

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 8

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

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 PUBLIC SAFETY; AMENDING THE CRIMINAL COMPETENCY PROCEDURES TO PROVIDE FOR COMMUNITY-BASED COMPETENCY RESTORATION FOR NON-DANGEROUS DEFENDANTS, TO EXPAND THE LIST OF CRIMES FOR WHICH A DEFENDANT MAY BE CRIMINALLY COMMITTED, TO ALLOW THE COURT TO ADVISE A DISTRICT ATTORNEY TO CONSIDER INITIATING PROCEEDINGS FOR INVOLUNTARY COMMITMENT OR ASSISTED OUTPATIENT TREATMENT UPON DISMISSAL OF A CRIMINAL CASE AND TO

.230708.1AIC February 20, 2025 (11:05am)

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ALLOW 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; CREATING THE CRIME OF UNLAWFUL POSSESSION OF A WEAPON CONVERSION DEVICE AND PRESCRIBING PENALTIES; INCREASING THE PENALTIES FOR CERTAIN AUTOMOBILE THEFT FELONY OFFENSES; INCREASING THE PENALTY FOR THE CRIME OF MAKING A SHOOTING THREAT; PROVIDING FOR THE ALTERATION OF A BASIC SENTENCE FOR TRAFFICKING CERTAIN AMOUNTS OF FENTANYL; AMENDING THE REQUIREMENTS TO OBTAIN A WARRANT TO TEST THE BLOOD OF A PERSON SUSPECTED OF OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS AND ALLOWING CERTAIN MEDICAL PROFESSIONALS TO DRAW BLOOD FOR THE PURPOSES OF CHEMICAL BLOOD TESTS; 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:

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"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,
the proceeding shall be suspended until the issue is
determined. [Unless the case is dismissed upon motion of a
party, when the question is raised in a court other than the
district court or a metropolitan court, the proceeding shall be
suspended and the cause transferred to the district court. If
the question of a defendant's competency 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, shall be transferred to the
district court.]

B. Unless the case is dismissed upon motion of a
party or through diversion SJC→;←SJC SJC→,←SJC

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

~~(2) if the question of a defendant's
competency is raised in a metropolitan court and the court~~

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~~determines that the defendant is not competent to stand trial,
the case shall be transferred to the district court~~ ←SJC ."

SECTION 2. Section 31-9-1.1 NMSA 1978 (being Laws 1988, 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 psychologist or psychiatrist or other 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.

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C. If, in the opinion of the qualified professional, a defendant is not competent to stand trial, an evaluation report shall 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

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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 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 SJC→a reasonable time←SJC SJC→ninety days←SJC after an evaluation report is submitted to

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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, 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) committing murder in the first or second 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

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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 L of Section 33-2-34 NMSA 1978 with the use of a firearm.

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

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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 is a court-approved program that is designed to restore a defendant to competency and provided in an outpatient setting in the community where the defendant resides. A court may order a defendant to participate in a community-based competency restoration program for no longer than ninety days, and:

(1) within thirty days of the date that the defendant was ordered to participate in a community-based competency restoration program, 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;
and

(d) an opinion as to the probability of

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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;

(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 supervising the defendant's competency restoration program 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 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

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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 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

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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 within seventy-two hours 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 by the department of health in a secure, locked facility; and
- (2) ~~[the defendant, during the period of commitment]~~ shall not be released from that ~~[secure]~~ facility

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except pursuant to an order of the [~~district~~] court that committed [~~him~~] the defendant.

[~~6.~~] E. The department of health shall admit a defendant for competency restoration within

Sf12→~~SJC~~→~~thirty~~←~~SJC~~ ~~SJC~~→~~seven~~←~~SJC~~←Sf12

Sf12→~~Sf12~~→~~thirty~~←~~Sf12~~←Sf12 Sf12→~~fifteen~~←Sf12 days of receipt

of the court's order 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, 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]~~ the secretary's designee.

If the secretary of health or the secretary's designee

determines that the department of health does not have the ability to meet the [~~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 SJC→~~fourteen~~←SJC

SJC→~~seven~~←SJC days of the receipt of the court's order of

commitment and necessary and available documents reasonably

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required for admission pursuant to written policies adopted by the secretary or [~~his~~] the secretary's designee. 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 a department of health facility [~~to undergo treatment to attain competency to proceed in a criminal case, the person supervising the defendant's treatment~~] or an inpatient psychiatric hospital for 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

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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 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

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(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 treatment supervisor 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 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~~

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~~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.

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

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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 treatment supervisor 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,

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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 ~~[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; eriminal 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) 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;

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(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 L of Section 33-2-34 NMSA 1978 with the use of a firearm;

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 treatment supervisor [~~has issued a report finding~~] 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

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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 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 who is 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~~

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~~criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978. Such]:~~

(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 L of Section 33-2-34 NMSA 1978 with the use of a firearm.

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

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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 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

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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 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 by the department of health in a secure, locked facility;
- (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;

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(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:

(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~~]

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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 at any licensed psychiatric hospital."

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 SJC ~~→the defense←~~ SJC SJC ~~→a party or the court←~~ SJC, ~~[requesting a ruling]~~ the court shall hold a hearing to determine whether the defendant ~~[has]~~ is not

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competent due to a developmental or intellectual disability as defined in Subsection E of this section, 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.

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 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

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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) 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

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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 L of Section 33-2-34 NMSA 1978 with the use of a firearm.

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 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.--

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A. Upon motion of SJC→~~any defendant~~←SJC SJC→a party or the court←SJC , 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; provided that the report remains valid pursuant to the time limits set forth in that code or 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.--

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.

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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; [øø]

(7) a surrogate decision-maker; or

(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

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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 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

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petition either in person or by contemporaneous transmission from a different location."

SECTION 10. A new section of Chapter 30, Article 7 NMSA 1978 is enacted to read:

"[NEW MATERIAL] UNLAWFUL POSSESSION OF A WEAPON CONVERSION DEVICE--PENALTY.--

A. Unlawful possession of a weapon conversion device consists of a person knowingly having in that person's possession an unlawfully obtained weapon conversion device or knowingly transporting an unlawfully obtained weapon conversion device.

~~SJC→B. Each weapon conversion device found in violation of this section constitutes a separate offense.←SJC~~

SJC→C.←SJC SJC→B.←SJC A person who commits unlawful possession of a weapon conversion device is guilty of a third degree felony.

SJC→D.←SJC SJC→C.←SJC As used in this section:

(1) "fully automatic weapon" means a weapon that shoots, is designed to shoot automatically or can be readily restored to Sfl1→SJC→shoot more than one shot←SJC SJC→fire each cartridge or shell←SJC←Sfl1 Sfl1→Sfl1→shoot more than one shot←Sfl1←Sfl1 Sfl1→fire more than one cartridge or shell←Sfl1 , without manual reloading, by a single function of the trigger;

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(2) "semiautomatic weapon" means a repeating rifle, shotgun or pistol, regardless of barrel or overall length, that uses a portion of the energy of a firing cartridge or shell to extract the fired cartridge case or spent shell and chamber the next round and that requires a separate function of the trigger to fire each cartridge or shell; and

(3) "weapon conversion device" means a part or combination of parts designed and intended to convert a semiautomatic weapon into a fully automatic weapon."

SECTION 11. Section 30-16D-1 NMSA 1978 (being Laws 1978, Chapter 35, Section 91, as amended by Laws 2009, Chapter 253, Section 1 and by Laws 2009, Chapter 261, Section 1) is amended to read:

"30-16D-1. UNLAWFUL TAKING OF A VEHICLE OR MOTOR VEHICLE.--

A. Unlawful taking of a vehicle or motor vehicle consists of a person taking any vehicle or motor vehicle as defined by the Motor Vehicle Code intentionally and without consent of the owner. Whoever commits unlawful taking of a vehicle or motor vehicle is guilty of a

~~[(1) fourth degree felony for a first offense;~~

~~(2) third degree felony for a second offense;~~

and

~~(3) second degree felony for a third or subsequent offense]~~ felony as provided in Section 30-16D-4.1

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NMSA 1978.

B. The consent of the owner of the vehicle or motor vehicle to its taking shall not in any case be presumed or implied because of the owner's consent on a previous occasion to the taking of the vehicle or motor vehicle by the same or a different person.

C. Nothing in this section shall be construed to prohibit the holder of a lien duly recorded with the motor vehicle division of the taxation and revenue department from taking possession of a vehicle to which possession the lienholder is legally entitled under the provisions of the instrument evidencing the lien. A holder of a duly recorded lien who takes possession of a vehicle without the knowledge of the owner of the vehicle shall immediately notify the local police authority of the fact that the holder has taken possession of the vehicle."

SECTION 12. Section 30-16D-2 NMSA 1978 (being Laws 2009, Chapter 253, Section 2 and Laws 2009, Chapter 261, Section 2) is amended to read:

"30-16D-2. EMBEZZLEMENT OF A VEHICLE OR MOTOR VEHICLE.--

A. Embezzlement of a vehicle or motor vehicle consists of a person embezzling or converting to the person's own use a vehicle or motor vehicle as defined by the Motor Vehicle Code, with which the person has been entrusted, with

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the fraudulent intent to deprive the owner of the vehicle or motor vehicle.

B. Whoever commits embezzlement of a vehicle or motor vehicle is guilty of a

~~[(1) fourth degree felony for a first offense;~~

~~(2) third degree felony for a second offense;~~

and

~~(3) second degree felony for a third or subsequent offense]~~ felony as provided in Section 30-16D-4.1 NMSA 1978."

SECTION 13. Section 30-16D-3 NMSA 1978 (being Laws 2009, Chapter 253, Section 3 and Laws 2009, Chapter 261, Section 3) is amended to read:

"30-16D-3. FRAUDULENTLY OBTAINING A VEHICLE OR MOTOR VEHICLE.--

A. Fraudulently obtaining a vehicle or motor vehicle consists of a person intentionally misappropriating or taking a vehicle or motor vehicle as defined by the Motor Vehicle Code that belongs to another person by means of fraudulent conduct, practices or representations.

B. Whoever commits fraudulently obtaining a vehicle or motor vehicle is guilty of a

~~[(1) fourth degree felony for a first offense;~~

~~(2) third degree felony for a second offense;~~

and

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~~(3) second degree felony for a third or subsequent offense]~~ felony as provided in Section 30-16D-4.1 NMSA 1978."

SECTION 14. Section 30-16D-4 NMSA 1978 (being Laws 1978, Chapter 35, Section 92, as amended by Laws 2009, Chapter 253, Section 4 and by Laws 2009, Chapter 261, Section 4) is amended to read:

"30-16D-4. RECEIVING OR TRANSFERRING STOLEN VEHICLES OR MOTOR VEHICLES.--

A. Receiving or transferring a stolen vehicle or motor vehicle consists of a person who, with intent to procure or pass title to a vehicle or motor vehicle as defined by the Motor Vehicle Code that the person knows or has reason to believe has been stolen or unlawfully taken, receives or transfers possession of the vehicle or motor vehicle from or to another or who has in the person's possession any vehicle that the person knows or has reason to believe has been stolen or unlawfully taken. This section shall not apply to an officer of the law engaged at the time in the performance of the officer's duty as an officer.

B. Whoever commits receiving or transferring a stolen vehicle or motor vehicle is guilty of a

- ~~(1) fourth degree felony for a first offense;~~
- ~~(2) third degree felony for a second offense;~~

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and

~~(3) second degree felony for a third or subsequent offense]~~ felony as provided in Section 30-16D-4.1 NMSA 1978."

SECTION 15. A new Section 30-16D-4.1 NMSA 1978 is enacted to read:

"30-16D-4.1. [NEW MATERIAL] PENALTIES.--

A. Whoever violates any of the provisions described in Sections 30-16D-1 through 30-16D-4 NMSA 1978 is guilty of a:

- (1) fourth degree felony for a first offense;
- (2) third degree felony for a second offense, regardless of which provision was the first offense; and
- (3) second degree felony for a third or subsequent offense, regardless of which provision was the first or second offense.

B. A defendant who violates multiple provisions described in Sections 30-16D-1 through 30-16D-4 NMSA 1978 with a single vehicle shall be determined to have committed a single offense for purposes of this section."

SECTION 16. Section 30-20-16 NMSA 1978 (being Laws 1975, Chapter 285, Section 1, as amended) is amended to read:

"30-20-16. BOMB SCARES AND SHOOTING THREATS UNLAWFUL.--

A. Making a bomb scare consists of [~~falsely~~] intentionally and maliciously stating to another person that a bomb or other explosive has been placed in such a position that

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property or persons are likely to be injured or destroyed.

B. Making a shooting threat consists of intentionally and maliciously communicating to another person a serious expression of an intent to bring a firearm to a property or use the firearm [~~with the~~] and an intent to:

(1) place a person or group of persons in fear of great bodily harm, and a person or group of persons was placed in fear of great bodily harm;

(2) prevent or interrupt the occupation or use of a public building, and the occupation or use of a public building was prevented or interrupted; or

(3) cause a response to the threat by a law enforcement official or volunteer agency organized to deal with emergencies, and the threat caused a response by a law enforcement official or volunteer agency organized to deal with emergencies.

C. Whoever commits making a bomb scare is guilty of a fourth degree felony.

D. Whoever commits making a shooting threat is guilty of a [~~misdemeanor~~] fourth degree felony.

E. A court may order a person convicted for the offense of making a bomb scare or shooting threat to reimburse the victim of the offense for economic harm caused by that offense.

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F. As used in this section, "economic harm" means all direct, incidental and consequential financial harm suffered by a victim of the offense of making a bomb scare or shooting threat. "Economic harm" includes:

(1) wages, salaries or other compensation lost as a result of the commission of the offense of making a bomb scare or shooting threat;

(2) the cost of all wages, salaries or other compensation paid to employees for time that those employees are prevented from working as a result of the commission of the offense of making a bomb scare or shooting threat; and

(3) overhead costs incurred for the period of time that a business is shut down as a result of the commission of the offense of making a bomb scare or shooting threat."

SECTION 17. A new section of the Criminal Sentencing Act is enacted to read:

"[NEW MATERIAL] TRAFFICKING OF CERTAIN AMOUNTS OF FENTANYL--ALTERATION OF BASIC SENTENCE.--When a separate finding of fact by a court or jury shows that a person is in possession of fentanyl in relation to a crime of trafficking a controlled substance pursuant to Section 30-31-20 NMSA 1978, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 shall be enhanced by up to:

A. three years, if the person is in possession of between one hundred and five hundred pills, capsules or tablets

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containing a detectable amount of fentanyl, regardless of its concentration, or between ten and fifty grams of fentanyl powder SJC→, ~~whichever is less~~←SJC ;

B. five years, if the person is in possession of more than five hundred pills, capsules or tablets containing a detectable amount of fentanyl, regardless of its concentration, or more than fifty grams of fentanyl powder SJC→, ~~whichever is less~~←SJC ; or

C. five years, if the person has recruited, coordinated, organized, supervised, directed, managed or financed another to commit trafficking fentanyl pursuant to Section 30-31-20 NMSA 1978. The enhancement shall be in addition to, not a replacement of, charging conspiracy to commit trafficking pursuant to Section 30-28-2 NMSA 1978."

SECTION 18. Section 66-8-103 NMSA 1978 (being Laws 1967, Chapter 160, Section 1) is amended to read:

"66-8-103. CHEMICAL BLOOD TESTS--PERSONS QUALIFIED TO PERFORM TESTS--RELIEF FROM LIABILITY.--Only a physician, licensed professional or practical nurse, [~~or laboratory technician~~] emergency medical technician or certified phlebotomist or a technologist employed by a hospital or physician shall withdraw blood from [~~any~~] a person in the performance of a [~~blood-alcohol~~] chemical blood test. No such physician, nurse, technician, phlebotomist or technologist who

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withdraws blood from ~~[any]~~ a person in the performance of a ~~[blood-alcohol]~~ chemical blood test that has been directed by ~~[any]~~ a police officer or by ~~[any]~~ a judicial or probation officer shall be held liable in any civil or criminal action for assault, battery, false imprisonment or any conduct of ~~[any]~~ a police officer except for negligence, nor shall ~~[any]~~ a person assisting in the performance of ~~[such a]~~ the test or ~~[any]~~ a hospital wherein blood is withdrawn in the performance of ~~[such a]~~ the test be subject to civil or criminal liability for assault, battery, false imprisonment or any conduct of ~~[any]~~ a police officer except for negligence."

SECTION 19. Section 66-8-104 NMSA 1978 (being Laws 1978, Chapter 35, Section 512) is amended to read:

"66-8-104. ~~[BLOOD-ALCOHOL]~~ CHEMICAL BLOOD TESTS--~~[POLICE, JUDICIAL OR PROBATION]~~ OFFICER UNAUTHORIZED TO MAKE ARREST OR DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL DUTIES ~~[AUTHORIZED BY LAW]~~..--Nothing in Sections ~~[64-8-103 or 64-8-104 NMSA 1953]~~ 66-8-103 or 66-8-104 NMSA 1978 is intended to authorize ~~[any]~~ a police officer or ~~[any]~~ a judicial or probation officer to make ~~[any]~~ an arrest or to direct the performance of a ~~[blood-alcohol]~~ chemical blood test except in the performance of ~~[his]~~ that officer's official duties and as otherwise authorized by law."

SECTION 20. Section 66-8-111 NMSA 1978 (being Laws 1978, Chapter 35, Section 519, as amended) is amended to read:

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"66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

A. If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code refuses upon request of a law enforcement officer to submit to chemical tests designated by the law enforcement agency as provided in Section 66-8-107 NMSA 1978, none shall be administered except when a municipal judge, magistrate or district judge issues a search warrant authorizing chemical tests as provided in Section 66-8-107 NMSA 1978 upon finding in a law enforcement officer's written affidavit that there is probable cause to believe that the person has driven a motor vehicle while under the influence of alcohol or a controlled substance thereby causing the death or great bodily injury of another person, or there is probable cause to believe that the person has committed a felony or misdemeanor while under the influence of alcohol or a controlled substance and that chemical tests as provided in Section 66-8-107 NMSA 1978 will produce material evidence in a [felony] criminal prosecution.

B. SJC→~~If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code refuses upon request of a law enforcement officer to submit to chemical tests designated by the law enforcement agency as provided in Subsection A of this section and the person does not cause~~

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~~great bodily injury of another person or there is probable cause to believe the person has committed a misdemeanor while under the influence of alcohol or a controlled substance, the person's charge may be aggravated pursuant to the provisions of Section 66-8-102 NMSA 1978.~~ ←SJC

The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor or drugs and that, upon request, the person refused to submit to a chemical test after being advised that failure to submit could result in revocation of the person's privilege to drive, shall revoke the person's New Mexico driver's license or any nonresident operating privilege for a period of one year or until all conditions for license reinstatement are met, whichever is later.

C. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor and that the person submitted to chemical testing pursuant to Section 66-8-107 NMSA 1978 and the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or

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older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age, shall revoke the person's license or permit to drive or ~~[his]~~ the person's nonresident operating privilege for a period of:

(1) six months or until all conditions for license reinstatement are met, whichever is later, if the person is twenty-one years of age or older;

(2) one year or until all conditions for license reinstatement are met, whichever is later, if the person was less than twenty-one years of age at the time of the arrest, notwithstanding any provision of the Children's Code; or

(3) one year or until all conditions for license reinstatement are met, whichever is later, if the ~~[person has previously had his]~~ person's license has been revoked previously pursuant to the provisions of this section, notwithstanding the provisions of Paragraph (1) of this subsection.

D. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

E. If the person subject to the revocation

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provisions of this section is a resident or will become a resident within one year and is without a license to operate a motor vehicle in this state, the department shall deny the issuance of a license to ~~[him]~~ the person for the appropriate period of time as provided in Subsections B and C of this section.

F. A statement signed by a law enforcement officer, pursuant to the provisions of Subsection B or C of this section, shall be sworn to by the officer or shall contain a declaration substantially to the effect: "I hereby declare under penalty of perjury that the information given in this statement is true and correct to the best of my knowledge.". The statement may be signed and submitted electronically in a manner and form approved by the department A law enforcement officer who signs a statement knowing that the statement is untrue in any material issue or matter is guilty of perjury as provided in Section 66-5-38 NMSA 1978."

SECTION 21. Section 66-8-111.1 NMSA 1978 (being Laws 1984, Chapter 72, Section 7, as amended) is amended to read:

"66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO HEARING.--

A. On behalf of the department, a law enforcement officer requesting a chemical test or directing the administration of a chemical test pursuant to ~~[Section]~~

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Sections 66-8-107 and 66-8-111 NMSA 1978 shall serve immediate written notice of revocation and of right to a hearing before the administrative hearings office pursuant to the Implied Consent Act on a person who:

- (1) refuses to permit chemical testing; or
- (2) submits to a chemical test the results of which indicate an alcohol concentration in the person's blood or breath of:

(a) eight one hundredths or more if the person is twenty-one years of age or older;

(b) four one hundredths or more if the person is driving a commercial motor vehicle; or

(c) two one hundredths or more if the person is less than twenty-one years of age.

B. The written notice of revocation and of a right to a hearing served on the driver shall be a temporary license valid for twenty days or, if the driver requests a hearing pursuant to Section 66-8-112 NMSA 1978, valid until the date the administrative hearings office issues the order following that hearing; provided that a written notice of revocation and right to a hearing shall not be a temporary license for a driver without any otherwise valid driving privileges in this state.

C. The law enforcement officer shall send to the

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department the signed statement required pursuant to Section 66-8-111 NMSA 1978."

SECTION 22. Section 66-13-1 NMSA 1978 (being Laws 2003, Chapter 241, Section 1) is amended to read:

"66-13-1. SHORT TITLE.--~~[Sections 1 through 13 of this act]~~ Chapter 66, Article 13 NMSA 1978 may be cited as the "Boating While Intoxicated Act"."

SECTION 23. Section 66-13-6 NMSA 1978 (being Laws 2003, Chapter 241, Section 6) is amended to read:

"66-13-6. ~~[BLOOD-ALCOHOL]~~ CHEMICAL BLOOD TESTS--PERSONS QUALIFIED TO PERFORM TESTS--RELIEF FROM CIVIL AND CRIMINAL LIABILITY.--Only a physician, licensed professional or practical nurse, ~~[or laboratory technician]~~ emergency medical technician or certified phlebotomist or a technologist employed by a hospital or physician shall withdraw blood from a person in the performance of a ~~[blood-alcohol or drug]~~ chemical blood test. A physician, nurse, technician, phlebotomist or technologist who withdraws blood from a person in the performance of a ~~[blood-alcohol or drug]~~ chemical blood test that has been directed by a law enforcement officer, or by a judicial or probation officer, shall not be held liable in a civil or criminal action for assault, battery, false imprisonment or any conduct of a law enforcement officer, except for negligence, nor shall a person assisting in the performance of the test, or a hospital wherein blood is

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withdrawn in the performance of the test, be subject to civil or criminal liability for assault, battery, false imprisonment or any conduct of a law enforcement officer, except for negligence."

SECTION 24. Section 66-13-7 NMSA 1978 (being Laws 2003, Chapter 241, Section 7) is amended to read:

"66-13-7. [~~BLOOD-ALCOHOL~~] CHEMICAL BLOOD TEST--[~~LAW ENFORCEMENT, JUDICIAL OR PROBATION~~] OFFICER UNAUTHORIZED TO MAKE ARREST OR DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL DUTIES [~~AUTHORIZED BY LAW~~].--Nothing in the Boating While Intoxicated Act is intended to authorize a law enforcement officer, or a judicial or probation officer, to make an arrest or direct the performance of a [~~blood-alcohol or drug~~] chemical blood test, except in the performance of [~~his~~] that officer's official duties or as otherwise authorized by law."

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