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Legislative Council Service

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2025 Public Safety and Health Measures:

House Bill 8 and Senate Bill 3

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See: Section 2-3-13 NMSA 1978 and Legislative Council Policy No. 7.

House Bill 8* (2025)
An Act Relating to Public Safety

Primary Sponsor: Christine Chandler

Final Passage: 48-20 (House)/38-3 (Senate)

Enacted: February 27, 2025

Effective: June 20, 2025

Chaptered: Laws 2025, Chapter 4, Sections 1 through 24

Compiled: Sections 31-9-1 through 31-9-2, 43-1B-4, 30-7-3.1, 30-16D-1 through 30-16D-4.1, 30-20-16, 31-18-27, 66-8-103 through 66-8-104, 66-8-111 through 66-8-111.1, 66-13-1, 66-13-6 and 66-13-7 NMSA 1978.

*House Judiciary Committee Substitute for House Bill 8

Summary

House Bill 8 was referred to as the 2025 "Crime Package" and:

- **made comprehensive changes to the state's criminal competency procedures**;
- created the crime of "unlawful possession of a weapon conversion device";
- changed penalties for all auto theft crimes in the Criminal Code;
- changed penalties for the crimes of "making a bomb scare" and "making a shooting threat";
- created the fentanyl sentencing enhancement; and
- changed the DWI statutes regarding chemical blood tests and warrants for chemical blood tests.

Summary:
Changes to Criminal Competency Procedures

The provisions of House Bill 8 relating to criminal competency included two central substantive changes that can be described as:

1. expanding a court's options regarding competency restoration, including who may be subject to it and who may provide it; and
2. requiring closer integration with civil protective proceedings for persons with mental illness to provide for "continuity of care" across the legal system.

General Overview of Criminal Competency

- Criminal competency is a specific and narrow concept understood as a defendant's:
    1. sufficient, present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding;
    2. rational and factual understanding of the proceedings against the defendant; and
    3. capacity to assist in the defendant's own defense and to comprehend the reasons for punishment.[1]
- Competency restoration includes such things as "treatment", services and supports and is focused on making a (not competent) defendant competent to stand trial.
- As a constitutional matter, if a defendant is not competent to stand trial, the prosecution cannot move forward. If the (not competent) defendant cannot be made competent, the case is dismissed or the defendant is subject to "criminal commitment", which is a quasi-civil or quasi-criminal proceeding.[2]

Competency Restoration

Old Law[3]

- Only a defendant who is charged with a felony and found to be "dangerous" could be ordered to "treatment to attain competency".
- Psychiatric commitment was the only available treatment.
- The state hospital was the only facility that could provide that treatment.
- Courts were not required to dismiss cases for all other defendants found to be not competent but could only "wait and see" for up to nine months.

New Law[4]

- All defendants may be ordered to competency restoration.
- Defendants charged with misdemeanors or felonies who are not "dangerous" may be ordered to community-based competency restoration.
- Defendants charged with felonies **or** misdemeanors who are dangerous may be committed to psychiatric facilities for competency restoration.
- Competency restoration for dangerous defendants may be provided at the state hospital **or** at alternative facilities.
- Courts still have the discretion to dismiss cases in the interest of justice.

Dangerousness

Old Law[5]

- "dangerous means that, if released, the defendant presents a serious threat of inflicting great bodily harm on another or [committing criminal sexual penetration or criminal sexual contact of a minor]."

New Law[6]

- "A defendant who is not competent is dangerous if the court finds by clear and convincing evidence that the defendant presents a serious threat of committing murder […], inflicting great bodily harm [or criminal sexual penetration, criminal sexual contact of a minor or any of several other enumerated crimes]."

Community-Based Competency Restoration

Old Law[7]

- Competency restoration or "treatment to attain competency" could be provided only through psychiatric commitment to the state hospital for certain "dangerous" defendants.
- Affirmative competency restoration in different settings was not available for other defendants.

New Law[8]

- A court can order other defendants to participate in noncustodial competency restoration programs.
- A program must be:
    1. approved by the court;
    2. specifically designed for competency restoration;
    3. outpatient;
    4. in the community where the defendant resides; and
    5. no more than 90 days in duration.

Integration with Civil Commitment and Assisted Outpatient Treatment Proceedings

Old Law[9]

- Mandatory evaluations and reports pertained only to the defendant's "competency to stand trial".
- For defendants with mental illness who potentially needed civil protection, a district attorney could initiate civil commitment proceedings but not assisted outpatient treatment (AOT) proceedings.
- If initiated, civil commitment and AOT required new or separate "fact-finding" as to the defendant's mental condition and danger to self or others.
- An evaluation used in an AOT proceeding was only valid if completed within 10 days before the AOT petition was filed.

