

LFC Requestor: SANCHEZ, Scott

2025 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: House

Category: Bill

Number: 004

Type: Amendment

Date (of THIS analysis): 1/22/25

Sponsor(s): Christine Chandler

Short Title: Amending the Criminal Competency Statute

Reviewing Agency: Agency 665 - Department of Health

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Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

| Appropriation Contained | | Recurring or Nonrecurring | Fund Affected |
|-------------------------|-------|---------------------------|---------------|
| FY 25 | FY 26 | | |
| \$0 | \$0 | N/A | N/A |
| | | | |

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|-------|-------|---------------------------|---------------|
| FY 25 | FY 26 | FY 27 | | |
| \$0 | \$0 | \$0 | N/A | N/A |
| | | | | |

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY 25 | FY 26 | FY 27 | 3 Year Total Cost | Recurring or Non-recurring | Fund Affected |
|-------|-------|-------|-------|-------------------|----------------------------|---------------|
| Total | \$0 | \$0 | \$0 | \$0 | N/A | N/A |
| | | | | | | |

The fiscal implications of this bill are not possible to assess at this time. The proposed changes to the law may result in more admissions to the Forensic Division of the New Mexico Behavioral Health Institute (NMBHI) and may also result in more admissions to the Adult Psychiatric Division of NMBHI, as well as other licensed psychiatric facilities throughout the state. The changes to the law would create situations in which many more people are evaluated for admission. There is not data or a way to estimate how many people would meet this criteria, as they are not being evaluated at this time.

Section III: Relationship to other legislation

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: None

Duplicates/Relates to an Appropriation in the General Appropriation Act: None

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis

House Bill 4 (HB04) proposes to amend the Mental Illness and Competency Code, NMSA Chapter 31. The bill makes numerous minor language updates and changes throughout the code, as well as substantive changes to the code. The changes include both changes to who is admitted for treatment, who receives treatment in the community, and how the treatment process progresses. It also includes language mandating that people are evaluated for civil commitments throughout the process and admitted under that code when applicable.

Section 1 pertaining to NMSA 31-9-1 remains mostly unchanged substantively but contains changes to language and phrasing.

Section 2 relating to Section NMSA 31-9-1.1 amends the current law, providing for additional reporting requirements and assessments to be performed by the initial competency evaluators. In addition to conducting an evaluation for competency, the evaluators will also be required to conduct evaluations for appropriateness for civil commitment and for Assisted Outpatient Treatment (AOT) and to include these assessments in the reports. The proposed language also outlines the legal standard for competence as follows: (1) a sufficient, present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding; (2) a rational and factual understanding of the proceedings against the defendant; and (3) the capacity to assist in the defendant's own defense and to comprehend the reasons for punishment.

Section 3 amends Section NMSA 31-9-1.2. The bill amends the definition of dangerous, currently, dangerous is defined as “if released, the defendant presents a serious threat of inflicting great bodily harm on another or of violating Section 30-9-13 or 30-9-13 NMSA 1978.” The proposed definition of dangerous in the bill is as follows:

“A defendant who is not competent is dangerous if the court finds by clear and convincing evidence that the defendant presents a serious threat of: (1) inflicting great bodily harm, as defined in Section 30-1-12 NMSA 1978, on another person; (2) committing criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; (3) committing criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978; (4) committing abuse of a child, as provided in Subsection D of Section 30-6-1 NMSA 1978; (5) violating a provision of the Sexual Exploitation of Children Act; (6) committing human trafficking, as provided in Section 30-52-1 NMSA 1978; (7) committing a felony involving the use of a firearm; or (8) committing aggravated arson, as provided in Section 30-17-6 NMSA 1978.”

Section 3 also includes new language allowing the Court to order a defendant who is not “dangerous”, to participate in community-based competency restoration program, which must be approved by the court and must be in an outpatient setting in the community where the defendant resides. There is also a new provision that permits the court to advise the district attorney to consider civil commitment and AOT for defendants who are found to be not dangerous and whose cases are dismissed. In cases where the DA wishes to pursue a civil commitment, the bill allows the defendant to be detained for up to seven days to prepare and file the petition.

