

LFC Requester:	Scott Sanchez
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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: 25 January 2025 *Check all that apply:*
Bill Number: HB 4 Original Correction
 Amendment Substitute

Sponsor: Chandler **Agency Name and Code** NM Sentencing Commission -- 354
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		

(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

BILL SUMMARY

Synopsis:

HB 4 represents a major reworking of the state's laws on competency to stand trial, as follows:

Section 1 of the bill amends Section 31-9-1 NMSA 1978, regarding raising the issue of competency, to clarify the language around suspending a case for a question of competency by requiring a party to the case or the court to raise the issue, at which point the proceeding shall be suspended. The amendments to this section also clarify the language around transferring the case to District Court.

Section 2 of the bill amends and greatly expands Section 31-9-1.1, regarding evaluation and determination of competency. The "qualified professional" who is to evaluate competency is no longer specified as a psychologist or psychiatrist.

The amendments to this Section also detail at length what should be in the required report from the qualified professional – these additions make up the bulk of the changes to this Section.

The report shall contain the professional's opinion as to whether the defendant is competent to stand trial 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.

Additionally, if the qualified professional believes that the defendant is not competent to stand trial, the report shall include the professional's opinion as to whether the defendant satisfies the criteria for involuntary commitment in accordance with the Mental Health and Developmental Disabilities Code or satisfies the criteria for involuntary treatment in accordance with the Assisted Outpatient Treatment Act, with the added specifications that the professional needs to meet under each of those two scenarios.

Finally, while maintaining the timelines outlined in present law for hearings of defendants who are incarcerated, the changes to this section specify that a hearing for a defendant who is not incarcerated shall be held "within a reasonable time after an evaluation report is submitted."

Section 3 of the bill amends and greatly expands Section 31-9-1.2, regarding commitment of a defendant, providing detail that was absent under present law and shifting responsibilities. The revised section outlines at length how a court shall determine whether a defendant can be considered "dangerous" or "not dangerous" if the competency hearing determines that the defendant is not competent to stand trial, and how a defendant's case should be handled in each circumstance.

A defendant is "dangerous" if the court finds by clear and convincing evidence that the defendant presents a serious threat of inflicting great bodily harm on another person; committing

criminal sexual penetration, committing criminal sexual contact of a minor, committing abuse of a child, violating a provision of the Sexual Exploitation of Children Act, committing human trafficking, committing a felony involving the use of a firearm; or committing aggravated arson.

Under this Section, for defendants who are not competent to stand trial but are determined by the court to not be dangerous, the court has the added option of ordering the defendant into a community-based restoration program instead of dismissal. If the court dismisses the case, the court may, as under present law, advise the district attorney to consider the initiation of involuntary civil commitment proceedings in accordance with the Mental Health and Developmental Disabilities Code and may detain the defendant for a maximum of seven days to facilitate initiation of those proceedings, or could now under HB 4 advise the district attorney to consider initiation of proceedings in accordance with the Assisted Outpatient Treatment Act but may not detain the defendant for that purpose.

This Section of HB 4 details the mechanics of ordering a defendant to a community-based restoration program. The program must be approved by the court and provided in an outpatient setting in the defendant's community. The order to participate in the community-based restoration program can be for no longer than 90 days. Within 30 days of the order, the person supervising the defendant's program has to submit a progress report to the court and both parties. HB 4 has a detailed list of what must be discussed in the progress report. No later than 90 days from the date of the order to participate in the program, the court is to hold a review hearing and determine if the defendant has been restored to competency.

Seven days prior to that review hearing the person who is providing the outpatient services to the defendant shall submit a written report. That report shall include an opinion as to whether the defendant has been restored to competency; information about the defendant's medication; if the defendant is considered not competent, and an opinion about whether the defendant satisfies the criteria for involuntary commitment under the Mental Health and Disabilities Code or the Assisted Outpatient Treatment Act, with details specified under each of those options.

If the court finds after the review hearing that the defendant is competent, the case shall proceed to trial. If the court finds that the defendant remains not competent, the case shall be dismissed without prejudice and the court may advise the district attorney to consider initiating proceedings in accordance with the Mental Health and Developmental Disabilities Code or the Assisted Outpatient Treatment Act.

If the court finds that a defendant who is not competent is dangerous, the court may commit the defendant for competency restoration. If the court orders commitment, the court is to enter a transport order for the defendant to return to the local jail upon the defendant being restored to competency, completion of the competency restoration program, or as otherwise required by the court. As in present law, a defendant committed for competency restoration shall be provided with treatment available to persons subject to civil commitment.

