

Amendment to HB 480

1 Amend the bill by inserting after section 1 the following and renumbering the original section 2 to
2 read as 4:

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4 2 Statement of Findings and Purpose. The general court finds that:

5 I. Individuals with severe mental illness are at increased risk of interacting with the probate
6 court on civil commitments as well as with the criminal justice system in 2 important areas: trial
7 competency and competency restoration.

8 II. As is evidenced by the number of individuals ordered for competency evaluations, the
9 need for these evaluations has increased substantially over the last 5 years, with some state
10 jurisdictions reporting 70 to 100 percent increases. Accordingly, New Hampshire experienced a 75
11 percent increase in the number of competency orders since 2015. In 2019, there was an average of
12 66 court orders for trial competency evaluations each month. With increases of the numbers of
13 competency evaluations, there are more individuals court ordered for competency restoration. An
14 individual ordered into competency restoration is expected to improve and return to court to face his
15 or her charges upon restoration of his or her competency. Analysis of 56 published studies from 1975
16 to 2013 showed that nationwide, 81 percent of individuals ordered to inpatient competency
17 restoration treatment were able to return to court.

18 III. In New Hampshire, there is no formal, existing system to provide treatment for
19 individuals found incompetent to stand trial. In stark contrast to these national numbers, fewer
20 than half of the individuals ordered into a competency restoration period are able to return to court
21 and complete their criminal cases. Specifically, in 2019, only 44 percent of individuals were found to
22 have their competency restored.

23 IV. It is imperative that the state improve the efficiency and effectiveness of the competency
24 restoration process in New Hampshire by establishing a forensic liaison pilot program in one judicial
25 jurisdiction as recommended by the committee to study restoration of competency as created under
26 RSA 135:49.

27 3 New Subdivision; Forensic Liaison and Competency Restoration Pilot Program. Amend RSA
28 135 by inserting after section 49 the following new subdivision:

29 Forensic Liaison and Competency Restoration Pilot Program

30 135:50 Forensic Liaison and Competency Restoration Pilot Program Established.

31 I. In this section, "parties" means the prosecution, the defense, and the office of the forensic
32 examiner.

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1 II. The department of health and human services shall establish a 2-year pilot program
2 creating the position of one or more forensic liaisons (FL) and contracting for all services necessary
3 for competency restoration not otherwise covered by a third-party payer. The FL shall operate as
4 neutral entities between the parties and the court in instances when competency is raised as an
5 issue in a criminal case. The FL shall operate in the superior court in Merrimack or Strafford
6 county and in the circuit courts district division in the county that is selected. The commissioner of
7 the department of health and human services shall be responsible for designating an employee of the
8 department to hire, train, and supervise the FL, or shall contract with another entity to provide such
9 services and any services necessary for competency restoration not covered by a third-party payer.
10 The FL shall hold at least a bachelor's level degree in social work, psychology, criminal justice, or
11 sociology, or have a minimum of 2 years of work experience in a relevant field, as determined by the
12 department or contracted entity.

13 III. The duties of the FL shall include the following, unless provided by an existing case
14 manager or other provider in an effort to avoid the duplication of services:

15 (a) Facilitating the defendant's attendance at the initial competency evaluation with the
16 office of the forensic examiner.

17 (b) Assisting the defendant in obtaining the proper evaluations to determine the services
18 necessary for competency restoration.

19 (c) Providing recommendations to the parties and the court in writing as to the most
20 appropriate treatment or service to restore a defendant's competency based on the evaluations in
21 subparagraph (b) above.

22 (d) Assisting the defendant in obtaining and receiving any recommended services for
23 competency restoration or that would facilitate competency restoration services.

24 (e) Assisting the defendant in reducing barriers to accessing and maintaining treatment
25 and services.

26 (f) Sharing information with the parties and the court regarding the defendant's
27 progress in and adherence to treatment.

28 (g) Sharing information with the parties and the court relating to changes in the
29 defendant's condition relative to competency, restorability, or dangerousness.

30 (h) Receiving and disseminating treatment information from all mental health
31 treatment facilities and providers with the parties and the court.

32 (i) Providing updates to the parties and the court as outlined in RSA 135:17 and RSA
33 135:17-a on the progression of competency restoration.

34 (j) Communicating and coordinating care with court-ordered providers.

35 (k) Performing any other appropriate duties as assigned by the department.

36 IV. The FL is entitled to all past and present relevant records and information relating to
37 the defendant's competency. The defendant shall provide authorization for the FL to obtain all

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1 necessary mental health records. If the defendant does not provide the FL with relevant records or
2 access to records, the FL shall notify the parties who may petition the court for an order requiring
3 the provision of such records. All materials received by the FL shall be confidential and exempt from
4 disclosure under RSA 91-A. The FL shall provide access to relevant records to the parties and the
5 court for the sole purpose of assessment and evaluation of competency. Such records shall be kept
6 confidential by the parties and the court and shall not be used for any purpose other than
7 determination of competency, except that in the case of a person deemed not competent, not
8 restorable, and dangerous per RSA 135:17-a, V, in which case the records shall be available to the
9 state for the purpose of initiating a guardianship or involuntary admission. Information provided by
10 the FL to the parties and the court regarding the defendant's treatment, or adherence thereto, shall
11 be sealed. The court may unseal such records or updates at its discretion.

12 V. The FL may be ordered to appear in any proceeding in which the court determines the FL
13 is necessary. In all cases, the parties and the court are entitled to file motions based upon reports
14 made to them by the FL.

15 VI. For each year of the pilot program, the FL shall report to the department the number of
16 cases received, the number of cases in which competency restoration was effectuated, and any
17 recommendations to improve the competency restoration system in New Hampshire. The
18 department shall present this report to the health and human services oversight committee.

19 VII. The department shall not be required to implement the pilot program established in
20 paragraph II until such date that the program is sufficiently funded to meet the requirements of this
21 section.

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AMENDED ANALYSIS

This bill directs the committee to study restoration of competency to submit any additional proposals on or before July 1, 2025 and requires, once adequate funding is received, the department of health and human services to establish a 2-year pilot program to create the position of one or more forensic liaisons, who will assist in competency proceedings of criminal defendants.