

LFC Requester:	Scott Sanchez
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 1/23/2025 *Check all that apply:*
Bill Number: HB 4 Original Correction
 Amendment Substitute

Sponsor: Christine Chandler & Mariana Anaya **Agency Name and Code** AOC 218
Short Title: CRIMINAL COMPETENCY AND TREATMENT **Number:** _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	N/A	

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
None	None	None	N/A	

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	N/A	

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None
Duplicates/Relates to Appropriation in the General Appropriation Act: None

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 4 amends statutory sections within Chapter 31, Article 9 NMSA 1978 and Chapter 43, Article 1b, Assisted Outpatient Treatment Act (AOT).

Chapter 31, Article 9 is amended to address competency in criminal proceedings, as follows:

- **Section 31-9-1 NMSA 1978:** Updates some of the language while also dividing the section into subsections.
- **Section 31-9-1.1 NMSA 1978:** Divides the section into subsections.
 - New Subsection A: removes the requirement that competency be evaluated by a psychologist or psychiatrist allowing for any “qualified professional recognized by the district court as an expert.”
 - New Subsection B:
 - Incorporates portions of Rule 5-602.1(B)(1) NMRA 1978 to create criteria for determine whether a defendant is competent.
 - If the qualified professional believes a defendant is incompetent, then the qualified professional must include in the evaluation report whether the defendant meets the criteria for involuntary civil commitment or treatment under the civil Assisted Outpatient Treatment (AOT) Act. This Subsection incorporates language from both the Mental Health and Developmental Disabilities Code (see Section 43-1-11(E)(3) and the AOT Act (see Section 43-1B-3 NMSA 1978).
 - New Subsection D: restates the time periods for holding a competency hearing upon completion of the evaluation report depending on whether a defendant is incarcerated or not or has felony or misdemeanor charges.
- **Section 31-9-1.2 NMSA 1978:** Moves dangerousness.
 - Moves dangerousness to the beginning of the section and expands the list of charges defined as dangerous. The new charges include child abuse, sexual exploitation of a child, human trafficking, committing a felony involving the use of a firearm, or commitment aggravated arson.
 - If the defendant is not determined to be dangerous, the court may order the defendant to a community-based competency restoration program or dismiss the case without prejudice. If the court dismisses the case, the court can advise the district attorney to consider initiating involuntary civil commitment or AOT proceedings. If the prosecutor is seeking involuntary civil commitment, the defendant can be held for up to seven days to facilitate the initiation of those proceedings; if AOT is being considered, the defendant may not be held.
 - The community-based competency restoration program shall be approved by the court in a community where the defendant resides; participation in the program is for no more than 90 days.
 - Within 30 days of the date the defendant was ordered to competency restoration, the supervisor of the defendant’s competency restoration program must submit a progress report to the court and both parties. The

- requirements of the report are outlined in Subsection C on pages 8 and 9.
- No later than 90 days from the date the court ordered community-based competency restoration, the court shall hold a review hearing to determine if the defendant has been restored to competency. Seven days prior to the hearing, the outpatient treatment provider shall provide a report to the court containing their opinion as to whether the defendant is restored to competency, the services the defendant is receiving, and whether the defendant satisfies the criteria for involuntary civil commitment or AOT.
 - At the 90 day review hearing, if the defendant is found competent, the case shall proceed to trial; if defendant remains incompetent, then the case shall be dismissed with prejudice and the court may advise the district attorney to initiate involuntary civil commitment or AOT proceedings.
- **Section 31-9-1.3 NMSA 1978:** Updates some of the language.
 - Subsection B: removes the term “treatment supervisors” and replaces it with “department of health.” Requires the department of health report on defendant’s progress towards competency restoration and provide certain opinions that include whether the defendant satisfies the criteria for involuntary civil commitment or AOT.
 - **Section 31-9-1.4 NMSA 1978:** Provides language cleanup and expands the list of enumerated charges for dangerousness.
 - **Section 31-9-1.5 NMSA 1978:** Establishes the term “criminal commitment” for this section.
 - Subsection A: renames the hearing to determine sufficiency of the evidence to “a commitment hearing to determine the sufficiency of the evidence of the defendant’s guilt...” Also expands the list of enumerated charges that can be considered “dangerous.”
 - Subsection F: adds that if the court dismisses the case, the district attorney or department of health may initiate involuntary civil commitment or AOT proceedings. If the prosecutor is seeking involuntary civil commitment, the defendant can be held for up to seven days to facilitate the initiation of those proceedings; if AOT is being considered, the defendant may not be held.
 - **Section 31-9-1.6 NMSA 1978:** Expands the list of enumerated charges (the same as the dangerousness charges) for requiring the department of health to initiate involuntary civil commitment proceedings.
 - **Section 31-9-2 NMSA 1978:** Adds a new subsection allowing the court to authorize the department of health or district attorney to use a report “of any examination ordered before a determination of a defendant’s competency to stand trial,” to initiate involuntary civil commitment or AOT proceedings.

The Assisted Outpatient Treatment Act (AOT) is amended as follows:

- **Section 43-1B-4:** Allows for a district attorney or the attorney general to list of those who may petition the court for AOT. The time period for the examination from a qualified professional is expanded from 10 to 30 days (as part of the affidavit).

There is no appropriation listed in this bill.

There is no effective date of this bill. It is assumed that the effective date is June 20, 2025, which is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

In FY24, 3,676 cases involving competency were filed across the state, which includes misdemeanor, felony, and those considered dangerous. The chart below details the number of competency cases in each judicial district. The processes detailed and required by HB 4 may require a significant investment of resources in:

- a. The community, as community-based competency restoration supports and facilities will need to be developed, bolstered and maintained; and
- b. The courts, whose role in the competency restoration process will require an increase in hearings and extend the time to disposition.
- c. AOT programs.

SIGNIFICANT ISSUES

- 1) According to the National Alliance on Mental Illness (NAMI),

Many states allow community-based competency restoration — 16 states have formal community-based competency restoration programs and 35 state mental health agencies report that they pay for these services. Unfortunately, institutional-based competency restoration remains the norm in many places.

Expanding community-based competency restoration services is a key strategy to prevent prolonged and unnecessary incarceration, and an alternative to more restrictive institutional based services. Community-based competency restoration can help individuals involved in the criminal justice system to focus on fostering recovery and community connections.

See, *Community-Based Competency Restoration*, at <https://www.nami.org/Advocacy/Policy-Priorities/Supporting-Community-Inclusion-and-Non-Discrimination/Community-Based-Competency-Restoration>.

- 2) The question of how and whether to treat to competency, whether through community-based competency restoration or through involuntary commitment, is a huge and complicated societal issue. On the one end of the spectrum is the need to develop community support and resources for competency restoration within the community, while on the other end is the issue of forcing people into treatment who do not want it or do not have the capacity to understand or adhere to the treatment recommendations.

The New York Times notes that, in an effort to interrupt the cycle of mentally ill defendants being shunted into the criminal justice system, only to return to homelessness upon their release,

... many communities are expanding involuntary treatment, a practice the country repudiated decades ago. Patient rights groups warn that forced treatment alone will never work — that in the absence of a robust social support system, it only

feeds people with mental illness back into the circuit of catch-and-release. Better to persuade them to accept treatment.

See, *The Man in Room 117*, Ellen Barry, January 28, 2024, New York Times at <https://www.nytimes.com/2024/01/28/health/schizophrenia-treatment-family.html>, noting, further, that an ideological shift toward involuntary psychiatric treatment is occurring.

3) HB 4 provides the ability for the court to order defendants who are found incompetent to be ordered into a community-based competency restoration programs for up to 90 days, provided the defendant is not found to be dangerous. HB 4 does not provide a method for referrals into competency diversion programs, which are different from community-based competency restoration programs. To date, the judiciary has four competency diversion pilot programs around the state, in the Third, Fourth, and Twelfth Judicial Districts with the First Judicial District launching its program in March 2025.

4) Although HB 4 provides key distinctions for the enumerated crimes to determine dangerousness, there is no real distinction between misdemeanor and felony charges.

