



Legislative Council Staff
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Fiscal Note

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Prime Sponsors:

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Bill Topic: **ADULT COMPETENCY TO STAND TRIAL**

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

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 \$649,224 to the Department of Human Services

Fiscal Note Status: The fiscal note reflects the bill draft requested 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 Bill 3

		Budget Year FY 2024-25	Out Year FY 2025-26
Revenue		-	-
Expenditures	General Fund	\$649,224	\$701,292
	Centrally Appropriated	\$121,173	\$156,874
	Total Expenditures	\$770,397	\$858,166
	Total FTE	6.2 FTE	8.0 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$97,384	\$105,194

Summary of Legislation

The bill makes several changes to the adult competency process, including providing a definition of “reasonably foreseeable future,” 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.

Reasonably foreseeable future. The bill provides a definition of “reasonably foreseeable future” for cases where a defendant’s competency is at issue.

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 also allows the court to issue an order to assist parties to the case in accessing information or records.

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.

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, this information is mandatory, and additional information about medication and prior cases known to the CDHS is 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 presently. 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 evaluator to include a list of clinically appropriate inpatient services if the defendant is in the custody of the CDHS and is not currently receiving inpatient services or if outpatient services are not appropriate.

Competency hearing procedures. The bill provides additional detail on court hearing timelines and findings once the court receives a competency evaluator’s opinion on the probability of whether a defendant will be restored to competency. It also clarifies the procedure for hearings in lieu of restoration and creates a procedure regarding a presumption that the defendant is not restorable. Finally, the bill requires the court, if it finds the defendant not eligible for release or not able to post the monetary conditions of bond, to commit the defendant to the custody of the CDHS until the CDHS recommends to the court that the defendant is competent, is released from custody, or the case is dismissed. The CDHS must designate a state facility at which the 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 remain 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. Bill 3

Crime Classification	Current Law	Bill 3
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	1 year	
Class 4 Felonies	2 years	
Class 1, 2, and 3 Felonies, Sex Offenses, and Level 1 and 2 Drug Felonies	Not applicable	

¹ Does not include Victim Rights Act felonies.

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

Finally, the bill allows the court to stay a dismissal of charges for 35 days for a defendant suffering from severe mental health or disability if the court finds that there are reasonable grounds to believe the person meets the standard for short-term certifications. To dismiss the charges for a person suffering from a mental illness or disability, the defendant must have a certain diagnosis, which has yet to be outlined in this bill draft.

State Expenditures

The bill will increase expenditures in the CDHS by about \$770,000 in FY 2024-25 and \$858,000 in FY 2025-26, paid from the General Fund. Expenditures are shown in Table 2 and discussed below.

Table 2
Expenditures Under Bill 3

	FY 2024-25	FY 2025-26
Department of Human Services		
Personal Services	\$531,258	\$691,052
Operating Expenses	\$7,936	\$10,240
Capital Outlay Costs	\$60,030	-
Computer Programming	\$50,000	-
Centrally Appropriated Costs ¹	\$121,173	\$156,874
Total Cost	\$770,397	\$858,166
Total FTE	6.2 FTE	8.0 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 (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 will require 4.5 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 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 will require 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, workload to the trial courts may increase to the extent the bill precipitates longer hearings. The fiscal note assumes no change in appropriations is required. The fiscal note also assumes that electronic access to records will not be provided to persons who are not party to the case, and 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 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

Similar to the state trial court impact, 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.

Technical Note

Currently, the bill requires the competency evaluation to include a recommendation as to whether outpatient restoration services are clinically appropriate. Under current practice, these recommendations take place outside the competency evaluation. It is the understanding of the fiscal analyst that the intent of the bill is to keep the process unchanged. If the CDHS is required to include these recommendations as part of its clinical evaluation, its costs will increase by \$2.2 million in FY 2024-25 and \$2.8 million in FY 2025-26, assuming that it will require additional staff for medical evaluation teams. Costs are based on the assumption that one FTE can handle about 20 orders a month. Given that the CDHS receives 447 orders a month, this would result in the need for an additional 22 FTE. In addition, the time to complete forensic evaluations will increase by an additional hour for the forensic evaluators to work with the clinical evaluators, requiring an additional 2.5 FTE.

Lastly, the bill has placeholder language for dismissal of charges when the defendant has certain diagnoses. As the intent with the placeholder is unknown, any impact related to this section has not been estimated.

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 a General Fund appropriation of \$649,224 to the Department of Human Services, and 6.2 FTE. Of this amount, \$50,000 is reappropriated to the Office of Information Technology.

State and Local Government Contacts

Behavioral Health Administration
Judicial

District Attorneys

Human Services