

LFC Requester:	Scott Sanchez
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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(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: 2/11/2025 *Check all that apply:*
Bill Number: HB 8 Original Correction
 Amendment Substitute

Sponsor:	<u>Christine Chandler & Mariana Anaya</u>	Agency Name and Code	<u>AOC 218</u>
Short Title:	<u>CRIMINAL COMPETENCY AND TREATMENT</u>	Number:	<u></u>
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

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

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

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

(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	Unknown	Unknown	Unknown	Unknown	N/A	

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 4
Duplicates/Relates to Appropriation in the General Appropriation Act: None

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 8 amends statutory sections within Chapter 31, Article 9 NMSA 1978 and Chapter 43, Article 1b, Assisted Outpatient Treatment Act (AOT).

Chapter 31, Article 9 is amended to address competency in criminal proceedings, as follows:

- **Section 31-9-1 NMSA 1978:** updates some of the language while also dividing the section into subsections.
 - New Subsection B: when discussing jurisdiction, this section now includes language saying, “Unless the case is dismissed upon motion of a party or through diversion...”
- **Section 31-9-1.1 NMSA 1978:** divides the section into subsections.
 - New Subsection B:
 - Incorporates portions of Rule 5-602.1(B)(1) NMRA 1978 to create criteria for determine whether a defendant is competent.
 - If the qualified professional believes a defendant is incompetent, then the qualified professional must include in the evaluation report whether the defendant meets the criteria for involuntary civil commitment or treatment under the civil Assisted Outpatient Treatment (AOT) Act. This Subsection incorporates language from both the Mental Health and Developmental Disabilities Code (see Section 43-1-11(E)(3) and the AOT Act (see Section 43-1B-3 NMSA 1978).
 - New Subsection D: restates the time periods for holding a competency hearing upon completion of the evaluation report depending on whether a defendant is incarcerated or not or has felony or misdemeanor charges.
- **Section 31-9-1.2 NMSA 1978:** moves the dangerousness
 - Subsection A: Moves dangerousness to the beginning of the section and expands the list of charges defined as dangerous. The new charges include first and second degree murder, child abuse, sexual exploitation of a child, human trafficking, committing a felony involving the use of a firearm, or commitment aggravated arson.
 - Subsection B: If the defendant is not determined to be dangerous, the court may order the defendant to a community-based competency restoration program or dismiss the case without prejudice. If the court dismisses the case, the court can advise the district attorney to consider initiating involuntary civil commitment or AOT proceedings. If the prosecutor is seeking involuntary civil commitment, the defendant can be held for up to seven days to facilitate the initiation of those proceedings; if AOT is being considered, the defendant may not be held.
 - Subsection C: defines community-based competency restoration program as a court-approved program designed to “restore a defendant to competency and provided in an outpatient setting in the community where the defendant resides.” Participation in the program is for no more than 90 days.
 - Within 30 days of the date the defendant was ordered to competency

restoration, the supervisor of the defendant's competency restoration program must submit a progress report to the court and both parties. The requirements of the report are outlined in Subsection C on pages 8 and 9.

- No later than 90 days from the date the court ordered community-based competency restoration, the court shall hold a review hearing to determine if the defendant has been restored to competency. Seven days prior to the hearing, the outpatient treatment provider shall provide a report to the court containing their opinion as to whether the defendant is restored to competency, the services the defendant is receiving, and whether the defendant satisfies the criteria for involuntary civil commitment or AOT.
- At the 90 day review hearing, if the defendant is found competent, the case shall proceed to trial; if defendant remains incompetent, then the case shall be dismissed with prejudice and the court may advise the district attorney to initiate involuntary civil commitment or AOT proceedings.
- Subsection C: provides a description of what a community-based competency restoration program shall entail;
 - Subsection D: if the defendant is found to be dangerous, a defendant can be committed to in-patient competency restoration, with the defendant being returned to jail within 72 hours upon the defendant being restored to competency.
 - Subsection F: allows for commitments to also take place in "an inpatient psychiatric hospital for competency restoration."
- **Section 31-9-1.3 NMSA 1978:** updates some of the language.
- **Section 31-9-1.4 NMSA 1978:** provides language cleanup and expands the list of enumerated charges for dangerousness that include: first and second degree murder, child abuse, sexual exploitation of a child, human trafficking, committing a felony involving the use of a firearm, or commitment aggravated arson.
- **Section 31-9-1.5 NMSA 1978:** establishes the term "criminal commitment" for this section.
 - Subsection A: renames the hearing [to determine sufficiency of the evidence] to "a commitment hearing to determine the sufficiency of the evidence of the defendant's guilt..." Also expands the list of enumerated charges that can be considered "dangerous," to include: first and second degree murder, child abuse, sexual exploitation of a child, human trafficking, committing a felony involving the use of a firearm, or commitment aggravated arson.
 - Subsection F: adds that if the court dismisses the case, the district attorney or department of health may initiate involuntary civil commitment or AOT proceedings. If the prosecutor is seeking involuntary civil commitment, the defendant can be held for up to seven days to facilitate the initiation of those proceedings; if AOT is being considered, the defendant may not be held.
- **Section 31-9-1.6 NMSA 1978:** expands the list of enumerated charges (the same as the dangerousness charges) for requiring the department of health to initiate involuntary civil commitment proceedings, to include: first and second degree murder, child abuse, sexual exploitation of a child, human trafficking, committing a felony involving the use of a firearm, or commitment aggravated arson.
- **Section 31-9-2 NMSA 1978:** adds a new subsection allowing the court to authorize the department of health or district attorney to use a report "of any examination ordered before a determination of a defendant's competency to stand trial," to initiate involuntary civil commitment or AOT proceedings.

The Assisted Outpatient Treatment Act (AOT) is amended as follows:

- **Section 43-1B-4:** Allows for a district attorney or the attorney general to list of those who may petition the court for AOT. The time period for the examination from a qualified professional is expanded from 10 to 30 days (as part of the affidavit).

There is no appropriation listed in this bill.

There is no effective date of this bill. It is assumed that the effective date is June 20, 2025, which is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The processes detailed and required by HB 8 may require a significant investment of resources in both:

- a. The community, as community-based competency restoration supports and facilities will need to be developed, bolstered and maintained; and
- b. The courts, whose role in the competency restoration process will require an increase in hearings.

SIGNIFICANT ISSUES

Community-based Competency Restoration vs. Competency Diversion

House Bill 8 provides the ability for defendants to be ordered into outpatient competency *restoration* programs, but the bill does not provide a method for referrals into competency *diversion* programs.

- 1) The bill defines a community-based competency restoration program as “a court-approved program that is designed to restore a defendant to competency and provided in an outpatient setting in the community where the defendant resides.” See Section 31-9-1.2(C) NMSA 1978 of HB 8.
- 2) There is already a delay in the process of completing competency evaluations due to a lack of credentialed evaluators. Currently, evaluators are contracted with the HCA. Expanding eligibility to include nonviolent felonies may exacerbate the current delay in the court obtaining completed evaluations.
- 3) A competency diversion program is an outpatient program that provides diversion from the legal system directly to resources and wraparound services including, if needed, mental health or substance abuse treatment and additional supportive structures such as case management. To date, the judiciary has four competency diversion pilot programs around the state, in the Third, Fourth, and Twelfth Judicial Districts with the First Judicial District launching its program in March 2025. The purpose of these diversion pilot programs is to divert individuals out of the competency evaluation process and

connect them to behavioral health and other social services in their community. The diversion programs are voluntary, and referrals require the agreement of all parties. The pilots are currently only taking defendants with misdemeanor cases, but in late FY25, eligibility will expand to defendants with non-violent felony charges.

HB 8 mentions competency diversion in amendments to Section 31-9-1 NMSA 1978, stating, “Unless the case is dismissed upon motion of a party or through diversion...” The addition of the phrase “through diversion” establishes that diversion programs are not precluded, yet HB 8 does neither establish diversion eligibility or criteria nor provides a method for referrals into such competency diversion programs.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 4a (Duplication)

TECHNICAL ISSUES

HB 8 provides some language cleanup in Section 31-9-1(B)(2), stating that cases originating in Metropolitan Court are transferred to District Court if the defendant is not competent and the case is not dismissed upon motion of a party or through diversion. If the defendant is later restored to competency through a community-based competency restoration program, it is unclear whether the case is sent back to Metropolitan Court for trial.

OTHER SUBSTANTIVE ISSUES

Although HB 8 provides key distinctions for the enumerated crimes to determine dangerousness, there is no real distinction between defendants with misdemeanor and felony charges who are not considered dangerous.

The amendments in HB 8 do not address the situation when a defendant does not attend or comply with program requirements, or does not have the capacity to comply, with the outpatient competency restoration program.

Section 31-9-2 NMSA 1978 is amended to include a new subsection allowing for the court to authorize the department of health or district attorney to use a report “of any examination ordered before a determination of a defendant’s competency to stand trial,” to initiate involuntary civil commitment or AOT proceedings. The statute does not state how current a report must be leaving open the opportunity for the use of stale reports.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS