

HOUSE BILL 334

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

INTRODUCED BY

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AN ACT

RELATING TO CHILDREN; PROVIDING THAT A REPORT OF COMPETENCY EVALUATION SHALL INCLUDE A QUALIFIED PROFESSIONAL'S OPINION AS TO WHETHER A CHILD IS COMPETENT FOR ADJUDICATION AND IF, IN THE OPINION OF THE PROFESSIONAL, THE CHILD IS NOT COMPETENT, TO INCLUDE AN OPINION AS TO WHETHER THE CHILD SATISFIES THE CRITERIA FOR INVOLUNTARY PLACEMENT; PROVIDING FOR COMMUNITY-BASED COMPETENCY RESTORATION FOR NONDANGEROUS CHILDREN; PROVIDING A LIST OF CRIMES FOR WHICH A CHILD MAY BE CRIMINALLY COMMITTED; PROVIDING THAT WITHIN NINETY DAYS AFTER THE COURT ISSUES AN ORDER FOR INVOLUNTARY PLACEMENT OR COMMITMENT, THE COURT SHALL CONDUCT A REVIEW HEARING TO DETERMINE COMPETENCY; PROVIDING THAT A COURT MAY HOLD A CRIMINAL COMMITMENT HEARING IF THE CHILDREN'S COURT DETERMINES THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE CHILD WILL BE RESTORED TO COMPETENCY; ALLOWING A COURT TO AUTHORIZE A CHILDREN'S COURT

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1 ATTORNEY OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT TO USE
2 THE REPORT; PROVIDING THAT THE CHILDREN'S COURT SHALL HOLD A
3 HEARING TO DETERMINE WHETHER THE CHILD IS NOT COMPETENT DUE TO
4 A DEVELOPMENTAL OR INTELLECTUAL DISABILITY.

5

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

7 SECTION 1. Section 32A-2-21 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 50, as amended) is amended to read:

9 "32A-2-21. DISPOSITION OF A CHILD WITH A MENTAL DISORDER
10 OR DEVELOPMENTAL DISABILITY IN A DELINQUENCY PROCEEDING.--

11 A. If in a hearing at any stage of a proceeding on
12 a delinquency petition the evidence indicates that the child
13 has or may have a mental disorder or developmental disability,
14 the court may:

15 (1) order the child detained if appropriate
16 under the criteria established pursuant to the provisions of
17 the Delinquency Act; and

18 (2) initiate proceedings for the involuntary
19 placement or commitment of the child as a minor with a mental
20 disorder or developmental disability pursuant to the provisions
21 of the Children's Mental Health and Developmental Disabilities
22 Act.

23 B. If the child is placed for residential treatment
24 or habilitation pursuant to the Children's Mental Health and
25 Developmental Disabilities Act, the department shall retain

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1 legal custody during the period of involuntary placement or
2 commitment or until further order of the court.

3 C. If a child is committed to a psychiatric
4 hospital for treatment or habilitation and in the event that
5 the department should be required to pay more than four hundred
6 dollars (\$400) per day because of the individualized treatment
7 plan, the annual costs over four hundred dollars (\$400) per
8 child per day will be reported annually by the department to
9 the legislative finance committee.

10 D. The child may remain in the residential
11 treatment or habilitation facility pending the disposition of
12 the delinquency petition.

13 E. When a child in departmental custody needs
14 involuntary placement or commitment for residential mental
15 health or developmental disability services as a result of a
16 mental disorder or developmental disability, the department
17 shall request the children's court attorney to petition for
18 that child's placement pursuant to the provisions of the
19 Children's Mental Health and Developmental Disabilities Act.

20 F. A child subject to the provisions of the
21 Delinquency Act who receives treatment in a residential
22 treatment or habilitation program shall enjoy all the
23 substantive and procedural rights set forth in the Children's
24 Mental Health and Developmental Disabilities Act.

