



Legislative Council Staff

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Fiscal Note

Drafting Number: LLS 23-0179
Prime Sponsors: Rep. Amabile; Soper

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Bill Status: House Judiciary
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Bill Topic: PROCEDURES RELATED TO ADULT COMPETENCY

Summary of Fiscal Impact:

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

The bill allows a district attorney, a medical professional, a representative of the Behavioral Health Administration, or a representative from the Office of Civil and Forensic Mental Health to initiate a proceeding for a certification for short-term treatment. Starting in FY 2023-24, the bill increases state expenditures on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$177,937 to multiple state agencies.

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

Table 1
State Fiscal Impacts Under HB 23-1138

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	\$177,937	\$370,355
	Centrally Appropriated	\$26,060	\$63,863
	Total Expenditures	\$203,997	\$434,218
	Total FTE	1.2 FTE	3.0 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$26,691	\$55,553

Summary of Legislation

The bill allows a district attorney, a medical professional, a representative of the Behavioral Health Administration (BHA), or a representative from the Office of Civil and Forensic Mental Health (OCFMH) in the Department of Human Services (DHS) to initiate a proceeding for a certification for short-term treatment in the following circumstances:

- when the defendant is found incompetent to proceed, is charged with a misdemeanor or lesser offense, the prosecuting attorney agrees, and the court believes the defendant meets the standard for a certification for short-term treatment; and
- when the court determines that there is not a substantial probability that the defendant will be restored to competency within the reasonably foreseeable future, and the court finds reasonable grounds to believe the defendant meets criteria for a certification for short-term treatment.

Process for short-term certification. The bill establishes the processes for certifying a person for short-term treatment for individuals found incompetent to proceed. The bill requires that an attorney be appointed for the respondent, and outlines other conditions for short-term certification.

Dismissal/stay of charges and stay of dismissal. The bill allows the court to forgo any order of restoration and to dismiss the charges when a certification for short-term treatment proceeding is initiated for defendants charged with a misdemeanor or lesser offense and who is found incompetent to proceed. If the case is not dismissed, or the defendant is charged with a felony, the court may stay the restoration order to allow for short-term certification. The court may also stay the dismissal from confinement for 35 days for a medical professional to petition for short-term certification, if the court believes the defendant meets the criteria for certification.

Reports and information. Finally, the bill makes several changes to required information in evaluation reports, including whether the defendant meets the criteria for an emergency mental health hold, a certification for short-term treatment, or has an intellectual and developmental disability. The initial evaluation must be submitted to the court within 14 days after meeting the defendant to conduct the evaluation and allows the report to be submitted electronically.

Assumptions

In 2022, there were 2,871 criminal cases that contained a finding that the defendant was incompetent to proceed and committed them to treatment. The fiscal note assumes that 5 percent of these cases, or 144 cases, will be transferred to the civil system under the bill.

State Expenditures

The bill increases state General Fund expenditures in the Judicial Department and the BHA by about \$204,000 in FY 2023-24 and about \$434,000 in FY 2024-25. The bill also impacts workload in the OCFMH. Expenditures are shown in Table 2 and detailed below.

**Table 2
Expenditures Under HB 23-1138**

	FY 2023-24	FY 2024-25
Judicial Department		
Court-Appointed Attorneys	\$18,915	\$37,539
Judicial Subtotal	\$18,915	\$37,539
Behavioral Health Administration (BHA)		
Personal Services	\$136,987	\$328,766
Operating Expenses	\$2,025	\$4,050
Capital Outlay Costs	\$20,010	-
Centrally Appropriated Costs ¹	\$26,060	\$63,863
FTE – Personal Services	1.2 FTE	3.0 FTE
BHA Subtotal	\$185,082	\$396,679
Total Costs	\$203,997	\$434,218
Total FTE	1.2 FTE	3.0 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Judicial Department. Starting in FY 2023-24, expenditures in the Judicial Department will increase to provide attorneys to individuals involved in short-term certification cases. The fiscal note assumes that nearly all (90 percent) of the assumed 144 cases transferred to civil court will require a court-appointed attorney at the average cost of \$291 per case. Costs in the first year are prorated for a January 1 start date.

Behavioral Health Administration (DHS). Starting in FY 2023-24, the BHA requires 3.0 FTE to provide training and care coordination for the new short-term certification procedures. This includes 1.0 FTE Training Specialist to train providers, judges, and other caregivers about the new process to certify someone for treatment transferred from the criminal system, and to train parties involved in the criminal system on the civil system. In addition, 2.0 FTE Program Managers are required to provide care coordination to the estimated 144 cases being considered for short-term certification. First-year costs are prorated for a January 1 start date and the General Fund pay date shift. Standard operating and capital outlay costs are also included for this staff.

- **Service costs.** In addition, to the extent more individuals are certified for short-term treatment and are referred to services within the BHA, service costs will increase. These costs will be addressed through the annual budget process based on actual caseload.

Office of Civil and Forensic Mental Health (DHS). Starting in FY 2023-24, workload in the OCFMH will increase to the extent that staff are required to petition the court for civil commitment, and decrease to the extent individuals are transferred out of the criminal system and into the civil system. Because there is a backlog for the state mental health hospitals, no cost savings from bed impacts is expected. Overall, the fiscal note assumes that the overall impact to OCFMH will be minimal.

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 shown in Table 2.

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, decreasing the amount of General Fund available for other purposes.

Local Government

County jails. To the extent individuals are transferred to the civil system instead of being housed in jail, costs to county jails will decrease.

Effective Date

The bill takes effect on January 1, 2024, assuming no referendum petition is filed.

State Appropriations

For FY 2023-24, the bill requires the following General Fund appropriations:

- \$18,915 to the Judicial Department; and
- \$159,022 to the Department of Human Services and 1.2 FTE.

State and Local Government Contacts

Behavioral Health Administration
Information Technology

District Attorneys
Judicial

Human Services