

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 5440 SB	<b>Title:</b> 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	.0	13,356,000	13,356,000	13,356,000	9.1	19,047,000	19,047,000	19,047,000	9.1	19,042,000	19,042,000	19,042,000
Department of Social and Health Services	39.8	12,538,000	12,538,000	12,538,000	34.5	10,622,000	10,622,000	10,622,000	34.5	10,622,000	10,622,000	10,622,000
Department of Social and Health Services	In addition to the estimate above, there are additional indeterminate costs and/or savings. Please see individual fiscal note.											
<b>Total \$</b>	<b>39.8</b>	<b>25,894,000</b>	<b>25,894,000</b>	<b>25,894,000</b>	<b>43.6</b>	<b>29,669,000</b>	<b>29,669,000</b>	<b>29,669,000</b>	<b>43.6</b>	<b>29,664,000</b>	<b>29,664,000</b>	<b>29,664,000</b>

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	.0	0	0	.0	0	0	.0	0	0
Department of Social and Health Services	.0	0	0	.0	0	0	.0	0	0
<b>Total \$</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>

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

<b>Prepared by:</b> Robyn Williams, OFM	<b>Phone:</b> (360) 704-0525	<b>Date Published:</b> Final 2/27/2023
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# Judicial Impact Fiscal Note

<b>Bill Number:</b> 5440 SB	<b>Title:</b> Competency evaluations	<b>Agency:</b> 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

## 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

<b>Bill Number:</b> 5440 SB	<b>Title:</b> Competency evaluations	<b>Agency:</b> 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.*

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 5440 SB	<b>Title:</b> Competency evaluations	<b>Agency:</b> 107-Washington State Health Care Authority
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## Part I: Estimates

**No Fiscal Impact**

### Estimated Cash Receipts to:

NONE

### Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.0	0.0	0.0	9.1	9.1
<b>Account</b>					
General Fund-State 001-1	5,971,000	7,385,000	13,356,000	19,047,000	19,042,000
<b>Total \$</b>	5,971,000	7,385,000	13,356,000	19,047,000	19,042,000

### 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: Hanh OBrien	Phone: 360-725-1447	Date: 02/19/2023
Agency Approval: Catrina Lucero	Phone: 360-725-7192	Date: 02/19/2023
OFM Review: Robyn Williams	Phone: (360) 704-0525	Date: 02/27/2023



## 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.

See attached narrative.

### 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.

See attached narrative.

### 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.

See attached narrative.

## Part III: Expenditure Detail

### III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
001-1	General Fund	State	5,971,000	7,385,000	13,356,000	19,047,000	19,042,000
<b>Total \$</b>			5,971,000	7,385,000	13,356,000	19,047,000	19,042,000

### III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years				9.1	9.1
A-Salaries and Wages				1,292,000	1,292,000
B-Employee Benefits				444,000	444,000
C-Professional Service Contracts					
E-Goods and Other Services				8,000	8,000
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services	5,971,000	7,385,000	13,356,000	16,757,000	16,752,000
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements				546,000	546,000
9-					
<b>Total \$</b>	5,971,000	7,385,000	13,356,000	19,047,000	19,042,000

### III. C - Operating FTE Detail: List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
FISCAL ANALYST 3	65,000				2.1	2.1
IT DATA MANAGEMENT - JOURNEY	106,000				1.0	1.0
MEDICAL PROGRAM SPECIALIST 3	90,000				6.0	6.0
<b>Total FTEs</b>					9.1	9.1

**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.*

# HCA Fiscal Note

Bill Number: 5440 SB

HCA Request #: 23-102

## Part II: Narrative Explanation

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

This bill relates to providing timely competency evaluations and restoration services to persons suffering from behavioral health disorders within the framework of the forensic mental health care system consistent with the requirements agreed to in the Trueblood settlement agreement (settlement agreement).

Sec 4(9) amends RCW 10.77.074 Competency evaluation – Forensic navigator to require forensic navigator (FN) in counties that have outpatient competency restorations, forensic projects for assistance in transition from homelessness (Forensic PATH), and forensic housing and recovery through peer services programs (Forensic HARPS), meet with individual who is charged with misdemeanors and have had two or more competency evaluations in the preceding 24 months on separate charges/cause numbers. The FN will do the followings:

- (a) Meet with, interview, observe the individual, and complete a recommended diversion program plan;
- (b) If the individual is enrolled into the diversion program, provide monthly status updates to the court and report disengagement of the person from diversion services; and
- (c) Work with the individual for up to six months while engaging in the program.

