

Fiscal Note

BILL # SB 1315

TITLE: incompetent and dangerous defendants;
treatment

SPONSOR: Driggs

STATUS: As Amended by Senate JUD

PREPARED BY: Matt Gress

Description

SB 1315 establishes additional referral options for defendants who are found not competent to stand trial and who will not be restored to competency within 21 months. Additionally, the bill permits prosecuting agencies to request that a defendant charged with certain crimes be evaluated to determine whether that defendant is a sexually violent person (SVP). The bill also lengthens the stay at the Arizona State Hospital (ASH) of persons who committed a sexual offense and are found guilty except insane (GEI).

Estimated Impact

SB 1315 bill could significantly raise costs at ASH by increasing the number of commitments for defendants deemed dangerous or an SVP. If a court orders all defendants who are not restorable to competency and who are also dangerous to ASH, then the treatment cost would range from \$3.1 million to \$5.7 million. This estimate is based on a 2014 JLBC fiscal note on SB 1249 (*see attachment*). This estimate does not include the cost to build a new facility that would be required as a result of increasing the civil population at ASH. The higher number of SVP commitments may also require ASH to expand its SVP unit at a General Fund cost of \$1.6 million.

The Department of Health Services (DHS) cannot determine the cost of SB 1315. While the agency is able to forecast the number of persons who would be classified as dangerous, DHS does not know what type of treatment the court would order. Further, DHS is unable to forecast the number of SVPs who would not be restorable to competency to stand trial.

Analysis

Restoration to Competency Options

The Restoration to Competency (RTC) Program at ASH, operated by DHS, and a few county-administered units treat patients who have been charged with a crime but found unfit to stand trial. These patients receive therapy and medication in addition to information about their own defense for up to 21 months. Once a patient is deemed competent to stand trial, the county may proceed with prosecution. If court-ordered mental health examiners determine that a patient is not restorable within the 21-month period, then the court currently has 3 options:

1. Remand the defendant to DHS for civil commitment proceedings;
2. Appoint a guardian for the defendant; or
3. Release the defendant from custody and dismiss the charges.

SB 1315 would give the court two additional options. The first option establishes a process by which the court can determine whether a defendant is dangerous after the defendant is known to be not restorable. A defendant would be considered dangerous if charged with a serious offense or a violent or aggravated felony as defined in A.R.S. § 13-706 and likely to commit a similar crime or cause serious physical injury to another person.

Determinations that a defendant is dangerous may increase either the frequency or length of civil commitments. Under current law, a court may remand a defendant to ASH or another hospital for inpatient treatment for up to 1 year as part of a civil commitment proceeding. The state is responsible for the entire cost of treatment for defendants remanded to ASH. SB 1315 would permit the court to order treatment for dangerous defendants for up to 6 years. In a 2014 JLBC fiscal note

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on SB 1249, DHS estimated that defendants deemed dangerous and not restorable would grow by 13 to 24 persons annually. (*See the attached fiscal note for more information.*) If the court remands every defendant to ASH for an extended period of treatment allowed by this bill, then state costs could increase significantly.

The second option entails the court referring the defendant to a behavioral health advisory board (BHAB) established by a county. These optional boards would recommend a treatment plan for the defendant and supervise the delivery of services. Counties would be primarily responsible for the cost of coordinating and supervising care. DHS believes that most persons referred to these boards are either enrolled in Medicaid already but not utilizing behavioral health services or eligible for Medicaid but not enrolled. If DHS is correct, BHABs could encourage additional utilization of behavioral health services, which would increase those costs.

Sexually Violent Persons Options

SB 1315 also permits prosecuting agencies to request that a defendant charged with a sexually violent offense as defined in A.R.S. § 36-3701, but incompetent to stand trial, be evaluated as an SVP. Currently, only persons who have been convicted of a crime and have served their sentence (except GEIs) can be evaluated as an SVP. If prosecuting agencies employ this provision, and a court determines the defendant to be an SVP, then that defendant would be transferred to ASH for further confinement and treatment until the defendant regains competency to stand trial or is no longer an SVP. If an SVP is judged not restorable, this provision would now permit the person to be housed at ASH indefinitely. DHS reports that the SVP unit at the Arizona State Hospital is nearing capacity. This provision could require DHS to establish another SVP unit. DHS estimates that establishing a new unit for 30 persons would cost \$204,700 General Fund for one-time facility costs to prepare the building for occupation and \$1.4 million General Fund in ongoing operating expenses and personnel.

Guilty Except Insane Length of Stay

SB 1315 extends the length of stay for persons found GEI pursuant to A.R.S. § 13-3994. The bill adds sexual offenses to the list of offenses that would trigger a hearing date no sooner than 120 days after admission to ASH. Under current law, a person who is GEI and who has committed a sexual offense but did not cause or threaten death or serious physical injury is entitled to a hearing no later than 75 days after commitment to determine whether the person may be released or meets the standards for civil commitment. By extending the maximum time for a hearing, the bill may increase the GEI census at ASH, which would result in an additional cost to the state.

Local Government Impact

There would be a cost to counties if they chose to establish and implement BHABs. If a court remands a defendant to a BHAB, the cost would include implementation and monitoring of a court-approved treatment plan.

Additionally, SB 1315 adds legal responsibilities to courts and prosecuting agencies, including additional hearings, thereby increasing a county's legal costs.