The bill includes reporting requirements for community restoration programs similar to the reporting requirements that currently exist for in-patient restoration. The community evaluators must submit reports at 30- and 90-day intervals that detail the status of a defendant’s treatment and likelihood of attaining competency as well as opinions as to whether or not a defendant satisfies criteria for civil commitment and AOT. The bill provides for a review hearing 90 days after entering the program to determine if a defendant has been restored to competency.

The bill amends the current inpatient competency restoration process. The timeline for admitting a defendant to a restoration program has been changed to 30 days from receipt of the court’s order. Current law requires admission within 30 days of the time documents required for admission are provided to the facility, thus, the bill eliminates the requirement that collateral medical and clinical information be provided prior to admission. The bill adds a provision that the Department of Health (DOH) may notify the court if the Department cannot meet the needs of a defendant, in which case, the court shall hold a hearing to determine a path forward.

Section 4, updates language throughout Section 31-9-1.3. It also requires the DOH to include an opinion as to whether or not a defendant meets criteria for civil commitment or AOT in its report provided prior to the 90 review hearing.

Section 5 modifies Section 31-9-1.4 to expand the list of crimes that qualify a defendant found incompetent as a result of a mental illness for commitment when they are determined to be unrestorable and remain incompetent. Under the bill, a defendant may be referred for commitment pursuant to 31-9-1.5 if they are charged with; (1) a felony involving infliction of great bodily harm, as defined in Section 30-1-12 NMSA 1978, on another person; (2) criminal sexual penetration, as provided in Section 30-9-11 NMSA

1978; (3) criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978; (4) abuse of a child, as provided in Subsection D of Section 30-6-1 NMSA 1978; (5) a crime provided for in the Sexual Exploitation of Children Act; (6) human trafficking, as provided in Section 30-52-1 NMSA 1978; (7) a felony involving the use of a firearm; or (8) aggravated arson, as provided in Section 30-17-6 NMSA 1978.

The new crimes that have been added to the list are: abuse of a child, a crime provided for in the Sexual Exploitation of Children Act, human trafficking, and aggravated arson. (only arson is listed in the current statute, not aggravated arson)

Section 6 amends Section 31-9-1.5. Minor language changes are made throughout. Language is added that clarifies that a District Attorney, as well as the DOH, may initiate civil commitment or AOT proceedings when a defendant is found to be incompetent but has not committed an unenumerated crime and their case is being dismissed.

Section 7 amends 31-9-1.6 relating to the commitment of defendants who are incompetent as a result of a developmental disability. The bill expands the list of qualifying crimes that would allow a court to refer the case to the DOH for civil commitment, making the list the same as the list of qualifying crimes for those found to be incompetent because of a mental illness. Currently the qualifying crimes are: murder in the first degree, first degree criminal sexual penetration, criminal sexual contact of a minor, or arson. The bill expands the list to include: (1) a felony involving infliction of great bodily harm, as defined in Section 30-1-12 NMSA 1978, on another person; (2) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; (3) criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978; (4) abuse of a child, as provided in Subsection D of Section 30-6-1 NMSA 1978; (5) a crime provided for in the Sexual Exploitation of Children Act; (6) human trafficking, as provided in Section 30-52-1 NMSA 1978; (7) a felony involving the use of a firearm; or (8) aggravated arson, as provided in Section 30-17-6 NMSA 1978.

Section 8 amends Section 31-9-2 to include a provision stating, "A court may authorize a district attorney 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 Mental Health and Developmental Disabilities Code or the Assisted Outpatient Treatment Act."

Is this an amendment or substitution? Yes No

Is there an emergency clause? Yes No

b) Significant Issues

The bill creates a new option for outpatient community-based restoration for defendants who are found to be not dangerous. Currently, the only option for those defendants is dismissal or civil commitment. The bill expands the duties of community forensic evaluators to include an opinion related to civil commitment and admission to AOT. This will necessitate additional training for these evaluators.

