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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	Reps. Chandler, Anaya and Reeb/Sens. Brantley and Cervantes	<b>LAST UPDATED</b>	2/6/25
		<b>ORIGINAL DATE</b>	1/27/25
<b>SHORT TITLE</b>	Criminal Competency & Treatment	<b>BILL NUMBER</b>	House Bill 4/aHCPAC
		<b>ANALYST</b>	Sanchez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
HCA/BHSD	No fiscal impact	\$3,243.4	\$3,243.4	\$6,486.8	Recurring	General Fund
NMCD	No fiscal impact	\$2,363.2	\$2,363.2	\$4,726.4	Recurring	General Fund
DOH	No fiscal impact	At Least \$16,370.0	At Least \$16,370.0	At Least \$32,740.0	Recurring	General Fund
AOC	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
AODA	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
Total	No fiscal impact	At least \$21,976.6	At least \$21,976.6	At least \$43,953.2	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

Agency Analysis Received From  
 Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 New Mexico Sentencing Commission (NMSC)  
 Corrections Department (NMCD)  
 Department of Health (DOH)  
 Healthcare Authority (HCA)  
 Department of Public Safety (DPS)  
 University of New Mexico (UNM)

Because of the short timeframe between the amendment of this bill and the first subsequent hearing, LFC has yet to receive analysis from several state, education, or judicial agencies on the amendment. If that analysis is received, this analysis could be updated.

## SUMMARY

### Synopsis of the HCPAC Amendment to House Bill 39

The House Consumer and Public Affairs Committee's amendments to House Bill 4 clarify and modify provisions related to competency proceedings and mental health commitments. The amendments specify that if a competency issue is raised in a non-district or Metropolitan Court,

the case must be transferred to the district court unless dismissed or diverted. Additionally, the amendments retain the existing requirement that competency evaluations be conducted by a psychologist or psychiatrist, removing language that would have expanded the definition of qualified evaluators. Changes also ensure that defendants held in jail pending competency determination must be transferred to a secure, locked, licensed inpatient psychiatric hospital within 72 hours.

Further revisions replace references to the Department of Health with inpatient psychiatric hospitals in provisions related to competency restoration, clarifying that these facilities, rather than the department itself, are responsible for overseeing inpatient treatment. The amendments also aim to ensure evaluators receive necessary and available documentation for admission decisions, as determined by written policies established by the secretary of the Department of Health.

### **Synopsis of House Bill 4**

House Bill 4 (HB4) seeks to reform New Mexico's approach to criminal competency and mental health within the judicial system. The bill amends Sections 31-9-1 through 31-9-3 NMSA 1978 (determination of competency) to enhance competency evaluation processes and expand the options available for handling defendants with mental health issues. Specifically, HB4 requires competency evaluation reports to include a professional opinion on whether the defendant can stand trial and, if not, whether they meet the criteria for involuntary commitment under the Mental Health and Developmental Disabilities Code (Sections 43-1-1 to 43-1-25 NMSA 1978) or for assisted outpatient treatment under the Assisted Outpatient Treatment Act (Section 43-1B-1 NMSA 1978).

HB4 makes changes to the dangerousness standards to refine and expand how the legal system evaluates and addresses defendants deemed incompetent to stand trial. These updates modify the list of qualifying offenses and adjust the procedural requirements for determining whether defendants present a danger to public safety, particularly for those charged with serious crimes. The bill broadens the definition of dangerousness by expanding the list of crimes that trigger mandatory criminal commitment hearings and eligibility for involuntary commitment under the Mental Health and Developmental Disabilities Code (MHDDC) or the Assisted Outpatient Treatment Act. The updated list includes child abuse, sexual exploitation of children, human trafficking, felonies involving great bodily harm or the use of a firearm, and aggravated arson. Previously, dangerousness assessments focused on a narrower range of crimes. Additionally, first-degree murder and arson have been removed from certain sections, potentially streamlining focus on broader categories of offenses.