Sec 9 amends RCW 10.77.086 Competency restoration – Procedure in felony charge

- (1) If the defendant is charged with a class A felony or a class B felony as their highest charge and determined to be incompetent,
  - (e) The court may not issue an order for outpatient competency restoration unless the Health Care Authority (HCA) certifies that there is an available appropriate outpatient competency restoration program (OCRCP) that has adequate space for the person at the time the order is issued, or the court places the defendant under the guidance and control of a professional person identified in the court order.
- (2) If the defendant is charged with a class C felony as their highest charges and determined to be incompetent, the court shall commit the defendant to the custody of the county for inpatient competency restoration, or may alternatively order the defendant to receive outpatient competency restoration for the department based on a recommendation from a FN and input from the parties.
  - (c) If the court orders outpatient competency restoration, the court shall modify conditions of release as needed to authorize the department to place the person in approved housing; which may include access to supported housing, affiliated with a contracted OCRCP.
  - (d) The director of OCRCP shall notify the HCA, DSHS, and the county when an individual is terminated. OCRCP shall coordinate with HCA, DSHS, the county, and any law enforcement personnel to ensure the time period between termination and admission into inpatient facility is as minimal as possible.
  - (e) The court may not issue an order for outpatient competency restoration unless Department of Social Health and Services (DSHS) certifies that there is available appropriate OCRCP that has adequate space for the person at the time the order is issued, or the court places the defendant under guidance and controls of a professional person identified in the court order.

Sec 10 amends RCW 10.77.088 Competency restoration – Procedure in nonfelony charge requiring that if the defendant charged with a nonfelony crime that is a serious offense and is found incompetent and a court finds there is a compelling state interest in pursuing competency restoration treatment, the

# HCA Fiscal Note

Bill Number: 5440 SB

HCA Request #: 23-102

court shall commit that person to the custody of the county for inpatient competency restoration in an appropriate county facility.

- (2)(c) The court shall enter an order for OCR consistent with the recommendation of the FN, unless the court makes a finding that an order for OCR is inappropriate or inadequate.
- (2)(e) The director of the OCR program shall notify HCA, DSHS, and the county when an individual is terminated from OCR program and request placement in an appropriate facility of the county for inpatient competency restoration.

Sec 11 New section is added to chapter 10.77 RCW to require if the defendant is charged with misdemeanor within counties that have outpatient competency restorations, FN, Forensic PATH, and Forensic HARPS, and have had two or more competency evaluations in the preceding 24 months on separate charges/cause numbers and who have not been referred for a competency evaluation, then:

- (1) A FN will meet, interview, observe the individual and determine willingness to engage with the FN and relevant other staff;
- (2) The FN will provide a diversion program plan that includes a recommendation on diversion options to defense counsel and the prosecuting attorney;
- (3) If the parties agree on a recommended option for diversion, the prosecutor will determine if charges will be dismissed with or without prejudice;
- (4) If the parties do not agree, the defendant may file a motion requesting enrollment in a diversion option. The court will hold a hearing on this motion within 10 days;
  - (a) At the hearing on the motion for diversion options, the court will consider based upon a preponderance of the evidence whether the defendant is amendable to diversion, is likely to comply with any treatment recommendations, and whether they can be safely treated in the community;
  - (b) If the court determines that diversion is an appropriate option, the defendant will be enrolled in a diversion program as recommended by the court and the charge(s) will be dismissed without prejudice;
- (5) Individuals whose charges are dismissed and enrolled in a diversion program will have a forensic navigator assigned to them for up to six months while engaging in the program;
- (6) For an individual enrolled in a diversion program whose charges are dropped without prejudice, the assigned FN will provide monthly status updates to the court and the parties regarding the individual's status in the diversion program.

Sec 13 New section to state sections 3, 5, 6, 7, and 10 of this act takes effect July 1, 2024.

Sec 14 New section to state section 9 of this act takes effect July 1, 2025.

## **II. B - Cash Receipts Impact**

General Funds State only.

## **II. C – Expenditures**

Fiscal impact. HCA requests \$13,356,000 GF-S in the 2023-25 biennium to implement the provisions of the bill discussed below.

