

Multiple Agency Fiscal Note Summary

Bill Number: 5440 E 2S SB	Title: Competency evaluations
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Estimated Cash Receipts

Agency Name	2023-25			2025-27			2027-29		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Washington State Health Care Authority	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Department of Licensing	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Department of Social and Health Services	0	0	7,089,000	0	0	15,836,000	0	0	15,879,000
Total \$	0	0	7,089,000	0	0	15,836,000	0	0	15,879,000

Agency Name	2023-25		2025-27		2027-29	
	GF- State	Total	GF- State	Total	GF- State	Total
Local Gov. 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.					

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	11.7	19,937,000	19,937,000	19,937,000	11.7	19,622,000	19,622,000	19,622,000	11.7	19,622,000	19,622,000	19,622,000
Washington State Health Care Authority	In addition to the estimate above, there are additional indeterminate costs and/or savings. Please see individual fiscal note.											
Department of Licensing	.0	0	0	47,000	.0	0	0	0	.0	0	0	0
Department of Licensing	In addition to the estimate above, there are additional indeterminate costs and/or savings. Please see individual fiscal note.											
Department of Social and Health Services	52.3	23,808,000	23,808,000	30,897,000	81.4	41,066,000	41,066,000	56,902,000	134.0	51,711,000	51,711,000	67,590,000
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.											
Total \$	64.0	43,745,000	43,745,000	50,881,000	93.1	60,688,000	60,688,000	76,524,000	145.7	71,333,000	71,333,000	87,212,000

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 Licensing	.0	0	0	.0	0	0	.0	0	0
Department of Social and Health Services	.0	31,000,000	31,000,000	.0	0	0	.0	0	0
Total \$	0.0	31,000,000	31,000,000	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

NONE

Agency Name	2023-25		2025-27		2027-29	
	Total		Total		Total	
Construction	28,000,000		0		0	
Predesign/Design	3,000,000		0		0	
Total \$	31,000,000		0		0	

Prepared by: Arnel Blancas, OFM	Phone: (360) 000-0000	Date Published: Revised 3/28/2023
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Judicial Impact Fiscal Note

Bill Number: 5440 E 2S 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: Monica Fontaine	Phone: 3607867341	Date: 03/09/2023
Agency Preparation: Angie Wirkkala	Phone: 360-704-5528	Date: 03/14/2023
Agency Approval: Chris Stanley	Phone: 360-357-2406	Date: 03/14/2023
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 03/16/2023

186,339.00

Request # 244-1

Form FN (Rev 1/00)

1

Bill # 5440 E 2S SB

Part II: Narrative Explanation

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

The engrossed second substitute would not make any changes affecting the fiscal impact to the Administrative Office of the Courts or 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

Minimal fiscal impact expected to the Administrative Office of the Courts. There would be minimal impact of less than \$5,000 for forms change and may be minimal impacts due to judicial education on the changes.

The courts could experience increased hearing time, but that time is estimated to be minimal and indeterminate.

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.

186,339.00

Form FN (Rev 1/00)

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Request # 244-1

Bill # 5440 E 2S SB

NONE

186,339.00

Form FN (Rev 1/00)

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Request # 244-1

Bill # 5440 E 2S SB

Individual State Agency Fiscal Note

Bill Number: 5440 E 2S 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: Monica Fontaine	Phone: 3607867341	Date: 03/09/2023
Agency Preparation: Sophia Byrd McSherry	Phone: 360-586-3164	Date: 03/12/2023
Agency Approval: Sophia Byrd McSherry	Phone: 360-586-3164	Date: 03/12/2023
OFM Review: Gaius Horton	Phone: (360) 819-3112	Date: 03/13/2023

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.

Engrossed Second Substitute Senate Bill 5440 relates to competency evaluation and restoration services for persons charged with crimes.

2SSB 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 those undergoing 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

Revised

Bill Number: 5440 E 2S SB	Title: Competency evaluations	Agency: 107-Washington State Health Care Authority
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

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

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	11.7	11.7	11.7	11.7	11.7
Account					
General Fund-State 001-1	10,126,000	9,811,000	19,937,000	19,622,000	19,622,000
Total \$	10,126,000	9,811,000	19,937,000	19,622,000	19,622,000

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: Monica Fontaine	Phone: 3607867341	Date: 03/09/2023
Agency Preparation: Hanh OBrien	Phone: 360-725-1447	Date: 03/24/2023
Agency Approval: Catrina Lucero	Phone: 360-725-7192	Date: 03/24/2023
OFM Review: Arnel Blancas	Phone: (360) 000-0000	Date: 03/28/2023

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	10,126,000	9,811,000	19,937,000	19,622,000	19,622,000
Total \$			10,126,000	9,811,000	19,937,000	19,622,000	19,622,000

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	11.7	11.7	11.7	11.7	11.7
A-Salaries and Wages	826,000	826,000	1,652,000	1,652,000	1,652,000
B-Employee Benefits	281,000	284,000	565,000	568,000	568,000
C-Professional Service Contracts					
E-Goods and Other Services	49,000	18,000	67,000	36,000	36,000
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services	8,619,000	8,332,000	16,951,000	16,664,000	16,664,000
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements	351,000	351,000	702,000	702,000	702,000
9-					
Total \$	10,126,000	9,811,000	19,937,000	19,622,000	19,622,000

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
FISCAL ANALYST 3	65,000	2.7	2.7	2.7	2.7	2.7
IT DATA MANAGEMENT - JOURNEY	106,000	1.0	1.0	1.0	1.0	1.0
MEDICAL PROGRAM SPECIALIST 3	90,000	8.0	8.0	8.0	8.0	8.0
Total FTEs		11.7	11.7	11.7	11.7	11.7

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 E2SSB

HCA Request #: 23-202-02

Part II: Narrative Explanation

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).

The engrossed second substitute bill makes the following changes from second substitute bill:

- Section 5(3)(c) - Removes "if the person is out of custody or is released from custody as part of a diversion" in assessing the individual for appropriateness for assisted outpatient treatment (AOT).
- Section 8:
 - (1)(b) - Adds if the defendant is subject to an order or proceedings have been initiated under chapter 71.05 RCW, there is a rebuttable presumption that the state's compelling interest has been satisfied;
 - (2)(a) - Removes if OCR program is available in the jurisdiction and is recommended as clinically appropriate by the forensic navigator (FN).
- New section 12(1) - Adds subject to availability of funds appropriated under this specific section and adds intellectual to the criteria as incompetent to stand trial.
- New section 13 - Adds HCA to require the programs it contracts with to increase compensation.
- New section 14 - Replaces "include" with "access".
- New section 18 - Adds sections 6 through 8 take effect immediately.

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

Section 5 adds language throughout regarding a forensic navigator's responsibility to refer people who they assess to be appropriate for assisted outpatient treatment (AOT). Sections 5(3)(c), 5(3)(e), and 5(3)(f)(vii) add language regarding the forensic navigator (FN) assessing people for appropriateness for AOT and providing updates to the court for people who have been diverted through AOT.

Section 7 amends RCW 10.77.086 Competency restoration – Procedure in felony charge

- (1) If the defendant is charged with a felony 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 (OCR) program that has adequate space for the person at the time the order is issued.

Section 8 amends RCW 10.77.088 Competency restoration – Procedure in nonfelony charge to require:

- (2)(a) If a court finds there is a compelling state interest in pursuing competency restoration treatment, the court shall order the defendant to receive OCR consistent with the recommendation of the FN, unless the court finds that an order for OCR is inappropriate or inadequate.
- (2)(e) The director of the OCR program shall notify HCA and Department Social Health and Services (DSHS) when an individual is terminated from OCR program and request placement in an appropriate facility of DSHS for inpatient competency restoration and shall cooperate with HCA, DSHS and law enforcement.

Section 9 New section is added to chapter 10.77 RCW to require:

- (1) In counties with a FN program, the FN shall meet, interview, and observe all defendants charged with a nonfelony who have had two or more competency evaluations in the preceding 24 months on separate charges/cause numbers, and determine the defendants' willingness to

HCA Fiscal Note

Bill Number: 5440 E2SSB

HCA Request #: 23-202-02

engage with services under this section and provide a diversion program plan to the parties that includes a recommendation for a diversion program to defense counsel and the prosecuting attorney. Services under a diversion program may include referral for AOT under chapter 71.05 RCW.

- (3) If the parties agree on the diversion program recommended by the FN, the prosecutor shall request dismissal of the criminal charges.
- (4) If the parties do not agree on the diversion program, the defense may move the court for an order dismissing the criminal charges without prejudice and referring the defendant to the services described in the diversion program. The court shall hold a hearing on this motion within 10 days. The court shall grant the defense motion if it finds by a preponderance of the evidence that the defendant is amenable to the services described in the diversion program and can safely receive services in the community.
- (5) Individuals who receive a dismissal of charges and referral to services described in a diversion program shall have a FN assigned to assist them for up to six months while engaging in the services described in the diversion program. The FN shall provide monthly status updates to the court and the parties regarding the individual's status in the diversion program.

New section 12 is added to chapter 10.77 RCW subject to the availability of funds appropriated for this specific purpose, DSHS shall establish a program with appropriate wraparound and housing support for individuals who have been involved in the criminal justice system and found incompetent to stand trial due to an intellectual or developmental disability or dementia.

New section 13 states subject to the availability of funds appropriated for this specific purpose, HCA shall require the programs it contracts with to increase compensation for staff in OCR programs to provide compensation at competitive levels to improve recruitment and allow for the full implementation of OCR programs.

New section 14 is added to chapter 10.77 RCW to require OCR program to include access to a prescriber.

New section 18 states sections 6 through 8 this act takes effect immediately.

II. B - Cash Receipts Impact

Indeterminate cash receipts impact based on Section 5 AOT indeterminate fiscal impact. HCA assumes the Medicaid utilization is 69% for AOT treatment costs. HCA assumes that the fiscal impact associated with the AOT treatment costs would be eligible for Federal Medical Assistance Percentage (FMAP). HCA estimates an average FMAP of 50 percent.

II. C – Expenditures

Fiscal impact, but indeterminate HCA requests \$19,937,000 GF-S in the 2023-25 biennium to implement the provisions of the bill discussed below.

Providers Expenditures:

Section 5 adds language throughout regarding a forensic navigator's responsibility to refer people who they assess to be appropriate for assisted outpatient treatment (AOT). Sections 5(3)(c), 5(3)(e), and 5(3)(f)(vii) add language regarding the FN assessing people for appropriateness for AOT as well as "coordinate the initiation of an AOT order if appropriate as part of a diversion program plan" and providing updates to the court for people who have been diverted through AOT. This would not have an effect on settlement agreement programs except when diversions include AOT, Forensic HARPS, and

HCA Fiscal Note

Bill Number: 5440 E2SSB

HCA Request #: 23-202-02

Forensic PATH programs. These effects are discussed in section 9 below and only relate to people with misdemeanor charges who are eligible for Forensic PATH services. Section 5 includes a wider effect on contracted AOT programs, which are administered through subcontracting agreements with behavioral health providers through Behavioral Health Administrative Services Organizations (BHASOs).

HCA assumes the proposed bill will increase the need for AOT for individuals with nonfelony charges with competency evaluations. HCA estimates FN will assess approximately 2,178 individuals with misdemeanor evaluation order for suitability for AOT annually. Currently, AOT operates under the civil courts while competency evaluations are ordered by the criminal courts. The data is not available for the percentage of individuals ordered to receive competency evaluations who would be diverted through AOT programs from criminal courts; therefore, the fiscal impact is indeterminate.

HCA projected a range of potential candidates for AOT from the highest number of individuals who could be referred and accepted into AOT program to a national average percent and lowest number of individuals based on King County case study. Based on experience of courts willingness to engage in forensic specialty service diversion in the Trueblood phased regions, HCA estimates courts could accept 1,509 (69.3 percent) referrals from FN for AOT at the highest range. If jurisdictions in Washington state are more willing to divert people through AOT than prosecutor-led diversion programs, the funding need is estimated at \$40,424,000 annually. AOT diversion and prosecutor-led diversion are similar counterparts in the civil and criminal court systems respectively. The national average provided by the American Civil Liberties Union (ACLU) of individuals eligible for prosecutor-led diversion who were actually diverted is 9 percent. If Washington state courts engage in AOT-level diversion close to the national average for prosecutor-led diversion, the estimated funding need is \$5,250,000 annually. Currently, the only prosecutorial diversion programs in Washington state is the Legal Intervention and Network of Care (LINC) program. LINC program provides behavioral health treatment in lieu of prosecution for individuals with mental health and substance use conditions who have been booked into jail for misdemeanors and low-level felonies. HCA holds a contract with King County to continue this program for fiscal year 2023. The data available shows that criminal courts have engaged in diversion with LINC at an average of 5.4 percent. Based on this model, the estimated funding need is \$3,157,000 annually.

Section 9 Diversion Program

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 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 2023-25 biennium to implement this section of the bill in the settlement agreement phased regions. This funding was appropriated in 2023-25 Biennium Governor's Budget.

HCA Fiscal Note

Bill Number: 5440 E2SSB

HCA Request #: 23-202-02

Section 9 does not contain the same language as stated under section 5(3)(e). Section 5(3)(e) states when the individual is enrolled in the OCR 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;
- (iv) Coordinating the individual's access to community case management services and mental health services;
- (v) Assisting the individual with obtaining prescribed medication and encouraging adherence with prescribed medication; and
- (vi) 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 2023-25 biennium. This request is an additional cost above the Governor's appropriation without the language specifying the FN duties discussed above.

Section 8(2)(a) and (e) nonfelony orders to OCR program

Sections 8(2)(a) of the bill will result in an increased number of orders to OCR program and will create fiscal impact to HCA current operations. HCA requests \$3,240,000 GF-S in 2023-25 biennium.

Fiscal year 2022 orders to OCR program are 27 percent for nonfelony in the phase 1 regions. HCA estimates 100 percent of the nonfelony will be ordered to OCR program, with an annual total of 305 for all orders to OCR program for all three phased regions of the settlement agreement. The current removal rate is 30 percent in the phase 1 regions. HCA estimates there will be an increase of 59 removals for all three phased regions of the settlement agreement. Transition work takes appropriately 12 days for each removal and HCA estimates the Subject Matter Expert (SME) staff will perform this work.

