

HB 480 - AS AMENDED BY THE HOUSE

13Feb2025... 0061h

2025 SESSION

25-0779

09/05

HOUSE BILL

480

AN ACT relative to restoration of competency to stand trial for criminal defendants.

SPONSORS: Rep. M. Pearson, Rock. 34; Rep. Gregg, Hills. 7; Rep. Kuttab, Rock. 17; Rep. Lynn, Rock. 17; Rep. Rhodes, Ches. 17; Rep. Roy, Rock. 31; Rep. Turer, Rock. 6; Sen. Fenton, Dist 10; Sen. Gannon, Dist 23; Sen. Long, Dist 20

COMMITTEE: Judiciary

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.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Five

AN ACT relative to restoration of competency to stand trial for criminal defendants.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Directive to Study Committee; Recommendations. The committee to study restoration of
2 competency, established in RSA 135:49, shall submit any additional recommendations for legislative
3 proposals, as identified in its November 1, 2024 report, to the president of the senate, the speaker of
4 the house of representatives, the senate clerk, the house clerk, and the governor on or before July 1,
5 2025.

6 2 Statement of Findings and Purpose. The general court finds that:

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

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

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

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

29 3 New Subdivision; Forensic Liaison and Competency Restoration Pilot Program. Amend RSA
30 135 by inserting after section 49 the following new subdivision:

31 Forensic Liaison and Competency Restoration Pilot Program

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 4 Effective Date. This act shall take effect upon its passage.

HB 480- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2025-0061h)

AN ACT relative to restoration of competency to stand trial for criminal defendants.

FISCAL IMPACT: This bill does not provide funding, nor does it authorize new positions.

Estimated State Impact				
	FY 2025	FY 2026	FY 2027	FY 2028
Revenue	\$0	\$0	\$0	\$0
<i>Revenue Fund(s)</i>	None			
Expenditures*	\$0	\$1.02 to \$1.22 million	\$1.05 to \$1.25 million	\$0
<i>Funding Source(s)</i>	General Fund			
Appropriations*	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

***Expenditure = Cost of bill**

***Appropriation = Authorized funding to cover cost of bill**

METHODOLOGY:

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.

The Department of Health and Human Services (DHHS) indicates New Hampshire currently does not have a competency restoration program. The Office of the Forensic Examiner is tasked with performing competency evaluations. DHHS states the bill would have a significant fiscal impact. DHHS would be required to establish a two-year pilot restoration of competency program in a county in New Hampshire. The bill requires DHHS to add “one or more” Forensic Liaison positions and to hire, train, and supervise of these positions. Since the DHHS has never been involved in the adult criminal justice system or with restoration of competency for individuals in the criminal system, it does not know how many staff would be needed. DHHS has no information on the number of individuals or their needs. Establishing a pilot program to service those in the criminal justice system would take significant time and resources and would involve establishing the proper number of positions and their supervisory responsibilities, hiring and training such staff, and implementing the program. The bill also requires contracting for services necessary for competency restoration not otherwise covered by a third-party payer.

DHHS states there is no way to estimate the need for contracted services currently. DHHS provided the following additional information:

- Competency restoration within NH has never been formally studied from a health plan coverage perspective. Whether Medicare, Medicaid, commercial insurance, and other health plan providers are willing to pay for restorative services is unknown and may differ by plan. It is not likely that federal dollars would be available for the State's restoration program. The Insurance Department will need to be engaged to identify coverage concerns and issues related to such a program from a health plan perspective.
- DHHS would need to renegotiate the Managed Care Organization contracts to ensure the coverage of such services for the Medicaid expansion population, commercial insurance contracts would need to be renegotiated for New Hampshire Hospital, and community mental health centers, and others that may provide these services. These costs are indeterminable but are expected to be significant.
- Certain mental health services provided by licensed practitioners may be covered by insurance. Restoration of competency is not solely mental health treatment and requires additional expertise and skills. Aside from the Office of the Forensic Examiner, DHHS does not know if such expertise exists within the state. The Office of Professional Licensure and Certification does not have administrative rules within their boards relative to the proper treatment and provision of these services. To meet some of the program objectives in the bill, such as assisting the defendant in obtaining and receiving services, the State will need to spend money to develop standards for clinicians to provide proper restorative services from NH licensed clinicians or engage out-of-state contracts for provision of certain services.
- DHHS does not receive information from the criminal justice system currently. The Office of the Forensic Examiner performs competency evaluations. DHHS would need to coordinate with the Judicial Branch and the Office of the Forensic Examiner regarding individuals found incompetent to stand trial. DHHS is unable to determine if an existing system is available or if a system would be necessary to facilitate this coordination.

DHHS provided a cost estimate assuming the workload would require four new positions: a Forensic Case Manager, a Forensic Liaison and two Psychologists. The estimated salary and benefit costs for these positions is \$616,194 in FY 2026 and \$646,994 in FY 2027. In addition to salaries and benefits there would be administrative costs including transportation, documentation, courier, postage, contracting for services, supervisory responsibilities, and administrative rule changes. These costs are indeterminable at this time but estimated to be between \$400,000 and \$600,000.

It is assumed that any fiscal impact would occur after FY 2025.

AGENCIES CONTACTED:

Department of Health and Human Services