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Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated January 12, 2024)

Drafting Number:	LLS 24-0275	Date:	March 13, 2024
Prime Sponsors:	Rep. Amabile; Bradfield Sen. Fields	Bill Status:	House Appropriations
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Bill Topic: **ADULT COMPETENCY TO STAND TRIAL**

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> State Transfer	<input checked="" type="checkbox"/> Local Government
	<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> TABOR Refund	<input type="checkbox"/> Statutory Public Entity

The bill makes several changes to the adult competency process. Starting in FY 2024-25, the bill will increase state and local expenditures on an ongoing basis

Appropriation Summary: For FY 2024-25, the bill requires an appropriation of \$830,803 to multiple departments.

Fiscal Note Status: This revised fiscal note reflects the introduced bill, as amended by the House Judiciary Committee. The bill is recommended by the Legislative Oversight Committee Concerning the Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice Systems.

Table 1
State Fiscal Impacts Under HB 24-1034

		Budget Year FY 2024-25	Out Year FY 2025-26
Revenue		-	-
Expenditures	General Fund	\$830,803	\$895,947
	Centrally Appropriated	\$161,940	\$205,177
	Total Expenditures	\$992,743	\$1,101,124
	Total FTE	8.4 FTE	10.6 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$124,620	\$134,392

Summary of Legislation

The bill makes several changes to the adult competency process, clarifying who raises the competency question in parole hearings, requiring the Department of Human Services (CDHS) to report records of past competency evaluations, changing what is included in a competency report, updating procedures for determining competency, and changing the amount of time a defendant may remain in custody while deemed incompetent to proceed.

Competency in parole hearings. The bill clarifies that the public defender liaison or an attorney representing an offender in a parole proceeding can raise the question of competency, rather than a member of the Parole Board.

Records of past competency evaluations. Under the bill, defendants waive confidentiality or privilege in any case where the defendant raised the issue of competency or the court determined the defendant incompetent to proceed.

The bill requires the CDHS to conduct a search for any prior competency evaluations in its possession from any other criminal case whenever a court orders a competency evaluation of defendant or a defendant has been found incompetent to proceed and file a report on its findings within 72 hours. The court must make prior evaluations available to the parties to the case. At the defendant's request, sheriffs and treatment providers must also provide the defendant copies of any record relating to the defendant's competency within 72 hours after receiving the request.

For a defendants whose competency has been raised or who have been found incompetent to proceed, upon a defense attorney's request, the bill requires the court to order the court clerk to provide the defense attorney with a list of jurisdictions and case numbers related to the defendant's current or prior competency proceedings; the defendant's criminal record, including sealed records; confirm the absence of relevant records; and provide copies to the defense attorney upon receiving the defendant's written release.

Competency evaluations. Under current law, the competency evaluation is required to include certain information if it is available. This includes descriptions of all competency evaluations or restoration services that were previously provided; a list of medications that were voluntary or involuntary administered; and the opinion of the evaluator as to whether there is a substantial probability that the defendant, with restoration services, will attain competency within the reasonably foreseeable future. Under the bill, the inclusion of this information is mandatory, and additional information about medication and prior cases known to the CDHS is also required.

Additionally, in cases where previous competency determinations have been made in the past five years, the evaluator must address the differing prior determinations and provide an opinion as to why the defendant's current circumstances differ in the present. In cases where the defendant is diagnosed with a moderate to severe intellectual or development disability, acquired or traumatic brain injury, or dementia, the bill does not require the competency evaluator to provide an opinion on competency attainment.

Currently, in cases where a competency evaluation determines inpatient restoration services are not appropriate, the report must detail the outpatient and out-of-custody restoration services that are available to the defendant. This bill requires the department to detail outpatient and out-of-custody restoration services available to the defendant.

Competency hearing procedures. The bill reorganizes the statute outlining the procedure after determination of competency and clarifies the procedure for hearings in lieu of restoration and creates a procedure regarding a presumption that the defendant is not restorable. In addition, it clarifies that a court is not prohibited from finding a defendant is not restorable in the reasonably foreseeable future based on “volitional,” or willing, lack of cooperation or unwillingness to participate in services and treatment.

The bill also makes a several changes to hearing procedures, including requiring that:

- the court, if it finds the defendant not eligible for release or not able to post the monetary conditions of bond, commit the defendant to the custody of the CDHS;
- the court conduct a non-appearance review 14 days after a defendant is released from custody for outpatient services; and
- the CDHS designate a state facility at which a defendant is held and may transfer the defendant from one facility to another if certain conditions are met.

Time limits. Current law provides time limits for how long a defendant committed to the custody of the CDHS or otherwise confined as a result of incompetency can remain in custody. Currently, a defendant cannot remain confined for a period in excess of the maximum term of confinement that could be imposed for the most serious offense less 30 percent for misdemeanor and less 50 percent for a felony; or depending on the offense committed, the court must dismiss the charges after 6 months, 1 year, or 2 years if the court determines the defendant remains incompetent to proceed.

This bill removes the general limit and instead specifies the length of time a defendant can remained confined when incompetent to proceed based on the offense level. Table 2 below outlines the maximum amount of time for each offense under current law and under the bill.

Table 2
Competency Confinement Time Limits Under Current Law vs. HB 24-1034

Crime Classification	Current Law	HB 24-1034
Petty or Traffic Offense	6 months	7 days
Class 2 Misdemeanor or Drug Misdemeanors	6 months	90 days
Class 1 Misdemeanor	6 months	6 months
Level 4 Drug Felony	1 year	6 months
Class 5 and 6 Felonies and Level 3 Drug Felonies	1 year	
Class 4 Felonies	2 years	
Class 1, 2, and 3 Felonies, Sex Offenses, and Level 1 and 2 Drug Felonies	Not applicable	

In addition, if charges have not been dismissed, the bill requires courts to dismiss the case if the defendant is found incompetent to proceed and the defendant’s presentence confinement credit exceeds the maximum sentence for the defendant’s highest charged offense.