- Phase 2 region is estimated to have a total of 158 orders to OCR program and an increase of 37 removals. Current funding for OCR program in phase 2 region is \$1.6 million annually and could serve up to 105 orders based on current team size. Additional funding is needed in the phase 2 region.
- The 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 an additional 103 orders.

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 staffing level in phase 1 and 3 regions will be able to handle the increased in orders as a result of section 8(2)(a) of the bill. If Legislator does not fund at the same level, then there will be additional fiscal impact.

Section 12 Wrap Around Services

The proposed bill requires DSHS to establish a program with appropriate wrap around and housing support for individuals who have been involved in the criminal justice system and found incompetent to

HCA Fiscal Note

Bill Number: 5440 E2SSB

HCA Request #: 23-202-02

stand trial due to an intellectual or developmental disability or dementia. RCW Title 71A state and local program coordination and continuum of care due to the complexities of developmental disabilities require the services of many state departments. HCA and DSHS assume that some portion of these individuals (35) will require Medicaid equivalent health care services but are not eligible for Medicaid. Currently, HCA provides Medicaid equivalent health care coverage for non-citizen individuals being served in long-term care facilities. The cost for those individuals is approximately \$1,553 per month or \$18,638 annually. Based on DSHS assumptions of 35 individuals will need to access the wrap around service including HCA covered health care services, HCA used non-citizen program cost as a proxy for HCA state funded medical coverage. HCA requests \$1,304,000 GF-S in 2023-25 biennium.

Section 13 Increase Compensation

HCA has provided 10 percent increases in contract costs to OCR program providers effective July 1, 2022. The increase funding is to provide an increase in staff compensation for the next five years and program expenses. The 2023-25 biennium Governor's budget appropriated funding for this increase in contract costs. OCR program has never been fully staffed since the inception of the program, July 1, 2020. Given these efforts to ensure compensation is provided at competitive levels to improve recruitment, OCR program providers still remain not fully staffed. To fulfill the provision of this bill, HCA estimates it will provide an additional seven percent increases to the current OCR program providers contracts for Phase 1 and 2 regions, as well as future contracts in Phase 3 regions, in-line with the projected seven percent increases for the behavioral health providers. HCA requests \$546,000 GF-S in 2023-25 biennium.

Section 14 Prescriber Staff

OCR program is based on the Breaking Barriers Competency Restoration Program. Core team requirements include 0.25 FTE Prescriber, estimated total is 1.75 FTEs Prescriber for all three phased regions of the settlement agreement. The requirement for OCR program to include access to a prescriber does not create fiscal impact to HCA current operations.

Other Considerations

Savings from Federal Match on alternative facilities

The bill provides the ability of the state hospital to transfer individuals found not guilty by reason of insanity (NGRI) and civil conversion patients out of Washington State hospital (WSH), to facilities eligible for matching of federal dollars. Where HCA is participating in the cost associated to alternative facilities and services, HCA anticipates using Medicaid Match, as appropriate. HCA anticipates a resulting reduction in State funded expenditures. The amount of reduction is indeterminate.

Savings from Assisted Outpatient Treatment Program (AOT) diversion

HCA believes referrals made to the AOT program can lead to a diversion from inpatient beds as well as evaluation services as a result of the AOT program and therefore a savings to the state. The AOT programs are expected to offer diversions across the state, beginning July of calendar year (CY) 2023. The amount of savings is indeterminate at this time.

HCA Expenditures:

Section 7(1)(e) 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 7(1)(e) of the bill changes the responsibility from DSHS to HCA to directly certify that there is

HCA Fiscal Note

Bill Number: 5440 E2SSB

HCA Request #: 23-202-02

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 region (six months). HCA estimates 1,582 annual forensic evaluations for 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 \$1,940,000 GF-S for 8.0 full time equivalents (FTEs) Medical Program Specialist 3 (MPS 3) in 2023-25 biennium.

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 for each of the MPS 3 daily. IT FTE and infrastructure costs are needed. 1.0 FTE IT Data Management – Journey is needed to create and maintain data collection tool, data ingestion method, data validation method, data transmission and storage method, and data export method for analysts to create operational reports. Infrastructure costs include initial software license investment, annual software license, server and storage. HCA requests \$344,000 GF-S and 1.0 FTE IT Data Management – Journey in 2023-25 biennium.

New section 18 states sections 6 through 8 of this act take effect immediately. HCA estimates that it will take four months to hire and train staff, and to create the data infrastructure, reports and processes.

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 \$702,000 GF-S for 2.7 FTEs in 2023-25 biennium and on-going.

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	10,126,000	9,811,000	19,937,000	19,622,000	19,622,000
Totals			\$ 10,126,000	\$ 9,811,000	\$ 19,937,000	\$ 19,622,000	\$ 19,622,000

By Object:

II. C - Expenditures by Object Or Purpose

		FY-2024	FY-2025	2023-25	2025-27	2027-29
FTE		11.7	11.7	11.7	11.7	11.7
A	Salaries and Wages	826,000	826,000	1,652,000	1,652,000	1,652,000
B	Employee Benefits	281,000	284,000	565,000	568,000	568,000
E	Goods and Other Services	49,000	18,000	67,000	36,000	36,000
N	Grants, Benefits & Client Services	8,619,000	8,332,000	16,951,000	16,664,000	16,664,000
T	Intra-Agency Reimbursements	351,000	351,000	702,000	702,000	702,000
Totals		\$ 10,126,000	\$ 9,811,000	\$ 19,937,000	\$ 19,622,000	\$ 19,622,000

By FTE:

HCA Fiscal Note

Bill Number: 5440 E2SSB

HCA Request #: 23-202-02

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	2.7	2.7	2.7	2.7	2.7
IT DATA MANAGEMENT - JOURNEY	106,000	1.0	1.0	1.0	1.0	1.0
MEDICAL PROGRAM SPECIALIST 3	90,000	8.0	8.0	8.0	8.0	8.0
Totals		11.7	11.7	11.7	11.7	11.7

Part IV: Capital Budget Impact

None

Part V: New Rule Making Required

None

Individual State Agency Fiscal Note

Bill Number: 5440 E 2S SB	Title: Competency evaluations	Agency: 240-Department of Licensing
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

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

Estimated Operating Expenditures from:

		FY 2024	FY 2025	2023-25	2025-27	2027-29
Account						
Highway Safety Account-State 106 -1		47,000	0	47,000	0	0
Total \$		47,000	0	47,000	0	0

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: Monica Fontaine	Phone: 3607867341	Date: 03/09/2023
Agency Preparation: Don Arlow	Phone: (360) 902-3736	Date: 03/10/2023
Agency Approval: Gerrit Eades	Phone: (360)902-3863	Date: 03/10/2023
OFM Review: Kyle Siefering	Phone: (360) 995-3825	Date: 03/13/2023

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 fiscal note

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 fiscal note

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 fiscal note

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
106-1	Highway Safety Account	State	47,000	0	47,000	0	0
Total \$			47,000	0	47,000	0	0

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					
A-Salaries and Wages					
B-Employee Benefits					
C-Professional Service Contracts					
E-Goods and Other Services	47,000		47,000		
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	47,000	0	47,000	0	0

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

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

Agency 240 – Department of Licensing

Bill Number: E2SSB 5440 Bill Title: Competency evaluations

Part 1: Estimates

No Fiscal Impact

Estimated Cash Receipts:

INDETERMINATE; PLEASE SEE NARRATIVE

Estimated Expenditures:

PARTIALLY INDETERMINATE, PLEASE SEE NARRATIVE

	FY 24	FY 25	23-25 Total	25-27 Total	27-29 Total
FTE Staff Years	-	-	-	-	-

Operating Expenditures	Fund	FY 24	FY 25	23-25 Total	25-27 Total	27-29 Total
Highway Safety	106	47,000	-	47,000	-	-
Account Totals		47,000	-	47,000	-	-

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

Legislative Contact: Monica Fontaine	Phone: (360) 786-7341	Date: 3/9/2023
Agency Preparation: Don Arlow	Phone: (360) 902-3736	Date: 3/10/2023
Agency Approval: Gerrit Eades	Phone: (360) 902-3931	Date:

Request #	1
Bill #	5440 E2SSB

Part 2 – Explanation

This bill revolves around 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.