Counties would also be required to pay for the optional evaluations provided in SB 1315. The dangerousness evaluation is estimated to add an hour to the existing competency evaluation. The actual increase in cost depends on whether the evaluation is performed by the county or contracted with a medical agency. Pima County, for example, uses both in-house and contracted evaluation services. The county reports that adding the dangerousness evaluation would have a minimal impact on in-house evaluation costs but would likely increase contracted costs by \$150, the hourly contracted rate. Other counties may experience similar costs.

Counties may also bear the cost of increased SVP evaluations. Pima County reports that an SVP evaluation costs approximately \$3,000. This rate could be lower depending on how much the SVP and the competency evaluations overlap. If defendants are found to be an SVP, then under budget-related session law, the counties would also pay for a portion of SVP care provided by ASH. The magnitude of these costs cannot be determined in advance.

BILL # SB 1249**TITLE:** dangerous and incompetent defendants;
commitment**SPONSOR:** Driggs**STATUS:** Senate Engrossed**PREPARED BY:** Matt Gress**Description**

SB 1249 establishes procedures for the state to request a defendant be considered “dangerous” once the defendant is found to be not restorable to competency. If a defendant is determined by a court to be dangerous, then the defendant would be involuntarily committed to the Arizona State Hospital (ASH).

Estimated Impact

The fiscal impact of SB 1249 will depend on the number of defendants determined as “dangerous” and not already committed to ASH. Currently, the “uncommitted” dangerous population is estimated to grow by 13 to 24 individuals annually.

Based on Department of Health Services (DHS) estimates, 13 to 24 new ASH residents each year would annually cost an additional \$3.1 million to \$5.7 million once the program is operational.

DHS states that there is currently limited space at ASH. If there are 13 to 24 new “dangerous” defendants, and only 5% being discharged each year, the ASH population would range between 61 and 115 residents by FY 2019. This level of expansion would require a new facility. A 150-bed unit is estimated to have a capital cost of \$50 million. This cost could either be paid upfront or amortized by debt financing.

Analysis

The Restoration to Competency (RTC) Program provides treatment for patients who have been charged with a crime but found to be unfit to stand trial. These patients receive therapy and medication in addition to information about their own defense for up to 21 months. Once a patient is deemed competent to stand trial, the county may proceed with prosecution. If court-ordered mental health examiners determine that a patient is not restorable within the 21-month period, then the court has 3 options:

1. Remand the defendant to ASH for civil commitment proceedings;
2. Appoint a guardian for the defendant; or
3. Release the defendant from custody and dismiss the charges.

SB 1249 would give the court a fourth option. The bill establishes a process by which the court can determine whether a defendant is dangerous after the defendant is known to be not restorable. A person would be considered dangerous if charged with a serious offense or a violent or aggravated felony as defined in A.R.S. § 13-706 and likely to commit a similar crime or cause serious physical injury to another person. If a court finds the defendant to be dangerous, then the defendant would be remanded to a secure facility licensed by DHS or the Joint Commission of Accreditation of Healthcare Organizations. The only facility in Arizona that meets either criteria is ASH. After commitment, the defendant’s treatment supervisor must submit a report within 180 days of commitment and every year thereafter stating the treatment received, the restoration to competency prognosis, and whether the defendant remains dangerous.

The statewide estimates of new “dangerous” defendants were extrapolated from Pima County’s experience. The Administrative Office of the Courts reports 2 defendants, or 2.1% of the entire RTC population from Pima County, would have been considered dangerous and not restorable in FY 2013. Generalized statewide, 13 defendants would fit these

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criteria in FY 2015. Over the past 5 years, Pima County had an average of 3.8 defendants, or 4.0% of the entire population, who would be considered dangerous and not restorable; generalized statewide, 24 RTC patients would be remanded to ASH in FY 2015. At those rates, ASH would house between 61 and 115 dangerous defendants by FY 2019. DHS estimates the cost of care and treatment for this population would be \$650 per day. In total, DHS would spend \$3.1 million to \$5.7 million for patient care in FY 2015. That cost increases by \$11.4 million to \$21.6 million in FY 2019 as more defendants are classified as dangerous.

In addition to the cost of treating these dangerous defendants, DHS states it would need to build a new facility on the ASH campus. Currently, DHS states that there is secured space at ASH for approximately 10 of these defendants. In coming up with its capital estimates, DHS uses the higher end of the patient population range and believes that a new 150-bed hospital at ASH would be required at a cost \$50 million. Of that amount, DHS allocates \$300,000 in construction costs per bed and \$5 million for asbestos remediation and demolition of abandoned hospital buildings where the new facility would be constructed. This estimate is based on the per-bed cost of building the forensic hospital in 2009.

Local Government Impact

There could be potential savings for counties if they determine a defendant is not restorable and dangerous early in the RTC treatment process. Instead of paying for RTC treatment for up to 21 months, counties would be able to shift dangerous and incompetent defendants to ASH and the treatment costs to the state. The magnitude of such a shift as well as the savings to counties cannot be determined in advance.

There will be extra legal costs to counties if they request the court to declare a defendant dangerous. If counties do not conduct a dangerousness evaluation of a defendant during the competency evaluation, then there will also be the cost of conducting another evaluation. Neither of these costs can be determined in advance.