



REPORT TO THE VERMONT LEGISLATURE

Agency of Human Services

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Agency of Human Services Department of Disabilities, Aging, and Independent Living Department of Mental Health

Competency Restoration Program Fiscal Estimate

In accordance with Act 137 (2024)

Submitted to: House Committees on Appropriations, on Health Care, and on Human Services
Senate Committees on Appropriations and on Health and Welfare

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Report Date: November 22, 2024

LEGISLATIVE REQUEST

Competency Restoration Fiscal Estimate (Section 28, Act 137, 2024)

On or before November 1, 2024, the Agency of Human Services shall submit a report to the House Committees on Appropriations, on Health Care, and on Human Services and to the Senate Committees on Appropriations and on Health and Welfare that provides a fiscal estimate for the implementation of a competency restoration program operated or under contract with the Department of Mental Health. The estimate shall include:

- (1) whether and how to serve individuals with an intellectual disability in a competency restoration program;
- (2) varying options dependent upon which underlying charges are eligible for court-ordered competency restoration; and
- (3) costs associated with establishing a residential program where court-ordered competency restoration programming may be performed on an individual who is neither in the custody of the Commissioner of Mental Health pursuant to 13 V.S.A. § 4822 nor in the custody of the Commissioner of Disabilities, Aging, and Independent Living pursuant to 13 V.S.A. § 4823.

1. Whether and How to Serve Individuals with an Intellectual Disability in a Competency Restoration Program

The questions of competency, competency determination, and “competency restoration” related to individuals diagnosed with intellectual disabilities (ID) are complex. A diagnosis of intellectual or developmental disability (I/DD) does not automatically mean that an individual is not competent to stand trial. Nationally, 4-10% of those individuals who are evaluated for competency, based on their diagnosis of intellectual disability, are found to be determined legally competent to stand trial.¹ However, given the lifelong nature of intellectual disability, “competency restoration” may be a misnomer. This term implies that the individual once had competency and the work is to re-establish it, as opposed to establishing it.

One approach to competency restoration/establishment for individuals with intellectual disabilities is the “Slater Method.” This is a tool used to ensure that individuals understand the legal concepts and processes needed to appropriately participate in their defense. Success of this program teaches the capacity to participate in legal proceedings more than “restores competency.” And, once competency is “restored” (or capacity is achieved), it can be “lost.”

For individuals with I/DD, competency is a learned concept or skill. If not used frequently, there is a risk of atrophy. An individual can be competent (or achieve competence) at one stage of their life and be found not competent—and be unable to restore competence—at another.

The work of competency restoration within the ID population can take significant time and achieve marginal success. Restoration for individuals with intellectual disabilities “often take[s] longer [than 9 months] ...” and results in lower rates than restoration efforts for individuals diagnosed with mental health conditions.²

2. Varying Options Dependent upon which Underlying Charges Are Eligible for Court-ordered Competency Restoration

Option 1: If competency restoration is to be utilized for individuals with ID, DAIL recommends that it be limited to those who have been committed by the court to the custody of the DAIL Commissioner under Act 248. To be eligible for such commitment,

¹ Barry W. Wall & Paul P. Christopher, *A Training Program for Defendants with Intellectual Disabilities Who are Found Incompetent to Stand Trial*, 40 AM ACAD. PSYCHIATRY L. 366,366 (2012) (as cited in *Competency of Individuals with Intellectual and Developmental Disabilities in the Criminal Justice System: A Call to Action for the Criminal Justice Community*. The Arc—National Center on Criminal Justice and Disability. 2017)

² *Competency of Individuals with Intellectual and Developmental Disabilities in the Criminal Justice System: A Call to Action for the Criminal Justice Community*. The Arc—National Center on Criminal Justice and Disability. 2017 pg. 12

an individual must be a “person in need of custody, care, and habilitation,” as defined in 18 V.S.A. § 8839(4). In part, this means that the person “has inflicted or attempted to inflict serious bodily injury to another or has committed... sexual conduct with a child... or lewd and lascivious conduct with a child...” Following an initial period of commitment, an individual’s custody may be continued if they pose a danger of harm to others, which is evidenced by the infliction of, or the attempt to inflict, serious bodily injury to another or the commitment of sexual or lewd and lascivious conduct with a child or by behavior that demonstrates a substantial likelihood that such conduct will occur absent continued treatment or programming. See 18 V.S.A. § 8839(3).

- Approximately 30 individuals are in the Commissioner’s custody under Act 248 at any given time. Those individuals receive services and supports exclusively in home- and community-based settings, and it is DAIL’s recommendation that any competency restoration process employed for this population be administered in this setting. Length of time needed for completing the competency program would vary greatly depending of the individual’s program and progress.

Option 2: In addition to the approximately 30 individuals who present a danger of harm to others and are placed in the Commissioner’s custody, approximately 200 individuals are not in the Commissioner’s custody but represent a public safety risk and receive Developmental Disabilities Home- and Community-Based Services.

