LFC Requester:	Scott Sanchez

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: January 23, 2025 *Check all that apply:*
Bill Number: HB 4 Original _x Correction __
Amendment __ Substitute __

Sponsor: Christine Chandler
Short Title: Criminal Competency & Treatment

Agency Name and Code Number: AODA - #264

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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:

None noted.
Duplicates/Relates to Appropriation in the General Appropriation Act

None noted.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Section 1 amends Section 31-9-1 – "Determination of Competency – Raising the Issue"

Subsection A changes the standard for raising competency from "whenever it appears there is a question" as to the defendant's competency to "when a party or the court raises a question as to a defendant's competency."

Subsection B makes some non substantive changes to the requirement that if the question of competency arises in a court other than the district court, the matter will be transferred to the district court. If the matter of competency arises in metropolitan court, and that court determines the defendant is not competent to stand trial, the case shall be transferred to the district court.

Section 2 – amends Section 31-9.1.1 – "Determination of Competency – Evaluation and Determination"

Subsection A is added and deletes "psychologist or psychiatrist" as a qualified professional and only retains "qualified professional as recognized by the district court as an expert" as someone to evaluate the defendant's competency and submit a report as ordered by the court.

Subsection B is new material and provides that the report shall "include a qualified professional's opinion" as to whether the defendant is competent and has "(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."

Subsection C is new material that details what shall be included in the qualified professional's report if the professional believes the defendant is not competent. The report should detail whether the defendant

(1) satisfies the criteria for involuntary commitment in accordance with the Mental Health and Development Disabilities Code (MHDDC) and whether (a) the defendant presents a likelihood of serious harm to self or others; (b) the defendant needs and is likely to benefit from involuntary commitment and treatment; and (c) the proposed commitment is consistent with the defendant's treatment needs and the least drastic means principle *or*

(2) satisfies the criteria for involuntary treatment in accordance with the Assisted Outpatient Treatment Act (AOT) and whether the defendant (a) has a primary diagnosis of a mental disorder; (b) has demonstrated a lack of compliance with treatment for a mental disorder (c) is unwilling or unlikely to participate in outpatient treatment; (d) is in need of assisted outpatient treatment as the least restrictive alternative to avoid a relapse or deterioration likely to result in serious harm to self or others; and (e) would likely benefit from assisted outpatient treatment.

Subsection D is new material and makes a slight change to the time limits for the competency hearing from no later than 30 days after the court is notified that the evaluation is complete (or 10 days from notification for an incarcerated defendant not charged with a felony) to *within* 30 days (or 10 days) from the date the report is submitted to the court. The subsection also adds a section that provides that a competency hearing shall be held "within a reasonable time" for a defendant who is not incarcerated.

Section 3 amends Section 31-9-1.2 – "Determination of Competency – Commitment – Report"

Subsection A is amended to provide that if a court, after a competency hearing, determines that the defendant is not competent to stand trial, the court shall determine if the defendant is dangerous. 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; (2) committing CSP; (3) committing CSCM; (4) committing child abuse; (5) violating a provision of the Sexual Exploitation of Children Act; (6) committing human trafficking; (7) committing a felony involving the use of a firearm; or (8) committing aggravated arson.

The original Subsection D of Section 31-9-1.2 providing a definition of "dangerous" as a defendant presenting a serious threat of inflicting great bodily harm on another or violating Section 30-9-11 (CSP) or Section 30-9-13 (CSCM) is deleted in favor of the expanded definition of dangerous above.

Subsection B is amended to expand the court's options if the defendant is not found to be dangerous and not competent. The court may order the defendant to participate in a community-based competency restoration program or dismiss the case without prejudice. If the court does dismiss the case, the court may (1) advise the district attorney to consider initiating proceedings under the MHDDC and may detain the defendant for 7 days to facilitate initiation of those proceedings (2) advise the district attorney to consider initiation of proceedings under the AOT but may not detain the defendant.

Subsection C is new material that provides that a "community-based restoration program" shall be approved by the court and provided in an "outpatient setting in the community where the defendant resides." The court may order a defendant to participate in such a program for no longer than 90 days and:

(1) Within 30 days, the person supervising the defendant's program shall submit a progress report that includes: (a) an initial assessment of the defendant and a description of the program; (b) the defendant's amenability to competency restoration; (c) assessment of the program's ability to provide appropriate programming for the defendant; (d) an opinion as to whether the defendant may be restored to competency within 90 days; and (e) an opinion as to whether the defendant meets the criteria for involuntary treatment under the AOT (the five criteria from Section 43-1B-11).

(2) Within 90 days, the court shall hold a review hearing to determine if the defendant has been restored to competency and the person providing the treatment to the defendant shall submit a written report, at least seven days before the hearing, that includes: (a) an opinion as to whether the defendant is restored to competency; (b) information about defendant's medications and their effect on defendant; (c) if the defendant remains not competent, an opinion as to whether defendant satisfies the criteria for involuntary commitment under the MHDDC; (d) if the defendant remains not competent, an opinion as to whether the defendant satisfies the criteria for involuntary treatment under the AOT.

(3) After this hearing, if the court finds the defendant is competent, the case will proceed to trial. However, if the court finds the defendant is not competent, the case shall be

dismissed without prejudice and the court may advise the DA to initiate proceedings under the MHDDC or the AOT.

Subsection D is amended to change the language used to deal with a defendant who is not competent and is found to be dangerous. Instead of "treatment to attain competency", the court may order the defendant to "competency restoration" commitment. The defendant shall be provided with treatment available to persons subject to civil commitment and (1) shall be detained in a secure, locked facility; (2) shall not be released absent an order from the court that committed the defendant.

Subsection E is amended to omit the language "of commitment of an incompetent defendant and of the necessary and available documents reasonably required for admission pursuant to written policies adopted by the secretary of health or his designee" and adds the language that the "department of health shall admit a defendant for competency restoration within 30 days" of the court's order. This subsection also makes stylistic changes to the language allowing the department of health to provide written certification to the committing court and the parties that it does not have the ability to meet the defendant's needs.

Subsection F is amended to provide that within 30 days of admission to a "department of health" facility, the department shall file a report. The references to a "facility" are omitted and changed to "department of health."

Section 4 amends Section 31-9-1.3 – "Determination of Competency – Ninety-Day Review – Reports – Continuing Treatment"

Subsection A is amended to make stylistic changes to the requirement that a court conduct a review hearing of an incompetent defendant within 90 days of the order committing the defendant for "competency restoration." "Attain" or "attainment" of competency is deleted in favor of "restore" and "restoration."

Subsection B currently provides that the "treatment supervisor" shall submit a written progress report at least seven days prior to the review hearing. "Treatment supervisor" is changed to "department of health." The term "restoration" is used instead of "attain" and the "original finding of incompetency" is changed to the date "the court determined the defendant is not competent to stand trial."

A fifth requirement is added to the findings of this report "if the department of health believes the defendant remains not competent." If that is the case, the department is to give an opinion as to whether the defendant satisfies the criteria for involuntary commitment under the MHDDC or whether the defendant satisfies the criteria for involuntary treatment under the AOT.

Subsection C makes stylistic changes to the requirement that the court shall set the matter for trial if it finds the defendant is competent but may also order continued care or treatment for the defendant until the criminal proceedings are included. "Supervisor of defendant's treatment" is changed to "department of health."

Subsection D makes stylistic changes to the requirement that if the defendant remains not competent, but is making progress toward restoration of competency, the court shall review the question not later than nine months after the date the court determined the defendant to be incompetent. "Treatment supervisor" is changed to "department of health" and "attain" is changed to "restore."

Section 5 amends Section 31-9-1.4 – "Determination of Competency – Incompetent Defendants"

Subsection A deals with the eventuality that the court determines the defendant will not retain competency within nine months from the date the court determined the defendant was not competent to stand trial. If the defendant is charged with various violent crimes, the court may hold a criminal commitment hearing pursuant to Section 31-9-1.5 within three months of when the defendant was charged. This subsection expands the list of those crimes to add human

trafficking and any crimes under the Sexual Exploitation of Children Act.

Subsection B makes a minor stylistic change to the court's option to dismiss the criminal case with prejudice.

Subsection C provides that the court may dismiss the case without prejudice in the interest of justice "provided that" if the department of health "reports to the court" that the defendant satisfies the criteria for involuntary commitment under the MHDDC, the department shall initiate those proceedings and the court may confine the defendant for seven days to facilitate that process. "Treatment supervisor" is changed to "department of health" and to provide that the district attorney may initiate the MHDDC proceedings "in the department's stead."

Section 6 amends Section 31-9-1.5 – "Determination of Competency – Evidentiary Hearing"

The title is changed to include "Criminal Commitment" between the two other phrases.

Subsection A makes minor changes to the requirement that a criminal commitment hearing be held if the "court determines that there is not a substantial probability that a defendant not competent to stand trial will be restored to competency." The hearing is to determine the sufficiency of "the defendant's guilt" when the defendant is charged with the expanded list of crimes: a felony involving infliction of great bodily harm, CSP, CSCM, child abuse, Sexual Exploitation of Children crime, human trafficking, or aggravated arson.

