitol Dome restoration. This suggests that only \$7,750,000 in new grant funding will be available. Because actual expenditures from the line item will likely be above \$7.75 million but below \$8.75 million, **staff recommends that the JBC keep the Long Bill amount for Preservation Grants at the FY 2018-19 of \$8,250,000.** Spending was at \$9.2 million in FY 2016-17 and \$8.4 million in FY 2017-18.

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Joint Budget Committee Members
FROM Carolyn Kampman, JBC Staff (303-866-4959)
DATE March 18, 2019
SUBJECT Staff Comeback: Status of Competency-related Lawsuit, Potential General Fund Placeholder, and Recommended Reduction in FY 2018-19 Appropriation

The Committee took action on the Department of Human Services' (DHS') budget request for the Office of Behavioral Health on March 5, 2019. At that time, **staff committed to updating the Committee on three topics concerning competency services before the Committee makes final decisions on the budget package** for FY 2018-19 and FY 2019-20:

- Status of the mediation for the lawsuit concerning competency-related services;
- Governor Polis' \$2,485,600 General Fund placeholder within his budget proposal for FY 2019-20 for community-based competency restoration services; and
- Status of DHS' efforts to expand inpatient psychiatric bed capacity for competency services by contracting with private for-profit or not-for-profit hospitals.

STATUS OF THE MEDIATION FOR THE 2011 LAWSUIT CONCERNING COMPETENCY-RELATED SERVICES

On Friday, March 15, 2019, DHS reached an agreement with the plaintiffs in a federal lawsuit concerning the length of time that pre-trial detainees wait for court-ordered competency services. The parties filed the agreement in federal court in the form of a consent decree. **If the consent decree is approved by the court, it will resolve the lawsuit and replace the existing Settlement Agreement.** The consent decree will be legally binding and judicially enforceable through December 1, 2025. Until the consent decree is terminated, DHS' compliance will be overseen by the Court and a Special Master (Groundswell Services, Inc., and its team of forensic mental health experts).

The consent decree requires DHS to take the following actions:

- *Develop a comprehensive, cohesive approach to planning to maintain compliance with the consent decree.* The consent decree requires DHS to engage in a **long-term visioning process** with the Plaintiff [the Center for Legal Advocacy, d/b/a Disability Law Colorado (DLC)], the Special Master, and stakeholders, and to produce by January 2020 an initial plan for maintaining compliance with the consent decree. DHS is required to review and revise the plan as appropriate.
- *Adhere to admission timeframes for pretrial detainees, and at the same time avoid harming or displacing other people with mental or developmental disabilities in DHS' care.* The consent decree requires DHS to maintain existing Mental Health Institute psychiatric beds for civil adult and juvenile patients, and to **refrain from freezing or reallocating civil beds** to provide competency services for pretrial detainees (unless the Special Master authorizes the use of unutilized beds for such purposes). The consent decree allows DHS to utilize private hospital beds to meet the needs

of pretrial detainees who meet civil commitment criteria¹ and with prioritization to pretrial detainees already residing in the same geographic location.

The consent decree also establishes **a new set of timeframes for competency evaluation and restoration services**, and it establishes **finest for each day a pretrial detainee waits more than the prescribed timeframes**. The fines range from \$100 to \$500 per detainee per day, and the consent decree caps the total amount at \$10.0 million for the period June 1, 2019, to May 31, 2020. This \$10.0 million limit increases for each subsequent 12-month period based on the CPI-U. 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 DLC, DHS, and the Special Master, will make decisions concerning payments from the account.

- The consent decree reduces the timeframes for competency evaluations over time. Specifically, DHS is required to offer admission for inpatient competency evaluations within 21 days as of June 1, 2019, and within 14 days as of July 1, 2020. For competency evaluations conducted in a county jail, DHS is required to complete the evaluation within 28 days as of June 1, 2019, and within 21 days as of July 1, 2020².
- The consent decree also shortens the timeframes for competency restoration treatment, requiring DHS to offer inpatient treatment with seven days to pretrial detainees who have been ordered to receive inpatient restoration treatment and who:
 - Appear to have a mental health disorder that results in the individual being a danger to others or to him or herself, or to be gravely disabled; or
 - Have a mental health disorder and delaying hospitalization beyond seven days would cause harm to the individual or to others.

For other pretrial detainees who have been ordered to receive inpatient competency restoration treatment, the consent decree establishes maximum timeframes for DHS to offer admission that start at 56 days as of June 1, 2019, and progressively decrease over time to 28 days by July 1, 2021.

- *Maximize the use of competency services in the community, by funding, developing, recruiting, and supporting a variety of community services.* The consent decree requires DHS to implement a **“coordinated wide-scale” community-based competency restoration system**. The consent decree indicates that DHS currently estimates that 10 to 20 percent of pretrial detainees admitted for inpatient restoration do not need hospital-level care. The consent decree requires DHS to “make best efforts” to reduce inpatient restoration hospitalizations by 10 percent and increase community restorations by 10 percent in six-month increments beginning June 1, 2019. If the court releases a pretrial detainee on bond to commence community-based restoration treatment, DHS is required to coordinate with the Court Liaison³ to develop a discharge plan within seven days of the order.

¹ See Section 27-65-105 (a), C.R.S.

² These timeframes apply to the following 20 counties: Adams; Alamosa; Arapahoe; Boulder; Broomfield; Crowley; Custer; Denver; Douglas; El Paso; Elbert; Fremont; Huerfano; Jefferson; Larimer; Mesa; Otero; Pueblo; Teller; and Weld. The remaining counties are subject to longer timeframes associated with a “hold and wait” process that requires the sheriff to transport the individual to nearest county where services are available, with longer applicable timeframes.

³ Senate Bill 18-251 established the Statewide Behavioral Health Court Liaison Program. The Committee has approved an appropriation of \$2,636,987 General Fund to the Judicial Department for this program for FY 2019-20.

- *Create a team that will develop a centralized, data-driven system that captures, analyzes, and disseminates data in a reliable and meaningful manner to inform decisions and planning.* The consent decree **requires DHS to** submit a plan to the Special Master and DLC for DHS to **hire the following positions by August 1, 2019:**
 - A Forensic Support Team, consisting of: (1) a full-time Supervising Coordinator who will interface with a number of stakeholders, assist in meeting the required timeframes, and “focus on budget and cost of inpatient versus outpatient care”; and, (2) an “effective number” of coordinators responsible for each judicial district who can provide a centralized structure for stakeholders to immediately access detailed information about programs, clients, and settings and can complement the Court Liaison Program.
 - A Data Management Team, consisting of at least three full-time employees, dedicated to collecting and analyzing data on which DHS will base its projections and recommendations, calculate inpatient bed space, assess community restoration capacity, and determine financial estimates.
- *Develop and implement a triage system that considers clinical needs to assign individualized services.* The consent decree requires DHS to **develop and implement a triage system by June 1, 2019**, which will screen each pretrial detainee and make recommendations to the committing court as to the most clinically appropriate level of care to restore the individual’s competency. The consent decree requires DHS to work with county jails to develop a program to screen, treat, assess, and monitor for triage purposes pretrial detainees who the court does not release to community-based restoration treatment and who thus await the receipt of inpatient restoration treatment. A member of the “Forensic Support Team” is required to report to the Court Liaison every 10 days concerning a pretrial detainee’s clinical status and progress towards competency.
- *Implement statewide, uniform standards for competency evaluators and evaluations and conduct rigorous training for forensic evaluators and restoration providers to ensure evaluations are of high quality.*
- *Prepare budget requests, and propose and support legislation to meet the terms of the consent decree. Take all necessary steps and exert good faith efforts to obtain adequate funding from the General Assembly.*

The consent decree also establishes **reporting requirements** for DHS and the Special Master to allow the court to monitor compliance, improve DHS’ performance, and assess any applicable fines. The consent decree requires DHS to pay the expenses of the Special Master and its staff for the duration of the consent decree. The consent decree states that DLC is entitled to seek attorney’s fees and costs for pursuing any **remedies for non-contempt violations of the consent decree**, and it authorizes the court to award liquidated damages of up to \$10,000 per day for each day a violation occurs until it is remedied.

Finally, the consent decree states that the Colorado State Office of Risk Management shall by DLC’s counsel the lump sum of \$654,117.50 (contingent upon the State Claims Board’s approval of this amount on March 26, 2019) in **full and final settlement of all costs and fees incurred by DLC’s counsel** from June 1, 2017, through the date the consent decree is finalized.

GOVERNOR'S PLACEHOLDER

In January 2019, Governor Polis set aside \$2,485,600 General Fund within his FY 2019-20 budget proposal for community-based competency restoration services. The Governor's January 15, 2019, letter indicated that this funding would augment other funds for community-based restoration services, and this funding "must be coupled with a comprehensive, system-wide approach to reduce wait times for restorative treatment programming, which includes legislative reforms".

