

LFC Requestor: SANCHEZ, Scott

2025 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: House

Category: Bill

Number: 8

Type: Introduced

Date (of THIS analysis): 2/11/2025

Sponsor(s): Chandler

Short Title: Criminal Competency

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

None

REVENUE (dollars in thousands)

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

None

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	\$	\$	\$	\$		

This bill will likely result in additional referrals to NMBHI and LLCP, but there is not data available to estimate the number.

Section III: Relationship to other legislation

Duplicates: Replaces HB 4.

Conflicts with: None

Companion to: None

Relates to: None

Duplicates/Relates to an Appropriation in the General Appropriation Act:

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis

House Bill 8 proposes to amend the Mental Illness and Competency Code, NMSA Chapter 31. HB8 makes numerous minor language updates and changes to the code, in addition to substantive changes, including changes to who is admitted for treatment, who receives treatment in the community, and how the treatment process progresses. HB8 also includes language requiring 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 in substance but contains changes to language and phrasing.

Section 2 concerning 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) committing murder in the first or second degree, as provided in Section 30-2-1 NMSA 1978; (2) inflicting great bodily harm, as defined in Section 30-1-12 NMSA 1978, on another person; (3) committing criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; (4) committing criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978; (5) committing abuse of a child, as provided in Subsection D of Section 30-6-1 NMSA 1978; (6) violating a provision of the Sexual Exploitation of Children Act; (7) committing human trafficking, as provided in Section 30-52-1 NMSA 1978; (8) committing a felony involving the use of a firearm; or (9) 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 a community-based competency restoration program, which must be approved by the court and must be in an outpatient setting 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 for 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 that are 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 the defendant’s treatment and likelihood of attaining competency as well as opinions as to whether the defendant satisfies criteria for civil commitment and AOT. The bill provides for a review hearing 90 days after entering the program to determine if the defendant has been restored to competency.

The bill amends the current inpatient competency restoration process. HB8 allows for inpatient competency restoration to take place at a department of health facility or “an inpatient psychiatric hospital for competency restoration”. The timeline for discharge after completion of a competency restoration program has changed. HB8 makes an amendment to the timeline on page 11 concerning the return of defendants to the local jail upon completion of restoration in an inpatient program. The amendment states that the court shall enter a transport order that provides for the transportation of the defendant back to the local jail “within seventy-two hours” of being restored to competency, completion of a competency restoration program, or as otherwise provided by the court. The bill also adds a provision that the Department of Health (DOH) may notify the court in the event that the Department cannot meet the needs of the 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.

Section 5 modifies Section 31-9-1.4 to expand the list of crimes that qualify a defendant found incompetent due to 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) committing murder in the

first or second degree, as provided in Section 30-2-1 NMSA 1978; (2) inflicting great bodily harm, as defined in Section 30-1-12 NMSA 1978, on another person; (3) committing criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; (4) committing criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978; (5) committing abuse of a child, as provided in Subsection D of Section 30-6-1 NMSA 1978; (6) violating a provision of the Sexual Exploitation of Children Act; (7) committing human trafficking, as provided in Section 30-52-1 NMSA 1978; (8) committing a felony involving the use of a firearm; or (9) committing aggravated arson, as provided in Section 30-17-6 NMSA 1978.”

The new crimes that have been added or specified are, murder in the first and second degree, 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 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 an intellectual or developmental disability. HB8 adds language requiring that the “evaluator shall be provided with the necessary and available documents reasonably required for admission pursuant to written policies adopted by the secretary of health or the secretary's designee.” When competency has been raised due to a developmental or intellectual disability.

The bill adds language that expands the list of qualifying crimes that would allow a court to refer the case to DOH for civil commitment, making the list the same as the list of qualifying crimes for those found to be incompetent as a result 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) committing murder in the first or second degree, as provided in Section 30-2-1 NMSA 1978; (2) inflicting great bodily harm, as defined in Section 30-1-12 NMSA 1978, on another person; (3) committing criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; (4) committing criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978; (5) committing abuse of a child, as provided in Subsection D of Section 30-6-1 NMSA 1978; (6) violating a provision of the Sexual Exploitation of Children Act; (7) committing human trafficking, as provided in Section 30-52-1 NMSA 1978; (8) committing a felony involving the use of a firearm; or (9) committing 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; provided that the report remains valid pursuant to the time limits set forth in that code or act."

Is there an emergency clause? Yes No

b) Significant Issues

- The evaluations for civil commitments may result in additional orders and treatment, which is a positive impact. The bill provides language on page 25, line 11 that at any point the person may be referred to “any licensed psychiatric hospital.” Hospitals will need to accept these referrals for involuntary treatment. Orders put in place at a district court will be 30-day commitment orders to NMBHI. In practice if the District Attorney or DOH initiates a civil commitment the only commitment that may be entered is a 30-day court order, and the only place that is mandated to take 30-day court orders is NMBHI. The intention is appropriate to spread the civil commitments across all hospitals, but it may be necessary to go further to clarify if the civil commitment is considered, it will be a 7-day certification and can be taken to a local psychiatric hospital.

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?
 Yes No
- 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

This bill would expand civil commitments at NMBHI and 1.6 commitments at LLCP. Data is not available to estimate this impact.

4. ADMINISTRATIVE IMPLICATIONS

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

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

This bill appears to be an amended version of HB4.

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

8. DISPARITIES ISSUES

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

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

None

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

On page 12, lines 14-15 the words “or an inpatient psychiatric hospital” should be taken out.

On page 25 line 11 include the language that at any point if civil commitment is determined to be appropriate the defendant will be placed on a 7-day certification and taken to a local psychiatric hospital.