The bill clarifies procedures for the CDHS in cases where it cannot comply with the time limits for issuing reports.

The bill allows the court to stay a dismissal of charges for 35 days for a defendant whose diagnosis includes neurocognitive or neurodevelopmental impairment. If the court stays the dismissal, it may order the Bridges court liaison to assist with case planning and coordination of services, and must notify a government entity or community-based organization that can provide resources to the defendant.

Bridges court liaison. The bill requires the Bridges court liaison to receive certain information.

State Expenditures

The bill increases expenditures in the CDHS and the Judicial Department by about \$993,000 in FY 2024-25 and \$1.1 million in FY 2025-26 and ongoing, paid from the General Fund.

**Table 3
 Expenditures Under HB 24-1034**

	FY 2024-25	FY 2025-26
Department of Human Services		
Personal Services	\$554,211	\$720,848
Operating Expenses	\$7,936	\$10,240
Capital Outlay Costs	\$60,030	-
Computer Programming	\$50,000	-
Centrally Appropriated Costs ¹	\$122,156	\$158,160
FTE – Personal Services	6.2 FTE	8.0 FTE
DHS Subtotal	\$794,333	\$889,248
Judicial Department		
Personal Services	\$137,251	\$162,206
Operating Expenses	\$1,364	\$1,612
Capital Outlay Costs	\$20,010	\$1,040
Centrally Appropriated Costs ¹	\$39,784	\$47,018
FTE – Personal Services	2.2 FTE	2.6 FTE
Judicial Subtotal	\$198,410	\$211,876
Total Cost	\$992,743	\$1,101,124
Total FTE	8.4 FTE	10.6 FTE

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

Department of Human Services. Starting in FY 2024-25, the CDHS requires staff and computer programming to implement the bill.

- **Data and assumptions.** The fiscal note assumes that administrative staff time spent processing a competency evaluation will increase by 1 hour; assembling information from sheriffs will take about 12 hours; and time to complete evaluations will increase by 1 hour. The CDHS currently receives about 447 competency orders per month, or 5,364 per year.
- **Staff.** The CDHS requires 8.0 FTE, including administrative staff, psychologists, and a short-term certification petitioner, as outlined below. Staff costs are prorated for an October 2024 start date and include personal services, operating expenses, and capital outlay costs.
 - **Administrative staff.** The CDHS requires 2.5 FTE administrative assistants to provide all prior competency evaluation to the court when an evaluation is ordered or a defendant is found incompetent to proceed, and to gather records related to competency from sheriffs or treatment providers when requested by the defendant. Based on assumptions outlined above, and assuming there will be about 173 requests per year based on current requests received by the CDHS, the fiscal note estimates that providing all prior competency evaluations will require 2.0 FTE; and that gathering records from sheriffs or treatment providers will require 0.5 FTE.
 - **Psychologists.** The CDHS requires 4.5 FTE psychologists. Of the new staff, 2.0 FTE will serve as competency evaluators to assist in the new workload of providing opinions in the evaluation of whether an individual can be restored to competency in the reasonably foreseeable future. An additional 2.5 FTE psychologists will provide new caseload support due to the additional time necessary to research prior cases where the defendant was found incompetent.
 - **Short-term certification petitioner.** Finally, the CDHS requires 1.0 FTE to petition for short-term certification for any defendant that meets the qualifications and is not restorable in the foreseeable future.
- **Computer programming.** In FY 2024-25 only, the CDHS requires \$50,000 to perform programming to allow prior competency evaluation filings to be provided to the court. Work will be performed by the Office of Information Technology. Costs are based on a similar project performed by the office for the CDHS on their data management system.

Judicial Department. Starting in FY 2024-25, the Judicial Department requires 2.6 FTE court staff to locate competency-related records upon a defense attorney's request. It is estimated the courts receive 22,570 unique felony criminal cases with a mental health stay order a year, and that there are about 135,000 records going back to December 2001. The fiscal note assumes that courts will receive about 16,000 records request each year, and that each request requires 20 minutes of court staff to fulfill. First-year costs are prorated for the bill's effective date.

Additionally, workload in the trial courts may increase to the extent the bill results in longer hearings and to provide Bridges court liaisons access to the electronic filing system. This workload can be accomplished within existing resources. It is assumed that the bill may increase hearings by 2 hours in 3 percent of cases, which would require an additional 0.1 FTE magistrate. Based on Judicial Department common policies, this amount is assumed to be absorbable. Finally, the fiscal note also assumes that electronic access to records will not be provided to persons who are not party to the case, and thus has not included costs to provide electronic access to these records.

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 3.

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

Similar to the state trial court impacts, costs and workload to county-funded district attorney offices and the Denver County Court will increase to the extent the bill results in longer hearing times.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For FY 2024-25, the bill requires total General Fund appropriations of \$830,803, including:

- \$672,177 to the Department of Human Services, and 6.2 FTE, of which \$50,000 is reappropriated to the Office of Information Technology; and
- \$158,626 to the Judicial Department, and 2.2 FTE.

State and Local Government Contacts

Behavioral Health Administration
Information Technology

District Attorneys
Judicial

Human Services

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit: leg.colorado.gov/fiscalnotes.