

HOUSE BILL 4

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Christine Chandler and Marianna Anaya and Andrea Reeb  
and Crystal Brantley

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO CRIMINAL COMPETENCY; PROVIDING THAT A REPORT OF A COMPETENCY EVALUATION SHALL INCLUDE A QUALIFIED PROFESSIONAL'S OPINION AS TO WHETHER A DEFENDANT IS COMPETENT TO STAND TRIAL AND, IF THE PROFESSIONAL BELIEVES THE DEFENDANT IS NOT COMPETENT, TO INCLUDE AN OPINION AS TO WHETHER THE DEFENDANT SATISFIES THE CRITERIA FOR INVOLUNTARY COMMITMENT OR ASSISTED OUTPATIENT TREATMENT; PROVIDING FOR COMMUNITY-BASED COMPETENCY RESTORATION FOR NON-DANGEROUS DEFENDANTS; EXPANDING THE LIST OF

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CRIMES FOR WHICH A DEFENDANT MAY BE CRIMINALLY COMMITTED;  
PROVIDING FOR THE COURT TO ADVISE A DISTRICT ATTORNEY TO  
CONSIDER INITIATING PROCEEDINGS FOR INVOLUNTARY COMMITMENT OR  
ASSISTED OUTPATIENT TREATMENT UPON DISMISSAL OF A CRIMINAL  
CASE; ALLOWING A COURT TO AUTHORIZE A DISTRICT ATTORNEY OR THE  
DEPARTMENT OF HEALTH TO USE THE REPORT OF A COMPETENCY  
EVALUATION IN INVOLUNTARY COMMITMENT AND ASSISTED OUTPATIENT  
TREATMENT PROCEEDINGS; AMENDING THE ASSISTED OUTPATIENT  
TREATMENT ACT TO AUTHORIZE A DISTRICT ATTORNEY OR THE ATTORNEY  
GENERAL TO FILE A PETITION FOR ASSISTED OUTPATIENT TREATMENT  
AND TO ALLOW A PETITION TO BE FILED UP TO THIRTY DAYS AFTER A  
QUALIFIED PROFESSIONAL HAS EXAMINED A DEFENDANT OR RESPONDENT;  
MAKING CONFORMING AMENDMENTS.

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

SECTION 1. Section 31-9-1 NMSA 1978 (being Laws 1988,  
Chapter 107, Section 1 and Laws 1988, Chapter 108, Section 1,  
as amended by Laws 1993, Chapter 240, Section 1 and also by  
Laws 1993, Chapter 249, Section 1) is amended to read:

"31-9-1. DETERMINATION OF COMPETENCY--RAISING THE  
ISSUE.--~~[Whenever it appears that there is a question as to the  
defendant's competency to proceed in a criminal case, any  
further proceeding in the cause]~~

A. When a party or the court raises a question as  
to a defendant's competency to stand trial in a criminal case,

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the proceeding shall be suspended until the issue is determined.

HCPAC → ~~B. Unless the case is dismissed upon motion of a party, [when] if the question of a defendant's competency:~~

~~(1) is raised in a court other than the district court or a metropolitan court, the [proceeding] case shall be [suspended and the cause] transferred to the district court; [If the question of a defendant's competency] and~~

~~(2) is raised in the metropolitan court and the court determines that the defendant is [incompetent to proceed in a criminal case, the cause, if not dismissed upon motion of a party] not competent to stand trial, the case shall be transferred to the district court."~~ ← HCPAC

HCPAC → B. Unless the case is dismissed upon motion of a party or through diversion:

(1) if the question of a defendant's competency is raised in a court other than a district court or a metropolitan court, the case shall be transferred to the district court; or

(2) if the question of a defendant's competency is raised in a metropolitan court and the court determines that the defendant is not competent to stand trial, the case shall be transferred to the district court." ← HCPAC

SECTION 2. Section 31-9-1.1 NMSA 1978 (being Laws 1988,

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Chapter 107, Section 2 and Laws 1988, Chapter 108, Section 2, as amended by Laws 1993, Chapter 240, Section 2 and also by Laws 1993, Chapter 249, Section 2) is amended to read:

"31-9-1.1. DETERMINATION OF COMPETENCY--EVALUATION AND DETERMINATION.--[The]

A. A defendant's competency shall be [professionally] evaluated by a HCPAC→[psychologist or psychiatrist or other]←HCPAC HCPAC→psychologist or psychiatrist or other←HCPAC qualified professional recognized by the district court as an expert. [and a report shall be submitted] The qualified professional who evaluates a defendant's competency shall prepare an evaluation report and submit the report as ordered by the court.

B. An evaluation report shall include a qualified professional's opinion as to whether a defendant is competent to stand trial and has:

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

(2) a rational and factual understanding of the proceedings against the defendant; and

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

C. If a qualified professional believes a defendant is not competent to stand trial, an evaluation report shall

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include the qualified professional's opinion as to whether the defendant:

(1) satisfies the criteria for involuntary commitment in accordance with the Mental Health and Developmental Disabilities Code and whether:

(a) as a result of a mental disorder, the defendant presents a likelihood of serious harm to the defendant's self or others;

(b) the defendant needs and is likely to benefit from involuntary commitment and treatment; and

(c) the proposed commitment is consistent with the treatment needs of the defendant and with the least drastic means principle; or

(2) satisfies the criteria for involuntary treatment in accordance with the Assisted Outpatient Treatment Act and whether the defendant:

(a) has a primary diagnosis of a mental disorder;

(b) has demonstrated a history of lack of compliance with treatment for a mental disorder;

(c) is unwilling or unlikely, as a result of a mental disorder, to voluntarily participate in outpatient treatment that would enable the person to live safely in the community without court supervision;

(d) is in need of assisted outpatient

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treatment as the least restrictive appropriate alternative to prevent a relapse or deterioration likely to result in serious harm to the defendant's self or others; and

(e) will likely benefit from assisted outpatient treatment and have the defendant's best interests served.

D. A competency hearing [~~on the issue of the competency of~~] shall be held:

(1) within thirty days from the date an evaluation report is submitted to the court for 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. In the case of]

(2) within ten days from the date an evaluation report is submitted to the court for an incarcerated defendant not charged with a felony; [the court shall hold a hearing and determine his competency within ten days of notification to the court of completion of the diagnostic evaluation] and

(3) within a reasonable time after an evaluation report is submitted to the court for a defendant who is not incarcerated."

SECTION 3. Section 31-9-1.2 NMSA 1978 (being Laws 1988, Chapter 107, Section 3 and Laws 1988, Chapter 108, Section 3,

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as amended) is amended to read:

"31-9-1.2. DETERMINATION OF COMPETENCY--COMMITMENT--  
REPORT.--

A. [~~When~~] If, after a competency hearing, a court determines that a defendant is not competent to [~~proceed in a criminal case and the court does not find that~~] stand trial, the court shall determine if the defendant is dangerous. 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:

- (1) inflicting great bodily harm, as defined in Section 30-1-12 NMSA 1978, on another person;
- (2) committing criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;
- (3) committing criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;
- (4) committing abuse of a child, as provided in Subsection D of Section 30-6-1 NMSA 1978;
- (5) violating a provision of the Sexual Exploitation of Children Act;
- (6) committing human trafficking, as provided in Section 30-52-1 NMSA 1978;
- (7) committing a felony involving the use of a firearm; or
- (8) committing aggravated arson, as provided

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in Section 30-17-6 NMSA 1978.

B. If the court determines that a defendant is not dangerous, the court may order the defendant to participate in a community-based competency restoration program or dismiss the criminal case without prejudice in the interests of justice; [Upon dismissal the court may advise, the district attorney to consider initiation of proceedings under the Mental Health and Developmental Disabilities Code and order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to that code] provided that if the court dismisses the case, the court may:

(1) advise the district attorney to consider the initiation of involuntary civil commitment proceedings in accordance with the Mental Health and Developmental Disabilities Code and may detain the defendant for a maximum of seven days to facilitate initiation of those proceedings; or

(2) advise the district attorney to consider initiation of proceedings in accordance with the Assisted Outpatient Treatment Act but may not detain the defendant for that purpose.