E2SSB 5440 compared to 2SSB 5440: Changes in E2SSB 5440 do not impact the department's fiscal note.

2.A – Brief Description Of What The Measure Does That Has Fiscal Impact

Section 3 amends RCW 10.77.060 to include a new subsection stating that if the defendant ordered to be evaluated under this subsection (1) is charged with a serious traffic offense under RCW 9.94A.030, or a felony version of a serious traffic offense, the prosecutor may make a motion to prohibit the defendant from driving during the pendency of the competency evaluation.

Section 6 amends RCW 10.77.084 to add that if the defendant is charged with a serious traffic offense under RCW 9.94A.030, or a felony version of a serious traffic offense, the court may order revocation of the defendant's driver's license for a period of one year.

Section 6 also adds a new subsection that states if the defendant's driver's license is revoked under subsection (1)(a) of this section, and the court subsequently finds that the defendant's competency has been restored, the court must vacate the revocation order for the driver's license made under this section. The court may vacate the revocation of the defendant's driver's license before the end of one year for good cause upon the petition of the defendant.

Section 8 amends RCW 10.77.088 to include that if the defendant is charged with a serious traffic offense under RCW 9.94A.030 the court must order revocation of the defendant's driver's license for a period of one year. The court shall vacate this revocation order if the defendant is restored to competency and may vacate the revocation order at any time before the end of one year for good cause upon the petition of the defendant.

Section 18 is an emergency clause applicable to sections 6 through 8.

2.B - Cash receipts Impact

The cash receipts impact of this bill is indeterminate. This bill adds a stipulation that an individual's driver license may be revoked due to a serious traffic offense under RCW 9.94A.030, or a felony version of a serious traffic offense, and may be prohibited from driving subject to competency evaluation. The potential impact for the Department of Licensing (DOL) would be around the number of driver license reinstatements, but it is not known how many there might be under this new circumstance in the courts at the \$75 fee.

The bill further stipulates that "If the defendant's driver's license is revoked under subsection (1)(a) of this section, and the court subsequently finds that the defendant's competency has been restored, the court shall vacate the revocation order for the driver's license made under this section. The court may vacate the revocation of the defendant's driver's license before the end of one year for good cause upon the petition of the defendant." If the court vacates the revocation, there would not be a need for driver

license reinstatement or \$75 fee associated with it. It is not known how many of the driver license revocations by the court might be vacated for this reason.

2.C – Expenditures

Operational expenditure impacts are indeterminate. DOL assumes that a Hearings Examiner 3 would be required to manage the workload increase associated with due process. Legal Assistant 2 support staff would move the competency evidence through case management and communicate with drivers on this new case type. Impacts to driver records management is also subject to the volume of events. Driver records are primarily managed by Customer Service Specialist 2 (CSS2) positions.

However, it is not possible, without additional information regarding the frequency of serious traffic offense charges raised in court, to know precisely how much additional workload the bill will generate. DOL will monitor activity volumes, assess capacity, and request additional resources in a future budget cycle as needed.

Information Services:

The agency will use appropriated funds to hire contract programmers to accomplish this work or to support current staff implementing this legislation within the required timeline. Appropriated funds may also be used to hire agency temporary staff to support permanent staff assigned to this legislative effort.

Any change requires a process to ensure changes are correctly applied to the system. This involves Project Managers that manage the team that completes the update, business analyst that documents and reviews the system changes, architect services that analyzes how the update could have an effect on other systems or DOL processes, developers who create the change, and testers and quality assurance teams that ensure the update is working correctly.

Cost Category	Description	Rate	2024	2025	2026	2027	2028	2029	Total Cost
TESTER	Test to verify individual components meet requirements; ensure that other business transactions have not been impacted.	\$ 22,620	11,300	-	-	-	-	-	11,300
BUSINESS ANALYST	Determine business requirements; translate requirements into what changes are needed to various systems including account codes, inventory codes, testing considerations, etc.	\$ 16,530	3,300	-	-	-	-	-	3,300
PROJECT MANAGER	Manage schedule and contracts	\$ 28,710	2,900	-	-	-	-	-	2,900
SECURITY AND ARCHITECT SERVICES	Create the conceptual model that defines the structure, behavior and framework of a computerized system including a breakdown of the system into components, the component interactions and interfaces (including with the environment, especially the user), and the technologies and resources to be used in the design.	\$ 16,530	1,700	-	-	-	-	-	1,700
CONTRACTED FAST DEVELOPER / TESTER	Updates to the DRIVES system will require additional vendor hours outside of the contracted maintenance to make system updates to implement this bill.	\$ 37,236	18,600	-	-	-	-	-	18,600
Trainer	Trains business partners and employees in new system processes and capabilities.	\$ 22,620	4,500	-	-	-	-	-	4,500
Project Contingency	Office of the Chief Information Officer designated rate of 10%	\$ 25,474	4,200	-	-	-	-	-	4,200
Totals			46,500	-	-	-	-	-	46,500

What DOL will implement:

1. Modify the DRIVES/DIAS system programming to order a driver's license suspension/immediate revocation based on competency concerns from the court.

2. Modify the DRIVES/DIAS system programming to reinstate the driver's license suspension/revocation order as well upon notification from the court, or at the end of the 1-year period.
3. Letter changes to the to notify the customer their license has been revoked.

Part 3 – Expenditure Detail

3.A – Operating Budget Expenditures

Operating Expenditures	Fund	FY 24	FY 25	23-25 Total	25-27 Total	27-29 Total
Highway Safety	106	47,000	-	47,000	-	-
Account Totals		47,000	-	47,000	-	-

3.B – Expenditures by Object or Purpose

Object of Expenditure	FY 24	FY 25	23-25 Total	25-27 Total	27-29 Total
Goods and Services	47,000	-	47,000	-	-
Total By Object Type		47,000	-	47,000	-

Part 4 – Capital Budget Impact

None.

Part 5 – New Rule Making Required

None.

