

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

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

Date Prepared: 2/14/25 *Check all that apply:*
Bill Number: HB8Sub Original Correction
 Amendment Substitute

Sponsor: Rep. Chandler **Agency Name and Code** HCA 630
Short Title: Criminal Competency & Treatment **Number:** _____
Person Writing Anita Mesa
Phone: 505.709.5665 **Email** Anitam.mesa@hca.nm

SECTION II: FISCAL IMPACT**APPROPRIATION (dollars in thousands)**

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

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

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

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
FTE Costs		\$169.4	\$169.4	\$338.8	Recurring	General Fund

Forensic Evaluator Contract Costs		\$3,074.0	\$3,074.0	\$6,148.0	Recurring	General Fund
Total		\$3,243.4	\$3,243.4	\$6,486.8		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB4 and HB4 Amended

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:(Almost a duplicate of 2025 HB4) Extensively rewrites sections of the Criminal Code relating to determining criminal competency, creating in the process a complicated flow chart of the actions that a court may take concerning determination, commitment, and treatment. Also expands the crimes for which a defendant may be criminally committed.

House Judiciary Committee substitute for HB8 creates an omnibus package by including the entirety of the original HB8--a criminal competency reform and treatment bill that would move more defendants who are not dangerous and also not competent toward competency restoration or assisted outpatient treatment as well as involuntary civil commitment--and adds provisions from five other unrelated crime bills introduced this session:

- HB38, prohibiting possession of devices that convert semiautomatic weapons into fully automatic weapons
- HB50, which increases penalties for repeat offenders for vehicle theft-related charges
- HB31, reclassifying shooting threats toward public places as a fourth degree felony (provisions also found in 2025 SB18)
- HB16, enhancing penalties for trafficking fentanyl
- HB106, which allows law enforcement to petition for a search warrant to have a DWI suspect’s blood drawn if they believe a controlled substance, including cannabis, is involved.

In its substituted form, HB 8 extensively rewrites sections of the Criminal Code relating to determining criminal competency, creating in the process a complicated flow chart of the actions that a court may take concerning determination, commitment, and treatment. Also expands the crimes for which a defendant may be criminally committed. It further amends the Criminal Code to address crimes of possession of a weapon conversion device, increasing penalties for repeat offenders for vehicle theft-related charges, reclassifying shooting threats toward schools or other public places, enhancing penalties for trafficking fentanyl, and the procedure for drawing blood for a chemical test of an alleged DUI suspect.

FISCAL IMPLICATIONS

The bill does not include specific funding to expand or oversee the inpatient and outpatient behavioral health services necessary to support the bill’s requirements.

The Health Care Authority’s Behavioral Health Services Division (HCA BHSD) provides structure, quality control, training, and non-Medicaid funding for all court ordered competency

evaluations wherein the defendant is found to be indigent. The Medicaid program administered by the HCA is the primary payor of most (more than 90%) of behavioral health services in New Mexico.

To accommodate the additional time needed for contracted evaluators to perform the functions in Section 2C, the HCA BHSD would need to increase its current budget by \$3,074,000. Calculation based upon 1,537 evaluations performed in FY24. The industry **average cost** for comprehensive clinical evaluations: \$200.00/hr. As a result of the projected increase in evaluations needed, the estimated number of additional hours needed per evaluation equals ten hours. As such, \$200 x 10hrs, x 1,537 per evaluation = \$3,074,000. (This figure does not reflect the potential increase in the number of evaluations needed to be performed as a result of bill implementation).

Section 2.C.1a- Section 2.C.2.e would require the qualified professional to offer opinion beyond what is currently required in rule 5-602.1. By expanding the scope of opinion for individuals deemed not competent not dangerous. In FY 24, there were 719 evaluations in which the individual was deemed not competent. A state contracted evaluator may be tasked with determining a treatment course and opine on the evaluated person's amenability to treatment. This level of input could expose evaluators to malpractice claims and may prompt evaluators to consider increased malpractice insurance. Malpractice insurance, also known as professional liability insurance, is designed to shield one from the financial and professional fallout of legal claims made by clients. In New Mexico malpractice premiums range between \$15,000. - \$20,000. for insurance coverage of \$200,000/\$600,000 per incident / per year (2019 Professional Risk Management Services, Inc. (PRMS)).

Each year, two – three percent of all psychiatrists in the United States face a malpractice claim (*New England Journal of Medicine* 2016; 374:354–362). Although rates of malpractice actions against psychiatrists are relatively low compared with rates for other specialists, psychiatrists are more likely than other specialists to be the recipients of disciplinary actions from state medical boards (*Annals in Clinical Psychiatry* 2014; 26:91–96). The most common cause of a malpractice claim is suicide or attempted suicide. This is closely followed by claims for alleged incorrect treatment (2019 Professional Risk Management Services, Inc. (PRMS)).

HCA BHSD would need to expand forensic evaluator scopes of work to ensure the new parameters and court timelines outlined in the bill are met, such as the inclusion of competency restoration services for uninsured individuals. These new duties will likely result in increased costs. In FY25, HCA BHSD increased payment to contract evaluators to \$1,250 per evaluation. This amount would likely need to be increased to retain the current pool of evaluators and recruit new evaluators.

HCA BHSD would need additional staff to accommodate the administrative and programmatic support of forensic evaluators. This would require 1 FTE at a pay band 70, and 0.5 of a supervisor position for a total of \$169,400 for salary, fringe and operating costs.

In calendar year 2025 HCA projected the Per Member Per Month (PMPM) costs for those enrolled in Turquoise Care that have a Substance Use Disorder or Serious Mental Illness diagnosis to be \$1,618,550 and \$2,609,610 respectively. (The projected PMPM does not specifically reflect individuals that may also be in a criminal justice setting with behavioral health needs).

SIGNIFICANT ISSUES

New Mexico requires a significant investment in behavioral health capacity and the workforce to successfully serve all individuals who may become eligible for court-ordered treatment as proposed in the bill. (The FY26 HCA Executive Recommendation includes \$100M GF for

behavioral health infrastructure and capacity). HB8Sub does not describe funding, or the state infrastructure needed to oversee and implement any new processes. The bill does not make clear how DOH or other state agencies would interface with the existing competency diversion programs being administered by these new processes, as possible resources for competency restoration services.

In New Mexico, the projected number of individuals who may need Medication Assisted Treatment (MAT) who are *not* receiving services for a substance use disorder (SUD) is 9,130; the projected number of individuals who may need community-based treatment who are *not* receiving services for a severe mental illness (SMI) is 12,182. In calendar year 2025 HCA projected the Per Member Per Month (PMPM) costs for those enrolled in Turquoise Care that have an SUD or SMI diagnosis to be \$1,618,550 and \$2,609,610 respectively. (The projected unmet service needs do not specifically reflect individuals that may also be in a criminal justice setting with behavioral health needs).

HCA BHSD provides structure, quality control, training and funding for all court ordered competency evaluations wherein the defendant is found to be indigent. Activities include: contracting with forensic evaluators statewide to ensure competency evaluations are assigned and completed, providing training for the competency evaluators on current practice, completing reviews on evaluations to ensure quality standards are met.

~~HB8~~ HB8Sub states that competency to stand trial reports can be used to determine whether someone meets criteria for involuntary commitment and harm to self and/or others. By NM rule 5-602, competency to stand trial evaluations and reports do not address these elements.

~~HB8~~ HB8Sub proposes competency restoration to occur in the community. There would need to be funding for outpatient competency restoration initiatives, especially in counties where defendants reside in other regions of the state. Many states allow community-based competency restoration. In the 16 states that have formal community-based competency restoration programs services are paid for by mental health agencies ([NAMI.org](https://www.nami.org), 2025).

Section 2.A endorses the authority of the NM Courts to determine who would qualify as an expert; and places risk on HCA BHSD's ability to properly vet and determine the caliber and quantity of its state contracted evaluators within its forensic program.

Section 2.C in its entirety would require comprehensive treatment recommendations outside of the original intent for forensic evaluations, which is to speak to the three basic prongs required for competency to stand trial. Additionally, collateral information and other key records are not available to state contracted evaluators, making it difficult for them to provide the scope of evaluation proposed in ~~HB8~~ HB8Sub. Evaluation time would be expanded and costs to perform comprehensive testing would increase. The industry standard hourly rates for these types of evaluations average \$150.00-\$200.00/hour and would likely require a minimum of 10 additional hours to accommodate assessment, testing, report writing, and treatment recommendations.

State funded contracted evaluators are not tasked to perform this level of comprehensive treatment recommendations. They also are not provided with the collateral information necessary to build a treatment plan. Administrative burden would increase in a manner that may impact the number of evaluators contracted with HCA BHSD, limit recruitment opportunities, and impact on the state's ability to perform and submit timely reporting for individuals who are deemed indigent.

Section 2.C.(2) lends to the possibility that Assisted Outpatient Treatment (AOT) could be mandated. A key principle to AOT services is that the individual enters treatment voluntarily for

optimal outcomes, rather than by mandate.

Section 3.B indicates that cases where the defendant is determined not competent not dangerous, "...the court may order the defendant to participate in a community-based competency restoration program..." without clarifying options available to stakeholders when no community-based competency restoration programs exist within the counties where the individuals reside.

HB8 HB8Sub accounts for DOH processes relating to CST evaluations and treatment evaluations that are performed primarily at NMBHI. However, the bill does not address the many challenges to be faced by state contracted forensic evaluators and expanded evaluations. For example, the bill may result in an increased workload and lack of reimbursement. The HCA pays \$1,250 per report but any additional court appearances or reports are out of pocket for the provider. In FY24, there were 719 evaluations conducted wherein the defendant was determined not competent, not dangerous. There is potential for an equal number of orders for mandated treatment to be issued. In practice, state contracted evaluators are frequently called to testify in these types of cases and increased financial burden to the evaluator is likely.