Procedurally, the bill attempts to clarify language for courts to assess dangerousness standards by specifying that these evaluations must align with stricter timelines and more defined reporting criteria. For example, competency evaluators must include opinions on whether defendants meet the criteria for civil commitment or outpatient treatment, further integrating dangerousness assessments into the competency determination process. For cases dismissed due to incompetency, the bill directs courts to recommend prosecutors consider initiating proceedings for involuntary commitment or assisted outpatient treatment, using the competency evaluation report as a basis for further action.

The bill adds requirements that restoration to competency must occur within nine months and would require hearings related to competency to be referred to as “criminal commitment hearings,” with updated language to create consistency across the affected statutes. Additionally, it makes the list of significant changes to a defendant’s condition exhaustive. It allows the Department of Health (DOH) or district attorneys to initiate involuntary commitment proceedings under the MHDDC or the Assisted Outpatient Treatment Act, with detention limited to seven days to facilitate such proceedings.

Finally, the bill allows district attorneys and the attorney general to file petitions for assisted outpatient treatment and extends the timeline for pre-petition professional examinations from 10 to 30 days.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## FISCAL IMPLICATIONS

HB4 would have substantial fiscal impacts across multiple agencies. Although the bill includes no appropriations, the reforms included within HB4 are expected to increase costs for agencies involved in competency evaluations, treatment programs, and criminal justice processes. These costs primarily stem from expanded evaluation and reporting requirements, community-based competency restoration programs, and the broadened definitions of dangerousness and qualifying crimes for criminal commitment. Of note, the Legislative Finance Committee (LFC) program evaluation unit’s 2024 [Bernalillo County Criminal Justice System Update](#) found that approximately 2 percent of felony cases statewide are dismissed due to competency issues. At the Bernalillo County Metropolitan Court, this equates to 512 out of 25,000 felony cases annually involving 294 individuals, or 1.6 percent of all individuals charged. While this represents a small percentage of cases, it reflects a high-need population that requires specialized behavioral health services, which are constrained by a shortage of qualified providers.

There is very little data available on the costs associated with conducting a criminal competency evaluation, which can vary based on factors such as the evaluator's expertise, location, and the evaluation's complexity. Rates for forensic psychologists typically range from \$300 per hour for evaluations to \$350 per hour for expert witness testimony, with additional charges for travel and expenses. The Journal of the American Medical Association estimated the cost to be around \$5 thousand per evaluation. Data from the Administrative Office of the Courts (AOC) indicates there were an average of 3,274 cases per year in New Mexico involving competency, meaning the cost for evaluation alone could run to at least \$16.4 million, which would be absorbed by DOH and other entities responsible for covering the costs of evaluation.<sup>1</sup>

DOH anticipates increased referrals to forensic and psychiatric facilities, including the New Mexico Behavioral Health Institute (NMBHI), due to the bill's expanded scope for civil commitment evaluations and the inclusion of community-based restoration. Current forensic infrastructure may need to grow to accommodate more individuals requiring competency

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<sup>1</sup> Morris, N. P., McNiel, D. E., & Binder, R. L. (2021). Estimating annual numbers of competency to stand trial evaluations across the United States. *Journal of the American Academy of Psychiatry and the Law Online*, 49(3). <https://doi.org/10.29158/JAAPL.200129-20>

restoration or treatment. DOH projects additional administrative costs, as staff would need to manage new reporting duties and oversee outpatient programs. However, the lack of precise data on future referrals makes it difficult to estimate the scale of the fiscal impact.

The Corrections Department (NMCD) foresees significant new costs if the number of diagnostic and evaluation (D&E) commitments increases. Under current law, there are approximately 200 D&E cases annually, but the department anticipates this number could double. The daily cost of housing an individual at the Central New Mexico Correctional Facility (where D&Es take place) is \$182.77, translating to over \$2.2 million annually for an additional 200 individuals. NMCD also projects the need for additional behavioral health staff to address increased caseloads at an annual cost of \$170 thousand.

