

# Fiscal Note

**BILL #** HB 2334

**TITLE:** dangerous; incompetent person; evaluation; commitment

**SPONSOR:** Pratt

**STATUS:** As Introduced

**PREPARED BY:** Morgan Dorcheus

## Description

The bill would establish procedures for the courts to determine if a defendant is dangerous and incompetent to stand trial and may be committed to the Arizona State Hospital (ASH) for treatment.

## Estimated Impact

We cannot determine the fiscal impact of this bill with certainty as we do not know how often the courts would commit dangerous defendants to the Arizona State Hospital (ASH) for treatment. The Department of Health Services (DHS) estimates that its ongoing annual costs would increase by between \$95.0 million and \$115.0 million. Under one possible scenario, we estimate that costs could be significantly lower at approximately \$5.7 million in FY 2021, gradually increasing to \$21.5 million in FY 2025.

In addition, DHS estimates the cost of construction for new facilities to provide these services would be approximately \$137.5 million. We expect that additional facilities may be needed to meet the requirements of the bill beginning in FY 2022.

The bill may increase costs to the courts to meet requirements for conducting proceedings for dangerous and incompetent defendants. This impact cannot be determined in advance.

## Analysis

Federal and state law requires that persons accused of committing a crime be sufficiently competent to assist in their own defense and understand the criminal trial proceedings against them. Some persons with a serious mental illness do not meet the criteria for competency at the time of their arrest. Such persons must be treated in a restoration to competency (RTC) program at ASH or other treatment facility. If after 21 months of treatment an individual in the RTC program is deemed non-restorable, the courts currently have the following options: 1) remand the defendant to ASH for civil commitment proceedings; 2) appoint a guardian for the defendant; or 3) dismiss the charges and release the defendant from custody.

The bill would establish procedures for the courts to determine if a defendant who has been deemed non-restorable after treatment in an RTC program is dangerous. If a non-restorable defendant is found to be dangerous, the court would be required to order the defendant to receive education, care, supervision and treatment at ASH until the defendant is found to be competent to stand trial, no longer dangerous, or on expiration of time equal to the presumptive sentence. While at ASH for treatment, the court would be required to maintain jurisdiction over the defendant. In addition, the bill sets requirements for medical expert evaluations, hearing timeframes, periodic review of the defendant's competence, conditional release into the community, and noncompliance with conditional release. The courts would be required to adopt rules for the conduct of these proceedings, which may allow hearings to be held at ASH utilizing teleconferencing. The bill provisions would be retroactive to December 31, 2020.

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Some incompetent dangerous individuals are likely already receiving court-ordered treatment through Arizona's civil commitment statutes, which allows such treatment for individuals deemed a "danger to others" and who have a mental disorder.

Because the legal rules for court-ordered treatment are complex, it is difficult to determine whether the bill would make courts more likely to order inpatient treatment for individuals with mental illness compared to the existing civil commitment process. In addition to defendants found to be dangerous due to a mental illness, the involuntary commitment process outlined in the bill would also allow for individuals with a "defect or disability" to be committed to ASH for treatment; the civil commitment process does not include those individuals.

To provide treatment for the state's non-restorable dangerous defendants, DHS estimates that annual costs would be between \$95.0 million and \$115.0 million. These estimates assume that between 200-300 defendants are deemed non-restorable per year and would be higher acuity than existing ASH patients, requiring a higher level of treatment and restorative staff. These costs are highly speculative and we expect that actual costs may be significantly lower.

According to a study conducted by Arizona State University and presented to the Non-restorable and Dangerous Legislative Study Committee in December 2016, approximately 200 defendants are deemed non-restorable in Arizona per year. It is difficult to determine how many non-restorable defendants who are not currently committed via the civil commitment statutes would be deemed dangerous by the courts under the bill's involuntary commitment procedures, as the data used in this study is incomplete. To provide a sample estimate, we make several assumptions: 1) the courts would deem 10% of non-restorable defendants as dangerous each year; 2) the daily cost of care for non-restorable dangerous defendants would be \$785, or consistent with costs to provide care in ASH's current RTC program; and 3) the annual discharge rate for this population would be 10%.

Under these assumptions, 20 defendants would be committed to ASH for treatment in FY 2021 at a cost of approximately \$5.7 million. By FY 2025, the treatment population would increase to 75 defendants at a cost of approximately \$21.5 million. Due to incomplete data on the number of non-restorable defendants in Arizona and uncertainty regarding implementation of the bill's provisions, these estimates may over- or understate the bill's fiscal impact.

ASH currently provides 143 beds in its forensic unit, which serves patients in its RTC program and post-trial patients ruled guilty except insane, not guilty by reason of insanity, or patients with a plan for conditional release into the community. In FY 2020, the forensic unit had an average daily census of 117, or 26 available beds. Under the sample estimate above, ASH may need additional capacity to provide treatment to non-restorable defendants beginning in FY 2022. DHS reports that it would need to construct a new 300-bed facility at a cost of \$137.5 million. We expect that the need for additional beds could be significantly less depending on implementation of the bill's provisions.

#### **Local Government Impact**

To the extent that the provisions require additional resources for conducting proceedings for incompetent dangerous defendants, the bill would increase ongoing costs to the courts. The impact cannot be determined in advance.