

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2026 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

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*{Analysis must be uploaded as a PDF}*

**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** Feb. 6, 2026  
**Bill No:** SB 232-280

**Sponsor:** Crystal Brantley  
**Short Title:** Determine Competency of a Child

**Agency Name and Code**    LOPD-280  
**Number:** \_\_\_\_\_  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY26</b>	<b>FY27</b>	<b>FY28</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 334 “Competency of Children”

Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

The bill would enact a new statute titled “Determination of Competency of a Child” providing a process by which a child’s “competency” may be raised by a court or either party to the proceeding.

The bill authorizes the court to order a “determination” of competency if “compelling reasons” – other than age alone – exist, at which time it “shall be evaluated by an independent child psychologist.”

The bill indicates children are presumed competent, and provides factors to determining competency, including their “ability to understand relevant information”; “ability to appreciate the consequences of choices”; “reasoning skills in weighing options and outcomes”; and “ability to express a choice clearly.”

**FISCAL IMPLICATIONS**

As discussed below, it is difficult to predict the impact this bill would have on public defense. The Legislature and LFC are well aware of the myriad constitutional concerns implicated in forcing indigent criminal defendants to proceed without effective assistance of counsel. Barring some other way to reduce indigent defense workload, any increase in the number of felony prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep this problem from spreading. Of course accurate prediction of the fiscal impact would be impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed statutory scheme.

**SIGNIFICANT ISSUES**

There are two overarching forms of “competency” in criminal law and this bill does not provide any clear indication of *which* form of competency it is designed to address.

The first form of competency is a question of a non-party child-witness’s competency to testify *as a witness*. See *State v. Hueglin*, 2000-NMCA-106, ¶ 24, 130 N.M. 54 (“To be competent, a

witness is required to have a basic understanding of the difference between telling the truth and lying, coupled with an awareness that lying is wrong and may result in ‘some sort of punishment.’”)

The other form of competency in criminal law is an *accused’s* mental competency to *stand trial*. *Drope v. Missouri*, 420 U.S. 162 (1975) (a defendant has a fundamental right not to be tried while incompetent); *Pate v. Robinson*, 383 U.S. 375, 378 (1966) (trying an incompetent defendant violates due process; *State v. Rotherham*, 1996-NMSC-048, ¶ 13, 122 N.M. 246 (requiring four components to competency, all of which must be met: 1) a factual understanding of the proceedings, 2) a rational understanding of the proceedings including the ability “to comprehend the reasons for punishment”, 3) an ability to assist the defense, and 4) an ability to consult with the lawyer with a reasonable degree of rational understanding).

Because the bill creates “new material” and does not specify a target chapter for the new section of law, and because the bill’s title and the bill itself only use the term “competency” generically, it is impossible for this Analyst to infer the intended aspect of competency the bill is designed to address. Its terms are broad enough to arguably apply to either type of competency described above.

**If addressing competency of a witness**, the bill is unnecessary to codify a matter of judicial procedural rules as clarified by case law and applied within the discretion of judges with regularity. *See* Rule 11-601 NMRA (“Competency to testify in general”); *State v. Fairweather*, 1993-NMSC-065, 116 N.M. 456 (an appellate court “will not reverse a trial court’s determination as to the competency of witnesses unless it clearly abused its discretion.”). The proposed factors for consideration are also inconsistent with the existing test for competency to testify, which focuses on “a basic understanding of the difference between telling the truth and lying, coupled with an awareness that lying is wrong and may result in ‘some sort of punishment.’” *Hueglin*, 2000-NMCA-106, ¶ 24.

**If addressing competency to be stand trial**, the bill dramatically misstates the long-standing due process standard articulated in *Rotherham* and applicable to all criminal defendants in New Mexico, whether they are prosecuted as adults or as children. Analyst cautions against any standard that *reduces* the requirements of mental competency of the accused, as the federal standard is *the floor* and states cannot provide less protection than the constitution requires.

The United States Supreme Court has cautioned that “the consequences of an erroneous determination [of competency] are dire” and that the defendant must be able to “communicate effectively with counsel” in order to “exercise other ‘rights deemed essential to a fair trial’” including a “myriad of smaller decisions concerning the course of his defense. The importance of these rights and decisions demonstrates that an erroneous determination of competence threatens a ‘fundamental component of our criminal justice system’ – the basic fairness of the trial itself.” *Cooper v. Oklahoma*, 517 U.S. 348, 364 (1996).

Finally, Analyst notes that – to the extent SB 232 creates a procedure for raising and evaluating an accused Child’s competency to be tried and/or adjudicated, it would appear to be redundant and in conflict with existing law. *See* NMSA 1978, § 32A-2-21 (“Disposition of a child with a mental disorder or developmental disability in a delinquency proceeding”). Section 32A-2-21 already provides the court the authority to initiate competency proceedings in order to pursue restoration to competency and provides procedural steps for staying proceedings or dismissing charges if competency cannot be achieved.

## **PERFORMANCE IMPLICATIONS**

Without knowing what the bill is seeking to do, Analyst cannot speculate as to the performance implications for LOPD attorneys.

## **ADMINISTRATIVE IMPLICATIONS**

## **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**

## **ALTERNATIVES**

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

## **AMENDMENTS**