25 [6. A child's competency to stand trial or

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1 participate in his own defense may be raised by a party at any
2 time during a proceeding. If the child has been accused of an
3 act that would be considered a misdemeanor if the child were an
4 adult and the child is found to be incompetent to stand trial,
5 the court shall dismiss the petition with prejudice and may
6 recommend that the children's court attorney initiate
7 proceedings pursuant to the provisions of the Children's Mental
8 Health and Developmental Disabilities Act. In all other cases,
9 the court shall stay the proceedings until the child is
10 competent to stand trial; provided that a petition shall not be
11 stayed for more than one year. The court may order treatment
12 to enable the child to attain competency to stand trial and may
13 amend the conditions of release pursuant to Sections 32A-2-11
14 and 32A-2-13 NMSA 1978. The child's competency to stand trial
15 shall be reviewed every ninety days for up to one year. The
16 court shall dismiss the petition without prejudice if, at any
17 time during the year, the court finds that a child cannot be
18 treated to competency or if, after one year, the court
19 determines that a child is incompetent to stand trial or
20 participate in his own defense. Upon dismissal, the court may
21 recommend that the children's court attorney initiate
22 proceedings pursuant to the provisions of the Children's Mental
23 Health and Developmental Disabilities Act.

24 H.] G. Involuntary residential treatment shall only
25 occur pursuant to the provisions of the Children's Mental

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1 Health and Developmental Disabilities Act.

2 H. A question regarding a child's competency for
3 adjudication or participation in the child's own defense may be
4 raised by any party or the court at any time during a
5 proceeding. If a party or the court raises a question as to a
6 child's competency, the delinquency proceeding shall be
7 suspended until the question is resolved.

8 I. A child's competency shall be evaluated by a
9 psychologist or psychiatrist or other qualified professional
10 recognized by the children's court as an expert. The qualified
11 professional who evaluates a child's competency shall prepare
12 an evaluation report and submit the report as ordered by the
13 court.

14 J. An evaluation report shall include a qualified
15 professional's opinion as to whether a child is competent for
16 adjudication and has:

17 (1) a sufficient, present ability to consult
18 with the child's lawyer with a reasonable degree of rational
19 understanding;

20 (2) a rational and factual understanding of
21 the proceedings against the child; and

22 (3) the capacity to assist in the child's own
23 defense and to comprehend the reasons for punishment.

24 K. If, in the opinion of the qualified
25 professional, a child is not competent for adjudication, an

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1 evaluation report shall include the qualified professional's
2 opinion as to whether the child satisfies the criteria for
3 involuntary placement or commitment in accordance with the
4 Children's Mental Health and Developmental Disabilities Act.

5 L. A competency hearing shall be held:

6 (1) within thirty days from the date an
7 evaluation report is submitted to the court for a detained
8 child alleged to have committed a felony;

9 (2) within ten days from the date an
10 evaluation report is submitted to the court for a detained
11 child alleged to have committed a misdemeanor; and

12 (3) within a reasonable time after an
13 evaluation report is submitted to the court for a child who is
14 not detained."

15 SECTION 2. A new section of the Delinquency Act, Section
16 32A-2-21.1 NMSA 1978, is enacted to read:

17 "32A-2-21.1. [NEW MATERIAL] DETERMINATION OF
18 COMPETENCY--INVOLUNTARY PLACEMENT OR COMMITMENT--REPORT.--

19 A. If, after a competency hearing, a court
20 determines that a child is not competent for adjudication, the
21 court shall determine if the child is dangerous. A child who
22 is not competent is dangerous if the court finds by clear and
23 convincing evidence that the child presents a serious threat
24 of:

25 (1) committing murder in the first or second

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degree, as provided in Section 30-2-1 NMSA 1978;

(2) inflicting great bodily harm, as defined in Section 30-1-12 NMSA 1978, on another person;

(3) committing criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

(4) committing criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;

(5) committing abuse of a child, as provided in Subsection D of Section 30-6-1 NMSA 1978;

(6) violating a provision of the Sexual Exploitation of Children Act;

(7) committing human trafficking, as provided in Section 30-52-1 NMSA 1978;

(8) committing aggravated arson, as provided in Section 30-17-6 NMSA 1978; or

(9) committing any "serious violent offense" enumerated in Subparagraphs (a) through (n) of Paragraph (4) of Subsection N of Section 33-2-34 NMSA 1978 with the use of a firearm.

B. If the court determines that a child is not dangerous, the court may order the child to participate in a nonresidential treatment or habilitation program or dismiss the delinquency petition without prejudice in the interests of justice; provided that if the court dismisses the petition, the court may:

(1) advise the children's court attorney to consider the initiation of involuntary placement or commitment proceedings in accordance with the Children's Mental Health and Developmental Disabilities Act and may order the child's detention at a detention facility for a maximum of seven days to facilitate initiation of those proceedings; or

(2) advise the children's court attorney to consider initiation of proceedings in accordance with the Children's Mental Health and Developmental Disabilities Act but may not detain a child for that purpose.

C. A treatment plan for a nonresidential treatment or habilitation program that is ordered pursuant to this section shall be targeted to restore a child to competency. A court may order a child to participate in a nonresidential treatment or habilitation program for no longer than ninety days, and:

(1) within thirty days of the date that the child was ordered to participate in the program, the person supervising the child's treatment or habilitation shall submit a progress report to the court and both parties that includes:

(a) an initial assessment of the child and a description of the programming that will be provided to the child:

(b) a report on the child's amenability to competency restoration;

- (c) an assessment of the program's capacity to provide appropriate programming for the child; and
- (d) an opinion as to the probability of the child being restored to competency within ninety days from the date that the court ordered the child's participation in the program;

(2) no later than ninety days from the date that the court ordered the child to participate in a nonresidential treatment or habilitation program, the court shall hold a review hearing and determine if the child has been restored to competency, and at least seven days prior to the review hearing, the person supervising the child's treatment or habilitation shall submit a written report that includes:

(a) an opinion as to whether the child has been restored to competency;

(b) if the child is receiving medication, information from the prescribing physician about the type, dosage and effect of the medication on the child's appearance, actions and demeanor;

(c) if the child remains not competent, an opinion as to whether the child satisfies the criteria for involuntary commitment in accordance with the Children's Mental Health and Developmental Disabilities Act and whether: 1) as a result of a mental disorder, the child presents a likelihood of serious harm to the child's self or others; 2) the child needs

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1 and is likely to benefit from involuntary placement and
2 treatment; and 3) the proposed placement is consistent with the
3 treatment needs of the child and the least drastic means
4 principle; and

5 (d) if the child remains not competent,
6 an opinion as to whether the child satisfies the criteria for
7 involuntary placement in accordance with the Children's Mental
8 Health and Developmental Disabilities Act and whether the
9 child: 1) has a primary diagnosis of a mental disorder; 2) has
10 demonstrated a history of lack of compliance with treatment for
11 a mental disorder; 3) is unwilling or unlikely, as a result of
12 a mental disorder, to participate in voluntary treatment that
13 would enable the child to live safely in the community with the
14 child's natural supports and without court supervision; 4) is
15 in need of residential treatment or habilitation as the least
16 restrictive appropriate alternative to prevent a relapse or
17 deterioration likely to result in serious harm to the child's
18 self or others; and 5) will likely benefit from residential
19 treatment or habilitation and have the child's best interests
20 served; and

21 (3) if, after a review hearing, the court
22 finds that the child is competent, the petition shall proceed
23 to the adjudication hearing, but if the court finds that the
24 child remains not competent, the case shall be dismissed
25 without prejudice and the court may advise the children's court

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1 attorney to consider initiating proceedings in accordance with
2 the Children's Mental Health and Developmental Disabilities
3 Act.

4 D. If the court determines that a child who is not
5 competent is dangerous, the court may order the child's
6 placement at a residential treatment or habilitation program
7 for competency restoration. If the court orders such
8 placement, the court shall enter a transport order that
9 provides for the child's return to the local detention facility
10 within seventy-two hours upon the child being restored to
11 competency, completion of the competency residential treatment
12 or habilitation program or as otherwise required by the court.
13 A child placed at a residential treatment or habilitation
14 program for competency restoration shall be provided with
15 treatment available to children subject to involuntary
16 placement and shall:

17 (1) be detained by the department in a secure,
18 locked facility; and
19 (2) not be released from that facility except
20 pursuant to an order of the court that committed the child.

21 E. The department shall admit a child for
22 competency restoration within thirty days of receipt of the
23 court's order of commitment of an incompetent child and of the
24 necessary and available documents reasonably required for
25 admission pursuant to written policies adopted by the secretary

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1 of children, youth and families or the secretary's designee.
2 If the secretary of children, youth and families or the
3 secretary's designee determines that the department does not
4 have the ability to meet the needs of the child, the secretary
5 or the secretary's designee may refuse admission by providing
6 written certification to the committing court and the parties
7 of the department's inability to meet the needs of the child.
8 The certification shall be made within fourteen days of the
9 receipt of the court's order of commitment and necessary and
10 available documents reasonably required for admission pursuant
11 to written policies adopted by the secretary of children, youth
12 and families or the secretary's designee. Within ten days of
13 filing of the certification, the court shall conduct a hearing
14 for further disposition of the criminal case.

15 F. Within thirty days of a child's admission to a
16 facility for competency restoration, the department shall file
17 with the court, the state and the defense:

18 (1) an initial assessment of the child and
19 treatment plan;

20 (2) a report on the child's amenability to
21 competency restoration;

22 (3) an assessment of the department's capacity
23 to provide appropriate treatment for the child; and

24 (4) an opinion as to the probability of the
25 child being restored to competency within nine months from the

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date the court determined the child is not competent for adjudication."

SECTION 3. A new section of the Delinquency Act, Section 32A-2-21.2 NMSA 1978, is enacted to read:

"32A-2-21.2. [NEW MATERIAL] DETERMINATION OF COMPETENCY--NINETY-DAY REVIEW--REPORTS--CONTINUING TREATMENT.--

A. Within ninety days after a court issues an order for involuntary placement or commitment of a child for competency restoration, the court, sitting without a jury, shall conduct a review hearing, unless waived by the defense, and shall determine:

(1) whether the child has been restored to competency or remains not competent for adjudication;

(2) if the child remains not competent, whether the child is making progress under treatment toward being restored to competency within nine months from the date the court determined the defendant is not competent for adjudication; and

(3) whether the child remains dangerous as determined by the court.

B. At least seven days prior to the review hearing, the treatment supervisor shall submit a written progress report to the court, the state and the defense that includes:

(1) the clinical findings regarding the child's progress toward competency restoration and the facts

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upon which the findings are based;

(2) an opinion as to whether the child has been restored to competency or as to whether the child is making progress toward being restored to competency within nine months from the date the court determined the child is not competent for adjudication and whether there is a substantial probability that the child will be restored to competency within nine months from the date the court determined the child is not competent for adjudication;

(3) an opinion as to whether the child remains dangerous as determined by the court; and

(4) if the child is receiving medication, information from the prescribing physician indicating the type, dosage and effect of the medication on the child's appearance, actions and demeanor.

C. If the children's court finds the child is restored to competency, the court shall set the matter for adjudication; provided that if the child is in need of continued care or treatment and the department agrees to continue to provide it, the court may order continued care or treatment of the child until the conclusion of the delinquency proceedings.

D. If the children's court finds that the child remains not competent but is making progress toward being restored to competency, the court may continue or modify its

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1 original treatment order entered; provided that:

2 (1) the question of the child's competency
3 shall be reviewed again not later than nine months from the
4 date the court determined the child is not competent for
5 adjudication; and

6 (2) the treatment supervisor shall submit a
7 written progress report as specified in Subsection B of this
8 section at least seven days prior to such hearing.

9 E. If the children's court finds that the child
10 remains not competent, that the child is not making progress
11 toward being restored to competency and that there is not a
12 substantial probability that the child will be restored to
13 competency within nine months from the date the court
14 determined the child is not competent for adjudication, the
15 court shall proceed pursuant to Section 32A-2-21.4 NMSA 1978.
16 However, if the child is in need of continued care and
17 treatment and the department agrees to continue to provide
18 continued care and treatment, the children's court may order
19 continued care or treatment of the child by the department
20 until the conclusion of the delinquency proceedings."

