

LFC Requester:	Scott Sanchez
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**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 1/29/24
Bill No: SB16

Sponsor: Sen. Ortiz y Pino
Short Title: DETERMINATION OF COMPETENCY OF DEFENDANT IN CRIMINAL CASE

Agency Name and Code HCA-630
Number: _____
Person Writing Alicia Salazar
Phone: 505-795-3920 **Email** Alicia.salazar2@hsd.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
\$0	\$0	\$0	NA

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
\$0	\$0	\$0	NA	NA

(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	\$0	\$0	\$0	NA	NA	NA

(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 (SB 16) is an act which amends the Criminal Code to provide a process for determining competency of a defendant; establishes competency restoration programs; requires the state to pay for mental examinations.

FISCAL IMPLICATIONS

No impact as HCA/BHSD has oversight of competency evaluation. DOH has oversight of competency restoration program.

SIGNIFICANT ISSUES

Currently, New Mexico Behavioral Health Institute (NMBHI) is the only program in San Miguel County for a small proportion of individuals found incompetent to stand trial. It is unclear how the defendants in counties other than San Miguel County would complete an outpatient competency restoration program.

SB16 does not describe funding, or the state infrastructure needed to oversee and implement these new processes. There would need to be funding for outpatient competency restoration initiatives in other counties.

Many states allow community-based competency restoration — 16 states have formal community-based competency restoration programs and 35 state mental health agencies report that they pay for these services.

<https://www.nami.org/Advocacy/Policy-Priorities/Supporting-Community-Inclusion-and-Non-Discrimination/Community-Based-Competency-Restoration#:~:text=Community%2Dbased%20competency%20restoration%20is,like%20a%20jail%20or%20hospital.>

The language appears to be based on similar statutes in other states and would help address concerns of a “revolving door”. Currently, when someone has a major behavioral health concern and has legal charges, they are likely to be found incompetent to stand trial and, if they are not deemed dangerous by the judge, their charges are dropped and there is no incentive or mechanism to encourage treatment. Without behavioral health treatment, these individuals frequently have further encountered with the legal system and may end up spending unnecessary time in jail while awaiting a new competency evaluation.

<https://www.innovatingjustice.org/sites/default/files/rethinkingtherevolvingdoor.pdf>

PERFORMANCE IMPLICATIONS

None for BHSD. DOH has oversight of competency restoration programs.

ADMINISTRATIVE IMPLICATIONS

None

No IT impact.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

- Define “treatment”
- Mental examinations should read “competency evaluations”
- Define intensive outpatient treatment.
- Addiction Services should read “substance use services”
- Substance abuse should be “substance use”
- There is no “department” in Health Care Authority
- Section 3.A.2. define “authorized”
- Section 8.C the definition of “developmental or intellectual disability” is and should include that the developmental period is between birth and 18th birthday:
Home and Community Based Waiver Eligibility Definition:
The developmental period is defined as the period between birth and the 18th birthday.

<https://www.nmhealth.org/publication/view/help/3881/>

- The legislation also refers to “determination of dangerousness” without specifying who determines this risk. Page 4 states that a hearing shall be held on the same day to determine competency and dangerousness. In general, mental health professionals who assess for competency do not assess for dangerousness during these evaluations. Risk assessments for dangerousness are a different evaluative approach.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC181079/>

- Page three, the language states that “Competency evaluations shall include a provisional diagnosis, or full diagnosis when possible”. It is recommended that the language state “if applicable” since not all individuals who undergo a competency evaluation meet criteria for a behavioral health diagnosis.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC181079/>

- On pages 8-16 there are references to a “treatment supervisor” which is not defined. It is not clear whether this role is a treating clinician versus the competency evaluator. It is recommended to isolate the evaluative role from the treatment role.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3410123/>

https://www.aapl.org/docs/pdf/Forensic_Assessment.pdf

- There is no language regarding interpretation service during competency evaluation or competency restoration:

National Standards for Culturally and Linguistically Appropriate Services (CLAS) in Health and Health Care Communication and Language Assistance:

- Offer language assistance to individuals who have limited English proficiency and/or other communication needs, at no cost to them, to facilitate timely access to all health care and services.
- Inform all individuals of the availability of language assistance services clearly and in their preferred language, verbally and in writing.
- Ensure the competence of individuals providing language assistance, recognizing that the use of untrained individuals and/or minors as interpreters should be avoided.
- Provide easy-to-understand print and multimedia materials and signage in the languages commonly used by the populations in the service area.

<https://thinkculturalhealth.hhs.gov/assets/pdfs/EnhancedNationalCLASStandards.pdf>

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

None