The parts of this section regarding the Department of Health's responsibilities are largely unchanged.

Section 4 of the bill amends and expands Section 31-9-1.3, regarding the 90-day review and continuing treatment. Most of the changes involve rewording of the language in this section of law, and changes responsibilities ascribed to the defendant's treatment supervisor to the Department of Health. One additional duty is that in the progress report the Department of

Health is required to submit seven days prior to the review hearing of the order committing a defendant for competency restoration, if the Department of Health believes that the defendant is still not competent to stand trial, they have to include in the report an opinion as to whether the defendant satisfies the criteria for involuntary commitment under the Mental Health and Developmental Disabilities Code or the Assisted Outpatient Treatment Act, with required details under each of those options specified.

Section 5 of the bill amends Section 31-9-1.4, regarding incompetent defendants. For defendants who the court determines will likely not be restored to competency within nine months, the list of felonies with which a defendant is charged that allows the court to hold a criminal commitment hearing has been expanded. The additional charges are: abuse of a child, a crime provided for in the Sexual Exploitation of Children Act, and human trafficking.

Section 6 of the bill amends Section 31-9-1.5, regarding evidentiary hearings, clarifying and tightening the language concerning the commitment hearings of Section 31-9-1.4 and providing additional details. The three new felonies from Section 31-9-1.4 (Section 5 of HB 4) are added here as well. The language in the current Section 31-9-1.5 concerning the Mental Health and Developmental Disabilities Code has been struck throughout this section and incorporated into a new Subsection, Subsection F, which provides that if at any time the court dismisses a case against a defendant, the Department of Health or the district attorney may initiate involuntary commitment proceedings in accordance with the Mental Health and Developmental Disabilities Code or proceedings in accordance with the Assisted Outpatient Treatment Act.

Section 7 of the bill amends Section 31-9-1.6, regarding the hearing to determine developmental or intellectual disability. The list of crimes with which a defendant is charged to trigger proceedings under this section has been expanded as in the prior sections.

Section 8 of the bill amends Section 31-9-2, regarding mental examinations, by adding that 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."

Section 9 of the bill amends a part of the Assisted Outpatient Treatment Act, Section 43-1B-4, regarding petitions to the court, to include a district attorney or the attorney general to the list of people who can petition for an order authorizing assisted outpatient treatment.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

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

SIGNIFICANT ISSUES

HB 4 represents a major rewriting of the competency statutes. Statutes concerning competency were overhauled in 1993, with further substantial amendments in 1999, but aside from some updating of terms used for those with mental disabilities, they have not been amended in a

quarter of a century or more.

The whole bill, adds welcome clarity, detail, and specificity to present law, including the incorporation of the provisions of the Assisted Outpatient Treatment Act. One place where more specificity might be welcome is in Section 3, where the definition of dangerousness in this section does not specify what a “serious threat” might be – when does a threat go from being just a threat to a serious threat? Perhaps a standard such as “more likely than not” would lead to more consistency as courts address this issue.

In August 2020, the NMSC published the report “Competency Assessment Results for FY 2019”. Working with New Mexico Counties, the NMSC designed a study to examine the competency process in New Mexico. NMSC received competency related events filed with the courts as well as competency evaluations from the New Mexico Behavioral Health Collaborative’s database. The report summarizes the results of NMSC's analyses of those evaluations. The report examined metrics such as the number of competency cases by judicial district, the time it took for a competency report to be generated, custody status, types of crimes, demographic factors, and the prevalence of different types of psychiatric diagnoses. The report is available at: <https://nmsc.unm.edu/reports/2020/nm-competency-assessment-results-fy19.pdf>.

HB 4 would put New Mexico in line with changes that are occurring on other states, where evaluators for the narrow confines of competency are now being tasked with expanding their evaluations to include recommendations for placement or commitment. In recent years the number of competency evaluations and the proportion of cases where defendants are found incompetent to stand trial have been increasing. This increased demand has triggered what is considered a “competency crisis” across the country. See Murrie et al., “Evaluations of competence to stand trial are evolving amid a national ‘competency crisis’”, *Behavioral Sciences & the Law*, Vol. 41, Issue 5: Advances in Forensic Psychiatric and Psychological Assessment (Sept. 2023), available at: <https://onlinelibrary.wiley.com/doi/epdf/10.1002/bsl.2620>.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS