

Multiple Agency Fiscal Note Summary

Bill Number: 5440 SB	Title: Competency evaluations
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Estimated Cash Receipts

NONE

Agency Name	2023-25		2025-27		2027-29	
	GF- State	Total	GF- State	Total	GF- State	Total
Local Gov. Courts	No fiscal impact					
Loc School dist-SPI						
Local Gov. Other						
Local Gov. Total						

Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Administrative Office of the Courts	.0	0	0	0	.0	0	0	0	.0	0	0	0
Office of Public Defense	.0	0	0	0	.0	0	0	0	.0	0	0	0
Washington State Health Care Authority	Fiscal note not available											
Department of Social and Health Services	Fiscal note not available											
Total \$	0.0	0	0	0	0.0	0	0	0	0.0	0	0	0

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	No fiscal impact								
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Administrative Office of the Courts	.0	0	0	.0	0	0	.0	0	0
Office of Public Defense	.0	0	0	.0	0	0	.0	0	0
Washington State Health Care Authority	Fiscal note not available								
Department of Social and Health Services	Fiscal note not available								
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Agency Name	2023-25			2025-27			2027-29		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Local Gov. Courts	No fiscal impact								
Loc School dist-SPI									
Local Gov. Other	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Local Gov. Total									

Estimated Capital Budget Breakout

Prepared by: Robyn Williams, OFM	Phone: (360) 704-0525	Date Published: Preliminary 2/13/2023
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Judicial Impact Fiscal Note

Bill Number: 5440 SB	Title: Competency evaluations	Agency: 055-Administrative Office of the Courts
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note for Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.

Legislative Contact: Kevin Black	Phone: (360) 786-7747	Date: 01/23/2023
Agency Preparation: Angie Wirkkala	Phone: 360-704-5528	Date: 01/26/2023
Agency Approval: Chris Stanley	Phone: 360-357-2406	Date: 01/26/2023
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 01/30/2023

180,392.00

Request # 095-1

Form FN (Rev 1/00)

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Bill # 5440 SB

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

This bill would amend and add a section to Chapter 10.77 RCW (Criminally Insane Procedures) to provide timely competency evaluations and restoration services to persons suffering from behavioral health disorders.

II. B - Cash Receipts Impact

None

II. C - Expenditures

No fiscal impact expected to the Administrative Office of the Courts and the courts. The bill would not cause court form or case management system impacts. There may be minimal impacts due to judicial education on the changes.

Part III: Expenditure Detail

III. A - Expenditure By Object or Purpose (State)

NONE

III. B - Expenditure By Object or Purpose (County)

NONE

III. C - Expenditure By Object or Purpose (City)

NONE

III. D - FTE Detail

NONE

III. E - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B1 - Expenditures by Object Or Purpose (State)

NONE

IV. B2 - Expenditures by Object Or Purpose (County)

NONE

IV. B3 - Expenditures by Object Or Purpose (City)

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

None

180,392.00

Form FN (Rev 1/00)

Individual State Agency Fiscal Note

Bill Number: 5440 SB	Title: Competency evaluations	Agency: 056-Office of Public Defense
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Kevin Black	Phone: (360) 786-7747	Date: 01/23/2023
Agency Preparation: Sophia Byrd McSherry	Phone: 360-586-3164	Date: 01/24/2023
Agency Approval: Sophia Byrd McSherry	Phone: 360-586-3164	Date: 01/24/2023
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 01/25/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

SB 5440 relates to competency evaluation and restoration services for persons charged with crimes.

SB 5440 does not impact the Washington State Office of Public Defense (OPD), which does not provide public defense services for criminal defendants at the trial level. Local governments are responsible for public defense services for criminal defendants at the trial level, including defendants in need of competency evaluation and restoration services.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 5440 SB

Title: Competency evaluations

Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- Cities: Indeterminate inpatient competency restoration treatment costs passed on from counties
- Counties: Indeterminate one-time costs to modify or renovate existing jail facilities for use as inpatient competency restoration treatment units; indeterminate expenditure impact to hire and staff additional corrections officers and behavioral health professionals, and operate jail-based inpatient competency restoration units; indeterminate expenditure impact as a result of increased exposure to liability from the Trueblood case
- Special Districts:
- Specific jurisdictions only:
- Variance occurs due to:

Part II: Estimates

- No fiscal impacts.
- Expenditures represent one-time costs: Indeterminate one-time costs to modify or renovate existing jail facilities for use as inpatient competency restoration units
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time: Costs to modify or renovate existing jail facilities; number of additional corrections officers and behavioral health professionals needed to operate jail-base inpatient competency restoration units; operating costs for such units; future number and county distribution of people who counties may be required to provide inpatient competency restoration services to; pass-through costs from counties to cities

Estimated revenue impacts to:

None

Estimated expenditure impacts to:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Part III: Preparation and Approval

Fiscal Note Analyst: James Vogl	Phone: 360-480-9429	Date: 02/01/2023
Leg. Committee Contact: Kevin Black	Phone: (360) 786-7747	Date: 01/23/2023
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 02/01/2023
OFM Review: Robyn Williams	Phone: (360) 704-0525	Date: 02/09/2023

Part IV: Analysis

A. SUMMARY OF BILL

Description of the bill with an emphasis on how it impacts local government.

The proposed legislation would amend several RCW sections related to competency restoration.

Section 1 would amend RCW 10.77.010, adding the following definition for alternative therapeutic unit: “a jail-based competency restoration unit as certified by the [Department of Social and Health Services], which includes standards to ensure the unit is sufficiently safe and therapeutic for defendants.”

Section 3 would amend RCW 10.77.068, including counties in subsections regarding defenses against allegations of exceeding maximum time limits for competency restoration services, notification to the court when it will not be possible to meet these time limits, and reporting requirements concerning timeliness and performance targets.

Section 5 would amend RCW 10.77.075, including counties among the entities required to receive certain materials from court clerks and prosecuting attorneys within 24 hours of the signing of a court order to provide competency restoration treatment.

Section 7 would amend RCW 10.77.048, requiring that if someone is committed for competency restoration through a county, the county or facility providing treatment must request an evaluation report that meets the requirements of RCW 10.77.060(3) at least 14 days before the commitment period ends.

Section 9 would amend RCW 10.77.086, specifying that if a court orders inpatient competency restoration for a person charged with a class A or B felony as their highest charge, that person may be placed in an alternative therapeutic unit.

This section would also specify that a person charged with a class C felony as their highest charge and found to be incompetent shall be committed to the custody of the county for inpatient competency restoration, for a period of no more than 45 days for the initial competency restoration period. If the court orders inpatient treatment, the county would be required to place a person in an appropriate county facility, which could include an alternative therapeutic unit.

Under certain circumstances, the court could order outpatient competency restoration from the state, although people who violate the conditions of outpatient treatment or are no longer clinically appropriate for such a setting may be subsequently returned to the county for inpatient treatment.

This section would allow counties to “authorize a peace officer to detain [a] defendant into emergency custody for transport to the designated inpatient competency restoration facility.”

Finally, section 9 would require that people charged with a class C felony as their highest offense, subject to certain exceptions, who have been found incompetent and had their charges dismissed without prejudice be committed to the county for evaluation for the purpose of filing a civil commitment petition under chapter 71.05 RCW.

Section 10 would amend RCW 10.77.088, requiring that if a person charged with a non-felony crime that is a serious offense is found incompetent and a court finds there is a compelling state interest in pursuing competency restoration treatment, the court shall commit that person to the custody of the county for inpatient competency restoration in an appropriate county facility.

This section would also require that courts enter recommendations for outpatient competency restoration “unless the court makes a finding that an order for outpatient competency restoration is inappropriate or inadequate.” If a person in outpatient competency restoration treatment under this section violate the conditions of that treatment or is no longer clinically appropriate for such treatment, they would be placed in inpatient treatment in a county facility.

Section 12 states that section 8 of the proposed legislation would take immediate effect.

Section 13 states that sections 3, 5, 6, 7 and 10 of the proposed legislation would take effect July 1, 2024.

Section 14 states that section 9 of the proposed legislation would take effect July 1, 2025.

B. SUMMARY OF EXPENDITURE IMPACTS

Expenditure impacts of the legislation on local governments with the expenditure provisions identified by section number and when appropriate, the detail of expenditures. Delineated between city, county and special district impacts.

The proposed legislation would have an indeterminate, but likely significant impact on local government expenditures.

According to the Washington State Association of Counties (WSAC), this expenditure impact on counties would come from three main sources: creating competency restoration units, staffing and operating these units, and increased liability exposure for counties as a result of the Trueblood case.

WSAC anticipates that competency restoration treatments services provided by counties in the circumstances the bill specifies would be provided in jail-based units that the bill defines as alternative therapeutic units. Providing beds in such units would require renovating or modifying existing county jail facilities to be suitable for use for competency restoration treatment. Due to the variability in the size, layout and condition of existing jail facilities between counties, the cost of required modifications for each facility cannot be predicted. Accordingly, the total expenditure impact that creating competency restoration units would have is indeterminate, but likely significant.

WSAC indicates that expanding jail facilities to include competency restoration treatment units would require hiring and staffing additional corrections officers. Counties would incur additional one-time costs for hiring and training these additional officers, as well as additional ongoing costs for staffing them. According to the 2022 Association of Washington Cities Salary Survey, the average hourly salary including benefits and overhead for a county corrections officer is \$46. Hiring costs would vary by jurisdiction, but would include reimbursing the Criminal Justice Training Commission for required training. According to the commission, the agency reimbursement for one officer to attend its Corrections Officer Academy is \$1,780. Due to the variability in any future corrections officers staffing requirements and associated costs between jurisdictions, the county expenditure impact that a need for additional corrections officers would have is indeterminate.

In addition to corrections officers, these units would also require behavioral health professionals to directly provide competency restoration treatment services. At a facility in Yakima County housed in a former jail, which closed its competency restoration unit in 2021, these services were provided by a third party contractor. It is unknown how counties would go about staffing jail-based competency restoration units with behavioral health professionals, what the details of any future third-party contracts for these services might be, or how many people would need competency restoration services in the future from a given county. Accordingly, the county expenditure impact from staffing and operating jail-based inpatient competency restoration units is indeterminate.

Per the Department of Social and Health Services' 2022 Timeliness of Services Related to Competency to Stand Trial Annual Report, the department received 3,006 court orders for inpatient competency restoration treatment services between October 1, 2021, and September 30, 2022. Over the same time period, the department recorded a total of 1,674 admissions for inpatient competency restoration treatment services, 300 to Eastern State Hospital and 1,374 to Western State Hospital. It is unknown how many of these orders and admissions stemmed from cases with charges at the felony versus non-felony levels.

Finally, WSAC indicates that the provisions of the bill that would require counties to provide competency restoration services in certain circumstances would increase the liability exposure of counties as a result of the Trueblood case, which concerned wait times for people in need of competency evaluation and restoration services. Before agreeing to a settlement in 2018, the state was fined tens of millions of dollars for not meeting court-ordered timeliness performance targets for competency evaluation and restoration services. Since counties do not currently provide competency restoration treatment services, the provisions of the bill that would require them to provide these services under certain

circumstances could result in additional claims against counties if these services are not provided in a sufficiently timely manner. It is unknown how many claims against counties could arise related to the timeliness of providing competency restoration treatment services, or what the details of such claims could be, so the magnitude of this expenditure impact on counties is indeterminate.

WSAC indicates that cities may incur costs as a result of the proposed legislation as well, since many people charged with misdemeanor offenses who need inpatient competency restoration services are booked by cities. In these cases, WSAC assumes that in these cases, counties that would be required to provide inpatient competency restoration treatment services under this bill's provisions would pass treatments costs along to cities. It is unknown how many cases may include pass-through costs, or what those costs might be, however, so any expenditure impact to cities that could result from this bill's provisions is indeterminate.

C. SUMMARY OF REVENUE IMPACTS

Revenue impacts of the legislation on local governments, with the revenue provisions identified by section number, and when appropriate, the detail of revenue sources. Delineated between city, county and special district impacts.

The proposed legislation would have no impact on local government revenues.

SOURCES:

Association of Washington Cities Salary Survey, 2022
Disability Rights Washington
Washington State Association of Counties
Washington State Criminal Justice Training Commission
Washington State Department of Social and Health Services
Yakima County Department of Corrections