Subsection B is added and adds the term "criminal commitment" to modify "hearing."

Subsection C provides that the court shall dismiss the criminal case with prejudice if the evidence does not establish by clear and convincing evidence that the defendant committed "the crime charged." This phrase is used to replace the previous shorter list of the crimes that qualify for a criminal commitment hearing. The reference to allowing the state to initiate proceedings under the MHDDC is deleted.

Subsection D provides that if the court finds by clear and convincing evidence that the defendant did commit the crime charged but has not made a finding of dangerousness, the court shall dismiss the criminal case without prejudice. The reference to allowing the state to initiate proceedings under the MHDDC is deleted.

Subsection E provides that if the court finds by clear and convincing evidence that the defendant committed the "crime charged" (again deleting the previous shorter list of crimes) and find that the defendant remains "not competent to stand trial", and remains dangerous, the defendant will be detained by the department in secure, locked facility with review hearings at least every two years. This subsection makes stylistic changes and deletes the reference to the "treatment supervisor" recommending that the defendant be committed pursuant to the MHDDC.

Subsection F is new material providing that "at any time", the department or the district attorney may initiate involuntary commitment proceedings under MHDDC or AOT and the court may detain the defendant for seven days if MHDDC proceedings are initiated.

Section 7 amends Section 31-9-1.6 – "Hearing to Determine Developmental or Intellectual Disability"

Subsection A adds the phrase "is not competent due to" a developmental or intellectual disability.

Subsection B adds the phrase "is not competent to stand trial due to" a developmental or intellectual disability and changes "become competent" to "restored to competency." Other stylistic changes are made that do not change the meaning of the subsection.

Subsection C deletes the reference to an "evaluation" by the department and provides only that the department "determine" that the defendant presents a danger to self or others, the department shall initiate involuntary commitment proceedings under MHDDC if the defendant was charged with the list of violent crimes as in the previous sections. The requirement that the

department initiate these proceedings "within 60 days" of their evaluation is deleted.

Subsection D make stylistic changes to the requirement that the case be dismissed without prejudice after the involuntary commitment hearing, or upon expiration of fourteen months from the initial determination that the defendant is not competent to stand trial.

Section 8 amends Section 31-9-2 – "Mental Examination"

The title is changed to "Competency Evaluation – Mental or Functional Examination"

Subsection A makes stylistic changes to the requirement that, upon motion of a defendant, the court shall order a mental examination of the defendant before making any competency determination.

Subsection B is added to provide that the court may authorize a district attorney or the department of health to use a report of "any examination ordered before a determination of defendant's competency to stand trial for the purpose of initiating proceedings in accordance with" MHDDC or AOT.

Section 9 amends Section 43-1B-4 – "Petition to the Court"

This section is part of the Assisted Outpatient Treatment Act. The amendment adds "a district attorney or the attorney general" as persons who can file a petition in district court for an order authorizing outpatient treatment.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

The requirement of "community-based competency restoration programs" will require funding. It is unclear if there are existing facilities that would qualify as such a program and Section 3(C) of the bill requires such facilities to "be approved by the court."

In addition, the bill appears to contemplate increased civil commitments to be undertaken by the district attorneys. That could increase the workload of prosecutors and/or require training on how such commitment proceedings should be handled, as they are not often undertaken.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

The amendment to Section 31-9-1 provides that both the parties and the court can raise the question of competency and this language puts the requirement to raise it in the active, rather than passive, voice. The rules governing competency – NMRA Rules 5-602.1(C), 6-507.1, 7-507.1, and 8-507.1 – state that "[t]he issue of the defendant's competency to stand trial shall be raised whenever it appears that the defendant may not be competent to stand trial. The issue may be raised by motion, or upon the court's own motion, at any stage of the proceedings."

The amendment to Section 31-9-1.1 expands the previously short Section 31-9-1.1 to detail what the qualified professional's report must include.

If competent, the report is to include the three factors which determine competency. However, "[t]o be considered competent, a defendant must (1) understand the nature and significance of the proceedings, (2) have a factual understanding of the charges, and (3) be able to assist in his own defense." *State v. Gutierrez*, 2015-NMCA-082, ¶ 9, 355 P.3d 93. The factors

contained in this section appear to be more detailed than the showing that New Mexico courts have required. For example, *Gutierrez* holds that the defendant needs to be able to assist in his own defense but the first factor in this section requires the defendant to have "a sufficient, present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding." The factors also require that the defendant "comprehend the reasons for punishment" and have not just a factual understanding of the proceedings against him but a "rational" one. These additional requirements could potentially lead to defendants being found incompetent when they are competent under the current understanding of that term.