21 SECTION 4. A new section of the Delinquency Act, Section
22 32A-2-21.3 NMSA 1978, is enacted to read:

23 "32A-2-21.3. [NEW MATERIAL] DETERMINATION OF
24 COMPETENCY--INCOMPETENT CHILDREN.--If at any time the
25 children's court determines that there is not a substantial

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probability that a child will be restored to competency within nine months from the date the court determined the child is not competent for adjudication, the children's court may:

A. hold a child commitment hearing in accordance with Section 32A-2-21.4 NMSA 1978 within three months if the child is charged with:

(1) murder in the first or second degree, as provided in Section 30-2-1 NMSA 1978;

(2) a felony involving infliction of great bodily harm, as defined in Section 30-1-12 NMSA 1978, on another person;

(3) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

(4) criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;

(5) abuse of a child, as provided in Subsection D of Section 30-6-1 NMSA 1978;

(6) a crime provided for in the Sexual Exploitation of Children Act;

(7) human trafficking, as provided in Section 30-52-1 NMSA 1978;

(8) aggravated arson, as provided in Section 30-17-6 NMSA 1978; or

(9) any "serious violent offense" enumerated in Subparagraphs (a) through (n) of Paragraph (4) of Subsection .232985.2

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1 N of Section 33-2-34 NMSA 1978 with the use of a firearm;

2 B. release the child from custody and dismiss the
3 petition with prejudice; or

4 C. dismiss the petition without prejudice in the
5 interest of justice; provided that if the treatment supervisor
6 reports to the court that the child satisfies the criteria for
7 involuntary commitment in accordance with the Children's Mental
8 Health and Developmental Disabilities Act, the department shall
9 initiate those proceedings, and the court may order the
10 detention of the child for a maximum of seven days to
11 facilitate the initiation of those proceedings; and provided
12 further that the children's court attorney may initiate
13 involuntary placement or commitment proceedings in the
14 department's stead."

15 SECTION 5. A new section of the Delinquency Act, Section
16 32A-2-21.4 NMSA 1978, is enacted to read:

17 "32A-2-21.4. [NEW MATERIAL] DETERMINATION OF
18 COMPETENCY--CRIMINAL COMMITMENT--EVIDENTIARY HEARING.--

19 A. If the court determines that there is not a
20 substantial probability that a child who is not competent for
21 adjudication will be restored to competency, a disposition
22 hearing to determine the sufficiency of the evidence of the
23 child's guilt shall be held if the child is charged with:

24 (1) murder in the first or second degree, as
25 provided in Section 30-2-1 NMSA 1978;

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(2) a felony involving infliction of great bodily harm, as defined in Section 30-1-12 NMSA 1978, on another person;

(3) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

(4) criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;

(5) abuse of a child, as provided in Subsection D of Section 30-6-1 NMSA 1978;

(6) a crime provided for in the Sexual Exploitation of Children Act;

(7) human trafficking, as provided in Section 30-52-1 NMSA 1978;

(8) aggravated arson, as provided in Section 30-17-6 NMSA 1978; or

(9) any "serious violent offense" enumerated in Subparagraphs (a) through (n) of Paragraph (4) of Subsection N of Section 33-2-34 NMSA 1978 with the use of a firearm.

B. A disposition hearing shall be conducted by the children's court without a jury. The children's court attorney may introduce evidence relevant to the question of the child's guilt of the crime charged. The children's court may admit hearsay or affidavit evidence on secondary matters such as testimony to establish the chain of possession of physical evidence, laboratory reports, authentication of transcripts

1 taken by official reporters, children's court and business
2 records and public documents.

3 C. If the evidence does not establish by clear and
4 convincing evidence that the child committed the crime charged,
5 the children's court shall dismiss the criminal case with
6 prejudice.

7 D. If the children's court finds by clear and
8 convincing evidence that the child committed the crime and has
9 not made a finding of dangerousness in accordance with Section
10 32A-2-21.1 NMSA 1978, the court shall dismiss the criminal case
11 without prejudice.

