

LFC Requester:	Marty Daly
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**AGENCY BILL ANALYSIS
2024 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 February 5, 2024

Bill No: HB 233

Sponsor: Lujan
Short Title: Criminal Competency Determination

Agency Name and Code NM Sentencing Commission (354)
Number: _____
Person Writing Douglas Carver
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(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						

(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:

The HHHC substitute bill for HB 233 reworks some sections of the original bill, while leaving some sections the same or relatively untouched, as follows:

Section 1 of the substitute bill has been reworked. It still repeals the existing language in Section 31-9-1, concerning raising the issue of competency, and creates a new process for how to proceed once the issue of competency has been raised. Under this new scheme, the case shall be stayed, and either the issue of competency be resolved, or, instead of ordering a competency evaluation, if the parties agree:

- the court may order the defendant to be diverted to a treatment program; or
- the parties shall file a stipulated petition requested the defendant be considered for assisted outpatient treatment.

For misdemeanor cases, the substitute bill holds that if parties agree, the defendant may be ordered to participate in a diversion to treatment program for no longer than 6 months, as in the original bill. The substitute clarifies that when the defendant is diverted to treatment in a misdemeanor case in Magistrate Court, the case shall not transfer to District Court. A misdemeanor case in Metropolitan Court shall remain in that court's jurisdiction regardless of whether the defendant is diverted to a treatment program.

For nonviolent felony cases, the defendant could be referred for participation in a diversion program for no longer than 18 months.

A defendant's charges shall be dismissed after the time period for completion of the diversion program has elapsed or upon the defendant's acceptance into assisted outpatient treatment. A defendant will not be required to undergo a competency evaluation while they are participating in a diversion to treatment program.

Section 2 of the substitute bill is the same as in the original bill.

Section 3 of the substitute bill still repeals the existing language in Section 31-9-1.2, concerning commitment of a defendant, and replaces it with new language around commitment and adds the

use of competency restoration programs. It has been reworked some from the original bill.

Under this new process, a court shall hold a hearing on the same day to determine whether a defendant is incompetent to proceed and on dangerousness. If competent, the stay on the case is lifted and the case shall be scheduled for trial “or any other type of hearing the court deems appropriate.” If incompetent and not dangerous, the court shall dismiss the case without prejudice. If incompetent and dangerous, the court shall order treatment in the least restrictive setting consistent with the goal of restoration to competency. The substitute bill then outlines the process and restrictions to this third option.

Similar to the original bill, if the case is dismissed, the defendant may be referred by any of the interested parties for an eligibility determination for civil commitment proceedings under the Mental Health and Developmental Disabilities Code. Additionally, the court may order the defendant confined for a maximum of seven days to facilitate the filing of an order referring the defendant for an assessment to determine eligibility for civil commitment.

The bill again states that the court shall hold a hearing on the same day to determine whether a defendant charged with a felony is incompetent to proceed in the criminal case, and, if the court makes a specific finding that the defendant is dangerous, the court may order the defendant to a competency restoration program. If the defendant is ineligible for competency restoration. The defendant shall be committed and provided with treatment available to involuntarily committed persons. If in the “state hospital”, the defendant shall be detained by DoH in a secure, locked facility until completion of treatment – communication is to be provided “with all parties listed in this subsection.” Upon the completion of competency restoration and the submission of a final report to the state, defense counsel and the court, the court shall enter an order to transport the defendant to the appropriate county detention facility, if applicable. Upon release, the committing facility shall forward a discharge plan and treatment documents to the receiving provider or facility, if applicable.

The remaining Subsections (D and E) of this Section are the same as in the original bill.

Section 4 of the substitute bill is largely unchanged from the original bill, except that “treatment” has been replaced with “competency restoration” in most, though not all, cases. The requirement that the 30-day review report assess diversion has been removed.

Sections 5, 6, 7, 8, and 9 of the substitute bill are the same as in the original bill.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

The HHHSC substitute for HB 233 clarifies some of the language that was unclear in the original version of the bill, but there are still ambiguities, with some new ambiguities introduced in this version.

The problem of a loose use of “the state” and “the defense” still exists in this new version of the bill. Similarly, the substitute bill uses “the same day” three times, without saying the same day as what. Further, twice in the bill there is reference to “*a* state hospital”; twice there is reference to “*the* state hospital”. As “state hospital” is not defined, it is not clear which institution is being referred to, or whether the references are to the same place or different places.

There are definitions for “competency restoration program” and “outpatient competency restoration”, but there is no definition for “competency restoration” itself, which is used extensively throughout the bill (a definition for the term could probably be incorporated into the “competency restoration program” definition). Similarly, while there is the definition for “outpatient competency restoration”, there is no definition for “residential treatment program”.

The substitute bill references “assisted outpatient treatment” in a few places, but unlike in the original bill, there is no reference to the Assisted Outpatient Treatment Act. Presuming that the bill intends that defendants should be referred pursuant to that Act, that should be made clear in the language (perhaps as an added definition). Or if it is not intended that assisted outpatient treatment in the substitute is tied to that Act, this should also be made clear in a definition.

In Section 3, in Paragraph 1 of Subsection C, it states that “appropriate communication shall be provided with all parties listed in this subsection.” It is unclear what list is being referred to. The only list in the Subsection is found at Paragraph 2 of Subsection C, but other parts of Subsection C have a different cast of characters.

There is a definition given for “reasonable time”, to mean “within thirty days of referral.” Yet in Section 2 of the bill, which amends Section 31-9-1.1, Subsection B of that Section is amended to read, “A hearing on the same day regarding the issue of competency and dangerousness of an incarcerated defendant charged with a felony shall be held by the district court within a reasonable time, but in no event later than thirty days after notification to the court of completion of the diagnostic evaluation.” The definition of “reasonable time” in the new definitions section does not mesh with this language.

The problem with the definition of “violent felony” in the new definitions section, Section 8, remains. The definition given for “violent felony” is far more limited in scope than the list found in the statute concerning earned meritorious deductions, at Section 33-2-34(L), which is the normal list used for defining violent felonies in statute. There also seems to be also inconsistency between the definition of violent felony given here and the list of serious crimes referenced in 31-9-1.4; the list at 31-9-1.4 is cross-referenced in various other parts of the competency statutes.

The new language in Section 9, amending Section 31-9-2, is unchanged from the original draft. It still reads: “Where the defendant is determined to be indigent, the state shall pay for the costs of the examination from funds available to the court.” Aside from it being unclear which entity of the state would pay the examination costs – a problem noted in other sections of the bill – it is also unclear how the state would pay from court funds.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS