

JOINT BUDGET COMMITTEE BILLS CONCERNING COMPETENCY

The Joint Budget Committee (JBC), in partnership with the Chairs of the Senate and House Judiciary Committees, are sponsoring four bills concerning court-ordered services for individuals charged with a crime who are not mentally competent to proceed to trial. This document provides background information about the legal and financial issues that led to the JBC acting to introduce these bills.

The Problem

- The Department of Human Services (DHS) is responsible for *evaluating* the competency of individuals charged with a crime and for providing competency *restoration services* when an individual is determined to be incompetent to proceed to trial. The Colorado Mental Health Institute at Pueblo (CMHIP) provides these services unless the court authorizes these services to be provided in jail or in the community. Due to significant increases in the number of court orders for evaluations and restoration services, the number of beds devoted to competency services at CMHIP has increased, limiting the Department's ability to serve other patients needing psychiatric hospitalization. As of April 30, 199 (44.3 percent) of the 449 CMHIP beds were being utilized for patients requiring competency services.
- A legal challenge concerning the length of time individuals wait in jail to receive a competency evaluation or restoration services resulted in a 2012 Settlement Agreement that prescribes timeframes related to the length of time individuals wait for these services. Since June 2017, DHS has been out of compliance with timeframes, and it is currently discussing a potential consent decree with the plaintiffs. The plaintiffs have discussed assessing fines for every day that a person waits beyond the timeframes. Based on the current backlog, DHS estimates that these fines could total \$50 million per year.
- While DHS is the only agency subject to the Settlement Agreement, the State's ability to comply with the Agreement directly involves or affects:
 - individual defendants who are waiting for competency services, and their families;
 - lawyers representing these defendants;
 - district attorneys;
 - courts;
 - sheriffs, jail staff, and law enforcement officers; and
 - behavioral health providers.

Recent JBC and General Assembly Actions

- In FY 2013-14, the General Assembly began funding a 22-bed jail-based competency restoration program called Restoring Individuals Safely and Effectively (RISE). RISE is housed in the Arapahoe County Detention Facility in Centennial, and it essentially expands capacity for CMHIP.
- In September 2015, the JBC approved an emergency supplemental request to expand RISE by 30 beds because DHS was not in compliance with Settlement Agreement timeframes.
- The JBC sponsored H.B. 16-1410, which limited the court's discretion to order that a competency evaluation be conducted at CMHIP. This bill also prohibited the court from considering the need for the defendant to receive a competency evaluation when setting bond, and it included funding for secure transport staff to facilitate the transportation of defendants between jails, CMHIP, and RISE.
- In September 2017, the JBC approved another emergency supplemental request to expand RISE. The JBC also provided funding for DHS to begin implementing S.B. 17-012, which requires DHS to develop models for providing outpatient competency restoration services. These new models must integrate competency restoration education with other case management and treatment, ensure continuation of treatment and services as appropriate, avoid duplication of services, and achieve efficiencies by coordinating with existing community resources and programs.

- The FY 2018-19 Long Bill includes \$22.6 million General Fund for competency services, including:
 - \$13.4 million for RISE (an increase of **62 beds** for a total of 114 beds);
 - \$3.9 million for “court services”, the unit that administers and delivers services related to court-ordered mental evaluations and competency restoration education services (this is in addition to the operational costs related to CMHIP beds utilized by patients needing competency services);
 - \$3.2 million for DHS to contract for **10 beds** in a psychiatric hospital;
 - \$1.2 million for the ongoing costs of some program relocations at CMHIP designed to improve the safety of the adolescent unit (thereby allowing DHS to operate closer to the 20-bed capacity) and add **20 beds** for adult patients; and
 - \$0.9 million for outpatient competency restoration education services.

In total, the Long Bill funds an increase of **92 beds** to cover the shortfall estimated by DHS based on projected ongoing increases in the number of competency-related court orders. This represents a 16.0 percent increase in beds compared to the 575 Institute and RISE beds that were available last fall.

- In early March 2018, the JBC authorized one or more bills to be drafted to address systemic issues that are driving the continued increase in court orders for competency services and to increase the utilization of lower cost, clinically appropriate, community-based behavioral health services. The JBC has included as part of its FY 2018-19 budget package \$7,900,000 General Fund for implementation of these bills.

Bill Drafting Process

Since late January, there have been multiple meetings and discussions that have resulted in the bills under consideration. Primarily, these discussions have involved staff from DHS, the State Court Administrator’s Office, the Office of the State Public Defender, and the Colorado Behavioral Healthcare Council. A number of organizations were asked to review bill drafts and provide feedback, including: the Office of the Alternate Defense Counsel; Disability Law Colorado; the Colorado District Attorneys’ Council; County Sheriffs of Colorado; Colorado Counties, Inc.; the Colorado Department of Public Safety; Mental Health Colorado; Colorado Mental Wellness Network; the Committee concerning Treatment of Persons with Mental Health Disorders in the Criminal Justice System; and the Governor’s Office.

Policy Objectives of the Bill Package

The four bills are intended to work together to:

- redirect individuals with behavioral health disorders from the criminal justice system into treatment;
- improve communication and collaboration between the courts, district attorneys, defense attorneys, DHS, the Department of Health Care Policy and Financing, local law enforcement agencies, and community-based behavioral health providers concerning the needs and available treatment options for individuals with behavioral health disorders;
- provide timely competency-related services based on clinical necessity;
- integrate competency restoration services with existing community-based behavioral health services and supports to address the underlying causes of incompetency;
- improve mental health services in jails to help identify individuals who could be redirected into treatment and reduce the likelihood of individuals decompensating while they are held in jail;
- free up capacity for CMHIP to provide jails and other agencies with access to inpatient psychiatric treatment for individuals based on clinical necessity, regardless of whether there is a court order concerning competency;
- reduce the maximum term of confinement for purposes of receiving competency restoration treatment, thereby addressing a potential constitutional issue and reducing the demand for restoration services;
- establish procedures for transitioning individuals to a civil commitment when warranted; and
- improve procedures related to individuals who are found permanently incompetent to proceed.

A brief summary of each of the four bills is provided below, followed by a table summarizing the appropriations that are included in each bill as passed by the Senate:

- *S.B. 18-249 Establishing alternative programs in the criminal justice system to divert individuals with a mental health condition to community treatment:* This bill creates the Mental Health Criminal Justice Diversion Grant Program in the Office of the State Court Administrator to establish and facilitate four mental health pilot programs. The pilot programs are intended to identify individuals with mental health conditions who have been charged with low-level criminal offenses and divert such individuals out of the criminal justice system and into community treatment programs.
- *S.B. 18-250 Provision of jail-based behavioral health services:* This bill expands an existing program administered by the Department of Human Services that provides state funding to county sheriffs for the provision of behavioral health services. The existing program provides funding for substance use disorder services for adults while they are in jail and as they transition back to the community. This bill expands the program to cover mental health services and provides additional funding to support these services.
- *S.B. 18-251 Establishing a statewide behavioral health court liaison program:* This bill creates the Statewide Behavioral Health Court Liaison Program in the Office of the State Court Administrator. The Program is designed to keep judges, district attorneys, and defense attorneys informed about available community-based behavioral health services, including services for defendants who have been ordered to undergo a competency evaluation or receive competency restoration services. The Court Liaisons will facilitate communication between behavioral health systems and criminal justice entities, and coordinate with jail-based behavioral health providers to ensure continuity of care and service delivery.
- *S.B. 18-252 Actions related to determinations of competency to proceed:* This bill makes a number of changes concerning competency proceedings. These changes are intended to reduce the number of defendants who receive competency-related services at CMHIP when it is not a clinically appropriate setting, and increase the number of defendants who are released on bond and allowed to access competency-related services in the community. The bill reduces the maximum amount of time an individual can be confined as a result of the court determining the individual is incompetent to proceed. This bill also provides funding so that judges, district attorneys, and defense counsel have access to training concerning competency proceedings, including the changes that are made through this bill.

Appropriations in Reengrossed Bills for FY 2018-19				
Bill	Topic	Department	General Fund	FTE
SB 18-249	Alternative programs to divert individuals to community treatment	Judicial	\$750,000	0.5
SB 18-250	Jail-based behavioral health services	Human Services	2,564,603	1.8
SB 18-251	Court liaisons	Judicial	1,997,112	0.9
SB 18-252	Competency proceedings	Human Services	1,599,892	6.3
SB 18-252	Competency proceedings	Law and Judicial	170,000	0.0
Total			\$7,081,607	9.5