12 E. If the children's court finds by clear and
13 convincing evidence that the child committed the crime charged
14 and enters a finding that the child remains not competent for
15 adjudication and remains dangerous as determined by the court
16 in accordance with Section 32A-2-21.1 NMSA 1978:

17 (1) legal custody of the child shall be
18 transferred to the department for commitment to a residential
19 treatment or habilitation program;

20 (2) the maximum term of a child's commitment
21 shall be until the child reaches the age of twenty-five;

22 (3) significant changes in the child's
23 condition, including trial competency and dangerousness, shall
24 be reported in writing to the court, state and defense; and

25 (4) at least every year, the children's court

1 shall conduct a hearing upon notice to the parties and the
2 department charged with detaining the child. At the hearing,
3 the court shall enter findings on the issues of trial
4 competency and dangerousness:

5 (a) upon a finding that the child is
6 competent to proceed in a criminal case, the court shall
7 continue with the criminal proceeding;

8 (b) if the child continues to remain not
9 competent for adjudication and dangerous, the court shall
10 review the child's competency and dangerousness every two years
11 until expiration of the period of commitment equal to the
12 maximum sentence to which the child would have been subject had
13 the child been convicted in a criminal proceeding; and

14 (c) if the court finds upon the court's
15 two-year review hearing that the child is no longer dangerous,
16 the child shall be released.

17 F. At any time, including after a court dismisses a
18 case against a child, the department or the children's court
19 attorney may initiate involuntary commitment proceedings in
20 accordance with the Children's Mental Health and Developmental
21 Disabilities Act. If the children's court attorney indicates
22 an intent to initiate involuntary commitment proceedings in
23 accordance with that act, the court may detain the child for a
24 maximum of seven days only to facilitate the initiation of
25 those proceedings at any licensed psychiatric hospital."

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1 SECTION 6. A new section of the Delinquency Act, Section
2 32A-2-21.5 NMSA 1978, is enacted to read:

3 "32A-2-21.5. [NEW MATERIAL] HEARING TO DETERMINE
4 DEVELOPMENTAL OR INTELLECTUAL DISABILITY.--

5 A. Upon motion of the defense, the court shall hold
6 a hearing to determine whether a child is not competent due to
7 a developmental or intellectual disability, and the evaluator
8 shall be provided with the necessary and available documents
9 reasonably required for admission pursuant to written policies
10 adopted by the secretary of children, youth and families or the
11 secretary's designee.

12 B. If the court finds by a preponderance of the
13 evidence that the child is not competent for adjudication due
14 to a developmental or intellectual disability and that there is
15 not a substantial probability that the child will be restored
16 to competency within nine months from the date the court
17 determined the child is not competent for adjudication, the
18 court shall notify the department of the court's finding.
19 Within sixty days of receipt of the court's notification, the
20 department shall determine whether the child presents a
21 likelihood of serious harm to the child's self or others.

22 C. If the department determines that the child
23 presents a likelihood of serious harm to self or others, the
24 department shall initiate involuntary commitment proceedings in
25 accordance with the Children's Mental Health and Developmental

Disabilities Act is charged with:

(1) murder in the first or second degree, as provided in Section 30-2-1 NMSA 1978;

(2) a felony involving infliction of great bodily harm, as defined in Section 30-1-12 NMSA 1978, on another person;

(3) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

(4) criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;

(5) abuse of a child, as provided in Subsection D of Section 30-6-1 NMSA 1978;

(6) a crime provided for in the Sexual Exploitation of Children Act;

(7) human trafficking, as provided in Section 30-52-1 NMSA 1978;

(8) aggravated arson, as provided in Section 30-17-6 NMSA 1978; or

(9) any "serious violent offense" enumerated in Subparagraphs (a) through (n) of Paragraph (4) of Subsection N of Section 33-2-34 NMSA 1978 with the use of a firearm.

D. After the involuntary commitment hearing or upon expiration of fourteen months from the court's initial determination that the child is not competent for adjudication, the criminal case shall be dismissed without prejudice."