If incompetent, the section sets out an outline for the qualified professional to follow. The professional is to include their opinion as to whether the defendant satisfies the criteria for involuntary commitment under the Mental Health and Developmental Disabilities Code (MHDDC) (NMSA 1978, §43-1-2 et seq.) or the criteria for involuntary treatment under the Assisted Outpatient Treatment Act (AOT). The factors for involuntary commitment are the same as those needed for an involuntary 30-day commitment in Section 43-1-11(E). The factors for involuntary treatment are the same as those Section 43-1B-11.

The change to the time limit for the hearing changes the qualifying event from the notification to the court of the completion of the report to the actual submission of the report to the court. This seems to be a clearer deadline than "notification" to the court. However, given the more detailed reports that are required under this section, the time limits may be too onerous to be met by prosecutors' offices.

The amendment to Section 31-9-1.2 seeks to give the court more options if the defendant is found to be not competent and not dangerous. Under the current version, the court may only dismiss the case without prejudice and advise the district attorney to consider initiating proceedings under the MHDDC. This section provides for a community-based restoration program for 90 days to see if the defendant can be restored to competency. What form this program will take is unclear and funding will be needed for such programs, especially as they are required to be within the defendant's own community. It is unclear what "community" could mean or if there is meant to be a geographical limitation on such programs.

For a defendant who is not competent and is found to be dangerous, the amendment expands the definition of dangerous to include other dangerous crimes that the defendant is at serious threat of committing. Other than that, the changes to the procedure for commitment of a dangerous defendant are mainly stylistic. However, the amendments make it clear that it is the department of health that is responsible for the reports to the court on the dangerous defendant.

The bill changes the language throughout from "attain" competency to "restore" competency. This term seems more appropriate as it infers that the defendant was once competent and simply seeks to regain that status.

The amendment to Section 31-9-2 in Section 8 allows the district attorney or department of health to use a report of a mental examination for purposes of initiating civil commitment proceedings. This new requirement may deter defendants from requesting such reports, given that they could then be used for purposes of involuntary commitment or treatment. Or it may deter frivolous motions from the defense.

Either way, such a motion should set forth the grounds for belief that mental capacity is lacking. Without such grounds, the motion can be denied. "The statute requires such an examination only when it is shown that there is reasonable cause to believe that an accused may be presently insane or otherwise mentally incompetent." *State v. Hovey*, 1969-NMCA-049, ¶ 17, 80 NM. 373. Simply "wondering" about a defendant's mental capacity, based on defense counsel's impression, is not reasonable cause to grant the motion. *Id.*

One current concern with the competency scheme – that is not addressed directly in this bill – is that dangerousness hearings are governed by the Rules of Evidence. Recently, in *State v. Archuleta*, 2023-NMCA-077, 536 P.3d 528, the Court of Appeals affirmed the dismissal of a criminal case for the State's failure to prove dangerousness. At the criminal commitment hearing, the State submitted the criminal complaints showing the defendant's charges and criminal history. The district court sustained the defendant's hearsay objection and found the defendant not dangerous. In affirming the district court, the Court of Appeals ruled, "[W]e hold that the Rules of Evidence apply to dangerousness hearings under Section 31-9-1.2 and Rule 5-602.2. A dangerousness hearing is a criminal proceeding that does not fall into a listed exception to the Rules of Evidence under Rule 11-1101(D) and Rule 5-602.2 does not exempt itself from the Rules of Evidence. As such, we affirm the district court's dismissal without prejudice of the charges against Defendant after excluding the State's proposed evidence as a violation of the Rules of Evidence." *Id.* ¶ 20.

Currently, Section 31-9-1.5(C) mandates dismissal of the criminal case *with* prejudice if the State fails to prove dangerousness.

Overall, the bill makes it simpler to seek civil commitment for appropriate individuals and expands the crimes that can warrant a criminal commitment. The basic structure of the current competency scheme is otherwise largely kept intact.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

Prosecutors' offices could have increased work on the civil commitment side which could necessitate training and/or the need to hire new staff.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

Section 6, Subsection C says, "if the evidence does not establish by clear and convincing evidence that the defendant committed [the crime"] but Subsections D and E say "if the district court finds by clear and convincing evidence that the defendant committed [the crime]." Consistency might be a good idea and Subsection C could be changed to "if the district court does not find by clear and convincing evidence that the defendant committed [the crime]."

OTHER SUBSTANTIVE ISSUES

n/a

ALTERNATIVES

n/a

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

n/a