### **Providers Expenditures:**

#### **Sections 4(9) and 11**

HCA is responsible for the OCR program, Forensic PATH and Forensic HARPS in the phased implementation of the settlement agreement. Currently, individuals with two or more competency evaluations in the preceding 24 months on separate charges/cause numbers on the High Utilizer

# HCA Fiscal Note

Bill Number: 5440 SB

HCA Request #: 23-102

Referral list (Referral list) is provided to Forensic PATH teams to connect these individuals with community-based programs, including behavioral health, substance use disorder treatment, medical, housing, and other relevant services. Phase 1 Regions enrollment rates for these individuals are 23 percent in Forensic PATH and 16 percent in Forensic HARPS in fiscal year 2022. The proposed language for FN will connect individuals on the Referral list to a suite of services available through Forensic PATH and Forensic HARPS programs more quickly. HCA assumes 50 percent to 75 percent of individuals could be referred to the diversion program. In addition to the current Forensic HARPS services, a new housing component similar to OCR program in phase 2 King region, 24-hour residential housing services, will be available to the participants who are homeless or unstably house, to transitions participants to Forensic HARPS housing vouchers. HCA requests \$6,882,000 GF-S in the 2023-25 biennium to implement this section of the bill in the settlement agreement phased regions.

Section 11 does not contain the same language as stated under section 4(d). Section 4(d) states when the individual is enrolled in the diversion program, the FN will provide services to the individual including:

- (i) Assisting the individual with attending appointments related to medical and/or mental health treatment;
- (ii) Coordinating access to housing for individual;
- (iii) Meeting with the individual on a regular basis;
- (v) Coordinating the individual's access to community case management services and mental health services;
- (vi) Assisting the individual with obtaining prescribed medication and encouraging adherence with prescribed medication; and
- (vii) Planning for a coordinated transition of the individual to a case manager in the community behavioral health system.

HCA assumes the FN will not provide these services to the individual enrolled in the diversion program and therefore, Forensic PATH and Forensic HARPS providers would need additional staff to provide these services. HCA requests \$4,979,000 GF-S in the 2023-25 biennium.

## **Sections 9(2)(c) class C felony, 10(2)(c) nonfelony orders to OCR program**

Sections 9(2)(c) and 10(2)(c) of the bill will result in an increased number of orders to OCR program and will create fiscal impact to HCA current operations. Fiscal year 2022 orders to OCR program are 8 percent for all felony and 27 percent for nonfelony in the phase 1 regions. HCA estimates 50 percent of class C felony and 100 percent of the nonfelony orders will be ordered into OCR program, totals 409 orders annually for all three phased regions of the settlement agreement. HCA estimates there will be 199 orders to OCR program annually in the Phase 2 region. Phase 2 region current funding is \$1.6 million annually and could serve up to 105 orders based on current team size. Additional funding is needed for an equivalent team size to serve the additional 105 orders. Settlement agreement states residential support shall be provided for unstably housed Class Members, therefore requires client support/flex funds be available for clients served in OCR program. Food, clothing, lodging, rent, daily living needs, transportation and medically necessary services are needed. Flex funds per client can vary by need. Phase 1 regions costs for lodging, rent, and cost of living is \$3,330 per individual in fiscal year 2022. Annual client flex funds are available up to 189 orders. Funding is needed for additional 220 orders. HCA requests \$1,315,000 GF-S in fiscal year 2025 and \$4,272,000 GF-S in 2025-27 biennium. Fiscal year 2025 expenditures represent section 10 effective date July 1, 2024. 2025-27 biennium expenditures represent section 9 effective date July 1, 2025 and section 10.

If Legislator appropriates funding at the same level as the 2023-25 biennium Governor's budget for phase 1 regions additional resources and phase 3 regions, HCA estimates OCR program providers

# HCA Fiscal Note

Bill Number: 5440 SB

HCA Request #: 23-102

staffing level in phase 1 and 3 regions will be able to handle the increased in orders as a result of sections 9(2)(c) and 10(2)(c) of the bill. If Legislator does not fund at the same level, then there will be additional fiscal impact.

## **Sections 9(2)(d) adds termination notification and coordination with law enforcement and county and 10(2)(e) adds termination notification and coordination with county**

HCA and/or director of OCR program in the settlement agreement phased regions will need to develop relationships with county inpatient competency restoration programs in order to facilitate these terminations and removals if applicable. OCR program providers, DSHS FN and law enforcement may need to work together to facilitate the placement of individuals previously participated in OCR program, who are being removed from OCR program and may be ordered to participate in a county inpatient competency restoration program. OCR program rate of removal is 30% in phase 1 region. Transition work takes appropriately 12 days for each removal and HCA estimates the Subject Matter Expert staffs will perform this work. HCA requests \$180,000 GF-S in fiscal year 2025 and \$705,000 GF-S in 2025-27 biennium. Fiscal year 2025 expenditures represent section 10 effective date July 1, 2024. 2025-27 biennium expenditures represent section 9 effective date July 1, 2025 and section 10.

## **HCA Expenditures:**

### **Section 9(1)(e) class A felony and class B felony adequate space in OCR program certification change from DSHS to HCA**

Currently, DSHS FN have an integral part of engaging with the court to determine suitability for OCR program, certify there is adequate space in OCR program, and work closely with OCR program providers on release planning from jails to OCR programs. HCA OCR program provider staff meet with individuals who are court ordered to the OCR program at the time of enrollment in the community. Section 9(1)(e) of the bill changes the responsibility from DSHS to HCA to directly certify that there is adequate space in OCR program when the order is issued, and would impact HCA current operations. The proposed language will require HCA to communicate through writing, virtually, or in-person, that there is or is not adequate space in OCR programs. Fiscal year 2022 forensic evaluations are 631 in the phase 1 regions and 265 in the phase 2 regions (six months). HCA estimates 1,260 annual forensic evaluations for class A and B felony, and 69 courts in phase 1, 2 and 3 regions. HCA estimates eight hours to certify each evaluation, and assumes that capacity certification would occur in-person. HCA will require additional resources to coordinate with the OCR providers, DSHS FN before court date, and coordinate with the court when the order is issued. HCA requests \$1,458,000 GF-S for 6.0 full time equivalents (FTEs) Medical Program Specialist 3 (MPS 3) in the 2025-27 biennium and on-going.

In order to determine adequate space in OCR programs in the phased regions of the settlement agreement, HCA will need to collect the data from the OCR program providers and create reports to each of the MPS 3 daily. HCA requests \$286,000 GF-S for 1.0 FTE IT Data Management - Journey in the 2025-27 biennium and on-going to:

- Create and maintain data collection tool;
- Create and maintain data ingestion method;
- Create and maintain data validation method;
- Create and maintain data transmission and storage method;
- Create and maintain data export method for analysts to create operational reports.

## **HCA Administrative Costs**

Administrative costs are calculated at \$39,000 per 1.0 FTE. This cost is included in Object T based on HCA's federally approved cost allocation plan and are captured and/or included as Fiscal Analyst 3 classification. HCA requests \$546,000 GF-S for 2.1 FTEs in 2025-27 biennium and on-going.

# HCA Fiscal Note

Bill Number: 5440 SB

HCA Request #: 23-102

**By Fund:**

**II. C - Operating Budget Expenditures**

Account	Account Title	Type	FY-2024	FY-2025	2023-25	2025-27	2027-29
001-1	General Fund	State	5,971,000	7,385,000	13,356,000	19,047,000	19,042,000
<b>Totals</b>			<b>\$ 5,971,000</b>	<b>\$ 7,385,000</b>	<b>\$ 13,356,000</b>	<b>\$ 19,047,000</b>	<b>\$ 19,042,000</b>

**By Object:**

**II. C - Expenditures by Object Or Purpose**

		FY-2024	FY-2025	2023-25	2025-27	2027-29
<b>FTE</b>		0.0	0.0	0.0	9.1	9.1
A	Salaries and Wages	-	-	-	1,292,000	1,292,000
B	Employee Benefits	-	-	-	444,000	444,000
E	Goods and Other Services	-	-	-	8,000	8,000
N	Grants, Benefits & Client Services	5,971,000	7,385,000	13,356,000	16,757,000	16,752,000
T	Intra-Agency Reimbursements	-	-	-	546,000	546,000
<b>Totals</b>		<b>\$ 5,971,000</b>	<b>\$ 7,385,000</b>	<b>\$ 13,356,000</b>	<b>\$ 19,047,000</b>	<b>\$ 19,042,000</b>

**By FTE:**

**II. C - Operating FTE Detail:** List FTEs by classification and corresponding annual compensation.

Job title	Salary	FY-2024	FY-2025	2023-25	2025-27	2027-29
FISCAL ANALYST 3	65,000	0.0	0.0	0.0	2.1	2.1
IT DATA MANAGEMENT - JOURNEY	106,000	0.0	0.0	0.0	1.0	1.0
MEDICAL PROGRAM SPECIALIST 3	90,000	0.0	0.0	0.0	6.0	6.0
<b>Totals</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>9.1</b>	<b>9.1</b>

