

**LEGISLATIVE FISCAL OFFICE**

**Fiscal Note**



Fiscal Note On: **SB 449** SLS 10RS 737

Bill Text Version: **ENGROSSED**

Opp. Chamb. Action:

Proposed Amd.:

Sub. Bill For.:

<b>Date:</b> May 24, 2010 7:26 AM	<b>Author:</b> HEITMEIER
<b>Dept./Agy.:</b> Office of Mental Health	<b>Analyst:</b> Matthew LaBruyere
<b>Subject:</b> Mental capacity	

CRIMINAL PROCEDURE

EG SEE FISC NOTE GF EX

Page 1 of 2

Provides for procedures after a determination of mental capacity or incapacity. (8/15/10)

Proposed legislation retains present law regarding defendants whose mental capacity is likely to be restored in 90 days by clarifying outpatient care and treatment at a treatment facility defined by mental health law. Proposed legislation retains present law regarding jail-based treatment by DHH not to exceed 90 days if mental capacity can be restored or committed to Feliciana Forensic Facility (FFF) and requires the person must be charged with a crime of violence. Proposed legislation deletes present law regarding the court ordering a status conference then a contradictory hearing to determine whether or not the defendant's condition has changed; and adds if the defendant's mental capacity has not been restored, a contradictory hearing will be conducted to determine if the defendant is capable of standing trial. Proposed legislation deletes present law regarding the defendant being committed to FFF or held in parish jail for 180 days after initial status conference, then the court is required to order a contradictory hearing to release the defendant or to remain in custody pending civil commitment.

**(CONTINUED ON PAGE 2)**

<b>EXPENDITURES</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>5 -YEAR TOTAL</b>
State Gen. Fd.	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Ded./Other	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Federal Funds	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<b>\$0</b>
<b>Annual Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>REVENUES</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>5 -YEAR TOTAL</b>
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Ded./Other	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Federal Funds	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<b>\$0</b>
<b>Annual Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**EXPENDITURE EXPLANATION**

The Legislative Fiscal Office is unable to determine the impact to state general fund expenditures. The exact fiscal impact of the passage of this legislation is indeterminable since it allows the courts to determine the mental capacity of the defendants through contradictory hearings and a special risk assessment to determine whether to continue commitment or release the defendant and it is not known how many people will be determined mentally capable or incapable to stand trial.

The proposed legislation changes the procedures of present law with a special risk assessment performed by the sanity commission to determine if the defendant poses a risk to others or himself. In the event the sanity commission determines the defendant does pose a risk to others or himself, the defendant will remain under the supervision of the court until he no longer poses a risk. The defendant may move for a hearing to reconsider the court's findings depending on changes in the defendant's condition or other circumstances. If the defendant no longer poses a risk to others or himself, he is to be released or remanded to the Department of Health and Hospitals (DHH), as is currently practiced in current law.

A defendant that is charged with a crime of violence and committed to Feliciana Forensic Facility, (FFF), but must wait in a parish jail for available space, which is currently one year, will cost \$27.46 per day per defendant (\$22.39 per day reimbursement to sheriffs + \$5.07 per day for jail-based treatment), according to the Department of Health and Hospitals. With the proposed legislation, the waiting list for FFF may increase with defendants remaining in FFF while in criminal court custody if the court receives the Sanity Commission's evaluation that the defendant poses a risk to others or himself and the court chooses to continue with the defendant in custody. In the event the waiting list for FFF increases and defendants remain in jail, each additional day a defendant is in a parish jail will increase DHH expenditures by \$27.46 or \$10,023 annually.

However, the proposed legislation may result in a potential decrease in state general fund expenditures in certain circumstances. Defendants currently remanded to DHH and civilly committed to East Louisiana State Mental Hospital (ELMHS) costs DHH \$390 per day or Central Louisiana State Hospital (CLHS) costs DHH \$544 per day, an average of \$467 per day.

**(CONTINUED ON PAGE 2)**

**REVENUE EXPLANATION**

There is no anticipated direct material effect on governmental revenues as a result of this measure.

Senate                      Dual Referral Rules


13.5.1 >= \$100,000 Annual Fiscal Cost

13.5.2 >= \$500,000 Annual Tax or Fee Change

House

6.8(F) >= \$100,000 Annual SGF Cost

6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease

  
**Robert E. Hosse**  
 LFO Staff Director

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**CONTINUED EXPLANATION from page one:**

**(CONTINUED DESCRIPTION)**

Proposed legislation provides that the court must determine if the defendant charged with a crime of violence is incapable of standing trial and if he poses a danger to others or himself. After the contradictory hearing, if the court determines the defendant is incapable of standing trial and a danger to himself or others, he will be referred to a special risk assessment in court prior to release from inpatient treatment or jail. The special risk assessment will be conducted by a sanity commission within 30 days of referral, then within 30 days a contradictory hearing will be held to determine to continue commitment or order the defendant released conditionally.

**(CONTINUED EXPENDITURE EXPLANATION)**

In the event a defendant remains at FFF due to the proposed legislation's requirement, at a per day cost of \$450, until mental capacity is restored, a savings of \$17 per day may realized by not having the defendant civilly committed to a state mental hospital.

NOTE: DHH indicates a significant increase in state general fund expenditures. DHH assumes an increase of 66 individuals, who would remain in parish jails, annually at a per diem rate of \$22.39 would increase expenditures by \$539,375 (66 individuals x \$22.39 per day x 365 days). There have been 110 defendants (Lockharts) that have been remanded to DHH since January 2009 through March 2010. DHH assumes that if 30% (110 Lockharts x 30% = 33 Lockharts) of the individuals would not discharged due to the passing of this bill and remain in state mental hospitals at a per diem rate of \$335, expenditures would increase by \$4,035,075 (33 Lockharts x \$335 per day x 365 days). DHH indicates the total increase to be \$4,574,450 (\$539,375 + \$4,035,075).

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