

LFC Requester:

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}

Check all that apply:

Original **Amendment** **Date Prepared:** 2025-02-21
Correction **Substitute**

Bill No: HB8

Sponsor(s) Christine Chandler
:

Agency Name CYFD 69000
and Code
Number:

Person Writing Elizabeth Hamilton
Analysis:

Short CRIMINAL COMPETENCY
Title: & TREATMENT

Phone: 5057954256

Email: elizabeth.hamilton@state.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
0	0	0		
0	0	0		

ESTIMATED ADDITIONAL OPERATION BUDGET (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	0	0			

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

Original Bill Summary:

HB8 amends sections within Chapter 31, Article 9 NMSA 1978 and Chapter 43, Article 1b, Assisted Outpatient Treatment Act (AOTA). It requires that a qualified professional who evaluates a defendant for competency indicate in their competency evaluation report their opinion as to whether the defendant is: competent to stand trial; has sufficient, present ability to consult with defendant's lawyer with a reasonable degree of rational understanding; has a rational and factual understanding of the proceedings; and has capacity to assist in his/her own defense and comprehend the reasons for punishment. If not competent to stand trial, the evaluation report must include the qualified professional's opinion as to whether the defendant satisfies the criteria for involuntary commitment based on the Mental Health and Developmental Disabilities Code (MHDDC) and whether, as a result of the mental disorder, the defendant presents a likelihood of serious harm to self or others; the defendant's needs and is likely to benefit from an involuntary commitment & treatment; and the proposed commitment is consistent with the defendant's treatment needs and the least drastic means principle; or satisfies the criteria for involuntary treatment based on the AOTA; and whether the defendant has: a primary diagnosis of mental disorder; demonstrated a history of not complying with mental disorder treatment; is unwilling or unlikely, as a result of mental disorder, to voluntarily participate in outpatient treatment that would enable him/her to live safely in the community without court supervision; is in need of outpatient treatment as the least restrictive appropriate alternative to prevent a relapse or deterioration likely to result in serious harm to self or others; and will likely benefit from assisted outpatient treatment and have the defendant's best interests served.

If the defendant is not competent to stand trial, the court shall determine if the defendant is dangerous based on clear and convincing evidence that the

defendant presents a serious threat of: committing first or second degree murder; inflicting great bodily harm on another; committing criminal sexual penetration or contact, child abuse, sexual exploitation of a child, human trafficking, felony with a firearm and aggravated arson. If the court determines the defendant is not dangerous, the court may order the defendant to participate in a community-based competency restoration program or dismiss the case without prejudice. If the case is dismissed, the district attorney may consider initiation of involuntary civil commitment proceedings pursuant to the MHDDA and the AOTA.

The bill identifies when competency hearings must occur based on whether the defendant is charged with a felony or not and incarcerated or not. HB8 allows a District Attorney (DA) or the Department of Health (DOH) to use competency evaluation reports in involuntary commitment and assisted out-patient treatment proceedings.

HB8 also allows for community-based competency restoration programming (CBCRP) for no longer than 90 days if the defendant is found not dangerous. Progress reports shall be submitted by a person supervising the defendant's participation in the CBCRP that includes an initial assessment of the defendant, a description of the CBCRP provided, the defendant's amenability to restoration, the CBCRP's capacity to provide appropriate programming; and opinion of probability of defendant being restored to competency. A review hearing shall occur within the 90 days and the court shall determine if the defendant has been restored to competency. If the defendant is competent, the criminal case proceeds. If defendant remains not competent, whether the defendant satisfies the criteria for involuntary commitment pursuant to MHDDC or the AOTA and whether the criminal case should be dismissed is determined.

DOH shall admit a defendant for competency restoration within 30 days of receipt of court order. The DOH Secretary or designee may refuse admission if unable to meet the needs of defendant. A competency restoration report is submitted with defendant's amenability to competency restoration, the DOH's capacity to provide appropriate treatment and probability of defendant being restored to competency in 9 months. Review hearing requirements are stated in the bill. If defendant restored to competency, the criminal case proceeds. If the defendant is not competent, the court may hold a criminal commitment hearing if charged with crimes listed or release defendant and dismiss the case with prejudice. The DOH and DA may initiate involuntary commitment proceedings at any time, even if the case is dismissed.

Amended:

If enacted, the House Judiciary Committee Substitute for HB8 introduces several changes, including the removal of "committing a felony with a firearm" from the original HB8. It replaces this with "committing any serious violent offense" as

enumerated in Subparagraphs a-n of Paragraph (4) of Subsection L in Section 33-2-34 NMSA 1978, with the use of a firearm.

The substitute also adds specific crimes and penalties to the criminal code, as well as additional provisions in the Criminal Sentencing Act, targeting fentanyl possession. This includes penalties based on the amount of fentanyl possessed by a defendant, and provisions for defendants involved in organizing or financing fentanyl trafficking. Additionally, it revises the Motor Vehicle Code to expand the list of qualified professionals authorized to administer chemical blood tests in impaired driving cases.

FISCAL IMPLICATIONS

Original: There is no appropriation included in the bill and no fiscal impact on CYFD.

Amendment: There is no fiscal impact on CYFD. The proposed changes do not have an impact on the juvenile justice system where dispositions are determined within the Children's Code under the Delinquency Act.

SIGNIFICANT ISSUES

Original: If enacted, HB8 will require reform to New Mexico's competency statutes. The changes to the statute will add to the need to support community-based competency restoration programs. These changes will affect various state agencies as they will need to collaborate to ensure services and programs are available statewide.

Amended: If enacted HB 8 will require reform to New Mexico's competency statutes.

PERFORMANCE IMPLICATIONS

Original: There are no implications for CYFD. If enacted this gives clear direction regarding adults who are found incompetent to stand trial. It allows for multiple means of treating an individual to competence and allows for the

courts and community to collaborate on addressing the needs of the individual who is found incompetent.

Amended: This bill has no direct implications for CYFD. If enacted, it continues to address the needs of individuals found incompetent, providing additional options and approaches for working with identified individuals. It also offers greater clarity regarding court involvement, focusing on addressing the root causes of incompetency and facilitating treatment for individuals with mental and developmental needs.

ADMINISTRATIVE IMPLICATIONS

Original: No administrative implications for CYFD.

Amended: None identified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Original: None identified; related to HB4

Amended: None identified; related to HB4.

TECHNICAL ISSUES

Original: None identified.

Amended: None identified

OTHER SUBSTANTIVE ISSUES

Original: None identified.

Amended: None identified.

ALTERNATIVES

Original: None identified.

Amended: None Identified.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Original: Status quo.

Amended: Status quo.

AMENDMENTS

Original: None identified.

Amended: None identified.