Individual State Agency Fiscal Note

Bill Number: 5440 E 2S SB	Title: Competency evaluations	Agency: 300-Department of Social and Health Services
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

ACCOUNT	FY 2024	FY 2025	2023-25	2025-27	2027-29
General Fund-Federal 001-2	1,392,000	5,697,000	7,089,000	15,836,000	15,879,000
Total \$	1,392,000	5,697,000	7,089,000	15,836,000	15,879,000

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	51.0	53.6	52.3	81.4	134.0
Account					
General Fund-State 001-1	9,048,000	14,760,000	23,808,000	41,066,000	51,711,000
General Fund-Federal 001-2	1,392,000	5,697,000	7,089,000	15,836,000	15,879,000
Total \$	10,440,000	20,457,000	30,897,000	56,902,000	67,590,000

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

Estimated Capital Budget Impact:

	2023-25		2025-27		2027-29	
	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Pre-design/Design	3,000,000	0	0	0	0	0
Construction	0	28,000,000	0	0	0	0
Grants/Loans	0	0	0	0	0	0
Staff	0	0	0	0	0	0
Other	0	0	0	0	0	0
Total \$	3,000,000	28,000,000	0	0	0	0

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: Monica Fontaine	Phone: 3607867341	Date: 03/09/2023
Agency Preparation: Sara Corbin	Phone: 360-902-8194	Date: 03/21/2023
Agency Approval: Dan Winkley	Phone: 360-902-8236	Date: 03/21/2023
OFM Review: Arnel Blancas	Phone: (360) 000-0000	Date: 03/22/2023

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.

E2SSB 5440 will have an indeterminate fiscal impact to the Department of Social and Health Services (DSHS) as this bill relates to procedures and standards to ensure Trueblood class members receive timely and appropriate evaluation and restoration competency services.

Section 3(6) Adds language that if an individual is found not competent due to an intellectual or developmental disability, they shall be referred by Behavioral Health Administration (BHA) to the Developmental Disabilities Administration (DDA) for review of eligibility and services.

Section 5(3)(c) adds that Forensic Navigators will assess the individual for assisted outpatient treatment.

Section 5(3)(e) Requires the forensic navigators to provide regular updates to the court and parties of participation in diversion services and be responsive to inquiries about treatment status.

Section 5(3)(g) 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 6(1)(c) The court's order for inpatient restoration, shall specify whether the department has the authority to change the defendant's placement to a step-down facility or outpatient competency restoration program if the department determines that such placement is clinically appropriate given the defendant's progress in restoration services.

New Section 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.

New Section 12. Directs DSHS to develop a program for individuals who have been involved with the criminal justice system and who are diagnosed with a developmental disability or dementia disorder, subject to the availability of funds appropriated for this specific purpose.

New Section 15. States that jails shall allow access to DSHS BHA to provide services to individuals who are referred for competency restoration through clinical intervention specialists.

New Section 16. Directs DSHS to collect data so that information can be retrieved based on unique individuals, their complete Washington criminal history and referrals for forensic services.

New Section 17. Directs DSHS to coordinate with cities, counties, hospitals, and other public and private entities to identify locations that may be commissioned or renovated for use in treating clients committed to the department for competency evaluation, competency restoration, civil conversion, or treatment following acquittal by reason of insanity.

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.

Federal: A portion of the costs incurred to implement this legislation will be funded with federal Title XIX-Grants to States for Medical Assistance funds.

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.

Behavioral Health Administration (BHA)

Indeterminate Cost Impacts

Section 5

3(e) Requires the Forensic Navigators to provide regular updates to the court and parties of participation in diversion services and be responsive to inquiries about treatment status. Depending on the number of requests, this could increase Navigator workload. No costs are assumed at this time and if additional staff are needed, funding will be requested through the budget development process.

Section 12

This section creates a new program for individuals who have been diagnosed with a developmental disability or dementia order who has been involved with the criminal justice system. This will require support staff to track referrals and act as a liaison with the Developmental Disabilities Administration (DDA). It is assumed additional funding is not required if full funding is provided in the 2023-25 biennial enacted budget for rec sum item EV1 – Competency Evaluations. If funding is not provided, additional support staff will be needed to do this work.

Section 15

States that jails shall allow access to DSHS BHA to provide services to individuals who are referred for competency restoration through clinical intervention specialists. A clinical intervention team would provide enhanced oversight, monitoring and support individuals within jails who have been referred for services related to competency.

It is indeterminate how many jails/counties would need intervention specialists. For cost illustration each location/region (depending on jail size) that came online would require additional BHA staffing:

- 1.0 – Psychiatrist 4
- 1.0 – Psychologist 4
- 1.0 – Psychiatric Social Worker
- 1.0 – Administrative Assistant

The cost per fiscal year would be \$849,000 with one-time start up needs of \$24,000.

Section 17

Additional funding will be needed if the intent of this legislation is that DSHS BHA coordinate with internal and external stakeholders to identify locations to treat clients who have been committed for competency evaluations, civil conversion, or treatment following acquittal by reason of insanity. Four staff would be needed to identify potential locations, evaluate sites, and work with internal and external entities. The following staff would be needed:

- 1.0 – Siting Manager
- 1.0 – Communication Consultant
- 1.0 – Capital Programs Manager
- 1.0 – Administrative Assistant

The cost per fiscal year would be \$630,000 with one-time start up needs of \$24,000.

Determinate Fiscal Impact

Section 3

(6) adds language that if an individual is found not competent due to an intellectual or developmental disability, they shall be referred by BHA to DDA for review of eligibility and services. Data collection and reporting specific to DDA enrollment and tracking will need to be added to the Forensic Data System (FDS).

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

- 0.25 - IT Project Management – Senior
- 0.25 - IT Business Analyst – Senior
- 1.0 - IT App Development – Senior

FY2024 – 1.5 FTE’s and \$240,000

FY2025 – 1.5 FTE’s and \$246,000

2023-25 Total Impact 1.5 FTE’s & \$486,000

Section 5

3(g) 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. Data collection and reporting specific to Native American and Alaska Natives tracking will need to be added to FDS and Navigator Case Management System (NCM).

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

Section 6

Creates new workflow, data collection and reporting step down processes that will need to be added to FDS.

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

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

FY2024 – 1.0 FTE’s and \$159,000

FY2025 – 1.0 FTE’s and \$164,000

2023-25 Total Impact 1.0 FTE’s & \$322,000

Section 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 forensic navigator services are provided and includes those counties proposed in Phase 3 of the Trueblood Settlement 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

System changes will need to be made to 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 NCM.

Section 12

System changes will need to be made to NCM to include new workflow, data collection and reporting step down options for

the new program.

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

- 0.25 - IT Project Management – Senior
- 0.25 - IT Business Analyst – Senior
- 1.0 - IT App Development – Senior

FY2024 – 1.5 FTE’s and \$232,000

FY2025 – 1.5 FTE’s and \$237,000

2023-25 Total Impact 1.5 FTE’s & \$469,000

Section 16

This section will require additional staffing for both Information Technology (IT) and Research and Data Analytics (RDA) to configure data systems that can retrieve unique individuals’ Washington criminal history and forensic referrals.

Currently, RDA obtains information on criminal history from the Washington State Institute for Public Policy (WSIPP), on a quarterly basis. WSIPP compiles the data from multiple sources to create the file that is used. If DSHS can use that mechanism for individually identified level to be accessible for case management, it would require additional staffing to do confirmed linkage of data to individuals in FDS, establish all the necessary data structures and file transfers (one-time cost in first year), and on-going resources to maintain all links. RDA could do analyses and reporting, at the individual level, with the understanding that the data is provided to us every quarter, and that it takes about 6 months for the data to be fully ‘mature’.

