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FISCAL NOTE

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Prime Sponsors: Sen. Lee Bill Status: Senate Judiciary
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Bill Topic: MEASURES ON INCOMPETENT TO PROCEED

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

This bill makes changes to competency reports provided by evaluators, makes changes related to bond release for defendants who are incompetent to proceed, allows for certain charges to be dropped when a defendant is incompetent, and creates a committee to study the effect of sentencing for assault-related offenses on certain populations. Starting in FY 2020-21, the bill will increase state expenditures and impact local workload on an ongoing basis.

Appropriation Summary: For FY 2020-21, the bill requires an appropriation of \$193,941 to the Judicial Department.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 20-181

Table with 3 columns: Category, FY 2020-21, FY 2021-22. Rows include Revenue, Expenditures (General Fund, Centrally Appropriated, Total), Total FTE, Transfers, and TABOR Refund.

## **Summary of Legislation**

Under current law, when a court orders a competency evaluation, an evaluator must create a report that includes an opinion on whether the defendant is competent to proceed. If the evaluator finds that a person is incompetent to proceed, the evaluator must state his or her opinion on whether there is a substantial probability that the defendant will attain competency with restoration services. This bill requires the evaluator to make additional findings if certain condition arise, including:

- If a defendant has been found incompetent to proceed by any court in the last five years, then the evaluator must state why the defendant's circumstances are different from the past. The evaluator only has to make these findings if he or she finds that there is a substantial probability of attaining competency;
- If a defendant is diagnosed with a moderate to severe intellectual or developmental disability, then the evaluator must state whether he or she believes there are unique or different services outside the standard competency restoration curriculum that the defendant may need. The evaluator only has to make these findings if he or she finds that there is a substantial probability of attaining competency;
- If a defendant has been found incompetent to proceed three or more times over the previous three years, even if the defendant is later restored, the evaluator must identify those instances in his or her opinion and provide an opinion as to whether there is a substantial probability that the defendant can attain competency with restoration services.

If an evaluator makes one of the findings listed above, the court must set a hearing on the issue if there is substantial probability that the defendant can be restored to competency within 35 days of receiving the report.

During the hearing, there is a presumption that the defendant will not attain competency within the foreseeable future and the party attempting to overcome this presumption must prove, by a preponderance of the evidence, that there is substantial probability of restoration. If the court finds that there is not a substantial probability of restoration, the court must dismiss the case and may consider starting certification proceedings, or in the case with a defendant with an intellectual or developmental disability, start a proceeding to restrict their rights. If a court cannot make a finding, the court must order restoration education for no more than 91 days and review the case every 91 days. During the review hearings, the court must presume that there is not a substantial probability of restoration and must dismiss the case unless there is clear and convincing evidence that defendant is making progress toward attaining competency. The bill also allows certain victim right's crimes to forego an order of restoration if a defendant meets the standard for civil commitment.

**Bond release.** Under current law, if a defendant is in custody and the recommendation is for outpatient services, the court must consider releasing the defendant on bond. When the defendant is in custody on a misdemeanor, petty offense, traffic offense, or traffic infraction, this bill requires the court to appoint a court liaison to assist the defendant in a plan for release. The liaison must then notify the forensic support team that the defendant is likely to be released. The court must hold a bond hearing within 7 days of being found incompetent to proceed and during the hearing, there is a presumption that the court will order a personal recognizance bond. If the court does not order a personal recognizance bond and the defendant is committed for inpatient restoration, then the court must make a finding to overcome the presumption.

**Offenses eligible for dismissal.** The bill adds misdemeanor, drug misdemeanors, and petty offense crimes that fall under the Victim's Rights statute, as well as traffic offenses and traffic infractions as being eligible for dismissal, with the defendant released from confinement. The bill also requires municipal courts to dismiss cases when a defendant is charged with a municipal offense and is found incompetent to proceed or when civil commitment proceedings are initiated.

**Study of sentencing laws.** Finally, the bill requires the State Court Administrator, on or before July 1, 2020, to appoint a six-member committee to review the impacts of statutes related to 1st degree, 2nd degree, and 3rd degree assault have on people with certain health conditions. The committee must produce a report outlining budgetary, legislative, regulatory, and practice recommendation no later than November 15, 2020. The Judicial Department, the Department of Human Services (DHS), and the Department of Health Care Policy and Financing (HCPF) must provide any data needed to the committee.

