# Memorandum

To: Joint Budget Committee
From: Emily Pope, JBC Staff (303-866-4961)
Date: April 20, 2026
Subject: Human Services BA8 Resources to Comply with Consent Decree

The Office of State Planning and Budgeting submitted a budget request for additional competency resources on March 31, 2026. The Committee designated a placeholder of $20.0 million General Fund for the request on March 25 in response to an OSPB comeback, but did not take action on the request prior to closing the Long Bill on April 1. The budget request costs $30.1 million General Fund in FY 2026-27.

## Request

The Department requests additional resources to address the waitlist for inpatient competency restoration services.

- Year 1: $30.1 million General Fund and 10.0 FTE
- Year 2: $35.5 million General Fund and 13.0 FTE
- Year 3 and ongoing: $35.4 million General Fund and 13.0 FTE

The request is intended to demonstrate meaningful compliance with the consent decree, and includes funding to support 16 jail-based beds, 27 contracted competency restoration beds, 24 contracted civil beds, and repurposing beds at the state hospitals to open 22 competency restoration beds. The cost is slightly higher in FY 2027-28 because it is a leap year, requiring an extra day for contracted bed costs.

**Table 1: General Fund and FTE Request Impact by Fiscal Year**

| Item | Beds | FY 2026-27 General Fund | FY 2027-28 General Fund | Ongoing General Fund | Ongoing FTE |
|---|---|---|---|---|---|
| Jail-based beds | 16 | $2,459,808 | $2,466,547 | $2,459,808 | 0.0 |
| Competency contract beds | 27 | 10,347,750 | 10,376,100 | 10,347,750 | 0.0 |
| Civil contract beds | 24 | 5,212,800 | 10,540,800 | 10,512,000 | 0.0 |
| Repurpose hospital beds | 22 | 11,232,360 | 11,181,028 | 11,152,228 | 6.0 |
| Oversight FTE | 0 | 801,996 | 888,342 | 888,342 | 7.0 |
| Total | 89 | $30,054,714 | $35,452,817 | $35,360,128 | 13.0 |

# Recommendation

Staff recommends a compromise between the resources requested by the Department and longer term community-based and diversion oriented programs. The Department request is expected to be responsive to the consent decree, but utilizes high-cost services without improving access to comprehensive behavioral healthcare. Community-based programs are expected to better address concerns of the plaintiff while also improving access to long-term, comprehensive care.

The staff recommendation includes $19.9 million General Fund in FY 2026-27 for the following resources:

- 8 jail-based beds
- 16 contracted inpatient competency restoration beds
- 18 contracted civil beds
- 4.5 additional OCFMH staff
- $4.0 million for mental health transitional living home beds
- $4.0 million for competency diversion in the BHA
- 2.0 Behavioral Health Ombudsman staff to coordinate care and recommend system improvements

# Committee Action to Date

The Committee designated placeholders of $23.2 million General Fund in FY 2026-27 for S.B. 26-149 (Pathways for Individuals with Mental Health Disorder), and $20.0 million General Fund for OSPB Comeback #41 for additional competency resources.

The OSPB comeback assumed that $10.0 million of the placeholder for S.B. 26-149 would be used for the budget request submitted on April 1. Therefore, the Governor's Office assumes that $13.3 million will be used for S.B. 26-149 and $30.0 million for this budget request for budget balancing purposes.

As of the time this document was finalized, the FY 2026-27 impact of S.B. 26-149 is estimated to be $21.3 million General Fund after amendments in committee of reference significantly reduced costs from the introduced version of the bill. Therefore, staff assumes that a maximum of $21.9 million is available for this request without accounting for other balancing actions the Committee may need to consider.

## How does this request relate to the PITP bill?

Senate Bill 26-149 changes legal procedures and creates placements for people who are unlikely to be restored to competency, also called permanently incompetent to proceed (PITP). People who are permanently incompetent to proceed are assumed to need ongoing, rather than short-term, care due to neurocognitive or neurodevelopmental disorders.

The competency waitlist can increase if people who are unlikely to be restored remain in or continue to cycle through the state hospitals. Therefore, establishing alternatives for people who are PITP is expected to reduce the waitlist and improve compliance with the consent decree.

However, changing legal pathways and creating new placements for people who are permanently incompetent to proceed is not directly responsive to the core population that makes up the competency waitlist (ITP). Therefore, the PITP bill is expected to alleviate some pressure on the waitlist that existed historically, but is not

directly responsive to ongoing litigation about the consent decree. The request is intended to directly respond to ongoing litigation about the consent decree.

### Can a budget request be submitted in April?

Yes. Statute allows a state agency to submit a budget amendment to the Committee after applicable deadlines (November 1, January 2, and January 15) if the budget request is based upon circumstances unknown to, and not reasonably foreseeable by, the state agency prior to the deadline.[1] Staff agrees that the budget request is due to unforeseen circumstances that began in late February.

# Analysis

People continue to wait in jail for pre-trial behavioral health services for exorbitant periods of time despite increased state spending, systematic changes, statutory changes, and a consent decree.

Disability Law Colorado (DLC) alleged that the Department materially violated the consent decree in December 2025. This prompted the first formal dispute resolution with the court since the consent decree began. The process could conclude with mediated revisions to the consent decree, including lifting annual caps on fines.

The Department contends that the request adds resources that are most responsive to the consent decree in order to demonstrate meaningful compliance and reduce the risk of increased fines. Staff is concerned that the request may satisfy the Court and Special Master, but will not satisfy the plaintiff. The Special Master has sent a letter to the Committee in support of the request, while DLC has sent a letter of opposition.

The Department asks for additional resources to support some of the highest cost services in the statewide behavioral health system. More beds and resources could be provided through lower cost options, but those options are assumed to be less immediately responsive to the demands of the consent decree.

Staff is concerned that increasing contracted beds may only result in a temporary decline in the waitlist. Staff does not anticipate meaningful decreases in the waitlist as long as the competency process is the best tool available for courts to connect people to behavioral health services.

## Competency Background

The Department operates two mental health hospitals located in Pueblo and the Fort Logan campus in Denver. The hospitals serve forensic and civil patients. Forensic patients are ordered to the Department's care by criminal courts pre-trial for competency restoration, or post-trial for people who are determined to be not guilty by reason of insanity. Civil patients may be voluntary or involuntary. Involuntary patients are ordered to the Department's care by civil courts. Forensic and involuntary civil patients may become voluntary civil patients after initial treatment.

**Competency** refers to an individual's ability to assist in their own defense during legal proceedings. Competency can be called into question at any point during a criminal trial by the defense, prosecution, or court. The court

[1] Section 2-3-208 (2)(b)(II), C.R.S.

pauses legal proceedings when the question of competency is raised.[2] The question of competency can therefore interrupt the right to a speedy trial.

The Office of Civil and Forensic Mental Health (OCFMH) is responsible for conducting court-ordered competency evaluations and inpatient restoration services. Individuals may receive competency restoration services through inpatient state or private hospitals, jail-based, or outpatient community-based programs. Outpatient services may occur through safety net providers overseen by the Behavioral Health Administration. The Department operated a total of 640 competency restoration beds at the close of the last fiscal year.

**Table 2: Competency Restoration Beds**

| Type | Beds |
|---|---|
| Pueblo | 416 |
| Fort Logan | 44 |
| Private contracts | 84 |
| Jail-based | 96 |
| Total | 640 |

## Consent Decree

The Department entered into a consent decree following a federal lawsuit regarding the wait time for competency services in 2019. The consent decree is legally binding and judicially enforceable through December 1, 2027. Compliance is overseen by the court and a Special Master (Groundswell Services, Inc.).

The consent decree establishes a set timeframe for competency evaluation and restoration services. The Department must pay fines for each day of violation for these timeframes, varying from $100 to $500 per day based on patient and service type. Patients who are gravely disabled or are an immediate threat to themselves or others are considered to be Tier 1. Tier 2 patients require inpatient restoration services, but do not meet Tier 1 criteria.

**Table 3: Consent Decree Daily Fines by Patient and Service Type**

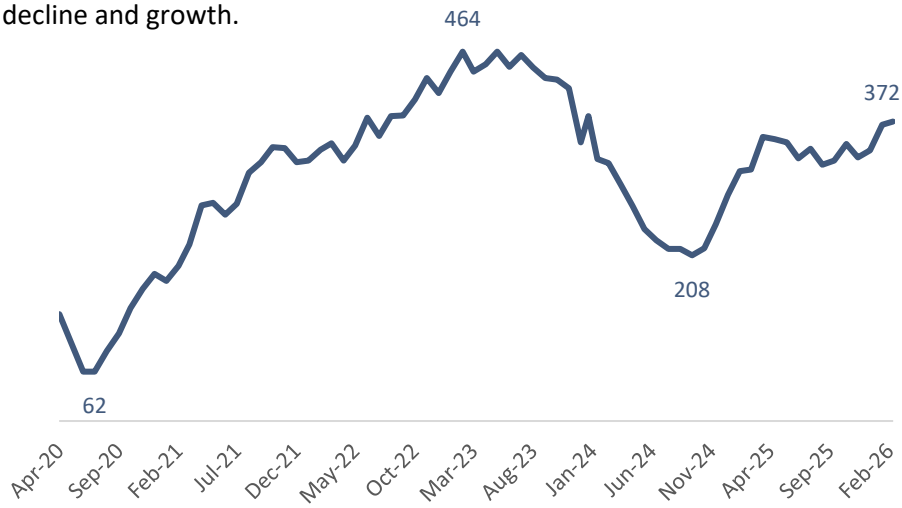
| Service | Timeframe | Fines |
|---|---|---|
| Inpatient evaluation admission | 14 days | $100 |
| Jail-based evaluation | 21 days | $100 |
| Tier 1 Inpatient restoration admission | 7 days | $500 |
| Tier 2 Inpatient restoration admission | 28 days | $500 |

The total amount the Department actually pays in fines is currently capped to an annual amount adjusted for inflation each year. The Long Bill includes $12.8 million General Fund for fines and fees in FY 2026-27. The cap is typically reached within the first few months of the fiscal year.

The caseload for inpatient competency restoration exceeds the Department's capacity, creating a waitlist for services. The waitlist increased consistently from 2020 to 2023. The waitlist decreased temporarily in 2023 following the re-opening of hospital units after the pandemic, and significant investments in contracted beds. However, the waitlist increased toward the end of 2024 following increased court orders and has now reached a plateau. The most recent waitlist data is provided in the chart below.

[2] Section 16-8.5-102 (1), C.R.S.

The waitlist has mostly plateued in recent months after a period of steep decline and growth.




## Fines Committee

Fines are distributed by a committee that consists of representatives from the Department, Disability Law Colorado, and the Special Master, as well as two auditors. Fines cannot be used to support state programs, and are instead awarded to support community-based programs that divert people from inpatient competency restoration or criminal charges.

The Fines Committee has distributed a total of $60.3 million as of December 2025.[3] Programs served 1,711 individuals in the last quarter, including providing housing for 304 competency-involved individuals. Awards include projects that serve 11 judicial districts, and five statewide programs. Forty-nine organizations have received awards, including sheriff's offices, judicial districts, supportive housing providers, and behavioral health safety net providers.

# Request

The request increases funding for jail-based beds, private hospital contracted beds, and additional staff. Additional detail on each component is provided in the following sections.

**Table 4: Request General Fund Impact by Component**

| Item | Beds | FY 2026-27 General Fund | Ongoing General Fund | Ongoing FTE |
|---|---|---|---|---|
| Jail-based beds | 16 | $2,459,808 | $2,459,808 | 0.0 |
| Competency contract beds | 27 | 10,347,750 | 10,347,750 | 0.0 |
| Civil contract beds | 24 | 5,212,800 | 10,512,000 | 0.0 |
| Repurpose state hospital beds | 22 | 11,232,360 | 11,152,228 | 6.0 |
| Oversight FTE | 0 | 801,996 | 888,342 | 7.0 |
| Total | 89 | $30,054,714 | $35,360,128 | 13.0 |

[3] Fines committee awards.

## 16 Jail-based Beds

**Total ongoing cost:** $2,459,808 General Fund
**Annual cost per bed:** $153,738

The Department currently operates 96 jail-based restoration beds. Programs include Restoring Individuals Safely and Effectively (RISE) at the Arapahoe County jail, Denver Restoration and Transition Unit (DRTU) at the Denver County Jail, and Peak View Behavioral Health in Colorado Springs. The Department anticipates that the RISE program in Arapahoe County is able to support an additional 16 beds starting July 1, 2026.

Beds provide treatment in jail. Therefore, the treatment environment is not equivalent to a hospital. However, jail-based based provide an alternative to people waiting in jail for a hospital bed with no access to treatment at all. Beds are operated in partnership with safety net providers, allowing a transition to continued treatment after jail.

Jail-based beds are expected to serve people with high criminal charges who may not reach an acuity level necessary for admission to the state hospitals. People with high criminal charges typically cannot be served in a community-based setting, and the hospitals must triage patients by acuity level to serve those with the highest needs. Therefore, people with high charges and moderate medical needs are likely to wait in jail for extended periods of time.

The RISE program has an average length of stay of 121 days and a 99.5 percent occupancy rate. DRTU has a 72 average length of stay and a 98.9 percent occupancy rate. This compares to an average length of stay of 131 days and an occupancy rate of 86.9 percent at Pueblo.

## 27 Competency Contract Beds

**Total ongoing cost:** $10,347,750 General Fund
**Annual cost per bed:** $383,250

The Department contracts with private hospitals for inpatient competency restoration beds. Beds serve patients who require inpatient care, but may have lower charges or acuity than patients served at the state hospitals. The beds serve an average of 3 patients per year.

The Long Bill includes an appropriation of $31.9 million General Fund for contracted beds. This includes an increase of $2.1 million approved during figure setting. The Department assumes the appropriation will support 82 beds in FY 2026-27. The appropriation was $3.4 million General Fund in FY 2022-23, reflecting an increase of 835.9 percent in four years.

The Department assumes that an additional 27 contracts could begin July 1, 2026. The beds would allow the Department to serve an additional 81 patients per year.

## Repurpose state hospital beds

**Total ongoing cost:** $11,152,228 General Fund
**Additional forensic beds:** 22

The request asks to create a new forensic unit at Pueblo by moving the Pueblo youth unit to Fort Logan, and moving civil patients at Fort Logan to contracted beds. The request indicates that the most secure unit on the

Pueblo campus is currently used for juvenile competency and civil adolescent patients. This causes the Department to lose access to beds that could be used for the highest acuity and highest security needs.

Fort Logan has a standalone civil unit that the Department identified as appropriate for youth patients. The Department also assumes that more youth would be closer to family at Fort Logan rather than Pueblo. The consent decree requires the Department to maintain civil bed capacity. Therefore, the Department proposes moving existing adult civil patients to contracted beds.

Moving youth to Fort Logan would require one-time capital construction costs to create space for a school. The change will also require additional staff at Pueblo to serve high acuity and high security adult patients. The Department assumes that beds would be operational beginning November 2026.

**Table 5: Repurpose State Hospital Beds General Fund Costs by Component**

| Item | Beds | FY 2026-27 General Fund | Ongoing General Fund | FTE |
|---|---|---|---|---|
| Modify Fort Logan for youth | 0 | $300,000 | $0 | 0.0 |
| Additional Pueblo staff | 22 | 420,360 | 640,228 | 6.0 |
| Remove 24 Fort Logan civil beds | -24 | 0 | 0 | 0.0 |
| Contracted civil bed offsets | 24 | 10,512,000 | 10,512,000 | 0.0 |
| Total | 22 | $11,232,360 | $11,152,228 | 6.0 |

## 24 Civil Contract Beds

**Total ongoing cost:** $10,512,000 General Fund
**Annual cost per bed:** $438,000

Pueblo primarily serves forensic patients. However, patients may continue to be served at Pueblo after charges are dropped through voluntary treatment or civil commitment. The request indicates that there are currently 57 patients at Pueblo on civil certification or voluntary status. Serving these patients at Pueblo reduces the number of beds available for high security and high acuity patients.

The request therefore includes funding for additional contracted civil beds beginning January 1, 2027. The Department has previously described significant challenges with identifying private providers to step down patients. Contracted beds may allow the Department to more appropriately transition individuals and increase capacity at Pueblo. The request also indicates that civil contract beds may assist with the implementation of H.B. 23-1138, which created a pathway to short-term certification when a defendant is found incompetent to proceed.

## 7.0 Oversight FTE

**Total ongoing cost:** $888,341 General Fund

The request also includes eight additional staff to provide administrative oversight. This includes staff to oversee the additional contract beds, coordinate admissions, and support court processes for short-term certification. Requested positions are provided in the table below.

**Table 6: Budget Year and Ongoing Costs by Position**

| Position | FY27 FTE | FY27 General Fund | Ongoing FTE | Ongoing General Fund |
|---|---|---|---|---|
| Civil bed program manager | 0.8 | $114,845 | 1.0 | 145,407 |
| Civil bed clinical staff | 0.8 | 94,069 | 1.0 | 117,706 |

| Position | FY27 FTE | FY27 General Fund | Ongoing FTE | Ongoing General Fund |
|---|---|---|---|---|
| Civil bed program assistant | 0.4 | 38,568 | 0.5 | 42,897 |
| Psychologist | 1.1 | 180,647 | 1.5 | 224,618 |
| Social work/counselor | 2.0 | 288,923 | 2.0 | 278,153 |
| Contract administrator | 1.0 | 84,945 | 1.0 | 79,560 |
| Total | 6.0 | $801,996 | 7.0 | $888,341 |

# Special Master Report

The Special Master provides a quarterly report to the court regarding the Department's compliance with the consent decree. The most recent report includes detailed analyses of recent investments, and includes four primary findings:

1. The demand for competence-related services has steadily increased; all parties should plan for continued increases, while strategizing to minimize them.
2. Expanding inpatient bed capacity is crucial to reducing the waitlist and wait times.
3. Expanding community bed capacity is crucial to reducing the waitlist, but details matter.
4. Inpatient and community beds must continue to increase with strategic planning.

The Department indicates that the report provides data to support contracted beds as the investment that is most directly responsive to the consent decree. Staff agrees that the report supports additional contracted beds. However, the report continually emphasizes the importance of investing in inpatient *as well as* community resources.

The report concludes by saying current capacity may be enough to maintain the waitlist, but much more inpatient and community-based beds are necessary to reduce the waitlist and accommodate future increases in orders. Additional detail from the report is provided in the following sections.

## Increasing Demand for Services

The report includes data demonstrating increases in evaluations, inpatient and outpatient restoration orders, and the waitlist. The waitlist increased from an average of 157 to 331 from 2019 to 2023.

**Evaluation orders:** +83%, from 1,080 to 1,979
**Outpatient restoration orders:** +190%, from 373 to 1,082
**Inpatient restoration orders:** +126%, from 750 to 1,696
**Inpatient admissions:** +28%, from 642 to 820