5) Regarding cases in Metropolitan Court, Section 31-9-1(B)(2) NMSA 1978 seems to remove the ability of the metropolitan court to dismiss a case when a the defendant is found incompetent. Instead, it appears to require the case be transferred to district court for the district judge to either dismiss the case with prejudice or order the defendant to a community-based competency restoration program per amended Section 31-9-2(B).

If a defendant is restored to competency (with a case that originated in metropolitan court), the statute is silent as to whether the case is sent back to the metropolitan court or remains in district court.

6) HB 4 adds language requiring evaluators to provide an opinion as to whether the defendant meets the criteria for involuntary civil commitment or AOT in each report submitted to the court. Requiring an evaluation that is outside the purview of criminal competency determination may raise due process issues.

7) The amendments in HB 4 do not address the situation when a defendant does not attend or adhere with program requirements, or does not have the capacity to comply, with the community-based competency restoration program.

8) The amendments in HB 4 use many terms and phrases found in the Rules of Criminal Procedure for competency, specifically Rules 5-602.1, 5-602.2, and 5-602.3 NMRA 1978. In HB 4, Section 31-9-1.5(A) is amended to read, “a commitment hearing to determine the sufficiency of the evidence of the defendant’s guilt.” Alternatively, Rule 5-602.2(H) uses the phrase, “clear and convincing evidence that the defendant committed the criminal act charged.” In trial, the fact finder (jury or judge) determines, beyond a reasonable doubt, whether a defendant is innocent or guilty. Using the term “guilt” at this point in a hearing, and when the standard is clear and convincing evidence, may cause confusion.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None identified.

TECHNICAL ISSUES

In Section 3, page 9, lines 21-22, it does not state who receives the 90 day report. Does the report only go to the court or to all parties?

In HB 4, Section 6, the title of Section 31-9-1.5 is amended to add the term, “criminal commitment.” The term is used throughout the section, especially when referring to a hearing (i.e. criminal commitment hearing on page 23, line 2) except on page 21, line 25 where the word “criminal” is left out.

OTHER SUBSTANTIVE ISSUES

Under HB 4, Section 3, when a defendant is found to not be competent and ordered to a community-based competency restoration program, reports are to be provided to the court at both 30 and 90 days. The 30 day report is to be completed by the “person supervising the defendant’s competency restoration program” (page 8, lines 9 – 10), and the 90 day report by the “person providing outpatient treatment and services to the defendant” (page 9, lines 20-21). Is this meant to be the same person?

Also, under Section 3, the person from outpatient competency restoration who writes the 90 day report is to provide an opinion to the court as to whether the defendant has been restored to competency. Therefore, is this person required to be a “qualified professional recognized by the district court as an expert,” as required of the evaluator in Section 31-9-1.1 NMSA 1978?

Section 31-9-2 NMSA 1978 is amended to include a new subsection allowing for the court to authorize the department of health or district attorney to use a report “of any examination ordered before a determination of a defendant’s competency to stand trial,” to initiate involuntary civil commitment or AOT proceedings. The statute does not state how current a report must be leaving open the opportunity for the use of stale reports.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

Cases Involving Competency by Judicial District and Year

<i>District</i>	2017	2018	2019	2020	2021	2022	2023	2024
First	242	313	397	273	316	287	144	125
Second	577	425	375	236	267	237	325	301
Third	138	87	153	167	219	195	314	296
Fourth	80	95	120	90	95	180	149	162
Fifth	478	461	496	462	550	520	573	517
Sixth	91	128	102	110	144	158	212	160
Seventh	137	127	159	135	133	123	143	165
Eighth	115	122	137	68	73	87	98	111
Ninth	213	135	119	128	148	156	202	198
Tenth	41	47	55	26	37	15	37	31
Eleventh	292	297	317	292	378	386	342	344
Twelfth	154	107	136	110	82	97	111	94
Thirteenth	257	210	154	151	216	196	166	180
Metropolitan Court	542	690	672	720	591	497	527	992
TOTAL	3,357	3,244	3,392	2,968	3,249	3,134	3,343	3,676