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FISCAL IMPACT REPORT

SPONSOR <u>House Judiciary Committee</u>	LAST UPDATED <u>2/18/25</u>	ORIGINAL DATE <u>2/11/25</u>
SHORT TITLE <u>Criminal Competency & Treatment</u>	BILL NUMBER <u>CS/House Bill 8/HJCS</u>	
	ANALYST <u>Sanchez</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
HCA – Forensic Evaluations & Administration**	No fiscal impact	\$3,243.4	\$3,243.4	\$6,486.8	Recurring	General Fund
DOH – Inpatient Psychiatric Treatment Expansion	No fiscal impact	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund
AOC – Increased Caseloads & Hearings***	No fiscal impact	At least \$1,750.0	At least \$2,000.0	At least \$3,750.0	Recurring	General Fund
LOPD – Increased Felony Caseloads	No fiscal impact	At least \$1,500.0	At least \$1,750.0	At least \$3,250.0	Recurring	General Fund
AODA – Increased Prosecution Costs	No fiscal impact	At least \$1,750.0	At least \$2,000.0	At least \$3,750.0	Recurring	General Fund
NMCD****	No fiscal impact	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund
Cost to Counties****	No fiscal impact	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund
Forensic Laboratories & Law Enforcement Training (HCA, DPS, AOC)*****	No fiscal impact	At least \$1,250.0	At least \$1,500.0	At least \$2,750.0	Recurring	General Fund
Total	No fiscal impact	At least \$9,493.4	At least \$10,493.4	At least \$19,986.8	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

**HCA's cost estimates for forensic evaluations (\$3.07M annually) and forensic administration (\$169.4 thousand annually) are included.

***AOC, LOPD, and AODA estimates are based on potential increased caseloads due to competency proceedings, felony enhancements, and increased sentencing provisions.

****NMCD and county detention facility costs remain unknown but are expected to increase based on historical trends in response to similar sentencing enhancements.

*****Forensic testing and law enforcement training costs are estimated based on potential increased blood testing for DWI and firearm-related evidence processing.

Relates to House Bill 4, House Bill 16, House Bill 31, House Bill 38, House Bill 50 and House Bill 106

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
Office of the Attorney General (NMAG)
Health Care Authority (HCA)
Department of Health (DOH)

Agency Analysis was Solicited but Not Received From

Children, Youth and Families Department (CYFD)
Council of Governments (CoGs)
New Mexico Municipal League (NMML)
Law Offices of the Public Defender (LOPD)
Sentencing Commission (NMSC)

SUMMARY

Synopsis of HJC Substitute for House Bill 8

The House Judiciary Committee substitute for House Bill 8 (HB8) is an omnibus public safety measure that incorporates provisions from six previously separate legislative proposals. The bill modifies criminal competency procedures, establishes a new criminal offense related to firearm modification, enhances penalties for motor vehicle theft and certain violent threats, increases sentencing enhancements for fentanyl-related drug trafficking, and revises laws governing chemical blood testing in impaired driving cases.

Competency Restoration and Criminal Commitment. HB8 amends Section 31-9-1 NMSA 1978 (the Criminal Competency Act) to allow for community-based competency restoration for non-dangerous defendants, reducing reliance on institutional commitment. Additionally, HB8 modifies Section 31-9-1.5 NMSA 1978 to expand the list of offenses for which a defendant may be criminally committed, including first-degree and second-degree murder (Section 30-2-1 NMSA 1978), criminal sexual penetration (Section 30-9-11 NMSA 1978), and aggravated arson (Section 30-17-6 NMSA 1978).

The bill further amends the Assisted Outpatient Treatment Act, Section 43-1B-4 NMSA 1978, to authorize district attorneys or the attorney general to file petitions for assisted outpatient treatment. The timeframe for filing such a petition is extended to up to thirty days after a qualified professional has examined a defendant or respondent. The bill also allows courts to authorize the use of competency evaluation reports in involuntary commitment proceedings.

Firearm Modifications and Weapon Conversion Devices. HB8 creates a new section under Chapter 30, Article 7 NMSA 1978, establishing the crime of unlawful possession of a weapon conversion device. This new offense applies to the possession or transportation of any part or combination of parts designed to convert a semi-automatic firearm into a fully automatic firearm. Each weapon conversion device found in violation of the section constitutes a separate third-degree felony offense.