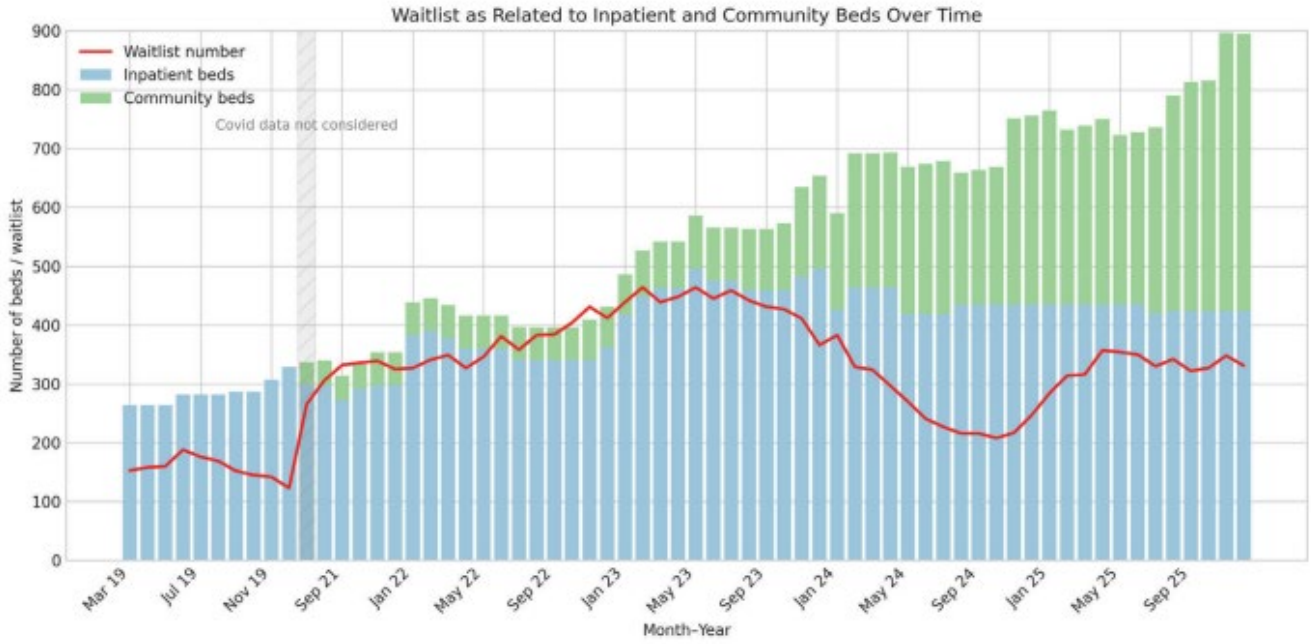
Overall, the waitlist increased by 112.0 percent at the same time court orders increased 126.0 percent. General Fund appropriations to OCFMH increased by 115.3 percent from FY 2019-20 to FY 2025-26, or 67.8 percent after adjusting for inflation.

## Impact of inpatient and community beds

The report states that adding inpatient beds appeared to reduce the waitlist. The most significant decrease in the waitlist post-pandemic followed a period of reopening units at the state hospitals and significant investments in contracted beds in 2023. However, the decline was temporary as court orders began to increase as soon as the waitlist began to decline.

The report also states that the waitlist grew drastically in the years when there were fewest community bed options. However, the waitlist also grew and eventually plateaued in 2024 and 2025 even though community beds increased. The waitlist compared to inpatient and community bed capacity from the report is provided in the chart below.

***Increasing Inpatient and Community Bed Capacity Reduced, then Plateaued, the Waitlist***




The report acknowledges that some people will never be appropriately served in the community and need inpatient beds at the state hospitals. However, the report also states that data strongly suggests that a combination of inpatient and community beds are necessary to reduce the waitlist. Further, the report indicates that the consent decree prioritizes community settings and resources, and encourages a limited role for privately contracted restoration beds.

The report also highlights the importance of placements that provide an alternative to the state hospitals, like jail-based and mental health transitional living home (MHTLH) beds. Quotes from the report are copied below.

- "While we emphasize neither jail-based restoration nor contracted beds should ever be the primary strategy for maintaining adequate capacity, we also note the important role that all of these beds play in serving a subpopulation of Colorado's restoration Detainees."
- "[Jail-based] programs and privately contracted beds remain crucial to addressing the competency restoration demand in Colorado. Until CDHS increases their bed capacity to replace the 162 currently contracted beds, those alternative settings remain crucial. Indeed, given the impact that increasing inpatient beds have had on the waitlist since 2021, we encourage all parties to consider an increase in the number of beds at alternative restoration settings to further reduce the waitlist."
- "MHTLH are among the Department's best strategies to improve public mental health services in Colorado, and their impact has certainly extended beyond the competence-services system."

- "The largest impact on the waitlist has been the availability of placement options: more inpatient beds have certainly helped, but the fines-funded housing options, MHTLHs, and Bridges-supported opportunities have also had a significant impact."

Finally, the report indicates that courts and attorneys may use the competency evaluation and restoration process as a means to access services, rather than diverting people from competency directly to the same or better services. The report notes concern that expanding resources only for those in the competency system will incentivize courts to misuse the process as the only or easiest route to treatment.

## Other States

The consent decree and increasing competency caseload are not unique to Colorado. There are many similarities and differences between how other states manage competency. Some large counties also manage competency caseloads independently. Some frequent examples are summarized below.

**Washington:** Washington state is operating under a consent decree similar to Colorado, but has faced significantly higher fines. The state paid a fine of $100 million in November 2023 for failing to meet court ordered deadlines for mental health services.[4] The state initially paid $83 million in fines in 2018. The Washington Legislature has introduced a bill that provides an incentive payment to counties and courts that reduce inpatient competency orders.[5]

**Oregon:** Oregon was fined $1.4 million in December 2025 for failure to admit defendants to state hospitals within 7 days, at a rate of $500 per day. The state has two hospitals that serve 700 patients on average. Oregon limits the amount of time individuals can remain in the hospital based on their charges, including 90 days for misdemeanors and six months to a year for some felonies.[6]

**California:** Budget documents indicate the state has spent $2 billion General Fund since 2021 to reduce the competency waitlist from 2,000 to less than 300 and expand the number of state and community-based beds from approximately 1,400 to over 2,300.[7] California has five state hospitals projected to serve 5,772 patients in FY 2025-26. The state hospitals charge counties a daily rate for certain patients.[8]

California spent nearly $500 million to implement behavioral health services in nearly all county jails following judicial action. Disability Rights California found that county jail conditions undermine treatment goals and services are not constitutionally adequate, and recommended the state instead invest in diversion and community-based restoration programs.[9]

**Connecticut:** Connecticut contracts with a private provider to provide long-term nursing level of care for justice involved and complex to place populations. This may include specialized parole and people who are permanently incompetent to proceed. The provider may accept Medicare, Medicaid, and private insurance, reducing state costs.[10] Advocates assume similar resources could be contracted in Colorado.

---

[4] Washington State Standard (2023). Washington pays $100M fine.
[5] Washington HB 1218 CRJ 25.
[6] Statesman Journal (2025). State fined $1.4M for patient intake delays.
[7] California Health and Human Services Budget Summary FY26-27.
[8] California Department of State Hospitals 2025-26 May Revision Estimate..
[9] Disability Rights California (2025). A Half-Measure Solution to a Long-Standing Crisis.
[10] iCare Health Network MissionCare.

**Miami-Dade:** Miami-Dade county is frequently used as an example of successful competency reform. The judicial district diverts individuals with serious mental illness and co-occurring disorders away from the courts and into community-based treatment. The program includes pre- and post-booking diversion to reduce the number of people repetitively cycling through the court system.

Pre-booking diversion includes law enforcement training that provides 40 hours of education on mental illness and local resources. The program is estimated to reduce daily jail census by 39.0 percent, and reduce expenditures by $12 million per year.[11]

Post-booking diversion includes a screening and intensive case management to divert people with severe mental illness from jail to community-based services. The program is estimated to have facilitated 5,000 diversions in the last decade.

**Colorado:** Colorado operates a diversion program for youth detention, called the Colorado Youth Detention Continuum (CYDC, or S.B. 91-094 Programs). Youth receive a standardized assessment at arrest to determine if detention is an appropriate placement, or if lower security alternatives are available. Advocates indicate that the program does not adequately connect youth to services. However, it is an existing program within the state that could be used as a model to pilot similar programs for competency diversion.

## Staff Recommendation

The Department has a convincing legal argument for requesting additional contracted beds to be as responsive as possible to the consent decree. However, staff is concerned that additional contracted beds will not satisfy the plaintiffs, are the most expensive option, and are not guaranteed to decrease the waitlist and improve access to services in the long-term.

Therefore, staff recommends funding a portion of requested contract beds along with increased investments in diversion from the competency system outside of OCFMH. Staff proposes this as a compromise option intended to be responsive to the immediate demands of the consent decree, while also supporting systems that are more likely to improve the overall continuum of behavioral health services. The staff recommendation reflects fewer beds the request. However, staff assumes that funding for division programs will increase community-based beds while reducing the need for inpatient hospital beds.

**Table 7: FY 2026-27 Staff Recommendation**

| Item | Beds | General Fund | FTE |
|---|---|---|---|
| Jail-based beds | 8 | $1,229,904 | 0.0 |
| Forensic contract beds | 16 | 6,132,000 | 0.0 |
| Civil contract beds | 18 | 3,942,000 | 0.0 |
| Repurpose hospital beds | 0 | 0 | 0.0 |
| OCFMH FTE | 0 | 432,269 | 4.5 |
| MHTLH Level II contracts | 30 | 4,000,000 | 0.0 |
| BHA diversion | 0 | 4,000,000 | 0.0 |
| BHOCO research | 0 | 149,376 | 2.0 |
| Total | 72 | $19,885,549 | 6.5 |

[11] Eleventh Judicial Circuit Criminal Mental Health Project (2021).

**Table 8: Staff Recommendation Ongoing Impacts**

| Item | FY 2027-28 Beds | FY2027-28 General Fund | FY 2027-28 FTE | FY 2028-29 Beds | FY 2028-29 General Fund |
|---|---|---|---|---|---|
| Jail-based beds | 8 | $1,233,274 | 0.0 | 8 | $1,229,904 |
| Forensic contract beds | 12 | $4,611,600 | 0.0 | 8 | $3,066,000 |
| Civil contract beds | 22 | $9,662,400 | 0.0 | 26 | $11,388,000 |
| Repurpose hospital beds | 0 | 0 | 0.0 | 0 | 0 |
| Oversight FTE | 0 | 591,278 | 5.0 | 0 | 591,278 |
| MHTLH Level II contracts | 30 | 4,000,000 | 0.0 | 30 | 4,000,000 |
| BHOCO research | 0 | 0 | 0.0 | 0 | 0 |
| BHA diversion | 0 | 4,000,000 | 0.0 | 0 | 4,000,000 |
| Total | 72 | $24,098,552 | 5.0 | 72 | $24,275,182 |

## Maintain 30 Level II Mental Health Transitional Living Home beds

Statute requires the Department to operate a minimum of 125 mental health transitional living home (MHTLH) beds. The Department has been operating 164 state-operated and contracted beds since FY 2024-25. However, the Department assumes that the current General Fund appropriation will only support the statutorily required minimum 125 beds for FY 2026-27.

The bed reduction is because the Department has been utilizing ARPA funds to support beds in the current fiscal year. The Department anticipates that of the 39 reduced beds, 9 beds will be the lowest level (Level I) and 30 will be from Level II beds. Responses from the Department indicate that some people currently served by MHTLHs are anticipated to become homeless as a result of the loss of Level II beds.

MHTLH beds create a step-down option from the hospitals to transition people to community-based services. The Department, Special Masters, and Disability Law Colorado frequently cite the MHTLHs as one of the most innovative approaches to improving the service continuum to reduce the waitlist. However, the Department indicates that MHTLHs are not as directly responsive to the consent decree as contracted inpatient beds. Therefore, the request prioritizes contracted beds rather than fully funding the current level of MHTLHs.

The Department estimates that an additional $5.5 million General Fund is necessary to continue operating 164 MHTLH beds in FY 2026-27. Staff estimates that $3.9 million General Fund is necessary to continue operating the 30 Level II beds. If the Committee approves an increase of this amount, the actual number of beds funded may be more or less subject to contracts between the provider and the Department.

## Create BHA Competency Division Funding

The fines committee has successfully distributed funding to community-programs that divert people from inpatient treatment. Many awards are for start-up costs and are not intended to rely on fines funding for ongoing operations. However, there is not sustainable state funding specifically for competency diversion projects in the long-term in absence of the consent decree.

Investments in diversion are expected to be more cost effective than inpatient beds. Programs may benefit from Medicaid match and other local or private funding sources rather than relying solely on state General Fund. Programs are also intended to serve people before they reach the acuity level of the state hospitals.

Staff therefore recommends that the Committee establish ongoing funding for competency diversion programs in the BHA. Funding could fund Assertive Community Treatment, supportive housing, transportation,

competency dockets, and other programs that support partnerships between courts and providers to divert people from entering the competency waitlist.

Staff would typically recommend the Committee sponsor legislation to clarify the intended use of funds in statute. However, these activities fit within the current statutory authority of the BHA and can be supported without legislation. The Committee may also consider adding a Long Bill footnote to clarify the intended use of funds.

Staff recommends an appropriation of $4.0 million General Fund on balance with other priorities in the request and recommendation. The amount may be adjusted as necessary for budget balancing or to prioritize against other options provided in the budget request and staff recommendation.

## Behavioral Health Ombudsman report

Staff met with multiple behavioral health organizations to develop a recommendation. Most meetings ended in frustration over the current state of behavioral healthcare in the state, including:

1. The high cost of state hospital and contracted beds compared to community-based alternatives.
2. Competency overtaking other behavioral health resources, and therefore requiring criminal justice involvement for access to treatment.
3. Persistent gaps in the continuum of care.
4. A lack of demonstrated responsibility from other state agencies to respond to the consent decree, including the BHA, HCPF, and DOLA.

Competency is an example of the harms created by a fractured statewide response to behavioral health care. Separating the state hospitals from community-based services leads to gaps in the system, defused responsibility, and increased need for care coordination. Caseload is outside of the control of OCFMH, and impacts overall capacity at jails and safety net providers.

During figure setting, the Committee discussed sponsoring legislation to evaluate and address gaps in the behavioral health system. Discussed options included a working group to evaluate returning the BHA and OCFMH to a single agency, or requiring the BHA to evaluate and report on whether existing behavioral health programs are located in the appropriate agencies.

The Committee and staff were hesitant to create a working group because the BHA was created as a result of a taskforce recommendation. The BHA was also not fully implemented until FY 2025-26, and has seen significant leadership turnover. Therefore, it would be difficult to weigh the success of the BHA and may be premature to suggest foundational changes.

The Behavioral Health Ombudsman of Colorado (BHOCO) assists patients, families, and providers with navigating gaps in the behavioral health system. BHOCO therefore has extended experience with the real-life consequences of the state's current approach to behavioral health care. The Office can also serve as a third-party to recommend policy changes to the Committee.

Staff recommends that the Committee request an extensive report from BHOCO by December 1, 2026 to evaluate and recommend system changes to the Committee. Staff anticipates that the report would become a fulltime project for one or two existing staff. Staff therefore recommends two term-limited positions for the office so that case management work is not disrupted by the report.

Staff does not recommend requesting a report without additional resources for the office as the report is assumed to decrease the Office's ability to connect the highest acuity people in the state with services. Staff recommends an initial report by December 1 because the Ombudsman is an appointed position that may change in 2027. The Committee may choose to extend the project if the initial report is helpful for decision making. Draft language for the report request is provided in Appendix A.

### Reduce Requested Contracted Beds and FTE to Align with Placeholder

The staff recommendation includes reductions to the Department's request for contracted beds and FTE. The recommendation does not include funding to repurpose state hospital beds. Staff maintains some funding for all types of contracts because contracted beds serve different populations and are assumed to be more immediately responsive to the consent decree than diversion services. However, the Committee may choose to appropriate more or less for any type of contract as necessary for budget balancing or preferred service types.

Staff further recommends that additional funding for contracted competency beds phase out over time to transition funding to diversion or contracted civil beds. Staff recommends decreasing the amount for competency beds by four beds each year, and transferring that amount to civil beds. The Committee could instead choose to transfer the amount to diversion programs. However, staff was reluctant to recommend increased funding for diversion in the BHA before successful implementation can be demonstrated.

The staff recommendation includes funding for an additional 4.5 FTE at OCFMH in FY 2026-27, and 5.0 FTE on an ongoing basis. Staff agrees that additional positions are necessary to improve the referral of patients to civil beds. The recommendation includes most of the requested positions with standard adjustments to align with Committee common policies. Actual hiring by the Department may vary from the positions used for the staff calculation.

**Table 9: FY 2026-27 FTE Recommendation**

| Position | Requested FTE | Recommended FTE |
|---|---|---|
| Civil bed program manager | 0.8 | 0.8 |
| Civil bed clinical staff | 0.8 | 0.8 |
| Civil bed program assistant | 0.4 | 0.0 |
| Psychologist | 1.1 | 1.1 |
| Social work/counselor | 2.0 | 0.8 |
| Contract administrator | 1.0 | 0.8 |
| Total | 6.0 | 4.3 |

## Alternatives to align with Department request

The Committee may consider multiple options to approve the Department request in whole or in part. The sections below provide alternatives to the staff recommendation to more closely align with the Department request.

### Department request within placeholder

If the Committee is interested in approving the Department request, but staying within the $20.0 million placeholder, staff recommends approval of the request without repurposing state hospital beds. This maintains

funding for jail-based and contracted beds as requested, and decreases the General Fund impact to $18.6 million. This would reduce the number of requested beds from 89 to 67.

**Table 10: Request without Repurposed State Hospital Beds**

| Item | Beds | Request | Recommendation |
|---|---|---|---|
| Jail-based beds | 16 | $2,459,808 | $2,459,808 |
| Forensic contract beds | 27 | 10,347,750 | 10,347,750 |
| Civil contract beds | 24 | 5,212,800 | 5,212,800 |
| Repurpose hospital beds | 0 | 11,232,360 | 0 |
| Oversight FTE | 0 | 801,996 | 623,255 |
| Total | 67 | $30,054,714 | **$18,643,613** |

## Department request with standard FTE adjustments

If the Committee is interested in approving the Department request, staff recommends accounting for standard FTE adjustments to align with Committee common policies. The Department has requested some salaries above the range minimum because medical positions are competitive and challenging to fill.

The Committee risks the positions not being filled in a timely manner, or filled with more expensive contract staff, if the requested funding is not approved. However, staff assumes that the Department has sufficient funding and flexibility to hire new positions within common policies.

**Table 11: Request with Standard FTE Adjustments**

| Item | Beds | Request | Recommendation |
|---|---|---|---|
| Jail-based beds | 16 | $2,459,808 | $2,459,808 |
| Forensic contract beds | 27 | 10,347,750 | 10,347,750 |
| Civil contract beds | 24 | 5,212,800 | 5,212,800 |
| Repurpose hospital beds | 22 | 11,232,360 | 11,248,463 |
| Oversight FTE | 0 | 801,996 | 623,255 |
| Total | 89 | $30,054,714 | **$29,892,076** |

# Appendix A: BHOCO Report

The staff recommendation includes additional resources for the Behavioral Health Ombudsman of Colorado (BHOCO) to provide a report to evaluate and recommend changes to the statewide behavioral health system by December 1, 2026. Recommended language is provided below.

Department of Human Services, Office of the Ombudsman for Behavioral Health Access to Care – The Office is requested to provide, by December 1, 2026, a report evaluating the statewide behavioral health system and making recommendations to the Joint Budget Committee for budgetary and legislative changes that may improve access to care. The report should prioritize General Fund saving and General Fund neutral changes, but should also include recommendations that would help the Committee understand the total amount of money necessary to adequately fund behavioral health services across the state. The report may consider, but is not limited to, topics such as:

1. Whether state agencies with behavioral health programs demonstrate collaboration that reduces gaps in the continuum of care.
2. Whether existing state behavioral health programs are located in the appropriate state agency to ensure best access to care and reduce duplicative spending across agencies, including any specific recommendations to move programs from one agency to improve service and recognize efficiencies.
3. Recommended changes to the capitated Medicaid behavioral health system to improve access to care.
4. Recommended changes to reduce the waitlist for competency restoration services, prioritizing recommendations that would reduce state costs while increasing access to services.
5. Examples of programs from other states that could be implemented in Colorado to improve access to care.
6. The three most significant gaps in the continuum of care for adults with serious mental illness, and the budgetary or legislative changes necessary to address the system gaps.
7. The three most significant gaps in the continuum of care for children with serious emotional disturbance, and the budgetary or legislative changes necessary to address the system gaps.