New Law[10]

- Mandatory evaluations and reports are required to include assessments relevant to the standards for civil commitment and AOT.
- A district attorney may initiate civil commitment proceedings **and** AOT proceedings.
- With the criminal court's authorization, evaluations and reports from a criminal competency proceeding may be used by a district attorney in a civil commitment or AOT proceeding.
- An evaluation used in an AOT proceeding is valid if completed within 30 days before the AOT petition is filed.

Senate Bill 3* (2025)
The Behavioral Health Reform and Investment Act

Primary Sponsor: Peter Wirth

Final Passage: 37-5 (Senate)/44-23 (House) without Emergency Clause

Enacted: February 27, 2025

Effective: June 20, 2025

Chaptered: Laws 2025, Chapter 3, Sections 1 through 11

Compiled: Sections 24A-10-1 through 24A-10-10 NMSA 1978

*Senate Finance Committee Substitute for Senate Bill 3

Summary

- The act establishes a multiyear strategic planning process to reform and fund the state's behavioral health system.
- Integral to this process is the regionalization of the state's behavioral health system.
- Designated regions will adopt phased plans to address their behavioral health needs.
- Phased plans are required to incorporate nationally recognized behavioral health delivery standards and "sequential intercept mapping", which is a conceptual framework for understanding how persons with mental illness or drug and alcohol addiction interact with the criminal justice system.
- The act also includes other provisions that streamline and coordinate elements of the existing behavioral health system related to workforce development, Medicaid credentialing, crisis and emergency response and standards of care for services and delivery.

Implementing Authority: Behavioral Health Executive Committee Created[11]

The committee is composed of:

- the Secretary of Health Care Authority (HCA);
- the director of the Behavioral Health Services Division of the HCA;
- the director of the Medical Assistance Division of the HCA;
- the director of the Administrative Office of the Courts; and
- three behavioral health experts (appointed by the director of the Administrative Office of the Courts).[11]

The committee is required to:

- designate behavioral health regions;
- review and approve regional plans;
- establish funding strategies and structure based on approved regional plans;
- monitor and track deliverables and expenditures that address deficiencies in and implementation issues of regional plans; and
- establish a project management strategy that shall be led by a project manager at the HCA.[12]

Administrative Support Agency: Administrative Office of the Courts

Generally, the Administrative Office of the Courts is required to:

- provide coordination and staffing for the executive committee and regional meetings;
- collaborate with regions to complete sequential intercept mapping; and
- monitor progress and report to the Legislature.[13]

Requirements for Regional Plans

Each region's regional plan shall:

1. include phased implementation;
2. incorporate no more than five "[state] grants or state-funded priorities" per phase;
3. identify available "local resources" that may offset costs;
4. include time lines and performance measures for each funding priority;
5. include a "continuity of care plan";
6. consider "language access" needs;
7. include a plan to obtain available federal, local or private resources that advance the region's priorities, if applicable;
8. include an index of all behavioral health service providers in the region; and
9. include plans to optimize, leverage or reinforce coordination with Medicaid.[14]

Guidelines for State Funding

State behavioral health investments:

- shall be used to address priorities and funding gaps identified in regional plans;
- shall be equitably distributed for all eligible priorities;
- may be used for grants with no more than a four-year funding window;
- may be used to pay for non-acute behavioral health services for indigent and uninsured persons;
- may be used for advanced disbursements in certain emergency circumstances; and
- may be repurposed if certain criteria are met.[15]

Additional Provisions:

- All "stakeholders" that receive state funding are required to participate in regional planning.[16]
- Public post-secondary educational institutions are required to participate in regional planning for behavioral health workforce development pipelines.[17]
- The Health Care Authority is required to establish a universal Medicaid enrollment and credentialing process for behavioral health service providers.[18]
- Relevant state agencies are required to coordinate 988 and 911 systems.[19]
- Contract and grant audits and program evaluations for regional plans are required.[20]
- The Interagency Behavioral Health Purchasing Collaborative is repealed.[21]

Endnotes

1. Section 31-9-1.1 NMSA 1978; *State v. Linares*, 2017-NMSC-014, ¶ 34 ("A person is competent to stand trial when he or she has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, a rational as well as a factual understanding of the proceedings against him, and the capacity to assist in his own defense and to comprehend the reasons for punishment. [A defendant's] retardation may factor into this analysis—and may factor heavily—but the mere fact that [the defendant] is mentally retarded does not, in and of itself, resolve the question of [the defendant's] competency." (internal quotes and citations omitted)); *Dusky v. U.S.*, 362 U.S. 402 (U.S. 1960).