**Part IV: Capital Budget Impact**

None

**Part V: New Rule Making Required**

None

# Individual State Agency Fiscal Note

Revised

<b>Bill Number:</b> 5440 SB	<b>Title:</b> Competency evaluations	<b>Agency:</b> 300-Department of Social and Health Services
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## Part I: Estimates

**No Fiscal Impact**

### Estimated Cash Receipts to:

NONE

### Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	39.8	39.8	39.8	34.5	34.5
<b>Account</b>					
General Fund-State 001-1	6,297,000	6,241,000	12,538,000	10,622,000	10,622,000
<b>Total \$</b>	6,297,000	6,241,000	12,538,000	10,622,000	10,622,000

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

### 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: Sara Corbin	Phone: 360-902-8194	Date: 02/22/2023
Agency Approval: Dan Winkley	Phone: 360-902-8236	Date: 02/22/2023
OFM Review: Robyn Williams	Phone: (360) 704-0525	Date: 02/27/2023



## 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 will have an indeterminate fiscal impact to the Department of Social and Health Services (DSHS), Behavioral Health Administration (BHA) as this bill relates to procedures and standards to ensure Trueblood class members receive timely and appropriate evaluation and restoration competency services.

Section 1(2) Adds a new definition for "Alternative therapeutic unit" jail-based competency restoration units certified by the DSHS, which includes standards to ensure the unit is sufficiently safe and therapeutic for defendants.

Section 1(16) Adds a new definition for 'Genuine doubt as to competency' to mean that there is reasonable cause to believe based upon actual interactions with and/or observations of the defendant, that a defendant is incompetent.

Section 2(1)(b) Requires a court to determine by direct observation of a defendant that there is genuine doubt as to competency before ordering a competency evaluation.

Section 2(6) Requires DSHS to submit a report to the court and parties when completion of the evaluation is not achieved after two attempts to schedule with the defendant. If the evaluation is not achieved after the third attempt, the court may issue a warrant for the defendant and shall vacate order for competency evaluation.

Section 3(7) Adds requirements that any county required to provide a report to DSHS quarterly. DSHS is required to report to the executive and legislature on behalf of the state and the counties when failure to meet one or more of the performance targets or maximum time limits.

Section 3(8) Adds requirements that any county providing competency restoration services to report to DSHS on the timeliness of services provided.

Section 4(3)(e) Adds requirements that DSHS notifies and coordinates with Native American and Alaska Natives tribes, and Indian Health care providers regarding defendant's competency/forensic navigator services related involvement and to ensure that services are coordinated appropriately as soon as possible.

Section 4(9) Adds requirements to the forensic navigator role to engage and assess clients for diversion who have misdemeanor charges, and who have had two or more competency evaluations in the preceding 24 months. A forensic navigator is required to meet with, interview, and observe the individual and complete a recommended diversion plan. If enrolled into the program, the navigator will provide monthly status updates to the court and report disengagement of the person from diversion. Navigators will work with the individual for up to six months in this program.

Section 5 Amended to add county as an entity receiving material after 24 hours of signing of court order.

Section 7(5) Adds requirements that Behavioral Health Administration will refer those who have developmental or intellectual disabilities to DDA if found not competent.

Section 7(6)(a) Adds If a defendant is committed to a county for restoration, the department will need to receive at least 14 days prior to end of legal authority notification for an evaluation. An early evaluation may also be requested.

Section 7(6)(b) Adds a notice to DSHS must be electronic and include location available for evaluation, copy of current competency restoration order, any treatment records for restoration, and a copy of criminal discovery. DSHS must conduct any evaluation three days prior to the scheduled end of the commitment period.

Section 9(6) Adds if a defendant is charged with a class A felony or a class B felony as their highest charge, commit to the custody of the secretary or outpatient. This could include placement in an alternative therapeutic unit.

Section 9(1)(e) Amends to shift responsibility from DSHS to the Health Care Authority (HCA) in informing the court that they may not issue an order for Outpatient Competency Restoration (OCR) unless there is an available appropriate outpatient competency restoration program that has adequate space.

Section 9(2) Adds If defendant is charged with a class C felony as highest charge and is deemed incompetent, court shall commit to the county for up to 90 days of treatment. Outpatient restoration is available as well. In cases where the highest charge is assault in the third degree where bodily harm has occurred or any felony class C with a domestic violence enhancement, the prosecutor may petition the court for inpatient restoration conducted by DSHS. The court will consider health and safety of the defendant, the risk to public safety, and current capacity in state facilities in determining whether to order defendant into custody of department. DSHS is required to provide timely data on facility capacity at request of court.

Section 10(2) Amended to state misdemeanors would be sent to the county for inpatient competency restoration or receive outpatient competency restoration services from DSHS.

Section 10(2)(c) Adds the court would enter an order for outpatient restoration unless the court makes a finding that an order for outpatient restoration is inappropriate or inadequate. The court will consider opinions of the parties, risk to public safety, appropriateness of placement, health and safety of defendant, and any other relevant factors.

New Section 11. Describes the misdemeanor diversion process and forensic navigator role.

New Section 14. Allows DSHS to place a defendant in a jail-based competency restoration program certified by DSHS, effective July 1, 2025.

## **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.*

There are no cash receipts.

## **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.*

5440 SB will have an indeterminate fiscal impact to the Department of Social and Health Services (DSHS), Behavioral Health Administration (BHA). DSHS BHA cannot determine how many Alternative Therapeutic Units will need to be certified.

### **Indeterminate Fiscal Impacts**

The addition of 'Alternative therapeutic units' (ATU) would provide an additional option to restoration in the case that the court orders a defendant to inpatient competency restoration. Without having a determinate number of jails that will need to be certified the potential fiscal impact and the impact on the waitlist is unknown at this time. If a jail were to open an ATU a certification team would be needed to certify and maintain fidelity of the competency program through auditing. The below cost illustration assumes that 4-5 jails would establish a jail-based competency program and the following staff would be needed July 1, 2023, to develop the framework of certification:

- 1.0 - Certification Program Manager with a Ph.D. in Psychology
- 1.0 - Administrative Assistant 5
- 1.0 - Psychologist 4

- 2.0 - Psych Associates
- 1.0 - Registered Nurse 2
- 1.0 - Management Analyst 5

FY2024 – 7.0 FTE’s and \$1,203,000

FY2025 – 7.0 FTE’s and \$1,128,000

2023-25 Total Impact 7.0 FTE’s & \$2,331,000

FY2026 – 7.0 FTE’s and \$1,128,000

FY2027 – 7.0 FTE’s and \$1,128,000

2025-27 Total Impact 7.0 FTE’s & \$2,256,000

If more than 4-5 jails created jail-based competency programs additional staffing would be needed to support the certification process.

Section 2

(6) is a new subsection that adds language that if after two attempts at scheduling with the defendant the department will report to the court and parties to make a third attempt scheduling an evaluation for those released on personal recognize. After the third attempt if the evaluation is not completed, the court may issue a warrant for the defendant and shall vacate the order for competency restoration.

It is unknown how many individuals would have their order for competency restoration vacated and the potential impact. It is unclear if after the order is vacated if these individuals would then be remanded into jail custody and ordered for an in-jail based evaluation. No costs are illustrated as the bill is silent on what occurs after the order is vacated. If an in-jail based evaluation order is needed additional evaluators may be needed.

Section 3

If counties/jails were to open ATU’s additional resources would be needed for Information Technology (IT) and Research Data Analytics (RDA) to support the reporting and data requirements laid out below.

(7) requires the department to receive information from the counties each quarter to add to the current reporting requirements. If jails participated in this program, it would require additional changes to FDS to build a new workflow / interface from the counties to FDS. This would include data collection and reporting to Office of Financial Management and the legislature. The workflow or interface requires ‘meta data’ specific to each referral. The following staff would be needed beginning July 1, 2023, through June 30, 2025:

- 0.17 - IT Project Management – Senior
- 0.17 - IT Business Analyst – Senior
- 0.5 - IT App Development – Senior

In addition, staffing for research and data analytics would be needed to add the counties to the current reporting requirements. Current Trueblood reporting requires the integration of data from roughly 16 sources/systems for which we have developed a robust data error reporting. Experience suggests that the data from 39 counties/59 jails may contain a range of quality problems that will have to be addressed on an ongoing basis. The current error reporting infrastructure will have to be significantly expanded, as well as the development/provisioning of reports to counties/jails. The following staff would be needed beginning July 1, 2023:

- 1.5 - IT Data Management in FY2024 reduced to 1.0 FTE on-going
- 1.5 – Research Associate in FY2024 reduce to 1.0 FTE on-going
- 2.0 - Management Analyst 2

FY2024 – 5.8 FTE’s and \$879,000

FY2025 – 4.8 FTE’s and \$684,000

2023-25 Total Impact 5.3 FTE's & \$1,563,000

FY2026 – 4.0 FTE's and \$548,000

FY2027 – 4.0 FTE's and \$548,000

2025-27 Total Impact 4.0 FTE's & \$1,096,000

#### Determinate Fiscal Impact

##### Section 2

Multiple updates and additional fields will be required in the Forensic Data System (FDS) due to the changes in this section. New workflows will need to be added to capture the court's motion, record evaluator's assignment / opinion, 'capacity to proceed', 'status checks' for the counties, and tracking of number of attempts to evaluate with an appropriate closure type in FDS. Furthermore, new reporting related to this data and workflows will be required. The following staff would be needed beginning July 1, 2023, through June 30, 2025:

- 0.6 - IT Project Management – Senior
- 0.6 - IT Business Analyst – Senior
- 1.7 - IT App Development – Senior

FY2024 – 2.9 FTE's and \$528,000

FY2025 – 2.9 FTE's and \$540,000

2023-25 Total Impact 2.9 FTE's & \$1,068,000

##### Section 4

(9) increases the eligibility of clients for navigator services to include those who have misdemeanor charges and have had two or more competency evaluations in the preceding 24 months. The navigator's role under this subsection will be to engage and assess clients for diversion prior to the 10.77 competency evaluation being signed. They are required to meet with, interview, and observe the individual and complete a recommended diversion plan. If enrolled into the program, the navigator will provide monthly status updates to the court and report disengagement of the person from diversion. Navigators will work with the individual for up to six months in this program.

The fiscal estimate is based on the number of individuals who meet the criteria in the current counties where navigator services are provided and includes those counties proposed in Phase 3 of the Trueblood Agreement.

#### Fiscal Impact (No phase in is assumed)

FY2024 – 34.5 FTE's and \$5,392,000 (one-time costs of \$207,000)

FY2025 – 34.5 FTE's and \$5,311,000

2023-25 Total Impact 34.5 FTE's & \$10,703,000

FY2026 – 34.5 FTE's and \$5,311,000

FY2027 – 34.5 FTE's and \$5,311,000

2025-27 Total Impact 34.5 FTE's & \$10,622,000

Changes will need to be made to the Navigator Case Management System (NCM) to include new workflow, data collection, and reporting specifically to misdemeanor charges and competency evaluations.

The following staff will be needed beginning July 1, 2023, through June 30, 2025:

- 0.17 - IT Project Management – Senior
- 0.17 - IT Business Analyst – Senior
- 0.5 - IT App Development – Senior

FY2024 – 0.8 FTE’s and \$133,000  
FY2025 – 0.8 FTE’s and \$137,000  
2023-25 Total Impact 0.8 FTE’s & \$270,000

#### Navigator Program Assumptions

1. The number of clients is based on the following criteria:
  - a. Individuals are considered eligible for Forensic Projects for Assistance in transition from Homelessness (F-PATH) if they had two or more evaluation orders signed in the past 24 months on different dates for different cause numbers.
  - b. Clients with a Misdemeanor Evaluation Order who are eligible for F-PATH with an In-Jail Status for FY2022 and are unduplicated by fiscal year within each county.
  - c. Includes only individuals with an "in-jail" client status at some point while they were waiting for competency services.
  - d. Phase 1 counties consist of Adams, Clark, Ferry, Klickitat, Lincoln, Pend Oreille, Pierce, Skamania, Spokane, and Stevens.
  - e. Phase 2 consists of King County
  - f. Phase 3 counties consist of Thurston, Mason, Clallam, Jefferson, and Kitsap.
2. Of the total number of clients eligible it is assumed that 56.5 percent will receive navigator services based on the number used previously to calculate impacts to the Navigator program. We will update the fiscal projection based on the number of clients served after the first full year of implementation.
3. Staffing assumptions are based on the following ratios to determine the fiscal impact:
  - a. Navigator caseload is 25:1
  - b. One Office Assistant for every nine Navigators
  - c. Two Forms and Records Analysts for every nine Navigators
  - d. One IT Customer Service – Entry for every nine Navigators
  - e. One Forensic Navigator Supervisor and Administrative Assistant 3 for every nine Navigators
4. Additional staffing requirements are needed for research and data analysis, reporting and data management, and Information Technology resources for updates to the Navigator Caseload Management system.

#### Section 7

(5) adds language that if an individual is found not competent due to an intellectual or developmental disability, they shall be referred by BHA to the Developmental Disabilities Administration (DDA) for review of eligibility and services. There were 70 clients with restoration orders in FY2022 who could have been referred to a Developmental Disabilities Professional for services.

Data collection and reporting specific to DDA enrollment and tracking 14-day notifications will need to be added to FDS. Scheduling functionality will need to be added to ensure evaluations are scheduled three days prior to the scheduled end of the commitment period.

The following staff will be needed beginning July 1, 2023, through June 30, 2025:

- 0.1 - IT Project Management – Senior
- 0.1 - IT Business Analyst – Senior
- 0.5 - IT App Development – Senior

FY2024 – 0.7 FTE’s and \$112,000  
FY2025 – 0.7 FTE’s and \$115,000  
2023-25 Total Impact 0.7 FTE’s & \$227,000

#### Section 9

(2) States that if a defendant is charged with a class A felony or a class B felony as their highest charge, commit to the

custody of the secretary or outpatient. This could include placement in an alternative therapeutic unit. Data collection and reporting specific to a client’s ‘highest charge’ will need to be added to FDS. New reports will be required to the court related to facility capacity. New workflow, data collection, and reporting specific to civil felony conversions.

The following staff will be needed beginning July 1, 2023, through June 30, 2025:

- 0.17 - IT Project Management – Senior
- 0.17 - IT Business Analyst – Senior
- 0.5 - IT App Development – Senior

FY2024 – 0.8 FTE’s and \$133,000

FY2025 – 0.8 FTE’s and \$137,000

2023-25 Total Impact 0.8 FTE’s & \$270,000

**Overall Staffing Assumptions**

1. Costs do not include the potential need for additional funding for leased office space.
2. Salary includes the proposed 4 percent cost of living increase in FY2024 and 3 percent in FY2025.

Developmental Disabilities Administration (DDA) acknowledges that there may be some additional requests for service but assesses that there would not be a notable workload impact.

**Part III: Expenditure Detail**

**III. A - Operating Budget Expenditures**

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
001-1	General Fund	State	6,297,000	6,241,000	12,538,000	10,622,000	10,622,000
<b>Total \$</b>			6,297,000	6,241,000	12,538,000	10,622,000	10,622,000

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

**III. B - Expenditures by Object Or Purpose**

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	39.8	39.8	39.8	34.5	34.5
A-Salaries and Wages	4,234,000	4,362,000	8,596,000	7,396,000	7,396,000
B-Employee Benefits	1,180,000	1,202,000	2,382,000	2,012,000	2,012,000
C-Professional Service Contracts					
E-Goods and Other Services	283,000	284,000	567,000	482,000	482,000
G-Travel	79,000	79,000	158,000	154,000	154,000
J-Capital Outlays	207,000		207,000		
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements	314,000	314,000	628,000	578,000	578,000
9-					
<b>Total \$</b>	6,297,000	6,241,000	12,538,000	10,622,000	10,622,000

In addition to the estimates above, there are additional indeterminate costs and/or savings. Please see discussion.

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

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Administrative Assistant 3	53,965	2.5	2.5	2.5	2.5	2.5
Forensic Navigator	122,823	20.0	20.0	20.0	20.0	20.0
Forensic Navigator Supervisor	122,826	2.5	2.5	2.5	2.5	2.5
Forms & Records Analyst 3	64,093	2.5	2.5	2.5	2.5	2.5
IT App Development - Senior	123,468	3.2	3.2	3.2		
IT Business Analyst - Senior	117,576	2.0	2.0	2.0	1.0	1.0
IT Customer Support - Entry	79,878	2.5	2.5	2.5	2.5	2.5
IT Project Management - Senior	123,468	1.0	1.0	1.0		
Management Analyst 5	97,596	1.0	1.0	1.0	1.0	1.0
Office Assistant 3	46,594	2.5	2.5	2.5	2.5	2.5
<b>Total FTEs</b>		39.8	39.8	39.8	34.5	34.5

**III. D - Expenditures By Program (optional)**

Program	FY 2024	FY 2025	2023-25	2025-27	2027-29
Behavioral Health Administration (030)	6,297,000	6,241,000	12,538,000	10,622,000	10,622,000
<b>Total \$</b>	6,297,000	6,241,000	12,538,000	10,622,000	10,622,000

**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