The following staffing is needed beginning July 1, 2023:

- 2.5 IT Data Management – Senior in FY2024
- 1.5 IT Data Management – Senior in FY2025 and subsequent FYs

FY2024 – 2.5 FTE’s and \$434,000

FY2025 – 1.5 FTE’s and \$258,000

2023-25 Total Impact 2.0 FTE’s & \$692,000

IT would have to analyze, develop, and create new data structures / reporting to comply with this new legislation.

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

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

FY2024 – 2.0 FTE’s and \$319,000

FY2025 – 2.0 FTE’s and \$327,000

2023-25 Total Impact 2.0 FTE’s & \$646,000

Reporting Requirements and IT Systems

Current Trueblood reporting requires the integration of data from roughly 16 sources/systems for which DSHS has developed a robust data error reporting structure. Experience suggests that the data from counties/jails will contain a range of quality problems that will have to be addressed on an ongoing basis. Assuming even a small number of counties/jails have a clinical intervention team, the current error reporting infrastructure will have to be expanded, as well as the development/provisioning of reports to counties/jails; IT staff will also need to expand the analytic databases derived from this raw data which is needed for analysis and reporting.

The following RDA staffing is needed beginning July 1, 2023:

- 0.5 – IT Data Management – Senior
- 0.5 – Research Associate

FY2024 – 1.0 FTE’s and \$171,000

FY2025 – 1.0 FTE’s and \$169,000

2023-25 Total Impact 2.0 FTE’s & \$340,000

The following IT Systems would need to be maintained/updated on an on-going basis: FDS and NCM.

The following BHA staffing is needed beginning July 1, 2025:

- 2.0 – IT Business Analyst – Senior
- 1.0 – IT App Development – Senior

FY2026 – 3.0 FTE’s and \$513,000

FY2027 – 3.0 FTE’s and \$513,000

2025-27 Total Impact 3.0 FTE’s & \$1,026,000

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

Aging and Long-Term Services Administration (AL TSA) and Developmental Disabilities Administration (DDA)

Overview

Section 12 in E2SSB 5540 requires DSHS to develop a program for individuals who have been involved in the criminal justice system and who are diagnosed with a developmental disability or dementia disorder. The program must include both wraparound services and housing supports.

DSHS's Research & Data Analysis (RDA) identified 2,668 individuals who had a competency order signed in SFY 2022 and a "not competent" finding recorded in the Forensic Data System. Of that number, 433 individuals had a developmental disability diagnosis or service, a dementia diagnosis or service, or both. 74 individuals had a dementia diagnosis or service. 386 individuals had a developmental disability diagnosis or service.

DDA Services

DDA assumes that it serves that many of the individuals who have a developmental disability who also qualify for services under RCW Title 71A. DDA assumes that the population that would need to be served under this new program with services not already available would be limited to individuals with felony charges and do not have a residential option.

DDA estimates that approximately 16 individuals will have felony charges and need a readily available option. This would be a first step before a long-term option is identified. DDA's program will involve the creation of two four-person low-density cottages at two state-operated facilities on the grounds of Rainier School and Yakima Valley School. Subject to local zoning requirements, DSHS Capital Programs estimates that the cottages would be remodeled and available to serve clients beginning in June 2026 based on funding being provided as of July 1, 2023. The estimated length of time between when the remodel process begins and when program occupancy may commence is three years. The cost per cottage is based on a recent estimate regarding the addition of a hardened cottage program at Rainier School. The costs include the cottage remodel, administration & programming costs, and sitework.

DDA estimates that clients will be placed in this facility setting at a rate of two every four months.

Approximately 24 individuals will need housing supports with wraparound services and personal care services.

DDA FTE requirements are phased-in in accordance with the anticipated first service date. Full details of the staff to client ratios and phase-in are included in the model on the DDA Facility Staffing Model tab.

Due to certain provisions of this bill, such as the wording that DSHS will "place" clients, suggesting that it is an involuntary program, the facility services provided by DDA will not qualify for federal match.

DDA requires two FTE related to the facility services, one each for program management and quality assurance.

DDA requires variable FTE for case management based on the ratio of 25:1.

DDA can begin phasing-in clients for the housing supports and related services in October 2023. Full details on the phase-in and costs can be found on the DDA In-Home Placements tab.

The 24 clients served by this portion of the program are assumed to be eligible for DDA services and therefore DDA assumes it will qualify for federal match for the cost of providing personal care services.

AL TSA Services

Based on data regarding the prevalence of dementia in the population, AL TSA assumes that it will serve approximately 110 clients per year in its program. This includes some clients who may have a developmental disability but who do not fall within the definition included in RCW Title 71A.

Of these 110 clients, AL TSA estimates that 75 percent would be placed in a residential setting (meaning that AL TSA will transition individuals voluntarily, because based upon current federal rules DSHS does not have the authority to place people in a long-term care setting) and 25 percent would receive in-home services. 90 percent of these clients are estimated to be Medicaid eligible and would likely be served through existing programs and pathways to services. 10 percent will either not be eligible for Medicaid due to not being financially eligible or will not meet current functional eligibility to qualify for Medicaid-funded Long-Term Services and Supports.

AL TSA will need to develop a new program to serve clients who do not qualify for Medicaid-funded services. This will include determining the services to be offered, creating, or modifying the CARE assessment system, developing regulations and processes to transition clients quickly into services, developing a rate structure, and providing staff training.

AL TSA can begin phasing-in clients beginning in October 2023. Full details on phase-in and costs can be found on the AL TSA Residential Services and AL TSA In-Home Placements tabs.

6.4 FTE on-going reflecting 1 WMS2 program manager, 1 SHPC4 benefits coordinator and trainer, and 4.4 FTE Social Service Specialist 3 for case management at ratio of 25:1.

It's anticipated there will be additional costs for HCA which are not include in the DSHS fiscal note. The non-Medicaid clients will need medical coverage to provide a safe plan of care for these individuals.

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	9,048,000	14,760,000	23,808,000	41,066,000	51,711,000
001-2	General Fund	Federal	1,392,000	5,697,000	7,089,000	15,836,000	15,879,000
Total \$			10,440,000	20,457,000	30,897,000	56,902,000	67,590,000

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	51.0	53.6	52.3	81.4	134.0
A-Salaries and Wages	5,386,000	5,689,000	11,075,000	14,510,000	20,997,000
B-Employee Benefits	1,554,000	1,647,000	3,201,000	4,690,000	7,423,000
C-Professional Service Contracts					
E-Goods and Other Services	352,000	368,000	720,000	1,162,000	1,965,000
G-Travel	103,000	117,000	220,000	255,000	287,000
J-Capital Outlays	266,000	26,000	292,000	220,000	390,000
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services	2,423,000	12,244,000	14,667,000	35,084,000	35,084,000
P-Debt Service				28,000	76,000
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements	356,000	366,000	722,000	953,000	1,368,000
9-					
Total \$	10,440,000	20,457,000	30,897,000	56,902,000	67,590,000

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	104,553	2.5	2.5	2.5	3.2	4.5
Attendant Counselor 1	49,399				17.4	52.0
Attendant Counselor Manager	63,214				1.9	4.0
Benefits Coordinator and Trainer (SHPC4)	92,000	1.0	1.0	1.0	1.0	1.0
Developmental Disab Case/Res Mgr	77,000	0.4	1.0	0.7	1.2	1.6
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	4.0	4.0	4.0	1.0	1.0
IT Business Analyst - Senior	117,576	2.6	2.6	2.6	3.0	3.0
IT Customer Support - Entry	79,878	2.5	2.5	2.5	2.5	2.5
IT Data Management - Senior	117,588	3.0	2.0	2.5	2.0	2.0
IT Project Management - Senior	123,468	1.6	1.6	1.6		
IT Systems Admin - Journey	105,055				1.0	2.0
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
PAT Director	97,488				1.0	2.0
Physician Asst/Adv Reg Nurse Pract.	106,889				1.0	2.0
Program Policy and Oversight (WMS)	94,000	1.0	1.0	1.0	1.0	1.0
Psychology Affiliate	63,214				1.0	2.0
Psychology Associate	82,901				1.9	4.0
Research Associate	91,068	0.5	0.5	0.5	0.5	0.5
Residential Services Coordinator	60,153				1.0	2.0
SHPC4 Training Coordinator	91,525				1.0	2.0
SHPC4 Transition Coordinator	91,525				1.0	2.0
Social Service Specialist 3	77,000	1.4	4.4	2.9	4.4	4.4
WMS Behavior Specialists	91,500				1.0	2.0
WMS Program Administrator	91,500				1.9	4.0
WMS Program Manager	92,000	1.0	1.0	1.0	1.0	1.0
WMS Quality Assurance	92,000	1.0	1.0	1.0	1.0	1.0
WMS2 Investigator	132,610				0.7	2.0
Total FTEs		51.0	53.6	52.3	81.4	134.0

III. D - Expenditures By Program (optional)

Program	FY 2024	FY 2025	2023-25	2025-27	2027-29
Behavioral Health Administration (BHA) (030)	7,212,000	6,987,000	14,199,000	12,502,000	12,502,000
Developmental Disabilities Administration (DDA) (040)	623,000	1,782,000	2,405,000	11,304,000	21,992,000
Aging and Long-Term Services Administration (AL TSA) (050)	2,605,000	11,688,000	14,293,000	33,096,000	33,096,000
Total \$	10,440,000	20,457,000	30,897,000	56,902,000	67,590,000

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
057-1	State Building Construction Account	State	3,000,000	28,000,000	31,000,000	0	0
Total \$			3,000,000	28,000,000	31,000,000	0	0

IV. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years					
A-Salaries and Wages					
B-Employee Benefits					
C-Professional Service Contracts	3,000,000	28,000,000	31,000,000		
E-Goods and Other Services					
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total \$	3,000,000	28,000,000	31,000,000	0	0

IV. C - Capital Budget Breakout

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

Construction Estimate	FY 2024	FY 2025	2023-25	2025-27	2027-29
Predesign/Design	3,000,000		3,000,000		
Construction		28,000,000	28,000,000		
Grants/Loans					
Staff					
Other					
Total \$	3,000,000	28,000,000	31,000,000		

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

NONE

DDA estimates that approximately 16 individuals will have felony charges and need a readily available option. This would be a first step before a long-term option is identified. DDA's program will involve the creation of two four-person low-density cottages at two state-operated facilities on the grounds of Rainier School and Yakima Valley School. Subject to local zoning requirements, DSHS Capital Programs estimates that the cottages would be remodeled and available to serve clients

beginning in June 2026 based on funding being provided as of July 1, 2023. The estimated length of time between when the remodel process begins and when program occupancy may commence is three years. The cost per cottage is based on a recent estimate regarding the addition of a hardened cottage program at Rainier School. The costs include the cottage remodel, administration & programming costs, and sitework.

Part V: New Rule Making Required

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

Some rule changes may be needed to manage the additional roles of navigators and the dementia program.

LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 5440 E 2S SB

Title: Competency evaluations

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

Legislation Impacts:

- Cities:** Indeterminate expenditure impact as a result of the prescription drug requirements of section 11; indeterminate impact on jail expenditures as a result of facilitating and supporting the work of clinical intervention specialists; indeterminate expenditure impact from increased liability exposure as a result of presence of clinical intervention specialists
- Counties:** Indeterminate expenditure impact as a result of changes in attorney time required from prosecutors and public defenders in cases involving diversion; indeterminate expenditure impact as a result of the prescription drug requirements of section 11; indeterminate impact on jail expenditures as a result of facilitating and supporting the work of clinical intervention specialists; indeterminate expenditure impact from increased liability exposure as a result of presence of clinical intervention specialists
- Special Districts:**
- Specific jurisdictions only:**
- Variance occurs due to:**

Part II: Estimates

- No fiscal impacts.
- Expenditures represent one-time costs:
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time:** Number of future cases that may require hearings and supervision related to diversion; amount of attorney time required for such hearings and supervision; number of cities and counties that may choose to apply for grants under section 17 and the associated application costs; medical contract details and mental health resources currently available in jails statewide; number of facilities where clinical intervention specialists would be operating and the level of additional support these specialists would require from jails

Estimated revenue impacts to:

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

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: 03/16/2023
Leg. Committee Contact: Monica Fontaine	Phone: 3607867341	Date: 03/09/2023
Agency Approval: Alice Zillah	Phone: 360-725-5035	Date: 03/16/2023
OFM Review: Arnel Blancas	Phone: (360) 000-0000	Date: 03/21/2023

Part IV: Analysis

A. SUMMARY OF BILL

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

This fiscal note analyzes the impact of E2SSB 5440, comparing it to 2SSB 5440.

CHANGES BETWEEN THIS VERSION AND PREVIOUS BILL VERSION:

The engrossed second substitute bill would remove the local option included in the previous bill version that would have allowed willing jails to contract with the Department of Social and Health Services (DSHS) to construct and operate clinical intervention units in jails, instead requiring that jails provide such specialists with access to incarcerated people who have been referred for treatment under chapter 10.77 RCW, for the purpose of supporting “jail health services in providing direct services, enhanced oversight and monitoring of the behavioral health status of participating individuals.”

SUMMARY OF CURRENT BILL:

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

Section 2 would amend RCW 10.77.010, adding the following definition for clinical intervention specialist: “a licensed professional with prescribing authority who is employed by or contracted with the department to provide direct services, enhanced oversight and monitoring of the behavioral health status of in-custody defendants who have been referred for evaluation or restoration services related to competency to stand trial and who coordinate treatment options with forensic navigators, the department, and jail health services.”

Section 9 would add a new section to chapter 10.77 RCW, specifying that under certain conditions, forensic navigators would be required to “meet, interview and observe” a person charged with a nonfelony as their most serious offense who has a qualifying history of previous competency evaluations, and provide a diversion program plan to prosecutors and public defenders.

If the parties agreed on a diversion plan, the defendant would have their charges dismissed. If the parties did not agree on a diversion plan, a defendant could file a motion requesting enrolment in such a plan, and courts would be required to hold a hearing to determine if that would be an appropriate option.

People who have had their charges dismissed under this section would have a forensic navigator assigned to assist them for up to six months “while engaging in the services described in the diversion program,” and the forensic navigator would be required to provide monthly updates to the court and both parties on a person's progress in their diversion program.

