LFC Requester:	Scott Sanchez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 2/5/25

Bill Number: HB4

Check all that apply:

Original ___ Correction ___

Amendment x Substitute ___

Sponsor: Rep. Christine Chandler, Rep. Marianna Anaya. Rep. Andrea Reeb, Rep. Crystal Brantley, Rep. Joseph Cervantes

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: Criminal Competency & Treatment

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	**FY26**		

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	**FY26**	**FY27**		

(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						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: Revises and expands Chapter 31, Article 9 on proceedings to determine competency to stand trial on criminal charges.

Section 1 amends Section 31-9-1 (determination of competency – raising the issue) to clarify that a party or the court (not an ambiguous anyone) may raise a defendant's competency to stand trial (not simply proceed in a criminal case), and that the case shall be transferred to the district court, not suspended.

The original version of Section 2 amends Section 31-9-1.1 (determination of competency – evaluation & determination) to clarify that any qualified professional (not just a psychologist or psychiatrist) may evaluate a defendant's competency. The **proposed amendment** returns to the current statutory language of requiring that a defendant's competency evaluation be conducted by a psychologist or psychiatrist or other qualified professional recognized by the district court as an expert. Section 2 further requires the professional who completes the evaluation shall prepare and submit a report to the court. It also adds a new Subsection describing what the evaluation report shall include and a new Subsection providing that if the professional determines that a defendant is not competent to stand trial, the report shall include additional specified information, including discussion of involuntary commitment and/or treatment. Section 31-9-1.1 is also amended to provide a specific time frame within which the competency hearing must occur.

Section 3 amends Section 31-9-1.2 (determination of competency – commitment – report) to provide the same clarification regarding competency *to stand trial*, and to delineate that a court determines a defendant is not competent and is dangerous if the court finds by clear and convincing evidence that the defendant presents a serious threat of one or more of a list of specified acts. The amendment also permits a court to order participation in a community-based competency restoration program if the defendant is not dangerous. The amendment also clarifies that if the court dismisses the case (without prejudice), it may advise the DA to consider initiating involuntary civil commitment proceedings and detain a defendant for a maximum of 7 days to facilitate such proceedings, **or** initiating proceedings for outpatient treatment without any detention.

A new Subsection is also added to Section 31-9-1.2 to state that a community-based restoration program shall be approved by the court and provided in an outpatient setting in

the community in which a defendant resides, and that the court may order a defendant to participate in such program for no longer than 90 days. The proposed additional language also provides further detail on how a defendant shall proceed through the program with timelines, reporting requirements, and a review hearing. If, within the timeline set forth in the bill, the court determines that a defendant is not competent, additional requirements for how the court should proceed are specified in the added language, including providing an opinion on involuntary commitment or treatment, and dismissal without prejudice and the potential initiation of other proceedings described above. Conversely, if the court finds that the defendant is competent, the case proceeds to trial.

Section 31-9-1.2 is also modified to provide for an order of competency restoration for a defendant who is found to be not competent and dangerous. The Section is further amended to clean up language that was otherwise included in earlier additions and to provide clarity regarding the department of health's obligation to admit a defendant for competency restoration or provide certification that the department cannot meet the needs of the defendant. The **proposed amendment** adds that a court shall enter a transport order that provides for the defendant's return to the local jail "within seventy-two hours" upon being restored to competency, completion of the competency restoration program, or as otherwise required by the court. The **proposed amendment** also changes the phrasing "locked facility" to "a secure, locked, licensed inpatient psychiatric hospital" and changes "department of health facility" to "an inpatient psychiatric facility." In addition, the **proposed amendment** restores language the original bill would have struck, such that the existing statutory language referring to "the necessary and available documents reasonably required for admission pursuant to written policies . . ." would remain.

Section 4 amends Section 31-9-1.3 (determination of competency – 90-day review – reports – continuing treatment) to specify its application to competency restoration and otherwise provide clarity with more specific language (e.g., replacing "of the original finding of incompetency" with "the court determined the defendant is not competent to stand trial" throughout). The amendments also generalize the responsible party (e.g., changing "treatment supervisor" to "department of health" throughout) and clarifies that findings of dangerousness are by the court in accordance with the statute, not merely "as that term is defined in" the statute.

Additional language is added to Section 31-9-1.3 to outline additional requirements for when a defendant remains not competent, including an opinion regarding involuntary commitment or treatment and a discussion of various factors including risk of harm and existence of mental disorder. The original version of the bill placed this determination upon the department of health; the **proposed amendment** returns to the current statutory language of requiring the "treatment supervisor" to submit the required written progress reports.

Section 5 amends Section 31-9-1.4 (determination of competence – incompetent defendants) to incorporate the same clarifying language throughout this section (e.g., "be restored to competency" rather than "become competent to proceed in a criminal case") and to incorporate the same additional restrictions and requirements discussed in the earlier sections (e.g., "within nine months" rather than "within a reasonable period of time not to exceed nine months"). This section also clarifies that the hearing is a "criminal commitment hearing" when a defendant is charged with a list of specified crimes, which expands the previous list to *also* include abuse of a child, sexual exploitation of children, and human trafficking.

Section 6 amends Section 31-9-1.5 (determination of competency – criminal commitment – evidentiary hearing) to clarify that if the court determines that there is not a substantial probability that a defendant not competent to stand trial will be restored to competency (uses the new language incorporated in prior sections), a commitment hearing to determine the sufficiency of the evidence as to the defendant's guilt shall be held if the defendant is charged with certain specified crimes, which the amendment expands to *also* include the same 3 additional crimes specified above. Various other amendments are incorporated to clarify and conform this section to the amendments described above. One additional amendment, however, seems to make the list of "significant changes to [a] defendant's condition" exhaustive (Subsection (E)(3)). A new Subsection (F) is also added to state that the department of health or the DA may initiate involuntary commitment proceedings in accordance with the Mental Health and Developmental Disabilities Code (MHDDC) or the Assisted Outpatient Treatment Act (and language throughout the rest of Section 31-9-1.5 had been updated to reflect this), and to note that the defendant may be detained for a maximum of 7 days only to facilitate the initiation of proceedings pursuant to the MHDDC. The **proposed amendment** changes the phrasing "locked facility" to "a secure, locked, licensed inpatient psychiatric hospital" consistent with similar language used in Section 3, above.

Section 7 amends Section 31-9-1.6 (hearing to determine developmental or intellectual disability) to clean up language to conform with changes discussed above and replace "defendant has a developmental or intellectual disability" with "defendant is not competent due to a developmental or intellectual disability," and similar language, throughout. This section is also amended to state that involuntary commitment proceedings in accordance with the MHDDC shall be initiated when a defendant is charged with specified crimes, *removing first degree murder* and *arson* and *adding* CSP (not limited to the first degree), child abuse, sexual exploitation of children, human trafficking, felony involving the infliction of great bodily harm, felony involving the use of a firearm, and *aggravated* arson. Note that the new list matches that seen earlier in Sections 31-9-1.4 and 31-9-1.5. The **proposed amendment** adds that when a court holds a hearing to determine whether a defendant is not competent due to an intellectual disability, "the evaluator shall be provided with the necessary and available documents reasonably required for admission pursuant to written policies adopted by the secretary of health or the secretary's designee."

Section 8 amends Section 31-9-2 (competency evaluation – mental or functional examination) to clean up language, remove reference to Sections 41-13-3 and 41-13-3.1, and add a new Subsection that states that a court may authorize a DA or the department of health to use a report of any examination ordered before a determination of a defendant's competency to stand trial for the purposes of initiating proceedings in accordance with the MHDDC or Assisted Outpatient Treatment Act.

Section 9 amends Section 43-1B-4 (petition to the court) to add "a district attorney or the attorney general" to the list of persons who may file a petition for an order authorizing assisted outpatient treatment and to change the time frame from 10 to 30 days prior to the filing of the petition, since the qualified professional had examined the respondent.

Additional generic changes throughout the bill include modified language for clarity, which does not otherwise substantively change the law.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

None.

PERFORMANCE IMPLICATIONS

By expanding on the meaning of dangerous (Section 31-9-1.2(A)), HB4 could result in an increased number of defendants who are criminally committed.

ADMINISTRATIVE IMPLICATIONS

The new authorization to file petitions under Section 43-1B-4 could result in increased case load for this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The proposed language in Section 31-9-1.1(C), which requires a qualified professional to include additional opinions in their report when they believe a defendant is not competent to stand trial, could pose a conflict with Rule 5-602.1(B)(2) NMRA, which states that a competency evaluation is "limited to determining whether the defendant is competent to stand trial." HB4's expanded definition of dangerousness could conflict with Rule 5-602.2(D) NMRA, which provides that "[a] determination of the defendant's dangerousness shall take into account only evidence relevant to whether the defendant presents a serious threat of inflicting great bodily harm on another or of violating Section 30-9-11 or Section 30-9-13."

TECHNICAL ISSUES

The **proposed amendment's** reinsertion of language that was stricken in the original bill results in the redundant phrasing "commitment order of commitment" at the end of Section 31-9-1.2(E).

OTHER SUBSTANTIVE ISSUES

See above – description of potential conflict with Rules 5-602.1(B)(2) and 5-602.2(D).

The **proposed amendment's** addition of the following language to Section 7: "the evaluator shall be provided with the necessary and available documents reasonably required for admission pursuant to written policies adopted by the secretary of health or the secretary's designee" may cause confusion because the proposed language seemingly refers to admission to an inpatient psychiatric hospital, but this subsection merely directs the court to hold a competency hearing. In addition, this is the only place where the phrase "the evaluator" is used and it is not clear whether this term refers to the court or to a qualified professional or otherwise.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

The changes proposed by amendment to HB4 are addressed above.