PERFORMANCE IMPLICATIONS

Additional requirements may strain the court system's ability to meet statutory timelines and ensure individuals' right to a prompt judicial process.

Section 3 proposes language that would greatly impact on the type of services to be made available in communities and does not describe how the resources to deliver these services would be obtained or funded. This section speaks to supervisors that would be responsible for determining an individual's competency based on treatment outcomes. There is no indication as to the type of supervision or level of expertise required to function in the proposed capacity.

As Section 3.C.1(a) –(d) would also require treatment providers to submit reports to the court as to the progress and outcomes for each person receiving mandated treatment. This requirement could place an additional administrative burden on behavioral health treatment providers and may negatively impact the interest for these providers to deliver these specialized services.

To date, there are three counties that have Assisted Outpatient Treatment programs, two of which are active in limited capacity (Bernalillo and Doña Ana), and one is in development stage (Santa Fe). The bill does not identify which agency would be responsible for implementing and overseeing other Assisted Outpatient Treatment programs to help ensure statewide access as proposed in the legislation.

Statutory timelines may be exceeded and unmet based on the scope of recommendations expected by the proposed legislation thus impacting an individual's right to a timely judicial proceeding.

DOH, New Mexico Behavioral Health Institute (NMBHI) currently has oversight of competency restoration programs. Competency restoration is an educational process whereby someone with a behavioral health condition can receive treatment and education about the legal processes so that they can work with their attorneys for a plea deal which is likely to involve engagement in treatment. NMBHI, located in San Miguel County, is the only facility in the State where individuals who are found incompetent to stand trial may receive treatment. NMBHI does not have the adequate capacity to serve all existing individuals needing treatment. Extensive planning and collaboration among HCA, DOH and AOC is necessary to expand competency restoration programs in other counties. HCA will also need assist DOH in identifying providers in each county to collaborate on service delivery for the expanded competency restoration programs. Planning and collaboration ensure that behavioral health needs are met for those identified as needing

treatment.

ADMINISTRATIVE IMPLICATIONS

HCA BHSD would need to collaborate with the Department of Health (DOH), the Administrative Office of the Courts (AOC) and the NM Districts Courts (NM Courts) to support the development and implementation of community-based competency restoration programs as they seek to expand service delivery. HCA BHSD would need to collaborate with DOH/NMBHI who oversees the competency restoration program to help locate behavioral health treatment providers in local communities to expand the competency restoration programs. HCA BHSD may need to collaborate with local community and county programs to ensure a defendant is released with a treatment plan and case management services are in place.

No direct IT impact.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates HB4 as amended by HAPC mainly in Sections 2 and 3.

TECHNICAL ISSUES

HB8 HB8Sub is missing a definition section, making it difficult to establish the appropriate parameters to execute the functions and timelines identified throughout the entirety of the bill.

There is no language regarding interpretation service during competency evaluation or competency restoration: National Standards for Culturally and Linguistically Appropriate Services (**CLAS**) in Health and Health Care Communication and Language Assistance:

- o Offer language assistance to individuals who have limited English proficiency and/or other communication needs, at no cost to them, to facilitate timely access to all health care and services.
- o Inform all individuals of the availability of language assistance services clearly and in their preferred language, verbally and in writing.
- o Ensure the competence of individuals providing language assistance, recognizing that the use of untrained individuals and/or minors as interpreters should be avoided.
- o Provide easy-to-understand print and multimedia materials and signage in the languages commonly used by the populations in the service area.

OTHER SUBSTANTIVE ISSUES

According to a 2023 analysis, people with mental illness are more likely to be a victim of violent crime than the perpetrator. Additionally, not all individuals needing access to behavioral health services perpetrate violence. The most important and independent risk factor for criminality and violence among individuals with mental illness is a long-term substance use disorder. In patients with major psychiatric illness, comorbid substance use disorder, there is a four-fold increase in the risk of committing a crime or violence. Studies have shown that the rise in violent crime committed by individuals with mental illness, may entirely be accounted for with a history of alcohol and/or drug use.

The HCA is the largest payor of behavioral health care in NM. HCA Medical Assistance Division (Medicaid) is the payor of behavioral health services for the Medicaid eligible population, and HCA BHSD is the payor of behavioral health services for uninsured individuals and those ineligible for Medicaid. Together, these two HCA Divisions finance more than 90% of behavioral health care expenses in NM in FY25. This better integrated financing structure was made possible by the passage of the 2014 Federal Patient Protection and Affordable Care Act.

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

Only change necessary was replacing HB8 with HB8Sub.