

LFC Requester:

Marty Daly

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

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 X
Correction Substitute

Date Prepared: 02/07/2024

Bill No: SB16

Sponsor: Sen. G. Ortiz y Pino,
Rep. T.L. Lujan

Short Title: Criminal Competency
Determination

Agency Name and Code Number: 305 - New Mexico
Department of Justice

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Table with 4 columns: Appropriation (FY24, FY25), Recurring or Nonrecurring, Fund Affected.

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Table with 5 columns: Estimated Revenue (FY24, FY25, FY26), Recurring or Nonrecurring, Fund Affected.

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	<b>FY24</b>	<b>FY25</b>	<b>FY26</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:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis: The bill creates two alternate paths to current competency proceedings for criminal defendants: diversion to rehab and civil commitment.

**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.

None.

**SIGNIFICANT ISSUES**

The bill does not address what will happen if the defendant does not successfully complete diversion. If the case had been stayed, presumably it would resume. The bill does not address or create the procedural mechanism about how the case would resume.

The bill proposes excising and then adding the following text to Section 31-9-1.1: “[The defendant’s competency shall be professionally evaluated] When a court determines that an individual requires a competency evaluation, the evaluation shall be conducted . . . .” It appears that this substitution is to give the court leeway to move forward with one of the alternatives proposed in Section 31-9-1.2. However, the bill does not address the directives given to the district court, upon a motion of either party or the court itself, to suspend the criminal proceedings and determine if there is reasonable belief that the defendant may not be competent to stand trial. Rule 5-602.1(E)–(G) NMRA. If that reasonable belief determination is made, the district court must order the defendant to undergo a competency evaluation. Rule 5-602.1(F)(1) NMRA (“the court shall file an order”); Id. (F)(2)(a)–(b) (“the court shall do one of the following file an order . . . finding whether the motion is supported by a reasonable belief that the defendant may not be competent to stand trial or hold a hearing on the motion and file an order . . . finding whether there is a reasonable belief that the defendant may not be competent to stand trial” (text only)).

The bill would also require the competency and dangerousness hearings to occur on the same

day: “A hearing on the same day regarding the issue of [the] 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.” It is not uncommon for the district court staff to email and/or contact the respective attorneys with the completed competency evaluation and request that the competency issue be addressed at the next scheduled hearing which may be as soon as later that day or the next business day. It is one thing to read the evaluation and make a decision about pursuing a dangerousness finding than it is to be fully prepared for a dangerousness hearing. Preparation for a dangerousness hearing requires significantly more notice because subpoenas need to be sent out. Victims also need to be notified. NMSA 1978, § 31-26-4(D). And, if either victims or witnesses are unable to be in person, then motions for virtual appearances need to be filed. *See State v. Archuleta*, 2023-NMCA-077, ¶ 20, cert. denied (Sept. 27, 2023) (“Rules of Evidence apply to dangerousness hearings”).

The bill proposes to amend Section 31-9-1.4 by adding and excising the following language: “The district court, the department of health, the state, the family or the health care provider may refer the defendant to the district attorney for [possible initiation of proceedings under the Mental Health and Developmental Disabilities code] an assessment of whether the defendant is eligible for civil commitment.” Adding the department of health, the state, the healthcare provider, and especially the family as persons able to make referrals to the district attorney for civil commitment is slightly different than who is statutorily permitted to petition the court for commitment. *See* NMSA 1978, § 43-1-11(A) (2009) (only physician or evaluation facility may petition for commitment); NMSA 1978, § 43-1-12(A) (2009) (only physician or evaluation facility may petition for extending the original commitment); NMSA 1978, § 43-1-13(C) (2009) (only evaluation facility may petition for extended residential placement). *But see* NMSA 1978, § 43-1-15(K) (2009) (family included in persons who may petition the court for a termination of treatment guardianship). Granted, referral to the district attorney’s office and petition to the court are different functions.

The bill adds a section to article 9 regarding mental illness and competency. Within that new subsection, the bill defines dangerousness as such: “if released, the defendant presents a serious threat of inflicting great bodily harm on the defendant's self, another person or the community or of violating Section 30-9-11 or 30-9-13 NMSA 1978.” Including harm to self is different than the current definition. The term “dangerous” is defined by statute and is not a clinical diagnosis. NMSA 1978, § 31-9-1.2 (D) (“[D]angerous' means that, if released, the defendant presents a serious threat of inflicting great bodily harm on another or of violating Section 30-9-11 [criminal sexual penetration] or 30-9-13 [criminal sexual contact of a minor] NMSA 1978.”).

## **PERFORMANCE IMPLICATIONS**

None.

## **ADMINISTRATIVE IMPLICATIONS**

None.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicative of HB233; the two bills are almost completely identical.

Determining a criminal defendant's competency to stand trial is now managed by several sections of rule and statute, specifically Rule 5-602.1 through Rule 5-602.3 and article 9 of chapter 31 NMSA. Competency is also mentioned in rules regarding time limits for certain types of hearings, Rule 5-302(A)(1)(c) NMRA (preliminary examination); Rule 5-302.2(A)(1)(c) NMRA (grand jury proceeding); Rule 5-805(G)(2) NMRA (probation violation); and regarding suspension of proceedings in lower courts while the competency issue is determined in district court, Rule 6-507.1 NMRA (magistrate), Rule 8-507.1 NMRA (municipal), and Rule 7-501.1 NMRA (metropolitan). The bill proposes amendments, or repeal and rewrites to the following sections, NMSA 1978, § 31-9-1 through 31-9-2. Rules 5-602.1 through 5-602.3 are not mentioned in the bill.

## **TECHNICAL ISSUES**

The bill proposes to excise the following language from § 31-9-2: “. . . before making any determination of competency under [Sections 41-13-3 or 41-13-3.1 New Mexico Statutes Annotated, 1953 Compilation] Section 31-9-1 NMSA 1978.” However, that's not what § 31-9-2 says. The section reads: “determination of competency under Sections 41-13-3 or 31-9-1 NMSA 1978.”

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

None.

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

Status quo.

## **AMENDMENTS**

Amend the technical issue as listed above.