



Legislative  
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*Nonpartisan Services for Colorado's Legislature*

**SB 20-181**

# REVISED FISCAL NOTE

(replaces fiscal note dated March 2, 2020)

**Drafting Number:** LLS 20-0572  
**Prime Sponsors:** Sen. Lee  
Rep. Weissman

**Date:** June 2, 2020  
**Bill Status:** Senate Second Reading  
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**Bill Topic:** **MEASURES ON INCOMPETENT TO PROCEED**

**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 changes to competency reports provided by evaluators, makes changes related to bond release for defendants who are incompetent to proceed, and allows for certain charges to be dropped when a defendant is incompetent. Starting in FY 2020-21, the bill will impact state and local workload on an ongoing basis.

**Appropriation  
Summary:** No appropriation is required.

**Fiscal Note  
Status:** This fiscal note reflects the introduced bill, as amended by the Senate Judiciary Committee and the Senate Appropriations Committee.

## 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. 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 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.

## **State Expenditures**

This bill will increase workload in the Judicial Department, the independent judicial offices that represent indigent offenders, and the DHS beginning in FY 2020-21 as described below.

**Judicial Department.** 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. Overall, 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 multiple 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 that any increase in workload will be minimal and no change in appropriation is required.

**Department of Human Services.** Starting in FY 2020-21, this bill will increase workload in the DHS to provide additional assessments 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.

**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.

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 and Local Government Contacts**

Corrections  
Health Care Policy and Financing  
Information Technology  
Municipalities

Counties  
Human Services  
Judicial  
Sheriffs