



Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated March 13, 2024)

Table with 2 columns: Field (Drafting Number, Prime Sponsors, Date, Bill Status, Fiscal Analyst) and Value (LLS 24-0275, Rep. Amabile; Bradfield Sen. Fields, April 23, 2024, Senate Judiciary, Aaron Carpenter | 303-866-4918 aaron.carpenter@coleg.gov)

Bill Topic: ADULT COMPETENCY TO STAND TRIAL

Table with 2 columns: Fiscal Impact and Options (State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government, 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 workload on an ongoing basis

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill. 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.

Summary of Legislation

The bill makes several changes to the adult competency process, including 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.

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 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.

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 competency evaluator may provide an opinion on competency attainment, if possible.

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 pre-sentence 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 workload in the CDHS and the Judicial Department as described below.

Department of Human Services. Starting in FY 2024-25, workload in the CDHS will increase to the extent the bill leads to additional or longer evaluations. The fiscal note assumes that the work can be accomplished within existing resources and any increase in resources in future years will be requested through the annual budget process.

Judicial Department. 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.

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 upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Human Services

Judicial

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.