C. A community-based competency restoration program shall be approved by the court and provided in an outpatient setting in the community where a defendant resides. A court may order a defendant to participate in a community-based competency restoration program for no longer than ninety days,

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and:

(1) within thirty days of the date that the defendant was ordered to competency restoration, the person supervising the defendant's competency restoration program shall submit a progress report to the court and both parties that includes:

(a) an initial assessment of the defendant and a description of the competency restoration programming that will be provided to the defendant;

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

(c) an assessment of the program's capacity to provide appropriate programming for the defendant;

(d) an opinion as to the probability of the defendant being restored to competency within ninety days from the date that the court ordered the defendant's participation in the community-based competency restoration program; and

(e) an opinion as to whether the defendant satisfies the criteria for involuntary treatment in accordance with the Assisted Outpatient Treatment Act and whether the defendant: 1) has a primary diagnosis of a mental disorder; 2) has demonstrated a history or lack of compliance with treatment for a mental disorder; 3) is unwilling or unlikely, as a result of a mental disorder, to voluntarily

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participate in outpatient treatment that would enable the defendant to live safely in the community without court supervision; 4) is in need of assisted outpatient treatment as the least restrictive appropriate alternative to prevent a relapse or deterioration likely to result in serious harm to the defendant's self or others; and 5) will likely benefit from assisted outpatient treatment and have the defendant's best interests served;

(2) no later than ninety days from the date that the court ordered the defendant to participate in a community-based competency restoration program, the court shall hold a review hearing and determine if the defendant has been restored to competency and at least seven days prior to the review hearing, the person providing outpatient treatment and services to the defendant shall submit a written report that includes:

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

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

(c) if the defendant remains not competent, an opinion as to whether the defendant satisfies the criteria for involuntary commitment in accordance with the

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Mental Health and Developmental Disabilities Code and whether:

1) as a result of mental disorder, the defendant presents a likelihood of serious harm to the defendant's self or others;

2) the defendant needs and is likely to benefit from involuntary commitment and treatment; and 3) the proposed commitment is consistent with the treatment needs of the defendant and with the least drastic means principle; and

(d) if the defendant remains not competent, an opinion as to whether the defendant satisfies the criteria for involuntary treatment in accordance with the Assisted Outpatient Treatment Act and whether the defendant:

1) has a primary diagnosis of a mental disorder; 2) has demonstrated a history of lack of compliance with treatment for a mental disorder; 3) is unwilling or unlikely, as a result of a mental disorder, to voluntarily participate in outpatient treatment that would enable the defendant to live safely in the community without court supervision; 4) is in need of assisted outpatient treatment as the least restrictive appropriate alternative to prevent a relapse or deterioration likely to result in serious harm to the defendant's self or others; and 5) will likely benefit from assisted outpatient treatment and have the defendant's best interests served; and

(3) if, after a review hearing, the court finds that the defendant is competent, the case shall proceed to trial, but if the court finds that the defendant remains not

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competent, the case shall be dismissed without prejudice and the court may advise the district attorney to consider initiating proceedings in accordance with the Mental Health and Developmental Disabilities Code or the Assisted Outpatient Treatment Act.

~~[B. When a district]~~ D. If the 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 who is not competent 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 court shall enter an appropriate transport order that also provides for return of the defendant to the local facilities of the court upon completion of the treatment. The defendant so committed] competency restoration. If the court orders commitment, the court shall enter a transport order that provides for the defendant's return to the local jail HCPAC→within seventy-two hours←HCPAC upon the defendant being restored to competency, completion of the competency restoration program or as otherwise required by the court. A defendant committed for competency restoration shall be provided with treatment available to [involuntarily committed] persons subject to civil commitment, and:

- (1) ~~[the defendant]~~ shall be detained

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HCPAC→~~by the department of health in a secure, locked~~  
~~facility~~←HCPAC HCPAC→in a secure, locked, licensed inpatient  
psychiatric hospital←HCPAC ; and

(2) [~~the defendant, during the period of~~  
~~commitment~~] shall not be released from that [~~secure~~] facility  
except pursuant to an order of the [~~district~~] court that  
committed [~~him~~] the defendant.

[~~G.~~] E. The HCPAC→~~department of health~~←HCPAC  
HCPAC→inpatient psychiatric hospital←HCPAC shall admit a  
defendant for competency restoration within thirty days of  
receipt of the court's HCPAC→commitment←HCPAC order  
HCPAC→.~~←HCPAC HCPAC→[of commitment of an incompetent defendant~~  
~~and of the necessary and available documents reasonably~~  
~~required for admission pursuant to written policies adopted by~~  
~~the secretary of health or his designee,~~←HCPAC HCPAC→of  
commitment of an incompetent defendant and of the necessary and  
available documents reasonably required for admission pursuant  
to written policies adopted by the secretary of health or  
HCPAC→his←HCPAC HCPAC→the secretary's←HCPAC designee  
HCPAC→,~~←HCPAC HCPAC→[←HCPAC ←HCPAC the defendant shall be~~  
admitted to a facility designated for the treatment of  
defendants who are incompetent to stand trial and dangerous.  
If after conducting an investigation] If the secretary of  
health or the secretary's designee determines that the  
department of health does not have the ability to meet the

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[medical] needs of [a] the defendant [~~ordered committed to a facility~~], the secretary or [~~his~~] the secretary's designee may refuse admission [~~to the defendant upon~~] by providing written certification to the committing court and the parties of the [~~lack of ability~~] department's inability to meet the [medical] needs of the defendant. The certification [~~must~~] shall be made within fourteen days of the receipt of the court's commitment order HCPAC→~~[of commitment and necessary and available documents reasonably required for admission pursuant to written policies adopted by the secretary or his designee]~~←HCPAC HCPAC→of commitment and necessary and available documents reasonably required for admission pursuant to written policies adopted by the secretary or HCPAC→~~his~~←HCPAC HCPAC→the secretary's←HCPAC designee←HCPAC . Within ten days of filing of the certification, the court shall conduct a hearing for further disposition of the criminal case.

~~[D. As used in Sections 31-9-1 through 31-9-1.5 NMSA 1978, "dangerous" means that, if released, the defendant presents a serious threat of inflicting great bodily harm on another or of violating Section 30-9-11 or 30-9-13 NMSA 1978.~~

~~E.]~~ F. Within thirty days of [~~an incompetent~~] a defendant's admission to HCPAC→~~a department of health~~←HCPAC HCPAC→an inpatient psychiatric←HCPAC facility [~~to undergo treatment to attain competency to proceed in a criminal case, the person supervising the defendant's treatment]~~ for

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competency restoration, the department shall file with the  
[~~district~~] court, the state and the defense:

(1) an initial assessment of the defendant and  
treatment plan; [~~and~~]

(2) a report on the defendant's amenability to  
[~~treatment to render him competent to proceed in a criminal~~  
~~case~~] competency restoration;

(3) an assessment of the [~~facility's or~~  
~~program's~~] department's capacity to provide appropriate  
treatment for the defendant; and

(4) an opinion as to the probability of the  
[~~defendant's attaining~~] defendant being restored to competency  
within [~~a period of~~] nine months from the date [~~of the original~~  
~~finding of incompetency to proceed in a criminal case~~] the  
court determined the defendant is not competent to stand  
trial."

SECTION 4. Section 31-9-1.3 NMSA 1978 (being Laws 1988,  
Chapter 107, Section 4 and Laws 1988, Chapter 108, Section 4,  
as amended) is amended to read:

"31-9-1.3. DETERMINATION OF COMPETENCY--NINETY-DAY  
REVIEW--REPORTS--CONTINUING TREATMENT.--

A. Within ninety days [~~of the entry of the order~~  
~~committing an incompetent defendant to undergo treatment, the~~  
~~district court~~] after a court issues an order committing a  
defendant for competency restoration, the court, sitting

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without a jury, shall conduct a review hearing, unless waived by the defense, and shall determine:

(1) whether the defendant [~~is competent to proceed in the criminal case; and, if not~~] has been restored to competency or remains not competent to stand trial;

(2) if the defendant remains not competent, whether the defendant is making progress [~~under treatment~~] toward [~~attainment of~~] being restored to competency within nine months from the date [~~of the original finding of incompetency~~] the court determined the defendant is not competent to stand trial; and

(3) whether the defendant remains dangerous as [~~that term is defined in~~] determined by the court in accordance with Section 31-9-1.2 NMSA 1978.

B. At least seven days prior to the review hearing, the HCPAC→~~[treatment supervisor]~~←HCPAC HCPAC→treatment supervisor←HCPAC HCPAC→department of health←HCPAC shall submit a written progress report to the court, the state and the defense [~~indicating~~] that includes:

(1) the clinical findings [~~of the treatment supervisor~~] regarding the defendant's progress toward competency restoration and the facts upon which the findings are based;

(2) [~~the~~] an opinion [~~of the treatment supervisor~~] as to whether the defendant has [~~attained~~] been



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restored to competency or as to whether the defendant is making progress [under treatment] toward [attaining] being restored to competency within nine months from the date [of the original finding of incompetency] the court determined the defendant is not competent to stand trial and whether there is a substantial probability that the defendant will [attain] be restored to competency within nine months from the date [of the original finding of incompetency] the court determined the defendant is not competent to stand trial;

(3) an opinion as to whether the defendant [is] remains dangerous as [that term is defined in] determined by the court in accordance with Section 31-9-1.2 NMSA 1978 [or whether the defendant satisfies the criteria for involuntary commitment contained in the Mental Health and Developmental Disabilities Code and];

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

(5) if the department of health believes the defendant remains not competent, an opinion as to whether the defendant satisfies the criteria for involuntary commitment in accordance with the Mental Health and Developmental Disabilities Code and whether:

(a) as a result of a mental disorder,

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the defendant presents a likelihood of serious harm to the defendant's self or others;

(b) the defendant needs and is likely to benefit from involuntary commitment and treatment; and

(c) the proposed commitment is consistent with the treatment needs of the defendant and with the least drastic means principle; and

(6) if the department of health believes the defendant remains not competent, an opinion as to whether the defendant satisfies the criteria for involuntary treatment in accordance with the Assisted Outpatient Treatment Act and whether the defendant:

(a) has a primary diagnosis of a mental disorder;

(b) has demonstrated a history of lack of compliance with treatment for a mental disorder;

(c) is unwilling or unlikely, as a result of a mental disorder, to voluntarily participate in outpatient treatment that would enable the person to live safely in the community without court supervision;

(d) is in need of assisted outpatient treatment as the least restrictive appropriate alternative to prevent a relapse or deterioration likely to result in serious harm to the defendant's self or others; and

(e) will likely benefit from assisted

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outpatient treatment and have the defendant's best interests served.

C. If the district court finds that the defendant ~~[to be competent]~~ is restored to competency, the district court shall set the matter for trial; provided that if the defendant is in need of continued care or treatment and the ~~[supervisor of the defendant's treatment]~~ department of health agrees to continue to provide it, the district court may ~~[enter any]~~ order ~~[it deems appropriate for the]~~ continued care or treatment of the defendant ~~[by the facility or program pending]~~ until the conclusion of the criminal proceedings.

D. If the district court finds that the defendant ~~[is still]~~ remains not competent ~~[to proceed in a criminal case]~~ but that ~~[he]~~ the defendant is making progress toward ~~[attaining]~~ being restored to competency, the district court may continue or modify its original ~~[treatment]~~ commitment order entered pursuant to Section 31-9-1.2 NMSA 1978; provided that:

(1) the question of the defendant's competency shall be reviewed again not later than nine months from the ~~[original determination of incompetency to proceed in a criminal case]~~ date the court determined the defendant is not competent to stand trial; and

(2) the HCPAC → ~~[treatment supervisor]~~ ← HCPAC  
HCPAC → treatment supervisor ← HCPAC HCPAC → ~~department of~~

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health←HCPAC shall submit a written progress report as specified in Subsection B of this section at least seven days prior to such hearing.

E. If the district court finds that the defendant [~~is still~~] remains not competent, that [~~he~~] the defendant is not making progress toward [~~attaining~~] being restored to competency and that there is not a substantial probability that [~~he~~] the defendant will [~~attain~~] be restored to competency within nine months from the date [~~of the original finding of incompetency the district court~~] the court determined the defendant is not competent to stand trial, the court shall proceed pursuant to Section 31-9-1.4 NMSA 1978. However, if the defendant is in need of continued care and treatment and the [~~supervisor of the defendant's treatment~~] department of health agrees to continue to provide it, the district court may [~~enter any~~] order [~~it deems appropriate for the~~] continued care or treatment of the defendant by the [~~facility or program pending~~] department until the conclusion of the criminal proceedings."

SECTION 5. Section 31-9-1.4 NMSA 1978 (being Laws 1988, Chapter 107, Section 5 and Laws 1988, Chapter 108, Section 5, as amended) is amended to read:

"31-9-1.4. DETERMINATION OF COMPETENCY--INCOMPETENT DEFENDANTS.--If at any time the district court determines that there is not a substantial probability that the defendant will

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~~[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]~~ be restored to competency within nine months from the date the court determined the defendant is not competent to stand trial, the district court may:

A. ~~[hear the matter pursuant to]~~ hold a criminal commitment hearing in accordance with Section 31-9-1.5 NMSA 1978 within three months if the defendant is charged with ~~[a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978]~~:

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

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

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

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

(5) a crime provided for in the Sexual

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Exploitation of Children Act;

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

(7) a felony involving the use of a firearm;  
or

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

B. release the defendant from custody and dismiss the criminal case with prejudice [~~the charges against him~~]; or

C. dismiss the criminal case without prejudice in the interest of justice; provided that if the HCPAC→[~~treatment supervisor~~←HCPAC HCPAC→treatment supervisor←HCPAC

HCPAC→[←HCPAC ~~has issued a report finding~~] HCPAC→department of health←HCPAC reports to the court that the defendant satisfies the criteria for involuntary commitment [~~contained~~] in accordance with the Mental Health and Developmental

Disabilities Code, the department of health shall [~~commence~~] initiate those proceedings [~~pursuant to Chapter 43, Article 1 NMSA 1978~~], and the court may order the defendant confined for a maximum of seven days to facilitate [~~preparation and~~] the initiation of [~~a petition pursuant to the Mental Health and Developmental Disabilities code. The district court may refer the defendant to the district attorney for possible initiation of proceedings under the Mental Health and Developmental Disabilities Code~~] those proceedings; and provided further that

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the district attorney may initiate involuntary commitment proceedings in the department's stead."

SECTION 6. Section 31-9-1.5 NMSA 1978 (being Laws 1988, Chapter 107, Section 6 and Laws 1988, Chapter 108, Section 6, as amended) is amended to read:

"31-9-1.5. DETERMINATION OF COMPETENCY--CRIMINAL COMMITMENT--EVIDENTIARY HEARING.--

A. [~~As provided for in Subsection A of Section 31-9-1.4 NMSA 1978, A~~] If the court determines that there is not a substantial probability that a defendant not competent to stand trial will be restored to competency, a commitment hearing to determine the sufficiency of the evidence of the defendant's guilt shall be held if [the case is not dismissed and if] the defendant is charged with [a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978. Such]:

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

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

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

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

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

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

(7) a felony involving the use of a firearm;  
or

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

B. A criminal commitment hearing shall be conducted by the district court without a jury. The state and the defendant may introduce evidence relevant to the question of the defendant's guilt of the crime charged. The district 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 taken by official reporters, district court and business records and public documents.

~~[B.]~~ C. If the evidence does not establish by clear and convincing evidence that the defendant committed [a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated



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~~arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978] the crime charged, the district court shall dismiss the criminal case with prejudice. [~~however, nothing in this section shall prevent the state from initiating proceedings under the provisions of the Mental Health and Developmental Disabilities Code, and the court may order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to that code.~~~~

G.] D. If the district court finds by clear and convincing evidence that the defendant committed [a] the crime charged and has not made a finding of dangerousness [~~pursuant to~~] in accordance with Section 31-9-1.2 NMSA 1978, the district court shall dismiss the [~~charges~~] criminal case without prejudice. [~~The state may initiate proceedings pursuant to the provisions of the Mental Health and Developmental Disabilities Code and the court may order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to that code.~~

D.] E. If the district court finds by clear and convincing evidence that the defendant committed [~~a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual~~

