



Legislative Council Staff

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Final Fiscal Note

Drafting Number: LLS 23-0153
Prime Sponsors: Rep. Amabile
Sen. Rodriguez

Date: May 18, 2023
Bill Status: Signed into Law
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Bill Topic: **JUVENILE COMPETENCY TO PROCEED**

Summary of Fiscal Impact:

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

The bill makes several changes to juvenile competency hearings. Starting in FY 2023-24, the bill impacts state and local expenditures on an ongoing basis.

Appropriation Summary:

For FY 2023-24, the bill requires and includes an appropriation of \$120,000 to two independent agencies in the Judicial Department.

Fiscal Note Status:

The fiscal note reflects the enacted bill. The bill was recommended by the Legislative Oversight Committee Concerning Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice System.

Table 1
State Fiscal Impacts Under HB 23-1012

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	\$120,000	\$144,000
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$18,000	\$21,600

Summary of Legislation

The bill makes several changes to juvenile competency hearings including creating waivers of privilege when a juvenile is determined incompetent to proceed; allowing the court or party to raise the need for a restoration evaluation; establishing time limits on how long a juvenile can be held as incompetent; and allowing a juvenile to choose their own evaluator.

Waiver of privilege. When a court determines that a juvenile is incompetent to proceed, the bill waives any claim of confidentiality or privilege by the juvenile or the juvenile's parent or legal guardian to allow the court and parties to determine issues related to the juvenile's competency, restoration, and management plan. This includes access to evaluations, to information and documents related to the evaluation, to the evaluator, and to providers of restoration services. Any evidence obtained during an evaluation or competency restoration is only admissible to determine a juvenile's competency, incompetency, or orders related to restoration; this evidence is not admissible on the issues raised by pleas of not guilty.

Restoration evaluation. The bill allows the court or a party to raise the need for a restoration evaluation of a juvenile's competency. The court shall order a restoration evaluation when:

- there is credible information that the juvenile's circumstances have changed;
- the court cannot fairly determine whether the juvenile has been restored to competency or will be restored to competency in the reasonably foreseeable future; and
- the cause for the evaluation outweighs the negative impact of a restoration evaluation upon the juvenile.

The court may hold a hearing to determine if an evaluation should be ordered.

Time limits. The bill establishes a maximum amount of time before the court must find a juvenile is unrestorable to competency and to determine if a management plan for the juvenile is necessary. The time limits include:

- 6 months if the highest charge would be a misdemeanor, misdemeanor drug offense, a petty offense, or a traffic offense;
- 1 year if the highest charge would be a class 4, 5, or 6 felony, or a level 3 or 4 drug felony;
- 2 years if the highest charge would be a class 3 felony or a level 1 or 2 drug felony, unless the charge constitutes an act that alleges the juvenile is an aggravated juvenile offender; and
- 5 years if the highest charge would be a class 1 or 2 felony for a charge that constitutes an act that alleges the juvenile is an aggravated juvenile offender.

Upon a motion from the prosecuting attorney, the court may extend the time limits set forth above if the juvenile failed to attend or cooperate with restorative treatment; there is a reasonable likelihood of restoration; and the juvenile's lack of cooperation is not a result of an intellectual and developmental disability.

Juvenile request of evaluation. The bill allows a juvenile to choose the competency evaluator, and to request a second evaluation in response to a court-ordered competency evaluation or restoration evaluation.

State Expenditures

The bill increases state expenditures in two independent agencies of the Judicial Department by \$120,000 in FY 2023-24 and \$144,000 in FY 2024-25. In addition, the bill impacts state workload in the Judicial Department and the Department of Human Services. These impacts are shown in Table 2 and described below.

**Table 2
 Expenditures Under HB 23-1012**

Cost Components	FY 2023-24	FY 2024-25
Office of the State Public Defender		
Additional Evaluations	\$100,800	\$120,000
OSPD Subtotal	\$100,800	\$120,000
Office of Alternate Defense Counsel		
Additional Evaluations	\$19,200	\$24,000
OADC Subtotal	\$19,200	\$24,000
Total	\$120,000	\$144,000

Independent agencies in the Judicial Department. Starting in FY 2023-24, expenditures in the Offices of the State Public Defender and the Alternate Defense Counsel will increase for additional evaluations when a juvenile requests a second competency or restoration evaluation. The fiscal note assumes that there will be a total of 60 requests per year handled by the two offices. Evaluations are estimated to cost \$2,400, assuming that an evaluation takes 16 hours of work at \$150 per hour. The fiscal note assumes that 50 of the requests will be paid by the Office of the State Public Defender and 10 will be paid by the Office of Alternate Defense Counsel. Costs in FY 2023-24 are prorated for a September 1, 2022, implementation date.

Other potential impacts to be addressed through the annual budget process as trends are known are decreased expenditures from cases closing sooner resulting from established time frames and increased expenditures from additional restoration evaluation hearings.

Judicial Department. The bill impacts trial court workload within the Judicial Department in a number of ways. Overall, changes in workload to the trial courts are assumed to be minimal and no change in appropriations is required.

- **Workload decreases.** By establishing a waiver for confidentiality claims and requiring that certain information be shared with parties, workload will decrease since courts no longer need to settle the matter through a hearing. Workload may decrease to the extent that more cases are dismissed due to the establishment of time limits.

- **Workload increases.** Workload may increase to hold additional hearings related to a restoration evaluation or when a juvenile requests their own evaluation. Because courts are currently required to perform periodic reviews on juveniles found incompetent to proceed, it is assumed that any additional evaluations requested can be accommodated within the current review process.

Department of Human Services. Starting in FY 2023-24, workload in the Department of Human Services will decrease to the extent cases close sooner as a result of establish time frames. Workload may increase to accommodate the sharing of information or evaluation requests by the juvenile. These changes are expected to be minimal and no change in appropriation is required.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, which will decrease the amount of General Fund available for other purposes.

Local Government

Similar to the state, workload to district attorney offices will decrease if cases close sooner as a result of the established time frames and fewer hearings are held regarding information sharing. Workload may increase if more hearings are required due to restoration evaluations or if more evaluations are requested by the juvenile. Overall, workload impacts to district attorney offices are expected to be minimal.

Effective Date

The bill was signed by the Governor on May 16, 2023, and takes effect on August 7, 2023, assuming no referendum petition is filed.

State Appropriations

For FY 2023-24, the bill requires and includes General Fund appropriations totaling \$120,000 which includes:

- \$100,800 to the Office of the State Public Defender; and
- \$19,200 to the Office of Alternate Defense Counsel.

State and Local Government Contacts

District Attorney
Judicial

Human Services

Information Technology