**State Expenditures**

State expenditures in the Judicial Department will increase by \$238,690 and 2.0 FTE in FY 2020-21 and by \$236,567 and 2.2 FTE in FY 2021-22, as shown in Table 2. The bill will also impact workload in the independent judicial offices that represent indigent offenders, the DHS, and HCPF, as described below.

**Table 2  
 Expenditures Under SB 20-181**

	<b>FY 2020-21</b>	<b>FY 2021-22</b>
<b>Judicial Department</b>		
Personal Services	\$150,271	\$163,933
Operating Expenses	\$2,090	\$2,090
Capital Outlay Costs	\$19,800	\$880
Travel Cost	\$21,780	\$21,780
Centrally Appropriated Costs*	\$44,749	\$47,884
FTE – Personal Services		
<b>Total Cost</b>	<b>\$238,690</b>	<b>\$236,567</b>
<b>Total FTE</b>	<b>2.0 FTE</b>	<b>2.2 FTE</b>

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

**Judicial Department.** Starting in FY 2020-21, the Judicial Department will require 2.2 FTE court liaisons to create a plan and to coordinate services for individuals being released for outpatient services on bond. Because defendants being released on bail under the bill are lower classifications, the fiscal note assumes that each case will take an average of 3 months. Staffing level is based on the assumption that there will be 310 cases where a liaison will be assigned and that one liaison can handle 35 cases a year. The number of cases represents the number of mental health stay orders that do not currently have a liaison, and a finding of incompetence was entered in the case. Costs associated with each FTE include personal services costs, operating expenses, travel expenses, and capital outlay costs. FTE and personal services costs are prorated in the first year to reflect the General Fund paydate shift.

*Trial courts.* Starting in FY 2020-21, workload in the trial courts will be impacted by the bill. Workload will increase to hold additional hearings, as outlined in the bill. To the extent more offenders have charges dismissed due to changes in the bill, workload to the trial courts will decrease. The fiscal note assumes that changes in workload will be minimal and no change in appropriation is required.

**Offices representing indigent offenders.** Similar to the trial courts impact, workload to the Office of the State Public Defender and the Office of Alternative Defense Council will be impacted in a couple of ways. To the extent there are more hearings or more contested hearings, workload in these offices will increase. To the extent more charges are dropped, the workload in these offices will decrease. The fiscal note assumes any change in appropriations will be requested through the annual budget process. In addition, workload to the Office of the State Public Defender will increase to participate in the committee created under the bill. The fiscal note assumes this workload can be accomplished within existing resources.

**Department of Human Services.** Starting in FY 2020-21, this bill will increase workload in the DHS to provide more opinions and information in a competency evaluation. The fiscal note assumes that the increase in workload will be minimal and no change in appropriation is required.

**Providing data to committee.** Starting in FY 2020-21, workload in the Judicial Department, the DHS, and HCPF will increase to provide data, as needed, to the committee. The fiscal note assumes that this work can be accomplished within existing resources.

**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. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$44,749 in FY 2020-21 and \$47,884 in FY 2021-22.

## **Local Government**

Similar to the state, workload in district attorney offices will be impacted by the bill. To the extent there are more hearings or hearings last longer because they are contested, workload will increase. To the extent more charges are dropped, workload will decrease. In addition, workload will increase for any district attorney who serves on the study committee created by the bill.

To the extent that more cases are dismissed in municipal court because a defendant is found incompetent to proceed, workload to municipal courts will decrease. The fiscal note assumes that most competency proceedings happen in district and county court and therefore, any decrease in workload is assumed to be minimal.

## **Effective Date**

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

**State Appropriations**

For FY 2020-21, this bill requires a General Fund appropriation of \$193,941 and 2.0 FTE to the Judicial Department.

**State and Local Government Contacts**

Corrections  
Health Care Policy and Financing  
Information Technology  
Municipalities

Counties  
Human Services  
Judicial  
Sheriffs