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~~penetration, as provided in Section 30-9-11 NMSA 1978; or  
criminal sexual contact of a minor, as provided in Section  
30-9-13 NMSA 1978]~~ the crime charged and enters a finding that  
the defendant remains [~~incompetent to proceed~~] not competent to  
stand trial and remains dangerous [~~pursuant to~~] as determined  
by the court in accordance with Section 31-9-1.2 NMSA 1978:

(1) the defendant shall be detained HCPAC→~~by  
the department of health in a secure, locked facility~~←HCPAC  
HCPAC→in a secure, locked, licensed inpatient psychiatric  
hospital←HCPAC ;

(2) the defendant shall not be released from  
that secure facility except pursuant to an order of the  
[~~district~~] court [~~which~~] that committed [~~him~~] the defendant or  
upon expiration of the period of time equal to the maximum  
sentence to which the defendant would have been subject had the  
defendant been convicted in a criminal proceeding;

(3) significant changes in the defendant's  
condition, including [~~but not limited to~~] trial competency and  
dangerousness, shall be reported in writing to the district  
court, state and defense; and

(4) at least every two years, the district  
court shall conduct a hearing upon notice to the parties and  
the department of health charged with detaining the defendant.  
At the hearing, the court shall enter findings on the issues of  
trial competency and dangerousness:

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

(b) if the defendant continues to ~~[be incompetent to proceed in a criminal case]~~ remain not competent to stand trial and dangerous ~~[pursuant to]~~ in accordance with Section 31-9-1.2 NMSA 1978, the court shall review the defendant's competency and dangerousness every two years until expiration of the period of commitment equal to the maximum sentence to which the defendant would have been subject had ~~[he or she]~~ the defendant been convicted in a criminal proceeding; ~~[provided that if the treatment supervisor recommends that the defendant be committed pursuant to the Mental Health and Developmental Disabilities Code, the court may at any time proceed pursuant to Subsection C of Section 31-9-1.4 NMSA 1978]~~ and

(c) ~~[if the defendant is not committed pursuant to Sections 31-9-1 through 31-9-1.5 NMSA 1978 or]~~ if the court finds upon its two-year review hearing that the defendant is no longer dangerous, ~~[as defined in Section 31-9-1.2 NMSA 1978]~~ the defendant shall be released.

F. At any time, including after a court dismisses a case against a defendant, the department of health or the district attorney may initiate involuntary commitment proceedings in accordance with the Mental Health and

Developmental Disabilities Code or proceedings in accordance with the Assisted Outpatient Treatment Act. If the district attorney indicates an intent to initiate involuntary commitment proceedings in accordance with the Mental Health and Developmental Disabilities Code, the court may detain the defendant for a maximum of seven days only to facilitate the initiation of those proceedings."

SECTION 7. Section 31-9-1.6 NMSA 1978 (being Laws 1997, Chapter 153, Section 1, as amended) is amended to read:

"31-9-1.6. HEARING TO DETERMINE DEVELOPMENTAL OR INTELLECTUAL DISABILITY.--

A. Upon motion of the defense, [~~requesting a ruling~~] the court shall hold a hearing to determine whether the defendant [~~has~~] is not competent due to a developmental or intellectual disability as defined in Subsection E of this section HCPAC→, and the evaluator shall be provided with the necessary and available documents reasonably required for admission pursuant to written policies adopted by the secretary of health or the secretary's designee.←HCPAC .

B. If the court finds by a preponderance of the evidence that the defendant [~~has~~] is not competent to stand trial due to a developmental or intellectual disability and that there is not a substantial probability that the defendant will [~~become competent to proceed in a criminal case~~] be restored to competency within [~~a reasonable period of time not~~

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~~to exceed] nine months from the date [of the original finding of incompetency, then, no later than sixty days from notification to the secretary of health or the secretary's designee of the court's findings, the department of health shall perform an evaluation to]~~ the court determined the defendant is not competent to stand trial, the court shall notify the department of health of the court's finding. Within sixty days of receipt of the court's notification, the department of health shall determine whether the defendant presents a likelihood of serious harm to the defendant's self or others.

C. If the department of health [~~evaluation results in a finding]~~ determines that the defendant presents a likelihood of serious harm to self or others, [~~within sixty days of the department's evaluation]~~ the department shall [~~commence proceedings pursuant to Chapter 43, Article 1 NMSA 1978]~~ initiate involuntary commitment proceedings in accordance with the Mental Health and Developmental Disabilities Code if the defendant [~~was]~~ is charged with [~~murder in the first degree, first degree criminal sexual penetration, criminal sexual contact of a minor or arson in the initial proceedings, and the court presiding over the initial proceedings shall enter a finding that the respondent presents a likelihood of harm to others]~~]:

(1) a felony involving infliction of great

bodily harm, as defined in Section 30-1-12 NMSA 1978, on another person;

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

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

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

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

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

(7) a felony involving the use of a firearm;  
or

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

D. ~~[The criminal charges shall be dismissed without prejudice]~~ After the ~~[hearing pursuant to Chapter 43, Article 1 NMSA 1978]~~ involuntary commitment hearing or upon expiration of fourteen months from the court's initial determination that the defendant is ~~[incompetent to proceed in a criminal case]~~ not competent to stand trial, the criminal case shall be dismissed without prejudice.

E. As used in this section, "developmental or intellectual disability" means significantly subaverage general

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intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of developmental or intellectual disability."

SECTION 8. Section 31-9-2 NMSA 1978 (being Laws 1967, Chapter 231, Section 3) is amended to read:

"31-9-2. COMPETENCY EVALUATION--MENTAL OR FUNCTIONAL EXAMINATION.--

A. Upon motion of any defendant, the court shall order a mental examination of the defendant before making any determination of the defendant's competency. [~~under Sections 41-13-3 or 41-13-3.1 New Mexico Statutes Annotated, 1953 Compilation. Where~~] If the defendant is determined to be indigent, the court shall pay for the costs of the examination from funds available to the court.

B. A court may authorize a district attorney or the department of health to use a report of any examination ordered before a determination of a defendant's competency to stand trial for the purposes of initiating proceedings in accordance with the Mental Health and Developmental Disabilities Code or the Assisted Outpatient Treatment Act."

SECTION 9. Section 43-1B-4 NMSA 1978 (being Laws 2016, Chapter 84, Section 4, as amended) is amended to read:

"43-1B-4. PETITION TO THE COURT.--

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A. A petition for an order authorizing assisted outpatient treatment may be filed in the district court for the county in which the respondent is present or reasonably believed to be present; provided that such district court is a party to a memorandum of understanding with a participating municipality or county.

B. A petition for an order authorizing assisted outpatient treatment may be filed only by the following persons:

(1) a person eighteen years of age or older who resides with the respondent;

(2) the parent or spouse of the respondent;

(3) the sibling or child of the respondent; provided that the sibling or child is eighteen years of age or older;

(4) the director of a hospital where the respondent is hospitalized;

(5) the director of a public or charitable organization or agency or a home where the respondent resides and that provides mental health services to the respondent;

(6) a qualified professional who either supervises the treatment of or treats the respondent for a mental disorder or has supervised or treated the respondent for a mental disorder within the past forty-eight months; [or]

(7) a surrogate decision-maker; or

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(8) a district attorney or the attorney general.

C. The petition shall be entitled "In the Matter of \_\_\_\_\_" and shall include:

(1) each criterion for assisted outpatient treatment as set forth in Section 43-1B-3 NMSA 1978;

(2) facts that support the petitioner's belief that the respondent meets each criterion; provided that the hearing on the petition need not be limited to the stated facts; and

(3) whether the respondent is present or is reasonably believed to be present within the county where the petition is filed.

D. The petition shall be accompanied by an affidavit of a qualified professional that shall state that:

(1) the qualified professional has personally examined the respondent no more than [~~ten~~] thirty days prior to the filing of the petition, that the qualified professional recommends assisted outpatient treatment for the respondent and that the qualified professional is willing and able to testify at the hearing on the petition either in person or by contemporaneous transmission from a different location; or

(2) no more than ten days prior to the filing of the petition, the qualified professional or the qualified professional's designee has unsuccessfully attempted to

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persuade the respondent to submit to an examination, that the qualified professional has reason to believe that the respondent meets the criteria for assisted outpatient treatment and that the qualified professional is willing and able to examine the respondent and testify at the hearing on the petition either in person or by contemporaneous transmission from a different location."

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