AOC and the Law Offices of the Public Defender (LOPD) highlight the potential for increased litigation and administrative costs. Courts will see additional hearings related to competency determinations, restoration progress, and community-based program compliance. LOPD anticipates higher workloads stemming from expanded dangerousness definitions and new opportunities for outpatient restoration, requiring additional resources to support expert testimony and litigation of competency issues. These increased workloads, combined with the need for trained evaluators and program infrastructure, indicate long-term fiscal pressures on the judicial system and treatment providers.

The Health Care Authority's Behavioral Health Services Division (HCA BHSD) projects a significant fiscal impact from HB4 due to expanded requirements for competency evaluations and behavioral health services. The bill does not include specific funding to support the additional inpatient and outpatient behavioral health services required. HCA BHSD currently oversees court-ordered competency evaluations for indigent defendants and funds behavioral health services primarily through Medicaid, which covers over 90 percent of such services statewide.

To accommodate the additional time required for contracted evaluators to meet the bill's new requirements, HCA BHSD estimates a budget increase of \$3.1 million based on 1,537 evaluations conducted in FY24. This estimate reflects an average cost of \$200 per hour for 10 additional hours per evaluation. Additionally, HCA BHSD states they will need 1.5 FTE to administer and support the forensic evaluation process at an annual cost of \$170 thousand. Still, this estimate does not account for an expected increase in the number of evaluations resulting from the bill's implementation. Further costs are anticipated to expand forensic evaluator scopes of work, including meeting new timelines and providing competency restoration services for uninsured individuals. In addition, HCA BHSD may need to raise the current \$1,250 per evaluation payment to retain and recruit evaluators. HCA also reports that in calendar year 2025, the projected per-member-per-month Medicaid costs for individuals with substance use disorders or serious mental illness are \$1.6 million and \$2.6 million, respectively. However, these projections do not specifically account for individuals involved in the criminal justice system.

## **SIGNIFICANT ISSUES**

The bill proposes major reforms to New Mexico's competency statutes, including community-based restoration programs, expanded eligibility for civil commitment and Assisted Outpatient Treatment (AOT), and broader definitions of dangerousness. These changes are expected to require considerable investment in capacity, resources, and administrative processes to comply

with the bill's mandates.

A key challenge highlighted by DOH is the state's lack of adequate forensic and psychiatric infrastructure to meet the anticipated increase in competency restoration and treatment demands. Under HB4, defendants who are not dangerous can be referred to community-based competency restoration programs, but many communities lack the necessary facilities and providers to implement this provision effectively. Similarly, expanded pathways for civil commitment and AOT will likely increase referrals to facilities such as the New Mexico Behavioral Health Institute (NMBHI) and other psychiatric hospitals. Without corresponding investments to expand capacity, agencies may struggle to meet statutory timelines and provide required services.

Administrative and staffing demands are also expected to increase under HB4. DOH anticipates the need for additional staff to conduct expanded evaluations, oversee competency restoration programs, and manage new reporting requirements. AOC will face additional workloads from the bill's requirements for competency hearings, review hearings, and monitoring compliance with community-based restoration programs. LOPD expects higher caseloads and increased litigation stemming from the expanded definitions of dangerousness, additional expert testimony requirements, and new options for outpatient treatment. These administrative burdens may require agencies to reevaluate staffing levels and operational processes to meet demand.

The changes proposed by HB4 will also require robust interagency coordination to ensure efficient implementation. The bill creates new responsibilities for courts, prosecutors, and DOH in referring defendants to treatment programs or civil commitment proceedings. However, agencies may face challenges in aligning communication and reporting systems, potentially leading to delays or inconsistencies in implementation. For example, DOH notes that removing requirements for pre-admission documentation could disrupt care continuity for defendants entering inpatient competency restoration programs, further complicating coordination efforts.

Legal and policy concerns also arise from the bill's expanded definitions and requirements. HB4's mandate for competency evaluators to provide opinions on civil commitment and AOT eligibility, in addition to standard competency determinations, may exceed the current scope of forensic evaluations and raise due process concerns. The broader definition of dangerousness, which now includes crimes such as human trafficking and aggravated arson, could lead to increased criminal commitments and further strain the state's correctional and judicial systems. Additionally, questions remain about how the state will handle defendants who fail to comply with community-based restoration program requirements or whose competency cannot be restored.

Finally, while the bill includes no direct appropriation, the fiscal impacts on state agencies could be significant. DOH, AOC, LOPD, HCA BHSD, and NMCD all anticipate increased operational costs, including expanded staffing, new program infrastructure, and additional litigation. For instance, NMCD projects that the number of diagnostic and evaluation (D&E) commitments could double, potentially adding \$2.1 million annually to housing costs alone, in addition to the cost of new behavioral health staff. However, the lack of data on the number of individuals who may qualify for expanded restoration or treatment complicates efforts to forecast long-term fiscal impacts.

Addressing these significant issues will require strategic investments in staffing and infrastructure, careful planning to manage expanded workloads, and clear communication among

agencies to align processes. Without these measures, the state may face challenges in meeting the bill's statutory mandates and ensuring equitable implementation of the proposed reforms.

## **PERFORMANCE IMPLICATIONS**

If HB4 is adopted, agencies involved in competency evaluations, restoration, and treatment could experience significant performance implications related to increased caseloads, expanded program responsibilities, and operational efficiency. AOC highlights potential impacts on judicial performance measures, including the percentage of cases disposed of compared to cases filed and the average time to disposition. The additional hearings required for competency evaluations, restoration progress, and dismissal or referral proceedings could strain court resources and extend case timelines, potentially affecting the judiciary's ability to meet performance benchmarks.

DOH and LOPD also foresee challenges in meeting the increased demand for competency evaluations and restoration services. DOH may need to significantly expand its capacity to provide timely evaluations and maintain compliance with reporting and review timelines mandated by HB4. LOPD anticipates increased litigation associated with expanded dangerousness definitions and additional expert testimony requirements could lengthen case resolution times and require greater attorney involvement. Additionally, agencies responsible for community-based restoration programs may face difficulty maintaining consistent program outcomes due to limited statewide treatment infrastructure and the need to scale services quickly.

The introduction of community-based restoration programs for non-dangerous defendants could further strain performance metrics. These programs require robust monitoring and reporting to track defendant compliance and progress toward competency restoration. However, gaps in infrastructure and resource availability could lead to inconsistent implementation and outcomes.

As agencies adapt to these expanded responsibilities, they may need to redefine performance metrics to reflect the complexity of the new processes and measure effectiveness in balancing public safety with humane treatment options.

## **ADMINISTRATIVE IMPLICATIONS**

The University of New Mexico's (UNM) analysis of HB4 notes that it proposes broadening the definition of evaluators to include "qualified mental health professionals" as determined by the court rather than limiting it to psychiatrists or psychologists. However, UNM raises concerns about whether district courts have the expertise to make these determinations and points out that nationally recognized training programs in forensic evaluations exist only for psychologists and psychiatrists. Additionally, HB4 introduces new reporting requirements, including dangerousness and amenability assessments, which will increase the workload for evaluators and may delay the reporting process without appropriate funding and support.

UNM also emphasizes that the current behavioral health system does not have funding for the extensive evaluations and services HB4 requires, such as community-based and hospital-based competency restoration. The analysis suggests doubling the evaluation budget and recommends clarifying procedural steps to streamline competency evaluations without overburdening evaluators. Concerns about civil rights and due process are also noted, particularly in relation to

involuntary commitment procedures and evidentiary standards during dangerousness hearings. UNM proposes alternative approaches, including convening a workgroup to address these issues within existing statutes, as well as considering funding for jail-based restoration programs.

The analysis provided by DOH states: “The bill will add administrative costs to DOH facilities. In addition, DOH will be tasked with additional legal duties related to commitments which may require the hiring of additional staff and DOH may need to update administrative rules.”

Analysis from the Department of Public Safety states:

The Law Enforcement Records Bureau (LERB) of DPS serves as the Criminal Justice Information Services (CJIS) System Agency (CSA) for the state and does not act as a law enforcement agency or engage in enforcement actions. However, LERB remains committed to supporting law enforcement agencies by providing guidance, research, and assistance in facilitating communication with the FBI and other stakeholders. This legislation is directed at law enforcement agencies and officers, ensuring they have the tools to address firearm-related risks effectively.

The Federal Bureau of Investigations (FBI) National Crime Information Center (NCIC) Operation Policy Unit (NOPU) requires that all [extreme risk protection orders (ERPOs)] are filed in the dedicated NCIC Extreme Risk Protection Order (ERPO) File effective August 2, 2022. The ERPOs are now entered into a specialized system that enhances officer safety by allowing better tracking and distinction of these orders, which focus solely on firearm restrictions and differ from traditional protection orders. As the CJIS System Agency (CSA), the LERB facilitates access to DOJ/FBI resources; however, the responsibility for entering and managing ERPO data rests with the appropriate petitioning entities, typically within the law enforcement community. This responsibility lies with the petitioner, typically a certified law enforcement officer, reinforcing the role of law enforcement in this critical process. The specialized ERPO File underscores the importance of maintaining clear, distinct procedures to address public safety while supporting lawful firearm possession restrictions.”

## **TECHNICAL ISSUES**

According to the New Mexico Attorney General (NMAG):

“The proposed language in Section 31-9-1.1(C), which requires a qualified professional to include additional opinions in their report when they believe a defendant is not competent to stand trial, could pose a conflict with Rule 5-602.1(B)(2) NMRA, which states that a competency evaluation is “limited to determining whether the defendant is competent to stand trial.” HB4’s expanded definition of dangerousness could conflict with Rule 5-602.2(D) NMRA, which provides that “[a] determination of the defendant’s dangerousness shall take into account only evidence relevant to whether the defendant presents a serious threat of inflicting great bodily harm on another or of violating Section 30-9-11 or Section 30-9-13.”

## **OTHER SUBSTANTIVE ISSUES**

Analysis provided by DOH notes:

“The changes in this bill would add additional opportunities for civil commitment

evaluations to be conducted. It should be noted that treatment providers are required to obtain consent prior to providing services and many of the clients sent to outpatient treatment pursuant to this bill may lack capacity. Inpatient programs may often be better suited to deal with this circumstance, as it usually requires an application to the courts for the appointment of a legal guardian. Outpatient clinics that may be providing community-based services may find it difficult to obtain a legal guardian for the clients they are tasked to serve.

The civil commitment process as practiced currently may place all defendants on court orders in NMBHI's civil units. Representative Chandler has discussed this concern, and DOH anticipates language in future drafts to ensure that all licensed psychiatric hospitals are options for people recommended for civil commitment.

In another section of the response from DOH, the agency noted specific concerns about possible disparities, stating:

“Individuals in rural and tribal areas of New Mexico may face barriers to accessing qualified mental health professionals... Transportation challenges, healthcare provider shortages, and limited local resources may delay diagnosis and treatment, exacerbating disparities...Some individuals may face challenges related to costs associated with transportation, medications, or other out-of-pocket expenses not covered by public funding...Attention should be paid to defendants from low-income backgrounds who may struggle with access to adequate legal representation and mental health services...The bill mandates court-ordered evaluations, some defendants may face barriers in navigating the legal and healthcare systems effectively...Attention should be paid to non-English speakers may face challenges in understanding the competency process and treatment options...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.”

SS/rl/hg/sgs