



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

REVISED FISCAL NOTE

(replaces fiscal note dated April 10, 2019)

Drafting Number: LLS 19-0940 Date: April 17, 2019
Prime Sponsors: Sen. Lee; Gardner Bill Status: Senate Appropriations
Rep. Weissman; Landgraf Fiscal Analyst: Chris Creighton | 303-866-5834
Chris.Creighton@state.co.us

Bill Topic: ACTIONS RELATED TO COMPETENCY TO PROCEED

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

This bill makes various changes to the process when a defendant's competency to proceed is raised in a criminal proceeding. It decreases state revenue and increases state expenditures. Local government costs are both increased and decreased. These impacts are ongoing.

Appropriation Summary: For FY 2019-20, this bill requires a General Fund appropriation of \$7.7 million to the Department of Human Services and the Judicial Department.

Fiscal Note Status: This fiscal note has been revised to reflect the introduced bill as amended by the Senate Judiciary Committee and new information.

Table 1
State Fiscal Impacts Under SB 19-223

Table with 3 columns: Category, FY 2019-20, FY 2020-21. Rows include Revenue, Expenditures (General Fund, Centrally Appropriated, Total), Total FTE, Transfers, and TABOR Refund.

Summary of Legislation

This bill makes various changes to the process that occurs when a defendant's competency to proceed is raised in a criminal proceeding, as described below.

Competency evaluation time frames. The bill shortens the times frames for objecting to a preliminary court finding of competency, requesting a second competency evaluation, and completing inpatient and outpatient competency evaluations, as specified in the bill. Time frames and information that must be provided for case review, dismissal of charges, and commitment of any defendant determined incompetent to proceed are also provided in the bill.

Inpatient competency evaluation. The court may order inpatient competency evaluation if the DHS recommends that inpatient evaluation is clinically appropriate. Inpatient evaluation may also be ordered by the court if an evaluation was found to be inadequate, two or more evaluation reports contradict each other, or other extraordinary circumstances exist. When the court orders an inpatient competency evaluation, the evaluation is to begin as soon as possible and the defendant must be offered admission to the hospital or other inpatient program within 14 days. The court must review the case in 21 days to determine if transportation has occurred. If the defendant is determined to be incompetent to proceed and outpatient restoration services are available and clinically appropriate, the Department of Human Services (DHS) must notify the court and court liaison and develop a discharge plan. A court hearing must be held within 7 days.

Outpatient competency evaluation. An outpatient competency evaluation must be completed within 42 days. The court must require cooperation with an out-of-custody competency evaluation as a condition of bond. If the defendant remains in custody after the evaluation and is recommended for outpatient competency restoration, the court must consider releasing the defendant on bond. The court may require pretrial services, and the court liaison may be required to work with the DHS and competency restoration services providers to assist in securing appropriate support and care management services.

Competency evaluation reports. The bill specifies and expands upon information that must be included in competency evaluation reports, including information reviewed as part of the evaluation, whether the defendant has a substantial probability of having his or her competency restored, and whether inpatient restoration services are clinically appropriate or what outpatient services are available.

Incompetent to proceed. Options that the court has for a defendant determined to be incompetent to proceed to trial are specified in the bill and include, initiating civil commitment proceedings, ordering outpatient restoration services unless inpatient restoration is recommended, requiring outpatient pretrial management services and care management services, and dismissing the charges. Under current law, a defendant determined incompetent to proceed may not be detained for a period that exceeds the maximum term of the most serious offense he or she is charged with. This bill reduces this time period by 50 percent. Also under current law, such cases must be reviewed every three months. Under this bill, a case must be reviewed every 91 days, except that the case must be reviewed every 63 days after the fourth review.

Inpatient restoration services. Defendants ordered to undergo inpatient restoration services must be offered services based on their level of need, with defendants grouped into two tiers. Starting on July 1, 2019, tier 1 defendants must be offered admission for restoration services within 7 days of receiving the court order. Starting on July 1, 2021, tier 2 defendants must be offered admission within 28 days. The DHS must provide the court and the court liaison with an update on bed availability and when the defendant will be offered a bed every 10 days after the court order. Options the court may consider for defendants not offered admission to inpatient restoration services within these time frames are provided in the bill.

Defendants receiving inpatient restoration services may be moved to a less restrictive facility at the discretion of DHS. The DHS must notify the court and request outpatient community-based restoration services if the DHS determines this is more clinically appropriate for the defendant. The court must rule on this request within 14 days. Defendants receiving outpatient restoration services may be ordered by the court to have inpatient restoration services conducted instead.

Community reentry services. The DHS must assist defendants released on bond and restored to competency by coordinating transportation and services necessary for reentry into the community. Ongoing case and medication information must also be provided to the community agency that will be providing the defendant with ongoing services and medication.

Jail behavioral health. When a defendant is restored to competency and returned to county jail, the DHS must work with the court liaison, the sheriff, and any behavioral health providers to ensure the jail has the necessary information and medication plan to support the defendant while he or she is in jail.

Evaluation monitoring system. The DHS, with assistance from the Judicial Department, must develop an electronic system to track the status of defendants ordered to undergo competency evaluation or restoration and the cost of inpatient and outpatient services.

Restoration services guideline committee. By January 1, 2020, the DHS must create a committee of 10 clinical experts to create a guideline to be used by all competency evaluators when determining the correct clinical location for competency restoration services. This guideline must be created by July 1, 2020, and used by evaluators beginning January 1, 2021.

Training. By February 1, 2020, the DHS must create a partnership with an accredited higher education institution to develop and provide rigorous evaluation training. The Judicial Department, Office of the State Public Defender, Alternate Defense Counsel, and district attorneys are required to train attorneys and other employees on juvenile and adult competency evaluation reports, restoration services, and certification proceedings and to report annually to the General Assembly on this training.

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 Revenue

Beginning in FY 2019-20, criminal fine and fee revenue to the Judicial Department will decrease by a minimal amount. Fewer convictions are expected due to defendants not being restored to competency within the allowable time frames under this bill. Criminal fine and fee revenue is subject to TABOR; however, under the March 2019 Legislative Council Staff forecast, a TABOR surplus is not expected in FY 2019-20 or FY 2020-21.

State Expenditures

The bill increases costs in the Judicial Department and the DHS by \$8.0 million and 37.6 FTE in FY 2019-20 and \$8.9 million and 50.4 FTE in FY 2020-21, as shown in Table 2 and described below. These impacts continue in future years based on caseload and have not been estimated.

**Table 2
 Expenditures Under SB 19-223**

Cost Components	FY 2019-20	FY 2020-21
Judicial Department		
Personal Services	\$1,335,774	\$1,379,332
Operating Expenses and Capital Outlay Costs	\$79,048	\$19,675
Magistrate Operating and Capital Outlay	\$113,818	\$11,400
Travel	\$119,352	\$119,352
Training	\$120,000	-
Centrally Appropriated Costs*	\$288,294	\$298,178
FTE – Personal Services	16.9 FTE	17.5 FTE
Judicial Department (Subtotal)	\$2,056,286	\$1,827,937
Department of Human Services		
Personal Services	\$1,536,375	\$2,642,259
Operating Expenses and Capital Outlay Costs	\$166,503	\$77,905
Forensic Community Based Services	\$1,015,652	\$1,015,652
Community Based Restoration Services	\$2,261,896	\$2,634,736
Data Management System	\$350,000	-
Legal Services	\$139,901	\$72,541
Travel	\$50,000	\$50,000
Centrally Appropriated Costs	\$393,386	\$615,521
FTE – Personal Services	19.9 FTE	32.5 FTE
FTE – Legal Services	0.8 FTE	0.4 FTE
DHS (Subtotal)	\$5,913,713	\$7,108,614
Department of Law		
Training	\$50,000	-
Department of Law (Subtotal)	\$50,000	-
Total	\$8,019,999	\$8,936,551
Total FTE	37.6 FTE	50.4 FTE

* Centrally appropriated costs are included in the bill's appropriation for FY 2019-20 for the DHS, but not for the Judicial Department, since staff is increased by more than 20 FTE for the DHS.