The bill amends the timeline and admission process for clients being referred to competency restoration pursuant to 31-9-1.2. Currently, the law states that a client shall be admitted 30 days from the time the DOH receives documents required for admission. This clause has been removed in the proposed bill. The documents DOH requests received pursuant to this clause include vital medical information from referring facilities and hospitals. It also includes the forensic evaluation and other documents related to the case. The medical information is critical as it pertains to the safety of the defendant; receiving the defendant without receiving vital medical information beforehand may result in a lapse of a continuum of medical care and medication administration, which can be fatal. Not receiving prior assessments and legal documents prior to admission delays the evaluation process. Removing the requirement that the courts or parties provide collateral information to DOH prior to admission impedes DOH's ability to provide safe and effective medical care upon admission and could cause severe injury or death. It is our understanding that changes to this and other aspects of the bill will be made to address these concerns.

The bill expands the class of crimes that qualify an individual for a commitment pursuant to NMSA 31-9-1.5. These defendants spend the maximum duration of time allowed under statute at NMBHI in the Forensic unit. If the class of crimes is expanded as proposed, the population may increase.

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?

Yes No

If passed this bill would result in potential increases in client populations at NMBHI APD, psychiatric facilities throughout the states, and FTU units as well as the Estancia house at LLCP.

- Is this proposal related to the NMDOH Strategic Plan? Yes No

Goal 1: We expand equitable access to services for all New Mexicans

Goal 2: We ensure safety in New Mexico healthcare environments

Goal 3: We improve health status for all New Mexicans

Goal 4: We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?

Yes No N/A

- If there is an appropriation, is it included in the LFC Budget Request?

Yes No N/A

- Does this bill have a fiscal impact on NMDOH? Yes No

The fiscal impacts are not possible to determine given that the increase in referrals would spread across all licensed psychiatric hospitals in the state and would not all fall on NMDOH alone.

4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH? Yes No

The bill will add administrative costs to DOH facilities. In addition, DOH will be tasked with additional legal duties related to commitments which may require the hiring of additional staff and DOH may need to update administrative rules.

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

None

6. TECHNICAL ISSUES

Are there technical issues with the bill? Yes No

7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written? Yes No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)? Yes No
- Does this bill conflict with federal grant requirements or associated regulations?
 Yes No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs? Yes No

The changes in this bill would add additional opportunities for civil commitment evaluations to be conducted. It should be noted that treatment providers are required to obtain consent prior to providing services and many of the clients sent to outpatient treatment pursuant to this bill may lack capacity. Inpatient programs may often be better suited to deal with this circumstance, as it usually requires an application to the courts for the appointment of a legal guardian. Outpatient clinics that may be providing community-based services may find it difficult to obtain a legal guardian for the clients they are tasked to serve.

The civil commitment process as practiced currently may place all defendants on court orders in NMBHI's civil units. This concern has been discussed with Representative Chandler and DOH anticipates language in future drafts to ensure that all licensed psychiatric hospitals are options for people recommended for civil commitment.

8. DISPARITIES ISSUES

Individuals in rural and tribal areas of New Mexico may face barriers to accessing qualified mental health professionals.

Transportation challenges, healthcare provider shortages, and limited local resources may delay diagnosis and treatment, exacerbating disparities.

Some individuals may face challenges related to costs associated with transportation, medications, or other out-of-pocket expenses not covered by public funding.

Attention should be paid to defendants from low-income backgrounds who may struggle with access to adequate legal representation and mental health services.

The bill mandates court-ordered evaluations, some defendants may face barriers in navigating the legal and healthcare systems effectively.

Attention should be paid to non-English speakers may face challenges in understanding the competency process and treatment options.

A shortage of qualified mental health professionals in rural areas of the state could lead to delays in competency evaluations and treatment, disproportionately affecting those in high-demand regions.

9. HEALTH IMPACT(S)

The addition of the option of community-based restoration may give access to services to a population that are not currently receiving services.

This bill may provide treatment to individuals who are currently electing not to receive it, leading to better long-term outcomes.

The bill is expected to improve mental health outcomes by providing timely evaluations and appropriate treatment recommendations.

10. ALTERNATIVES

Enforcing existing statutes for civil commitment Assisted Outpatient Treatment, and referrals for mental health evaluations may impact the population that is attempting to be served in this bill.

11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If HB04 is not enacted, the Mental Illness and Competency Code will not be amended to make various substantive changes.

12. AMENDMENTS

DOH recently met with Representative Chandler to discuss ways to improve the bill. It is our understanding that most if not all of those changes will be incorporated into a future draft of the bill.