Motor Vehicle-Related Offenses. The bill revises several sections of Chapter 30, Article 16D NMSA 1978, which pertain to motor vehicle theft and related crimes. Specifically, HB8 amends Section 30-16D-1 NMSA 1978 to reclassify the unlawful taking of a vehicle or motor vehicle into progressively more severe felony classifications based on the number of prior offenses. Similarly, Section 30-16D-2 NMSA 1978 (embezzlement of a vehicle or motor vehicle) and Section 30-16D-3 NMSA 1978 (fraudulently obtaining a vehicle or motor vehicle) are amended to impose stricter penalties for repeat offenses.

HB8 creates a new section of Chapter 30, Article 16D, Section 30-16D-4.1 NMSA 1978, to establish a tiered penalty structure for violations of motor vehicle theft statutes. First offenses constitute fourth-degree felonies, second offenses are classified as third-degree felonies, and third or subsequent offenses are classified as second-degree felonies.

Threats of Violence. The bill amends Section 30-20-16 NMSA 1978, increasing the penalty for making a shooting threat from a misdemeanor to a fourth-degree felony. The revised definition of making a shooting threat includes intentionally and maliciously communicating an intent to bring a firearm to a property or to use a firearm with the intent to place others in fear of great bodily harm, disrupt the occupation of a public building, or cause a law enforcement response.

Sentencing Enhancements for Fentanyl Trafficking. HB8 creates a new section under the Criminal Sentencing Act, amending Section 31-18-15 NMSA 1978, to impose additional sentencing enhancements for fentanyl trafficking offenses. If a defendant possesses between 100 and 500 fentanyl pills (or 10 to 50 grams of fentanyl powder), the basic sentence is enhanced by three years. Possession of more than 500 pills (or more than 50 grams of fentanyl powder) results in a five-year enhancement. Additionally, a five-year enhancement applies if a defendant is found to have recruited, coordinated, or financed another person to engage in fentanyl trafficking.

Impaired Driving and Chemical Blood Testing. The bill amends multiple sections of the Motor Vehicle Code, including Section 66-8-111 NMSA 1978 (implied consent law), to revise procedures for obtaining a warrant to test the blood of a person suspected of driving under the influence (DUI). It also expands the list of medical professionals authorized to withdraw blood for chemical testing purposes, adding emergency medical technicians and certified phlebotomists to the list of qualified individuals.

Furthermore, HB8 amends Section 66-8-111.1 NMSA 1978 to clarify that law enforcement officers requesting chemical tests or directing the administration of chemical tests under the Implied Consent Act must provide immediate written notice of license revocation and the right to an administrative hearing.

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

HB8 combines multiple legislative proposals into a single public safety omnibus bill. The provisions impact multiple state and local agencies, including the Department of Health (DOH), the Health Care Authority (HCA), the Administrative Office of the Courts (AOC), the Administrative Office of the District Attorneys (AODA), the Office of the Attorney General

(NMAG), law enforcement agencies, county detention facilities, and the Corrections Department (NMCD).

While the bill does not contain direct appropriations, agency analyses indicate implementation may require additional expenditures related to competency evaluations, competency restoration programs, increased court caseloads, sentencing enhancements, forensic testing, and pretrial and long-term incarceration costs.

Criminal Competency and Treatment (Former HB4). The provisions modifying competency evaluation procedures, competency restoration, and involuntary treatment could have significant fiscal impacts on state behavioral health and judicial systems.

HCA estimates that expanded competency evaluations, which now require assessments for involuntary civil commitment and assisted outpatient treatment, will require an additional \$3.07 million annually for forensic evaluator contracts. This estimate is based on 1,537 competency evaluations conducted in FY24 and assumes 10 additional evaluator hours per case at industry rates. Additionally, HCA projects a need for at least one additional full-time staff member and a supervisor position, totaling \$169.4 thousand annually, to support program administration and oversight.

DOH anticipates an increase in referrals to inpatient psychiatric facilities, such as the New Mexico Behavioral Health Institute (NMBHI), because of the expanded competency evaluation and restoration process. While DOH has not quantified the expected increase, the agency notes that existing state inpatient capacity may be impacted.

AOC indicates additional judicial resources may be required to manage new competency hearings, compliance monitoring, and expanded court oversight of competency restoration programs. According to AODA, increased caseloads for district attorneys handling competency-related petitions and involuntary treatment orders could also require additional prosecutorial resources.

Fentanyl Trafficking Sentences (Former HB16). The bill enhances penalties for fentanyl trafficking by modifying sentencing provisions for possession of 100-500 fentanyl pills (or 10-50 grams of fentanyl powder) and possession of more than 500 pills (or 50 grams of fentanyl powder). A separate five-year sentence enhancement applies to cases where an individual recruits, directs, or manages another person to traffic fentanyl.

NMCD has not yet provided a fiscal estimate, but similar sentencing enhancements in the past have resulted in increased incarceration costs. The cost of incarcerating an additional individual is estimated at \$28,200 per year in marginal costs and \$59,300 per year in full annual costs. County jails may also experience increased pretrial detention costs, estimated at \$19,200 per individual per year.

AOC and AODA note that enhanced sentencing provisions may lead to longer trials and additional appeals, which could result in higher legal and administrative costs for courts, public defenders, and prosecutors.

Fourth-Degree Felony for Shooting Threats (Former HB31). The bill reclassifies shooting threats toward schools or public places as a fourth-degree felony, aligning the penalty with the

state's penalty for bomb threats.

If conviction rates increase, NMCD and county detention facilities may incur additional costs associated with longer incarceration periods. The estimated annual marginal incarceration cost per additional inmate is \$28.2 thousand, and pretrial detention costs for counties are estimated at \$19.2 thousand per year per detainee.

AOC and public defenders may experience an increase in trial caseloads because more defendants may elect to go to trial instead of seeking plea agreements due to the enhanced penalties.

Possession of Weapon Conversion Devices (Former HB38). The bill criminalizes the possession of weapon conversion devices that modify semiautomatic firearms into fully automatic weapons. Each device constitutes a separate offense, classified as a third-degree felony.

NMAG and law enforcement agencies may incur costs associated with enforcing this provision, including training, forensic analysis, and evidence collection related to firearm modifications. LFC estimates the marginal incarceration cost per additional inmate for a third-degree felony is \$28.2 thousand per year at NMCD and pretrial detention costs for counties are estimated at \$19.2 thousand per year per detainee.

AOC and public defenders may also see increased caseloads and litigation costs because firearm-related offenses tend to involve specialized legal defense strategies.

Penalties for Vehicle Thefts (Former HB50). The bill increases penalties for repeat and habitual vehicle theft offenders, modifying existing laws to allow for penalty enhancements based on prior convictions for any vehicle-related theft crime rather than requiring multiple convictions for the same charge.

LFC estimates that the cost of increasing penalties from a fourth-degree to a third-degree felony would be approximately \$1.3 million annually by FY28, while increasing penalties to a second-degree felony could cost \$986 thousand per year, increasing to \$2.4 million annually by FY31.

AOC and AODA note that enhanced penalties may lead to increased legal proceedings, including more trials and appeals, which could require additional staffing and resources for courts, prosecutors, and public defenders.

DWI Blood Testing (Former HB106). The bill expands law enforcement authority to obtain search warrants for blood tests in misdemeanor DWI cases and modifies the list of medical professionals authorized to conduct blood draws.

HCA estimates forensic testing costs will increase due to the higher volume of chemical blood tests, requiring additional funding for laboratory personnel, equipment, and processing. The estimated annual cost increase for forensic testing is not yet available, but similar expansions in the past have required additional law enforcement training and forensic resources.

AOC and public defenders anticipate higher caseloads related to warrant requests, pretrial motions, and legal challenges to DWI blood test procedures.

Overall Fiscal Considerations. HB8 introduces multiple procedural and sentencing changes that could increase expenditures for competency evaluations, mental health treatment programs, court operations, forensic testing, incarceration, and law enforcement activities.

While some provisions may have potential deterrent effects or long-term cost savings through improved treatment pathways, the immediate fiscal impact will be primarily driven by increased expenditures for incarceration, legal services, and behavioral health programs. Agencies may require additional appropriations or reallocations of resources to implement the bill effectively.

Given the scale of the proposed changes, legislators may wish to consider whether additional funding mechanisms, such as dedicated appropriations for competency restoration or forensic testing, would be necessary to support implementation. Future analysis from state agencies may provide further clarity on specific cost drivers and potential budgetary adjustments.

SIGNIFICANT ISSUES

HB8 introduces multiple changes to the state’s criminal justice system, competency proceedings, sentencing laws, and law enforcement procedures. The scope of these changes raises several legal, administrative, and policy considerations that may require further examination by legislators, judicial authorities, law enforcement agencies, and behavioral health providers.

Criminal Competency and Treatment. HB8 modifies competency evaluation procedures and expands options for competency restoration and involuntary treatment. The bill requires competency evaluators to assess whether a defendant meets the criteria for involuntary commitment or assisted outpatient treatment in addition to determining competency to stand trial. This provision may alter how mental health professionals conduct evaluations and how courts interpret these findings in making legal determinations.

The bill also allows for community-based competency restoration programs for non-dangerous defendants. However, the availability of such programs varies across the state, particularly in rural areas with limited behavioral health infrastructure. Courts may have to determine whether appropriate treatment resources exist before ordering outpatient restoration. If sufficient programs are not available, defendants could remain in the criminal justice system for extended periods while awaiting treatment options.

Additionally, HB8 expands the list of offenses that trigger mandatory dangerousness assessments and potential criminal commitments. Some stakeholders have raised questions about whether the revised dangerousness criteria align with existing due process protections and whether they could increase the number of individuals subject to involuntary commitment. The long-term effects of these changes on public safety, mental health treatment capacity, and court caseloads remain uncertain.

Sentencing Enhancements and Criminal Penalties. The bill increases penalties for multiple offenses, including fentanyl trafficking, vehicle theft, shooting threats, and possession of weapon conversion devices. The impact of these sentencing enhancements will depend on enforcement levels, prosecutorial discretion, and judicial sentencing practices.

Some legal experts have noted that longer sentences may result in increased use of plea

agreements as defendants seek to avoid enhanced penalties. This could shift more case resolution to plea bargaining rather than trials, potentially affecting how the criminal justice system processes these cases. Additionally, the availability of public defense resources may influence case outcomes, particularly for indigent defendants facing new or enhanced felony charges.

For fentanyl trafficking, the bill allows for sentencing enhancements based on the presence of fentanyl in a controlled substance trafficking case. Some legal analysts have noted that similar provisions in other jurisdictions have led to litigation over evidentiary requirements, particularly regarding the burden of proof for establishing fentanyl possession in mixed-drug cases.

The bill also criminalizes the possession of weapon conversion devices, aligning state law with federal regulations on firearm modifications. Some legal experts have raised questions about whether this provision could be subject to constitutional challenges under recent U.S. Supreme Court rulings on firearm regulations. Additionally, enforcement of this provision may depend on law enforcement training and forensic capacity to identify and document conversion devices in criminal investigations.

DWI Blood Testing and Law Enforcement Procedures. The bill expands law enforcement authority to obtain search warrants for blood testing in DWI cases where there is probable cause to believe a misdemeanor has been committed. This change is intended to provide officers with additional tools for enforcing DWI laws; however, it also raises procedural considerations regarding how frequently search warrants will be sought and the capacity of forensic laboratories to process an increased volume of blood tests.

Legal analysts have noted that prior court rulings, including *Birchfield v. North Dakota* (2016), established limits on warrantless blood testing in DWI cases. While HB8 does not authorize warrantless searches, the expansion of warrant-based blood testing could lead to litigation over the scope and application of probable cause standards in misdemeanor cases.

Additionally, the bill modifies the list of medical professionals authorized to conduct blood draws for DWI testing. Law enforcement agencies may need to update policies and procedures to ensure compliance with the new standards.

Judicial and Administrative Workload Considerations. The bill's combined provisions could increase criminal case filings, pretrial motions, hearings, trials, and sentencing proceedings. Courts, prosecutors, and public defenders may experience additional caseload pressures, particularly in cases involving enhanced penalties or competency determinations.

The expansion of competency proceedings and mental health treatment options may require coordination among multiple agencies, including the judiciary, DOH, district attorneys, and public defenders. Courts may need to develop new procedures to manage competency restoration orders, involuntary treatment petitions, and ongoing compliance monitoring for outpatient programs.

Additionally, law enforcement agencies may require additional training and policy updates to implement new enforcement provisions, particularly those related to firearm modifications, fentanyl trafficking, and DWI blood testing. The effectiveness of these provisions may depend on agencies' ability to adapt to procedural changes and allocate necessary resources.

Equity and Geographic Disparities in Implementation. Some of the bill’s provisions, particularly those related to competency restoration and involuntary treatment, may have different effects depending on geographic location and available services. Rural and tribal communities often face barriers to accessing forensic mental health services, including a shortage of qualified evaluators and inpatient treatment facilities. The bill does not include specific provisions to address these disparities, and implementation challenges could arise if adequate treatment infrastructure is not available in certain areas.

Similarly, the impact of sentencing enhancements may vary based on local law enforcement priorities and prosecutorial discretion. Some jurisdictions may see higher rates of prosecution for offenses covered under the bill, while others may focus resources on different areas of criminal enforcement. Legislators may wish to monitor how these variations affect sentencing outcomes and incarceration rates across the state.

Potential Legal and Constitutional Considerations. Several provisions in the bill could be subject to legal challenges, particularly those related to competency evaluations, firearm regulations, and sentencing enhancements. Courts may be required to interpret how the expanded dangerousness criteria align with existing legal standards for involuntary commitment. Additionally, firearm-related provisions could face scrutiny under recent Second Amendment rulings by the U.S. Supreme Court.

The bill also expands prosecutorial authority in certain areas, such as allowing district attorneys and the attorney general to file petitions for assisted outpatient treatment. Some legal analysts have raised questions about whether this provision aligns with current judicial procedures for mental health treatment orders.

Overall, HB8 introduces multiple procedural and substantive changes to New Mexico’s criminal justice system. The bill’s implementation may require adjustments in judicial administration, law enforcement practices, forensic capacity, and behavioral health services. Legislators may wish to consider ongoing monitoring and evaluation of these provisions to assess their impact on public safety, mental health treatment access, and legal system operations.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The House Judiciary Committee Substitute for House Bill 8 consolidates provisions from multiple previously introduced bills into a single omnibus public safety measure. The following bills are incorporated into the current version of HB8:

House Bill 4: Criminal Competency and Treatment. This bill proposed changes to how the criminal justice system manages individuals with serious mental or behavioral health issues. It sought to expand competency restoration options, including community-based programs for non-dangerous defendants, and to provide additional pathways for involuntary commitment or assisted outpatient treatment. These provisions are now included in HB8, which amends competency procedures and treatment options for individuals found incompetent to stand trial.

House Bill 16: Fentanyl Trafficking Sentences. This bill aimed to modify sentencing provisions related to fentanyl trafficking, reflecting concerns about the drug’s potency and its role in overdose-related deaths. The current version of HB8 incorporates enhanced penalties for

fentanyl trafficking by altering the sentencing framework for trafficking certain quantities of the drug.

House Bill 31: Fourth-Degree Felony for Shooting Threat. This bill proposed increasing the penalty for making a shooting threat toward a school or public place, aligning it with the penalty for bomb threats. HB8 adopts this provision by amending state law to classify shooting threats as a fourth-degree felony.

House Bill 38: Possession of a Weapon Conversion Device. This bill sought to criminalize the possession of devices that convert semiautomatic firearms into fully automatic weapons. The current version of HB8 includes this provision, creating the crime of unlawful possession of a weapon conversion device and establishing associated penalties.

House Bill 50: Penalties for Vehicle Thefts. This bill proposed increasing penalties for repeat and habitual vehicle theft offenders by allowing enhancements based on prior convictions for any vehicle-related theft crimes rather than requiring multiple convictions for the same specific charge. HB8 includes these changes by modifying penalties for unlawful taking, embezzlement, and fraudulent acquisition of a vehicle.

House Bill 106: DWI Blood Testing. This bill sought to expand law enforcement's ability to enforce DWI laws by allowing testing for controlled substances when there is probable cause to suspect impairment, even in misdemeanor cases. HB8 incorporates this provision by modifying warrant requirements for chemical blood tests and authorizing additional medical professionals to perform blood draws.

These provisions, previously introduced as separate bills, are now combined into the Committee Substitute for HB8 as part of a broader public safety legislative package.

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