Judicial Department. This bill increases Judicial Department costs by \$2.1 million and 16.9 FTE in FY 2019-20 and \$1.8 million and 17.5 FTE in FY 2020-21, as described below.

Contract court liaisons. Under Senate Bill 18-251, 29 contract court liaison positions were created to facilitate communication and collaboration between the judicial and behavioral health systems in all 22 judicial districts. This bill expands the role of the liaisons significantly by requiring that they provide case management services, rather than only identifying resources and collaborating with judicial, health care, and behavioral health systems. Under this expanded role, the court liaison will develop discharge plans, medication plans, coordinate community reentry services, and advise defendants regarding court dates and bond requirements. Based on anticipated caseloads, 11 additional contract court liaisons are needed to provide these services. To provide training, administrative support, and program oversight, 0.5 FTE is needed for a program coordinator. Travel costs are included for all of these positions. First-year costs for the program coordinator position is prorated in FY 2019-20 to reflect the General Fund paydate shift.

Trial courts. Trial court workload will increase to review additional and more thorough competency reports, periodically review the status of defendants, and to conduct more competency and civil commitment hearings. Trial court workload will also decrease because more thorough reporting will result in earlier determinations that the defendants cannot be restored to competency, fewer requests for second competency evaluations, and more efficient case review. Overall, workload is expected to increase and 6.0 FTE are needed to accommodate this additional work; including 2.0 magistrates, and 4.0 support staff. This assumes reviewing 2,000 requests for a competency evaluation and periodic reviews for 3,000 incompetent to proceed orders per year. Personnel costs in FY 2019-20 are prorated for the General Fund paydate shift. Standard judge operating and capital outlay costs for judges are included for the magistrate, including law library materials, travel expenses, judge robe expenditures, and computer hardware and software. Costs in the first year are also included for courtroom furnishings for the magistrate chambers, law library, jury room, and conference room. These costs are based on the Judicial Department common policy costs. Standard operating and capital outlay costs for state employees are included for the support staff.

Probation. Workload in the Division of Probation is expected to decrease by a minimal amount estimated at eight cases per year. This decrease results from cases being dismissed when the defendant cannot be restored to competency within the allowable time frames under this bill.

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. These impacts are considered minimal because the bill will increase workload in cases where competency issues are raised, but may also lead to other cases being dismissed earlier. To the extent these impacts occur, it is assumed that affected agencies will request an adjustment in appropriations through the annual budget process.

Department of Human Services. This bill increases costs in the DHS by \$5.9 million and 19.9 FTE in FY 2019-20 and \$7.1 million and 32.5 FTE in FY 2020-21.

Competency evaluations. In order to conduct inpatient and outpatient competency evaluations in accordance with the requirements of this bill, 7.5 FTE for psychologists are needed. This assumes 362 additional inpatient competency evaluations and 641 additional outpatient competency evaluations per year assuming an average psychologist caseload of approximately 140 cases per year.

Forensic community based services. Case management services and support must be provided to defendants released due to the substantial probability that they will not be restored to competency. An estimated 33 offenders per year will need such services, which requires 3.0 FTE and \$1,015,652 for assertive community treatment and psychiatric medical care.

Community-based restoration services. Under this bill, the number of defendants receiving community-based restoration services is expected to increase by 10 percent. Costs to provide education, case management, and assertive community treatment services are estimated at \$2,261,896 for 182 additional defendants in FY 2019-20 and \$2,634,736 for 212 additional defendants in FY 2021-22.

Social workers. This bill increases workload to ensure the proper care and coordination of pretrial defendants, which involves working with the courts, court liaisons, service providers, conducting periodic case management evaluations. Based on anticipated caseloads, 15.0 FTE for social workers are needed to accommodate this additional coordination workload. In addition, 3.0 FTE for two supervisors and a program manager is needed to oversee the provision of these services, provide training and support to the social workers, and to ensure consistent coordination of efforts across all 22 judicial districts.

Data management system. The DHS is required to work the Judicial Department to develop an electronic system to track the status of defendants receiving competency evaluation or restoration services. It is assumed that \$350,000 is needed for the DHS to contract with a vendor for this system. Costs may vary depending on the outcome of the request for proposal process. The DHS will also need 1.0 FTE to administer this system beginning in FY 2019-20 and 2.0 data management analyst FTE beginning in FY 2020-21 to collect competency related data, forecast bed availability, and determine inpatient and outpatient evaluation and restoration costs.

Legal services. The Department of Law provides representation for the DHS on matters related to competency evaluations and competency restoration practices. This bill will increase the number of hours of legal services provided to the DHS by 1,350 in FY 2019-20 and 700 in FY 2020-21 at a rate of \$103.63 per hour. Specifically, legal services are required for rulemaking, responding to competency service challenges, and providing general counsel. Due to the current backlog of defendants awaiting competency services, challenges are expected to occur on a frequent basis between in the first two years while the DHS implements this bill. Legal services in FY 2021-22 and future years are estimated at 200 hours annually.

Training. For FY 2019-20 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 employee training, and \$20,000 for alternate defense counsel employee 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, ongoing training needs can be addressed within existing appropriations. Workload will increase by a minimal amount for the Judicial Department to report on the provision of this training.

Higher education evaluation training. Workload and costs are increased for the DHS and an institute of higher education, that has yet to be identified, to establish an evaluation training program which must provide training by January 1, 2021. It is assumed that DHS will request an FY 2020-21 appropriation to cover the costs of this training program through the annual budget process once a contract has been entered into. This training program is estimated to cost between \$50,000 and \$100,000 and will be partially offset by training participant fees.

Restoration guideline. DHS workload will increase to create a committee of clinical experts to create a competency restoration services placement guideline. Judicial Department workload will also increase to have a representative on this committee. This 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 and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill, except in instances where a bill results in an increase of more than 20 FTE. These costs include employee insurance and supplemental employee retirement payments, and leased space. For the DHS, these cost, estimated at \$393,386 in FY 2019-20 and \$615,521 in FY 2020-21, require appropriation. For the Judicial Department, these costs, which will be addressed through the annual budget process, are estimated to be \$288,294 in FY 2019-20 and \$298,178 in FY 2020-21.

Local Government

Beginning in FY 2019-20, this bill both increases and decreases local government costs as described below.

County attorneys. County attorney costs and workload are potentially increased to initiate additional civil commitment proceedings. Such proceedings are initiated by county attorneys in counties with a population of over 100,000 and district attorneys in counties with a population less than 100,000.

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. These impacts may be offset by decreased jail costs if charges are dropped for additional defendants because it is determined that they 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 and cannot be estimated. Based on a 2018 Joint Budget Committee Staff county jail survey, the average cost to house an offender in a county jail is \$98.83 per day, but varies significantly from \$43.65 to \$350.21 per day depending on the county. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.93.

County sheriffs. This bill may increase offender transportation costs for county sheriffs 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 out-of-custody competency restoration services is used more frequently, transportation costs may decrease. These impacts have not been estimated.

District attorneys. This bill will 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 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.

Effective Date

The bill takes effect July 1, 2019.

State Appropriations

For FY 2019-20 this bill requires the following General Fund appropriations:

- \$5,913,713 and an allocation of 19.9 FTE to the Department of Human Services, of which \$474,104 and 0.9 FTE is reappropriated to the Office of Information Technology and \$139,901 is reappropriated to the Department of Law;
- \$1,767,992 and an allocation of 16.9 FTE to the Judicial Department; and
- \$50,000 to the Department of Law.

Departmental Difference

The Department of Human Services estimates that an additional \$2.3 million is needed for jail-based mental health services in FY 2019-20 and FY 2020-21. This analysis assumes jail-based mental health services are beyond the scope of this bill.

State and Local Government Contacts

Alternate Defense Counsel
Higher Education
Judicial
Sheriffs

Counties
Human Services
Law

District Attorneys
Information Technology
Public Defender