

**LFC Requester:**

**Marty Daly**

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**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** \_\_\_\_\_  
**Correction** \_\_\_\_\_ **Substitute**  X

**Date Prepared:** 5 January 2024

**Bill No:** HB 233

**Sponsor:** Rep. T. Lujan  
Sen. G. Ortiz y Pino

**Agency Name and Code Number:** 305 – New Mexico  
Department of Justice

**Short Title:** Procedure to Determine  
Whether Defendant is  
Competent to Stand Trial

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis: This bill creates alternative judicial processes if a defendant is determined to be incompetent to stand trial: a diversion program or civil confinement.

**FISCAL IMPLICATIONS** None identified.

**SIGNIFICANT ISSUES**

Determining a criminal defendant’s competency to stand trial is now managed by several sections of rule and statute, specifically Rule 5-602.1 through Rule 5-602.3 and article 9 of chapter 31 NMSA. Competency is also mentioned in rules regarding time limits for certain types of hearings, Rule 5-302(A)(1)(c) NMRA (preliminary examination); Rule 5-302.2(A)(1)(c) NMRA (grand jury proceeding); Rule 5-805(G)(2) NMRA (probation violation); and regarding suspension of proceedings in lower courts while the competency issue is determined in district court, Rule 6-507.1 NMRA (magistrate), Rule 8-507.1 NMRA (municipal), and Rule 7-501.1 NMRA (metropolitan).

Sections 31-9-1 and 31-9-2 appear to give the court latitude to divert a criminal defendant to rehab or to civil commitment and thereby bypass competency proceedings. Competency of a defendant to stand trial is foundational to due process. *State v. Gurule*, \_\_\_-NMSC-\_\_\_, ¶ 25, \_\_\_ P.3d \_\_\_ (S-1-SC-37879, Dec. 7, 2023) (“And one who is incompetent cannot stand trial.”); *Dusky v. United States*, 362 U.S. 402, 402 (1960) (reversed and remanded because “the record in this case does not sufficiently support the findings of competency to stand trial”); *Pate v. Robinson*, 383 U.S. 375, 386 (1966) (“[the defendant’s] constitutional rights were abridged by his failure to receive an adequate hearing on his competence to stand trial”); *but see United States v. White*, No. CR-12-40-BLG-RFC, at \*1 (D. Mont. July 24, 2012) (nonprecedential) (“Because of concerns about [the defendant]’s competence, the case was resolved without a trial, with an informal deferral agreement that was signed by [the defendant], and the other co-defendants.”).

**§31.9-1.1**

The bill proposes excising and then adding the following text to Section 31-9-1.1: “[The defendant's competency shall be professionally evaluated] When a court determines that an

individual requires a competency evaluation, the evaluation shall be conducted . . . .” It appears that this substitution is to give the court leeway to move forward with one of the alternatives proposed in Section 31-9-1.2. However, the bill does not address the directives given to the district court, upon a motion of either party or the court itself, to suspend the criminal proceedings and determine if there is reasonable belief that the defendant may not be competent to stand trial. Rule 5-602.1(E)–(G) NMRA. If that reasonable belief determination is made, the district court *must* order the defendant to undergo a competency evaluation. Rule 5-602.1(F)(1) NMRA (“the court shall file an order”); *Id.* (F)(2)(a)–(b) (“the court shall do one of the following file an order . . . finding whether the motion is supported by a reasonable belief that the defendant may not be competent to stand trial or hold a hearing on the motion and file an order finding whether there is a reasonable belief that the defendant may not be competent to stand trial” (text only)).

### **§ 31-9-1.7**

The bill adds a section to article 9 regarding mental illness and competency. Within that new subsection, the bill defines dangerousness as such: “if released, the defendant presents a serious threat of inflicting great bodily harm on the defendant's self, another person or the community or of violating Section 30-9-11 or 30-9-13 NMSA 1978.” Including harm to self is different than the current definition. The term “dangerous” is defined by statute and is not a clinical diagnosis. NMSA 1978, § 31-9-1.2 (D) (“[D]angerous' means that, if released, the defendant presents a serious threat of inflicting great bodily harm on another or of violating Section 30-9-11 [criminal sexual penetration] or 30-9-13 [criminal sexual contact of a minor] NMSA 1978.”).

Also, the bill does not address competency for a minor.

### **PERFORMANCE IMPLICATIONS**

None.

### **ADMINISTRATIVE IMPLICATIONS**

None.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP :**

Duplicate of SB 16.

### **TECHNICAL ISSUES:**

None identified.

### **OTHER SUBSTANTIVE ISSUES**

### **ALTERNATIVES**

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL:**

Status quo.

### **AMENDMENTS**