- About 30 of these 200 individuals have had involvement with the Criminal Justice System; however, despite their lack of competence to stand trial, they were not eligible for Act 248 commitment because they did not meet statutory eligibility (e.g., due to the nature of the alleged crime, absence of intellectual disability) or charges were not pursued. These individuals receive their services and supports exclusively in home- and community-based settings, as well. While DAIL is not advocating for competency restoration, if such a process is to be employed for this population, it is recommended to be delivered in a community-based setting.

Length of time would vary greatly and be dependent upon the individual’s progress.

3. Cost Estimates for a Residential Competency Restoration Program

Intellectual Disabilities/Developmental Disabilities Specific Costs

Although DAIL is not advocating for competency restoration programming for persons with Intellectual or Developmental Disabilities (I/DD) who present a risk of harm to others but could not stand trial, the approximate costs to serve this population (up to 60 people) in a community setting, in addition to estimated staffing and operating costs (further below), include:

Evaluation: \$3,500 per person (up to 60 people)	\$210,000
Instructor: 5 FTE	\$100,000
Staff training \$25,000 (5 staff)	\$125,000
Transportation and supplies	\$300,000
TOTAL	\$1,135,000

Non-Intellectual/Developmental Disabilities Costs

Estimated costs associated with establishing a residential competency restoration program for individuals who are not in the custody of the Commissioner of Mental Health or the Commissioner of Disabilities, Aging, and Independent Living are listed in the tables below. Rough estimates include the infrastructure, staffing, and operational expenses required to create a dedicated space where court-ordered competency restoration services can be provided outside of traditional custodial settings.

Given the voluntary nature of this program, the State does not have a reliable way to estimate the number of individuals it would serve or the expected length of stay for participants. Since this program is designed for individuals who are not under the custodial supervision of the Commissioner of Mental Health or the Commissioner of Disabilities, Aging, and Independent Living, there is no precedent or comparable data to reference. Additionally, no other state has implemented a similar program, which further limits our ability to make informed projections about utilization or duration of services. As such, these cost estimates reflect infrastructure, staffing, and operational needs but do not account for program demand or variability in service length.

Recognizing that Vermont is still in the early stages of planning, State financial advisors have developed preliminary cost estimates. These estimates do not account for potential federal or regulatory requirements that could emerge as the planning process evolves, as such requirements are not yet fully known or defined at this stage. In addition, because neither DMH nor DAIL has the in-house expertise to design such a program, unforeseen considerations and costs are not factored into this estimate. And, given that it is a community-based program, the designated agencies will want input and

likely have additional infrastructure, administrative, and financial considerations not accounted for below.

1. Infrastructure Costs:

- **Building/Space Costs:** \$1,500,000
(Covers building purchase, renovation, or construction.)
- **Utilities:** \$50,000
(Estimated annual costs for water, electricity, heating, cooling, and internet.)
- **Maintenance & Janitorial Services:** \$40,000
(Routine upkeep and cleaning services for the facility.)

Subtotal (Infrastructure): \$ 1,590,000

2. Staffing Costs:

- **Psychiatrist (0.5 FTE):** \$320,000 **(N/A to ID individuals)**
- **Psychologist (0.5 FTE):** \$65,000
- **Registered Nurses (2 FTE):** \$300,000
- **Activity Therapist (1 FTE):** \$100,000
- **Social Worker (1 FTE):** \$115,000
- **Floor Staff (10 FTE, qualifications TBD):** \$1,000,000
(Includes nursing assistants, psychiatric techs, and/or direct care staff.)
- **Legal/Court Process Instructors (1 FTE):** **\$100,000**
(Instructors to educate participants about legal proceedings and competency restoration.)
- **Staff Training Costs:** \$25,000
(Ongoing training for competency restoration, trauma-informed care, and crisis intervention.)

Subtotal (Staffing): \$ 2,025,000

3. Operating Costs:

- **Evaluation Costs:** \$140,000
(Forty psychological or psychiatric evaluations at \$3,500 each.)

- **Judicial Costs:** \$350,000
(1 additional judge, 1 additional administrative assistant, additional courtroom time and related costs)
- **Legal Fees:** \$400,000
(Includes State's Attorney, Defender General, Attorney General's Office, and Legal Aid – additional attorneys and administrative staff plus overhead)
- **Supplies & Miscellaneous:** \$50,000
(Includes office supplies, medical equipment, and therapeutic materials.)
- **Transportation Costs:** \$10,000
(Estimated costs for transporting participants to court or medical services.)
- **Technology & Equipment:** \$30,000
(Computers, software for electronic health records (EHR), telehealth equipment if applicable.)
- **Food Services:** \$50,000
(Annual food provision costs for residents.)

Subtotal (Operating): \$ 1,030,000

Total Estimated Costs (not including ID/DD specific costs):

- **Infrastructure:** \$ 1,590,000
- **Staffing:** \$ 1,975,000
- **Operating:** \$1,030,000

Total: \$4,645,000