Based on the consent decree, the Governor's Office of State Planning and Budgeting (OSPB) is working with DHS to estimate the resources that will be required to comply with the consent decree. Based on *preliminary* estimates from DHS, a total of \$16.6 million General Fund is anticipated to be required for the consent decree in FY 2018-19 and FY 2019-20, including the following components:

- \$10.4 million in fines from June 2019 through June 2020;
- \$2.4 million for community-based competency restoration services;
- \$1.8 million for a Forensic Support Team (with a portion of this amount needed in FY 2018-19);
- \$1.0 million for jail-based behavioral health services;
- \$0.5 million in FY 2019-20 for the Special Master's expenses; and
- \$0.5 million in FY 2019-20 for a Data Management Team.

OSPB is thus now suggesting that the Committee establish a \$16.6 million General Fund placeholder related to this lawsuit (rather than \$2.5 million). In the next section of this memorandum, staff recommends that the Committee approve a \$2.6 million reduction in a General Fund appropriation to DHS for FY 2018-19. If these funds are essentially repurposed for actions needed to comply with the consent decree, that leaves a total of \$14.0 million additional General Fund that is anticipated to be needed. **A portion of the funding that would be set aside would likely be appropriated through 2019 legislation that is forthcoming that addresses lawsuit-related issues. The remainder would likely remain available for the Committee to utilize if DHS and OSPB submit an interim supplemental request (likely in June 2019) when more complete information is available regarding needed resources.**

STATUS OF DHS EFFORTS TO EXPAND INPATIENT PSYCHIATRIC BED CAPACITY FOR COMPETENCY SERVICES BY CONTRACTING WITH PRIVATE FOR-PROFIT OR NOT-FOR-PROFIT HOSPITALS

In January 2018, DHS requested funding to expand inpatient psychiatric capacity by 10 beds by contracting with private for-profit or not-for-profit hospitals in the Denver metropolitan area. The Department indicated that the bed capacity would be used to serve individuals who are ordered by the court to receive competency evaluations or competency restoration treatment. The Department requested \$275,596 General Fund and 0.3 FTE for FY 2017-18, and \$3,412,101 General Fund and 3.0 FTE for FY 2018-19.

In calendar year 2018, the Department was unsuccessful in contracting with a hospital to secure the expanded bed capacity. During the figure setting process, staff indicated that if DHS was unable to secure a contract to increase inpatient bed capacity, staff would recommend that the Committee reduce or eliminate the funds appropriated for this initiative for FY 2018-19 and repurpose the

recommended appropriation for FY 2019-20 to support other behavioral health initiatives that will more effectively address the challenges related to court-ordered competency restoration services.

In response to a staff inquiry, DHS indicates the following:

- The Department is in the final negotiations with two vendors, one in Denver and one in Colorado Springs, therefore, no contracts are in place at present. It is the Departments intention to have a contract in place before June 30, 2019.
- If both contracts are finalized as currently drafted, the Department estimates that both locations will be operational by June 2019.
- If both contracts are finalized as currently drafted, the Department will have up to three beds initially in Denver and up to ten beds in Colorado Springs. The addition of more beds in the future will be dependent on need determined by the Office of Behavioral Health and the selected vendor.
- The rates are still currently being negotiated with the vendors, but rates will not exceed \$1,500/bed/day.
- Assuming full daily occupancy, the total cost for FY 2018-19 for Denver and Colorado Springs will be as follows:

FY 2018-19 Cost Analysis

	DENVER	COLORADO SPRINGS
Number of Beds	3	10
Days for FY 2018-19	30	30
Maximum cost/bed	\$1,500	\$1,500
Total Cost	\$135,000	\$450,000

FY 2019-20 totals will be calculated once the exact contracted rate is established.

Based on the above information, staff recommends reducing the existing FY 2018-19 appropriation for “Purchased Psychiatric Bed Capacity” by \$2,614,882 General Fund. The existing appropriation of \$3,246,150 General Fund consists of \$3,199,882 for contractual expenses (based on an estimated daily per bed rate of \$876.68), and \$46,268 for 1.0 FTE for administrative support. Approval of staff’s recommendation would leave an appropriation of \$631,268 (including \$585,000 to cover the maximum cost for 13 beds for the full 30 days in June 2019, and \$46,268 for 12 months of funding for the administrative position.)

Please note that should DHS enter into the above-described contracts for 13 beds for FY 2019-20, a total of \$7,137,000 would be required to cover a daily per-bed rate of \$1,500 for 13 beds for 366 days. The approved appropriation for FY 2019-20 includes only \$3,240,735 for contractual expenses (based on 10 beds at a rate of \$885.45 (\$876.68 plus 1.0 percent provider rate increase) for 366 days. Thus, DHS may require an increase of up to \$3,896,265 for FY 2019-20 to cover the full costs of 13 beds.