2. *State v. Rotherham*, 1996-NMSC-048, ¶ ¶ 13-23 ("The law has long recognized that it is a violation of due process to prosecute a defendant who is incompetent to stand trial. […] Suspension of the criminal process where the defendant is incompetent is fundamental to assuring the fairness, accuracy and dignity of the trial.") ("It is well established that the government may detain mentally unstable individuals who present a danger to the public and dangerous defendants who become incompetent to stand trial. […] The State has an interest in rendering a defendant competent to stand trial, and, as long as they remain dangerous, the State has an interest in committing them to protect the defendants and the public."); *Bishop v. U.S.*, 350 U.S. 961 (U.S. 1956); *Pate v. Robinson*, 383 U.S. 375 (U.S. 1966); *U.S. v. Salerno*, 481 U.S. 739 (U.S. 1987).

3. Section 31-9-1.1 NMSA 1978 (1999) (amended 2025) ("When a district court determines that a defendant charged with a felony is incompetent to proceed in the criminal case, but does not dismiss the criminal case, and the district court at that time makes a specific finding that the defendant is dangerous, the district court may commit the defendant as provided in this section for treatment to attain competency to proceed in a criminal case. […] The defendant so committed shall be provided with treatment available to involuntarily committed persons, and: (1) the defendant shall be detained by the department of health in a secure, locked facility; and (2) the defendant, during the period of commitment, shall not be released from that secure facility except pursuant to and order of the district court that committed him."); Section 31-9-1.4 NMSA 1978 (1999) (amended 2025) ("If at any time the district court determines that there is not a substantial probability that the defendant will become competent to proceed in a criminal case within a reasonable period of time not to exceed nine months from the date of the original finding of incompetency, the district court may: [hear the matter for criminal commitment; release the defendant and dismiss the case with prejudice; or dismiss the case without prejudice in the interest of justice].").

4. Section 31-9-1.2 NMSA 1978 (requiring a determination of "dangerousness"; authorizing court to order "community-based competency restoration" or dismissal for defendants who are not dangerous; and authorizing commitment for restoration for dangerous defendants). (Subsection F considers "defendant's admission to a department of health facility or an inpatient psychiatric hospital for competency restoration".).

5. Section 31-9-1.2 NMSA 1978 (1999) (amended 2025) (see Subsection D).

6. Section 31-9-1.2 NMSA 1978 (see Subsection A) (enumerated crimes include: murder; infliction of great bodily harm; criminal sexual penetration; criminal sexual contact of a minor; abuse of a child; violations of the Sexual Exploitation of Children Act; human trafficking; aggravated arson; and serious violent offenses enumerated in Section 33-2-34 NMSA 1978).

Endnotes

7. Section 31-9-1.2 NMSA 1978 (1999) (amended 2025) (see Subsection B).
8. Section 31-9-1.2 NMSA 1978 (see Subsections B and C).
9. Section 31-9-1.1 NMSA 1978 (1993) (amended 2025) (regarding initial evaluation); Section 31-9-1.2 (1999) (amended 2025) (see Subsection E regarding 30-day assessment, treatment plan and report); Section 31-9-3 (1999) (amended 2025) (see Subsection B regarding 90-day review and written progress report); Mental Health and Developmental Disabilities Code, Section 43-1-11 NMSA 1978 (see Subsection A regarding the requirements for a petition for civil commitment and Subsection G regarding a district attorney's ability to file a petition); Assisted Outpatient Treatment Act, Section 43-1B-4 NMSA 1978 (2020) (amended 2025) (see Subsection B regarding who may file a petition and Subsection D regarding the validity of "examination").
10. Section 31-9-1.1 NMSA 1978 (see Subsection C regarding requirements for evaluation report); Section 31-9-1.2 NMSA 1978 (see Subsection C regarding community-based competency restoration program "progress reports"); Section 31-9-1.3 NMSA 1978 (regarding 90-day review for committed defendants); Section 43-1B-4 NMSA 1978 (see Subsection B regarding who may file a petition and Subsection D regarding the validity of "examination").
11. Section 24A-10-3 NMSA 1978 (see Subsection A).
12. Section 24A-10-3 NMSA 1978 (see Subsection B).
13. Section 24A-10-4 NMSA 1978 (see Subsections A, C and E regarding the Administrative Office of the Court's general administrative responsibilities).
14. Section 24A-10-4 NMSA 1978 (see Subsection D).
15. Section 24A-10-6 NMSA 1978.
16. Section 24A-10-4 NMSA 1978 (see Subsection B) ("behavioral health stakeholders" defined in Section 24A-10-2).
17. Section 24A-10-4 NMSA 1978 (see Subsection I).
18. Section 24A-10-7 NMSA 1978.
19. Section 24A-10-9 NMSA 1978.
20. Section 24A-10-10 NMSA 1978.
21. Laws 2025, Chapter 3, Section 11.