

LFC Requester:

Scott Sanchez

**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: HB233

Sponsor: Rep. Tara Lujan
Short Title: DETERMINATION OF COMPETENCY OF DEFENDANT IN CRIMINAL CASE

Agency Name and Code HCA-630
Number: _____

Person Writing Alicia Salazar

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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 | \$169.4 | \$169.40 | \$169.4 | \$508.2 | Recurring | SGF |

(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:

House Bill 233 (HB 233) 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

BHSD would need to collaborate with DOH who oversees the competency restoration program to expand its competency restoration program to other counties. BHSD could also assist DOH in identifying providers in the counties as DOH expands their competency restoration programs, to ensure that behavioral health needs are met for those who are identified as needing treatment. BHSD would also need to update the forensic evaluator scopes of work to ensure the new court timelines outlined in the bill are met. This would require 1 FTE at a pay band 70 and .5 of a supervisor position for a total of \$169,400 for salary, fringe and operating costs.

SIGNIFICANT ISSUES

Currently, New Mexico Behavioral Health Institute (NMBHI), located in San Miguel County, is the only facility in the State where individuals who are found incompetent to stand trial may receive treatment. NMBHI does not have the adequate capacity to serve all existing individuals needing treatment.

HB233 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, especially in other counties where defendants reside in other regions of the state.

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

DOH has oversight of competency restoration programs. Competency restoration is an educational process whereby someone with a behavioral health condition can receive treatment and education about the legal processes so that they can work with their attorneys for a plea deal which is likely to involve engagement in treatment. BHSD would also need to update contracts to include the new court timelines outlined in the bill. BHSD would need to expand provider contracts to include competency restoration services for uninsured individuals. BHSD would also need to do a cost analysis to determine the costs of assisted outpatient competency restoration programs and if there would be an impact to the HCA budget.

ADMINISTRATIVE IMPLICATIONS

BHSD would need to collaborate with DOH who oversees the competency restoration program to help locate behavioral health treatment providers in local communities in order to expand the competency restoration program beyond San Miguel county.

No IT impact.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

- Define “treatment”
- Define “diversion to treatment”
- Mental examinations should read “competency evaluations”
- Define intensive outpatient treatment.
- Addiction Services should read “substance use services”
- Substance abuse should be “substance use”
- 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

HCA provides structure, quality control, training and funding for all court ordered competency evaluations wherein the defendant is found to be indigent. Activities include: Contracting with forensic evaluators statewide to ensure competency evaluations are assigned and completed, provide training for the competency evaluators on current practice, complete reviews on evaluations to ensure quality standards are met.

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

None