Section 11 would add a new section to chapter 10.77 RCW, requiring that jails or juvenile detention facilities continue prescribing a person's prescribed antipsychotic, antidepressant, antiepileptic or other drug prescribed to treat a serious mental illness if that person is medically stable on the drug. Substitution of a prescribed drug for a different drug would only be permitted under certain circumstances.

Section 15 would add a new section to chapter 10.77 RCW, requiring jails to allow clinical intervention specialists access to incarcerated people who have been referred for treatment under chapter 10.77 RCW for the purposes of supporting “jail health services in providing direct services, enhanced oversight and monitoring of the behavioral health status of participating individuals.”

Section 17 would add a new section to chapter 10.77 RCW, requiring DSHS to “coordinate with cities, counties, hospitals, and other public and private entities to identify locations that may be commissioned or renovated for use in treating clients committed to the department for competency evaluation, competency restoration, civil conversion, or treatment following acquittal by reason of insanity.” Subject to the provision of funding, DSHS could provide capital grants to entities to accomplish to above purposes.

Section 18 specifies that the proposed legislation would take immediate effect.

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.

CHANGES IN EXPENDITURE IMPACT BETWEEN THIS VERSION AND PREVIOUS BILL VERSION:

The engrossed second substitute bill would have an indeterminate impact on jail expenditures as a result of facilitating and supporting the work of clinical intervention specialists, detailed below. While the Washington State Association of Counties (WSAC) indicates that jurisdictions with clinical intervention specialists operating in their jails would likely still face increased liability exposure as a result, the Association indicates this exposure would be less severe than counties exercising the local option available under the previous bill version to construct and operate clinical intervention units would have faced.

EXPENDITURE IMPACT OF CURRENT BILL:

The proposed legislation would have an indeterminate impact on local government expenditures.

DIVERSION COSTS:

Section 9 of the proposed legislation would require forensic navigators to provide prosecutors and defenders with diversion program plans for certain defendants under certain circumstances. The Washington Association of Prosecuting Attorneys (WAPA) indicates that this requirement could create additional demands for prosecutor time.

If the parties in a given case did not agree to a diversion plan, a defendant could file a motion to request enrolment in a diversion plan, resulting in a hearing to decide if that is an appropriate option. These hearings would require attorney time. Additionally, WAPA indicates that people who enter diversion plans would be subject to supervision, and depending on the structure of the program, this supervision could require regular meetings that could require time from prosecutors, defenders, probation officers or other court staffers, or judges. If someone were to be enrolled in a diversion program and have their charges dismissed without prejudice, their assigned forensic navigator would be required to provide monthly updates on that person's status in the program to the court and parties involved. It is reasonable to assume that impacts on attorney time as a result of the requirements of section 9 would be similar for prosecutors and public defenders.

It is unknown how many people may require additional hearings or supervision in diversion programs as a result of the requirements of section 9, however, as well as how much attorney time those hearings and supervision cases may require. Additionally, WAPA indicates that because enrolment in a diversion program under section 9 would occur before receiving a competency evaluation, a defendant may not be ordered to Eastern or Western State Hospitals for competency evaluation or restoration, and as such orders require attorney time for hearings, the attorney time required for diversion may not result in a net increase in attorney time required for a given case. Given the above unknowns, the local government expenditure impact of the diversion requirements in section 9 is indeterminate.

PRESCRIPTION DRUG COSTS:

The requirements of section 11 that jails and juvenile detention facilities may not substitute, except under certain conditions, prescribed antipsychotic, antidepressant, antiepileptic or other drugs if a person using them is medically stable could create additional city and county expenditures. According to the Association of Washington Cities, these prescription drug-related costs would vary by both case and jurisdiction since some cities pay the full cost of treatment for people charged with misdemeanors who are receiving treatment while incarcerated in county jails while others pay a standard rate agreed upon with a county jail, which may or may not reflect the full costs of treatment.

According to the South Correctional Entity (SCORE), in their facility it is rare to substitute drugs that appear on the jail's formulary, a list of commonly prescribed drugs, in the place of non-formulary drugs that incarcerated people enter the jail with prescriptions for. In such cases, there is an established process that the facility's medical contractor can follow to continue a person's existing prescription. As a result, SCORE indicates that the expenditure impact of the provision of section 11 for their facility would likely be minimal, and estimates this would also likely be true of larger jails with similar procedures, and medical or mental health resources.

In the case of smaller jails, however, SCORE indicates that this provision could have more significant impacts, since these facilities often do not have the same level of medical or mental health resources available, and in many cases the continuation of certain kinds of prescription drugs would not be covered under a facility's medical contract, placing the costs for the continuation of these drugs wholly on local jurisdictions.

Given this variation in contract terms, and medical or mental health resources in jails statewide, as well as the unknown number of people who enter jails with prescriptions that would fall under the requirements of section 11, the magnitude of the local government expenditure impact of this provision is indeterminate.

GRANT APPLICATION COSTS:

Section 17 would direct DSHS to coordinate with cities, counties and other entities to identify locations that could be repurposed for department use for competency evaluation and restoration services, civil conversion, or treatment following acquittal by reason of insanity, and would allow the department, subject to funding availability, to give grants to accomplish the above purposes. It is unknown what the application process for these grants may be, or how many local government entities may choose to apply, however, so the associated local government expenditure impact is indeterminate.

The Local Government Fiscal Note Program estimates that costs can range from \$10,000 to \$20,000 in staff time for an application to a state grant program.

CLINICAL INTERVENTION SPECIALIST COSTS:

Section 15 would require jails to provide access to incarcerated people referred for treatment under chapter 10.77 RCW, for the purposes of supporting “jail health services in providing direct services, enhanced oversight and monitoring of the behavioral health status of participating individuals.” The Washington Association of Sheriffs and Police Chiefs indicates that jails would likely incur additional costs as a result of providing training to clinical intervention specialists on how to operate in a particular facility, as well as providing additional resources such as security escorts for specialists working in jails.

It is unknown what level of additional support clinical intervention specialists may require from jails, however, as well as how many such specialists may operate in jails and with what frequency. Accordingly, the expenditure impact on jails from the presence of clinical intervention specialists is indeterminate.

According to the Washington State Association of Counties, jurisdictions with clinical intervention specialists operating in their facilities may face increased liability exposure, however the frequency and cost of any potential future claims is unknown, so the expenditure impact of any increased local government liability 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.

CHANGES IN REVENUE IMPACT BETWEEN THIS VERSION AND PREVIOUS BILL VERSION:

The engrossed second substitute bill does not include the provision the second substitute included in section 15 that would have allowed willing jails to contract with the Department of Social and Health Services (DSHS) to construct and operate clinical intervention units, and would have required DSHS to provide construction and operational funding to such willing jails.

REVENUE IMPACT OF CURRENT BILL:

Section 17 would allow DSHS to provide grants to accomplish the purposes of subsection 17 (1), however it is unknown what these grant amounts may be or how many local government entities may choose to apply for and be selected as recipients of these grants, however, so any resulting local government revenue impact is indeterminate.

SOURCES:

Association of Washington Cities
South Correctional Entity

Washington Association of Prosecuting Attorneys
Washington Association of Sheriffs and Police Chiefs
Washington State Association of Counties