

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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** _____

Date February 2, 2024

Bill No: SB 16-280

Sponsor: Gerald Ortiz y Pino
Short Criminal
Title: Competency Determination

Agency Name and Code LOPD-280
Number: _____
Person Writing Nina Lalevic
Phone: 505.395.2890 **Email** Nina.lalevic@lopdnm.

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
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: Senate Bill 16 proposes to amend Mental Illness and Competency Code (NMMICC). Essentially, it allows courts in their discretion, or upon agreement of the parties to order the defendant to either be referred for a civil commitment, or to participate in a diversion to treatment program for a certain period depending on the whether the defendant is charged with a misdemeanor or a non-violent felony. If the defendant is unable to comply or refuses the diversion program, the court may either dismiss the charges, or, if the parties agree, refer the defendant for a determination as to whether they are eligible for civil comment or an assisted outpatient treatment program.

The bill also proposes to change the language currently requiring a competency evaluation and instead leave that to the court’s discretion (“*When a court determines that an individual requires a competency evaluation...*”). See proposed 31-9-1.1. It also appears to envision a less rigorous competency evaluation (“shall include a provisional diagnosis, or full diagnosis when possible). *Id.*

The bill also proposes to add to Section 31-9-1.3 a new subsection requiring an initial report within thirty days of admission to a facility.

This bill does not propose significant changes to the portion of the NMMICC dealing with those who are mentally ill and violent.

FISCAL IMPLICATIONS

Analyst suspects the fiscal implications for the Department of Health would be prohibitive. New Mexico currently does not have the treatment facilities envisioned by this bill.

No new crime is created. It appears there may be some additional hearings involved in a competency case, but the fiscal implications for LOPD should not be significant.

SIGNIFICANT ISSUES

This bill proposes some positive changes. The attempt to remove non-violent mentally ill offenders from the criminal justice system is commendable. If New Mexico had the treatment programs this bill imagines, this would be beneficial to LOPD’s mentally ill clients. The desire to divert people with mental health issues to alternative treatment programs, rather than being prosecuted and imprisoned, is laudable. However, the lack of available programs makes this bill

currently unworkable. It would only confuse matters to have the option of an alternative to NMBHI when the alternative program does not exist.

One proposal in SB 16 is to offer an outpatient competency restoration program. This would make treatment accessible to defendants without committing them, but the issue of voluntary compliance is a concern. Many defendants who are incompetent are unable to remember court dates, unable to maintain appointments with their attorney, or comprehend court orders and compliance thereof. This bill does not address how these challenges are to be overcome to ensure outpatient treatment is successful.

Proposed Section 31-9-1(D) allows “upon agreement of the parties,” for a defendant who refuses or is unable to comply with court-ordered treatment, to refer them for determination of eligibility for the civil commitment process. This would create a conflict of interest between the defense attorney and their client. Defense counsel, who does not act as a guardian ad litem, but rather as an advocate, would be required to weigh in on whether to commit their client.

One final concern relates to the bill’s handling of evaluations. Proposed Section 31-9-1(A) provides that “the case shall be suspended and the issue of competency may be resolved pursuant to Section 31-9-1.1 NMSA 1978 or, prior to or instead of ordering a competency evaluation.” In order to determine a potentially incompetent defendant’s needs, an evaluation should be required before any diversion takes place. Furthermore, when an evaluation takes place, it should always be a complete evaluation. The language of proposed Subsection (A) provides that evaluations “shall include a provisional diagnosis, or full diagnosis when possible...” It is unclear whether the language regarding a provisional diagnosis reduces the rigor of the evaluation to disincentivize comprehensive testing necessary for a diagnosis, or whether the bill contemplates an evaluation that is in fact *broader* than a narrowly targeted *competency* evaluation; i.e., one that is more diagnostic in nature. Certainly, whether for competency purposes or for broader treatment of an underlying disorder, a complete evaluation is the best way to make sure a treatment provider is able to meet the individual’s needs.

PERFORMANCE IMPLICATIONS

See Fiscal Implications

ADMINISTRATIVE IMPLICATIONS

None noted

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Analyst is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill and analyst is unaware that it has been drawn pursuant to a special message of the Governor.

OTHER SUBSTANTIVE ISSUES

None noted

ALTERNATIVES

One possible alternative would be to provide funding to DOH to hire additional psychologists at New Mexico Behavioral Health Institute, the only facility currently available to adult defendants that analysis is aware of. In addition, this body could provide funding for DOH to create new treatment programs around the state. Once New Mexico has viable treatment options, a bill to create a diversionary program would be workable.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

None noted