

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 8

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

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
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;

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1 CREATING THE CRIME OF UNLAWFUL POSSESSION OF A WEAPON
2 CONVERSION DEVICE AND PRESCRIBING PENALTIES; INCREASING THE
3 PENALTIES FOR CERTAIN AUTOMOBILE THEFT FELONY OFFENSES;
4 INCREASING THE PENALTY FOR THE CRIME OF MAKING A SHOOTING
5 THREAT; PROVIDING FOR THE ALTERATION OF A BASIC SENTENCE FOR
6 TRAFFICKING CERTAIN AMOUNTS OF FENTANYL; AMENDING THE
7 REQUIREMENTS TO OBTAIN A WARRANT TO TEST THE BLOOD OF A PERSON
8 SUSPECTED OF OPERATING A MOTOR VEHICLE WHILE UNDER THE
9 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS AND ALLOWING CERTAIN
10 MEDICAL PROFESSIONALS TO DRAW BLOOD FOR THE PURPOSES OF
11 CHEMICAL BLOOD TESTS; MAKING CONFORMING AMENDMENTS.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "31-9-1. DETERMINATION OF COMPETENCY--RAISING THE
19 ISSUE.--~~[Whenever it appears that there is a question as to the~~
20 ~~defendant's competency to proceed in a criminal case, any~~
21 ~~further proceeding in the cause]~~

22 A. When a party or the court raises a question as
23 to a defendant's competency to stand trial in a criminal case,
24 the proceeding shall be suspended until the issue is
25 determined. ~~[Unless the case is dismissed upon motion of a~~

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1 ~~party, when the question is raised in a court other than the~~
 2 ~~district court or a metropolitan court, the proceeding shall be~~
 3 ~~suspended and the cause transferred to the district court. If~~
 4 ~~the question of a defendant's competency is raised in the~~
 5 ~~metropolitan court and the court determines that the defendant~~
 6 ~~is incompetent to proceed in a criminal case, the cause, if not~~
 7 ~~dismissed upon motion of a party, shall be transferred to the~~
 8 ~~district court.]~~

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

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

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

19 **SECTION 2.** Section 31-9-1.1 NMSA 1978 (being Laws 1988,
 20 Chapter 107, Section 2 and Laws 1988, Chapter 108, Section 2,
 21 as amended by Laws 1993, Chapter 240, Section 2 and also by
 22 Laws 1993, Chapter 249, Section 2) is amended to read:

23 "31-9-1.1. DETERMINATION OF COMPETENCY--EVALUATION AND
 24 DETERMINATION.--[The]

25 A. A defendant's competency shall be

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1 [professionally] evaluated by a psychologist or psychiatrist or
2 other qualified professional recognized by the district court
3 as an expert. [~~and a report shall be submitted~~] The qualified
4 professional who evaluates a defendant's competency shall
5 prepare an evaluation report and submit the report as ordered
6 by the court.

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

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

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

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

17 C. If, in the opinion of the qualified
18 professional, a defendant is not competent to stand trial, an
19 evaluation report shall include the qualified professional's
20 opinion as to whether the defendant:

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

24 (a) as a result of a mental disorder,
25 the defendant presents a likelihood of serious harm to the

1 defendant's self or others;

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

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

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

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

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

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

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

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

25 D. A competency hearing ~~[on the issue of the~~

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1 ~~competency of]~~ shall be held:

2 (1) within thirty days from the date an
3 evaluation report is submitted to the court for an incarcerated
4 defendant charged with a felony; [shall be held by the district
5 court within a reasonable time, but in no event later than
6 thirty days after notification to the court of completion of
7 the diagnostic evaluation. In the case of]

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

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

17 SECTION 3. Section 31-9-1.2 NMSA 1978 (being Laws 1988,
18 Chapter 107, Section 3 and Laws 1988, Chapter 108, Section 3,
19 as amended) is amended to read:

20 "31-9-1.2. DETERMINATION OF COMPETENCY--COMMITMENT--
21 REPORT.--

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

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1 defendant who is not competent is dangerous if the court finds
2 by clear and convincing evidence that the defendant presents a
3 serious threat of:

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

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

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

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

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

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

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

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

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

24 B. If the court determines that a defendant is not
25 dangerous, the court may order the defendant to participate in

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1 a community-based competency restoration program or dismiss the
2 criminal case without prejudice in the interests of justice;
3 ~~[Upon dismissal the court may advise, the district attorney to~~
4 ~~consider initiation of proceedings under the Mental Health and~~
5 ~~Developmental Disabilities Code and order the defendant~~
6 ~~confined for a maximum of seven days to facilitate preparation~~
7 ~~and initiation of a petition pursuant to that code]~~ provided
8 that if the court dismisses the case, the court may:

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

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

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

25 (1) within thirty days of the date that the

1 defendant was ordered to participate in a community-based
2 competency restoration program, the person supervising the
3 defendant's competency restoration program shall submit a
4 progress report to the court and both parties that includes:

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

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

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

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

18 (2) no later than ninety days from the date
19 that the court ordered the defendant to participate in a
20 community-based competency restoration program, the court shall
21 hold a review hearing and determine if the defendant has been
22 restored to competency and at least seven days prior to the
23 review hearing, the person supervising the defendant's
24 competency restoration program shall submit a written report
25 that includes:

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

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

7 (c) if the defendant remains not
8 competent, an opinion as to whether the defendant satisfies the
9 criteria for involuntary commitment in accordance with the
10 Mental Health and Developmental Disabilities Code and whether:

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

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

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

21 1) has a primary diagnosis of a mental disorder; 2) has
22 demonstrated a history of lack of compliance with treatment for
23 a mental disorder; 3) is unwilling or unlikely, as a result of
24 a mental disorder, to voluntarily participate in outpatient
25 treatment that would enable the defendant to live safely in the

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

7 (3) if, after a review hearing, the court
 8 finds that the defendant is competent, the case shall proceed
 9 to trial, but if the court finds that the defendant remains not
 10 competent, the case shall be dismissed without prejudice and
 11 the court may advise the district attorney to consider
 12 initiating proceedings in accordance with the Mental Health and
 13 Developmental Disabilities Code or the Assisted Outpatient
 14 Treatment Act.

15 ~~[B. When a district]~~ D. If the court determines
 16 that a ~~[defendant charged with a felony is incompetent to~~
 17 ~~proceed in the criminal case, but does not dismiss the criminal~~
 18 ~~case, and the district court at that time makes a specific~~
 19 ~~finding that the]~~ defendant who is not competent is dangerous,
 20 the district court may commit the defendant as provided in this
 21 section for ~~[treatment to attain competency to proceed in a~~
 22 ~~criminal case. The court shall enter an appropriate transport~~
 23 ~~order that also provides for return of the defendant to the~~
 24 ~~local facilities of the court upon completion of the~~
 25 ~~treatment. The defendant so committed]~~ competency restoration.

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1 If the court orders commitment, the court shall enter a
2 transport order that provides for the defendant's return to the
3 local jail within seventy-two hours upon the defendant being
4 restored to competency, completion of the competency
5 restoration program or as otherwise required by the court. A
6 defendant committed for competency restoration shall be
7 provided with treatment available to [~~involuntarily committed~~]
8 persons subject to civil commitment, and:

9 (1) [~~the defendant~~] shall be detained by the
10 department of health in a secure, locked facility; and

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

15 [~~G.~~] E. The department of health shall admit a
16 defendant for competency restoration within thirty days of
17 receipt of the court's order of commitment of an incompetent
18 defendant and of the necessary and available documents
19 reasonably required for admission pursuant to written policies
20 adopted by the secretary of health or [~~his designee, the~~
21 ~~defendant shall be admitted to a facility designated for the~~
22 ~~treatment of defendants who are incompetent to stand trial and~~
23 ~~dangerous. If after conducting an investigation] the
24 secretary's designee. If the secretary of health or the
25 secretary's designee determines that the department of health~~

1 does not have the ability to meet the ~~[medical]~~ needs of ~~[a]~~
 2 the defendant ~~[ordered committed to a facility]~~, the secretary
 3 or ~~[his]~~ the secretary's designee may refuse admission ~~[to the~~
 4 ~~defendant upon]~~ by providing written certification to the
 5 committing court and the parties of the ~~[lack of ability]~~
 6 department's inability to meet the ~~[medical]~~ needs of the
 7 defendant. The certification ~~[must]~~ shall be made within
 8 fourteen days of the receipt of the court's order of commitment
 9 and necessary and available documents reasonably required for
 10 admission pursuant to written policies adopted by the secretary
 11 or ~~[his]~~ the secretary's designee. Within ten days of filing
 12 of the certification, the court shall conduct a hearing for
 13 further disposition of the criminal case.

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

18 ~~E.]~~ F. Within thirty days of ~~[an incompetent]~~ a
 19 defendant's admission to a department of health facility ~~[to~~
 20 ~~undergo treatment to attain competency to proceed in a criminal~~
 21 ~~case, the person supervising the defendant's treatment]~~ or an
 22 inpatient psychiatric hospital for competency restoration, the
 23 department shall file with the ~~[district]~~ court, the state and
 24 the defense:

25 (1) an initial assessment of the defendant and

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1 treatment plan; ~~and~~

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

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

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

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

17 "31-9-1.3. DETERMINATION OF COMPETENCY--NINETY-DAY
18 REVIEW--REPORTS--CONTINUING TREATMENT.--

19 A. Within ninety days ~~[of the entry of the order~~
20 ~~committing an incompetent defendant to undergo treatment, the~~
21 ~~district court]~~ after a court issues an order committing a
22 defendant for competency restoration, the court, sitting
23 without a jury, shall conduct a review hearing, unless waived
24 by the defense, and shall determine:

25 (1) whether the defendant ~~[is competent to~~

1 ~~proceed in the criminal case; and, if not~~ has been restored to
 2 competency or remains not competent to stand trial;

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

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

12 B. At least seven days prior to the review hearing,
 13 the treatment supervisor shall submit a written progress report
 14 to the court, the state and the defense [~~indicating~~] that
 15 includes:

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

20 (2) [~~the~~] an opinion [~~of the treatment~~
 21 ~~supervisor~~] as to whether the defendant has [~~attained~~] been
 22 restored to competency or as to whether the defendant is making
 23 progress [~~under treatment~~] toward [~~attaining~~] being restored to
 24 competency within nine months from the date [~~of the original~~
 25 ~~finding of incompetency~~] the court determined the defendant is

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1 not competent to stand trial and whether there is a substantial
2 probability that the defendant will ~~[attain]~~ be restored to
3 competency within nine months from the date ~~[of the original~~
4 ~~finding of incompetency]~~ the court determined the defendant is
5 not competent to stand trial;

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

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

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

25 D. If the district court finds that the defendant

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

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

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

15 E. If the district court finds that the defendant
 16 ~~[is still]~~ remains not competent, that ~~[he]~~ the defendant is
 17 not making progress toward ~~[attaining]~~ being restored to
 18 competency and that there is not a substantial probability that
 19 ~~[he]~~ the defendant will ~~[attain]~~ be restored to competency
 20 within nine months from the date ~~[of the original finding of~~
 21 ~~incompetency the district court]~~ the court determined the
 22 defendant is not competent to stand trial, the court shall
 23 proceed pursuant to Section 31-9-1.4 NMSA 1978. However, if
 24 the defendant is in need of continued care and treatment and
 25 the ~~[supervisor of the defendant's treatment]~~ department of

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1 health agrees to continue to provide it, the district court may
2 [~~enter any~~] order [~~it deems appropriate for the~~] continued care
3 or treatment of the defendant by the [~~facility or program~~
4 ~~pending~~] department until the conclusion of the criminal
5 proceedings."

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

9 "31-9-1.4. DETERMINATION OF COMPETENCY--INCOMPETENT
10 DEFENDANTS.--If at any time the district court determines that
11 there is not a substantial probability that the defendant will
12 [~~become competent to proceed in a criminal case within a~~
13 ~~reasonable period of time not to exceed nine months from the~~
14 ~~date of the original finding of incompetency] be restored to
15 competency within nine months from the date the court
16 determined the defendant is not competent to stand trial, the
17 district court may:~~

18 A. [~~hear the matter pursuant to~~] hold a criminal
19 commitment hearing in accordance with Section 31-9-1.5 NMSA
20 1978 within three months if the defendant is charged with [~~a~~
21 ~~felony that involves the infliction of great bodily harm on~~
22 ~~another person; a felony that involves the use of a firearm;~~
23 ~~aggravated arson, as provided in Section 30-17-6 NMSA 1978;~~
24 ~~eriminal sexual penetration, as provided in Section 30-9-11~~
25 ~~NMSA 1978; or criminal sexual contact of a minor, as provided~~

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1 ~~in Section 30-9-13 NMSA 1978~~]:

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

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

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

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

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

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

15 (7) human trafficking, as provided in Section
16 30-52-1 NMSA 1978;

17 (8) aggravated arson, as provided in Section
18 30-17-6 NMSA 1978; or

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

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

24 C. dismiss the criminal case without prejudice in
25 the interest of justice; provided that if the treatment

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1 supervisor [~~has issued a report finding~~] reports to the court
2 that the defendant satisfies the criteria for involuntary
3 commitment [~~contained~~] in accordance with the Mental Health and
4 Developmental Disabilities Code, the department of health shall
5 [~~commence~~] initiate those proceedings [~~pursuant to Chapter 43,~~
6 ~~Article 1 NMSA 1978~~], and the court may order the defendant
7 confined for a maximum of seven days to facilitate [~~preparation~~
8 ~~and~~] the initiation of [~~a petition pursuant to the Mental~~
9 ~~Health and Developmental Disabilities code. The district court~~
10 ~~may refer the defendant to the district attorney for possible~~
11 ~~initiation of proceedings under the Mental Health and~~
12 ~~Developmental Disabilities Code~~] those proceedings; and
13 provided further that the district attorney may initiate
14 involuntary commitment proceedings in the department's stead."

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

18 "31-9-1.5. DETERMINATION OF COMPETENCY--CRIMINAL
19 COMMITMENT--EVIDENTIARY HEARING.--

20 A. [~~As provided for in Subsection A of Section~~
21 ~~31-9-1.4 NMSA 1978, A~~] If the court determines that there is
22 not a substantial probability that a defendant who is not
23 competent to stand trial will be restored to competency, a
24 commitment hearing to determine the sufficiency of the evidence
25 of the defendant's guilt shall be held if [~~the case is not~~

1 ~~dismissed and if] the defendant is charged with [a felony that~~
2 ~~involves the infliction of great bodily harm on another person;~~
3 ~~a felony that involves the use of a firearm; aggravated arson,~~
4 ~~as provided in Section 30-17-6 NMSA 1978; criminal sexual~~
5 ~~penetration, as provided in Section 30-9-11 NMSA 1978; or~~
6 ~~criminal sexual contact of a minor, as provided in Section~~
7 ~~30-9-13 NMSA 1978. Such]:~~

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

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

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

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

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

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

21 (7) human trafficking, as provided in Section
22 30-52-1 NMSA 1978;

23 (8) aggravated arson, as provided in Section
24 30-17-6 NMSA 1978; or

25 (9) any "serious violent offense" enumerated

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1 in Subparagraphs (a) through (n) of Paragraph (4) of Subsection
2 L of Section 33-2-34 NMSA 1978 with the use of a firearm.

3 B. A criminal commitment hearing shall be conducted
4 by the district court without a jury. The state and the
5 defendant may introduce evidence relevant to the question of
6 the defendant's guilt of the crime charged. The district court
7 may admit hearsay or affidavit evidence on secondary matters
8 such as testimony to establish the chain of possession of
9 physical evidence, laboratory reports, authentication of
10 transcripts taken by official reporters, district court and
11 business records and public documents.

12 [~~B.~~] C. If the evidence does not establish by clear
13 and convincing evidence that the defendant committed [~~a felony~~
14 ~~that involves the infliction of great bodily harm on another~~
15 ~~person; a felony that involves the use of a firearm; aggravated~~
16 ~~arson, as provided in Section 30-17-6 NMSA 1978; criminal~~
17 ~~sexual penetration, as provided in Section 30-9-11 NMSA 1978;~~
18 ~~or criminal sexual contact of a minor, as provided in Section~~
19 ~~30-9-13 NMSA 1978] the crime charged, the district court shall
20 dismiss the criminal case with prejudice. [~~however, nothing in~~
21 ~~this section shall prevent the state from initiating~~
22 ~~proceedings under the provisions of the Mental Health and~~
23 ~~Developmental Disabilities Code, and the court may order the~~
24 ~~defendant confined for a maximum of seven days to facilitate~~
25 ~~preparation and initiation of a petition pursuant to that code.~~~~

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

11 ~~D.]~~ E. If the district court finds by clear and
 12 convincing evidence that the defendant committed [~~a felony that~~
 13 ~~involves the infliction of great bodily harm on another person;~~
 14 ~~a felony that involves the use of a firearm; aggravated arson,~~
 15 ~~as provided in Section 30-17-6 NMSA 1978; criminal sexual~~
 16 ~~penetration, as provided in Section 30-9-11 NMSA 1978; or~~
 17 ~~criminal sexual contact of a minor, as provided in Section~~
 18 ~~30-9-13 NMSA 1978]~~ the crime charged and enters a finding that
 19 the defendant remains [~~incompetent to proceed~~] not competent to
 20 stand trial and remains dangerous [~~pursuant to~~] as determined
 21 by the court in accordance with Section 31-9-1.2 NMSA 1978:

22 (1) the defendant shall be detained by the
 23 department of health in a secure, locked facility;

24 (2) the defendant shall not be released from
 25 that secure facility except pursuant to an order of the

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1 [district] court [which] that committed [him] the defendant or
2 upon expiration of the period of time equal to the maximum
3 sentence to which the defendant would have been subject had the
4 defendant been convicted in a criminal proceeding;

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

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

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

17 (b) if the defendant continues to [~~be~~
18 ~~incompetent to proceed in a criminal case~~] remain not competent
19 to stand trial and dangerous [~~pursuant to~~] in accordance with
20 Section 31-9-1.2 NMSA 1978, the court shall review the
21 defendant's competency and dangerousness every two years until
22 expiration of the period of commitment equal to the maximum
23 sentence to which the defendant would have been subject had [~~he~~
24 ~~or she~~] the defendant been convicted in a criminal proceeding;
25 [~~provided that if the treatment supervisor recommends that the~~

1 ~~defendant be committed pursuant to the Mental Health and~~
 2 ~~Developmental Disabilities Code, the court may at any time~~
 3 ~~proceed pursuant to Subsection C of Section 31-9-1.4 NMSA 1978]~~
 4 and

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

10 F. At any time, including after a court dismisses a
 11 case against a defendant, the department of health or the
 12 district attorney may initiate involuntary commitment
 13 proceedings in accordance with the Mental Health and
 14 Developmental Disabilities Code or proceedings in accordance
 15 with the Assisted Outpatient Treatment Act. If the district
 16 attorney indicates an intent to initiate involuntary commitment
 17 proceedings in accordance with the Mental Health and
 18 Developmental Disabilities Code, the court may detain the
 19 defendant for a maximum of seven days only to facilitate the
 20 initiation of those proceedings at any licensed psychiatric
 21 hospital."

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

24 "31-9-1.6. HEARING TO DETERMINE DEVELOPMENTAL OR
 25 INTELLECTUAL DISABILITY.--

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

9 B. If the court finds by a preponderance of the
10 evidence that the defendant [~~has~~] is not competent to stand
11 trial due to a developmental or intellectual disability and
12 that there is not a substantial probability that the defendant
13 will [~~become competent to proceed in a criminal case~~] be
14 restored to competency within [~~a reasonable period of time not~~
15 ~~to exceed~~] nine months from the date [~~of the original finding~~
16 ~~of incompetency, then, no later than sixty days from~~
17 ~~notification to the secretary of health or the secretary's~~
18 ~~designee of the court's findings, the department of health~~
19 ~~shall perform an evaluation to~~] the court determined the
20 defendant is not competent to stand trial, the court shall
21 notify the department of health of the court's finding. Within
22 sixty days of receipt of the court's notification, the
23 department of health shall determine whether the defendant
24 presents a likelihood of serious harm to the defendant's self
25 or others.

1 C. If the department of health [~~evaluation results~~
2 ~~in a finding~~] determines that the defendant presents a
3 likelihood of serious harm to self or others, [~~within sixty~~
4 ~~days of the department's evaluation~~] the department shall
5 [~~commence proceedings pursuant to Chapter 43, Article 1 NMSA~~
6 ~~1978~~] initiate involuntary commitment proceedings in accordance
7 with the Mental Health and Developmental Disabilities Code if
8 the defendant [~~was~~] is charged with [~~murder in the first~~
9 ~~degree, first degree criminal sexual penetration, criminal~~
10 ~~sexual contact of a minor or arson in the initial proceedings,~~
11 ~~and the court presiding over the initial proceedings shall~~
12 ~~enter a finding that the respondent presents a likelihood of~~
13 ~~harm to others~~]:

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

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

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

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

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

25 (6) a crime provided for in the Sexual

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1 Exploitation of Children Act;

2 (7) human trafficking, as provided in Section
3 30-52-1 NMSA 1978;

4 (8) aggravated arson, as provided in Section
5 30-17-6 NMSA 1978; or

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

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

16 E. As used in this section, "developmental or
17 intellectual disability" means significantly subaverage general
18 intellectual functioning existing concurrently with deficits in
19 adaptive behavior. An intelligence quotient of seventy or
20 below on a reliably administered intelligence quotient test
21 shall be presumptive evidence of developmental or intellectual
22 disability."

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

25 "31-9-2. COMPETENCY EVALUATION--MENTAL OR FUNCTIONAL

1 EXAMINATION.--

2 A. Upon motion of any defendant, the court shall
 3 order a mental examination of the defendant before making any
 4 determination of the defendant's competency. [~~under Sections~~
 5 ~~41-13-3 or 41-13-3.1 New Mexico Statutes Annotated, 1953~~
 6 ~~Compilation. Where~~] If the defendant is determined to be
 7 indigent, the court shall pay for the costs of the examination
 8 from funds available to the court.

9 B. A court may authorize a district attorney or the
 10 department of health to use a report of any examination ordered
 11 before a determination of a defendant's competency to stand
 12 trial for the purposes of initiating proceedings in accordance
 13 with the Mental Health and Developmental Disabilities Code or
 14 the Assisted Outpatient Treatment Act; provided that the report
 15 remains valid pursuant to the time limits set forth in that
 16 code or act."

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

19 "43-1B-4. PETITION TO THE COURT.--

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

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

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

6 (2) the parent or spouse of the respondent;

7 (3) the sibling or child of the respondent;

8 provided that the sibling or child is eighteen years of age or
9 older;

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

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

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

19 (7) a surrogate decision-maker; or

20 (8) a district attorney or the attorney
21 general.

22 C. The petition shall be entitled "In the Matter of
23 _____" and shall include:

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

underscored material = new
[bracketed material] = delete

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

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

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

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

17 (2) no more than ten days prior to the filing
18 of the petition, the qualified professional or the qualified
19 professional's designee has unsuccessfully attempted to
20 persuade the respondent to submit to an examination, that the
21 qualified professional has reason to believe that the
22 respondent meets the criteria for assisted outpatient treatment
23 and that the qualified professional is willing and able to
24 examine the respondent and testify at the hearing on the
25 petition either in person or by contemporaneous transmission

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1 from a different location."

2 SECTION 10. A new section of Chapter 30, Article 7 NMSA
3 1978 is enacted to read:

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

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

11 B. Each weapon conversion device found in violation
12 of this section constitutes a separate offense.

13 C. A person who commits unlawful possession of a
14 weapon conversion device is guilty of a third degree felony.

15 D. As used in this section:

16 (1) "fully automatic weapon" means a weapon
17 that shoots, is designed to shoot automatically or can be
18 readily restored to shoot more than one shot, without manual
19 reloading, by a single function of the trigger;

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

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

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

8 "30-16D-1. UNLAWFUL TAKING OF A VEHICLE OR MOTOR
9 VEHICLE.--

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

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

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

17 and

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

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

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

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

14 "30-16D-2. EMBEZZLEMENT OF A VEHICLE OR MOTOR VEHICLE.--

15 A. Embezzlement of a vehicle or motor vehicle
16 consists of a person embezzling or converting to the person's
17 own use a vehicle or motor vehicle as defined by the Motor
18 Vehicle Code, with which the person has been entrusted, with
19 the fraudulent intent to deprive the owner of the vehicle or
20 motor vehicle.

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

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

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

25 and

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

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

7 "30-16D-3. FRAUDULENTLY OBTAINING A VEHICLE OR MOTOR
8 VEHICLE.--

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

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

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

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

18 and

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

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

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underscored material = new
[bracketed material] = delete

1 "30-16D-4. RECEIVING OR TRANSFERRING STOLEN VEHICLES OR
2 MOTOR VEHICLES.--

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

14 B. Whoever commits receiving or transferring a
15 stolen vehicle or motor vehicle is guilty of a
16 [~~(1) fourth degree felony for a first offense;~~
17 ~~(2) third degree felony for a second offense;~~
18 and
19 ~~(3) second degree felony for a third or~~
20 ~~subsequent offense] felony as provided in Section 30-16D-4.1
21 NMSA 1978."~~

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

24 "30-16D-4.1. [NEW MATERIAL] PENALTIES.--

25 A. Whoever violates any of the provisions described

1 in Sections 30-16D-1 through 30-16D-4 NMSA 1978 is guilty of a:

2 (1) fourth degree felony for a first offense;

3 (2) third degree felony for a second offense,
4 regardless of which provision was the first offense; and

5 (3) second degree felony for a third or
6 subsequent offense, regardless of which provision was the first
7 or second offense.

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

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

14 "30-20-16. BOMB SCARES AND SHOOTING THREATS UNLAWFUL.--

15 A. Making a bomb scare consists of [~~falsely~~]
16 intentionally and maliciously stating to another person that a
17 bomb or other explosive has been placed in such a position that
18 property or persons are likely to be injured or destroyed.

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

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

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

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

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

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

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

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

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

24 (2) the cost of all wages, salaries or other
25 compensation paid to employees for time that those employees

1 are prevented from working as a result of the commission of the
2 offense of making a bomb scare or shooting threat; and

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

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

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

15 A. three years, if the person is in possession of
16 between one hundred and five hundred pills, capsules or tablets
17 containing a detectable amount of fentanyl, regardless of its
18 concentration, or between ten and fifty grams of fentanyl
19 powder, whichever is less;

20 B. five years, if the person is in possession of
21 more than five hundred pills, capsules or tablets containing a
22 detectable amount of fentanyl, regardless of its concentration,
23 or more than fifty grams of fentanyl powder, whichever is less;
24 or

25 C. five years, if the person has recruited,

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1 coordinated, organized, supervised, directed, managed or
2 financed another to commit trafficking fentanyl pursuant to
3 Section 30-31-20 NMSA 1978. The enhancement shall be in
4 addition to, not a replacement of, charging conspiracy to
5 commit trafficking pursuant to Section 30-28-2 NMSA 1978."

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

8 "66-8-103. CHEMICAL BLOOD TESTS--PERSONS QUALIFIED TO
9 PERFORM TESTS--RELIEF FROM LIABILITY.--Only a physician,
10 licensed professional or practical nurse, [~~or laboratory~~
11 ~~technician~~] emergency medical technician or certified
12 phlebotomist or a technologist employed by a hospital or
13 physician shall withdraw blood from [~~any~~] a person in the
14 performance of a [~~blood-alcohol~~] chemical blood test. No such
15 physician, nurse, technician, phlebotomist or technologist who
16 withdraws blood from [~~any~~] a person in the performance of a
17 [~~blood-alcohol~~] chemical blood test that has been directed by
18 [~~any~~] a police officer or by [~~any~~] a judicial or probation
19 officer shall be held liable in any civil or criminal action
20 for assault, battery, false imprisonment or any conduct of
21 [~~any~~] a police officer except for negligence, nor shall [~~any~~] a
22 person assisting in the performance of [~~such a~~] the test or
23 [~~any~~] a hospital wherein blood is withdrawn in the performance
24 of [~~such a~~] the test be subject to civil or criminal liability
25 for assault, battery, false imprisonment or any conduct of

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1 [any] a police officer except for negligence."

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

4 "66-8-104. [~~BLOOD-ALCOHOL~~] CHEMICAL BLOOD TESTS--[~~POLICE,~~
5 ~~JUDICIAL OR PROBATION~~] OFFICER UNAUTHORIZED TO MAKE ARREST OR
6 DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL DUTIES
7 [~~AUTHORIZED BY LAW~~].--Nothing in Sections [~~64-8-103 or 64-8-104~~
8 ~~NMSA 1953~~] 66-8-103 or 66-8-104 NMSA 1978 is intended to
9 authorize [any] a police officer or [any] a judicial or
10 probation officer to make [any] an arrest or to direct the
11 performance of a [~~blood-alcohol~~] chemical blood test except in
12 the performance of [~~his~~] that officer's official duties and as
13 otherwise authorized by law."

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

16 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
17 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

18 A. If a person under arrest for violation of an
19 offense enumerated in the Motor Vehicle Code refuses upon
20 request of a law enforcement officer to submit to chemical
21 tests designated by the law enforcement agency as provided in
22 Section 66-8-107 NMSA 1978, none shall be administered except
23 when a municipal judge, magistrate or district judge issues a
24 search warrant authorizing chemical tests as provided in
25 Section 66-8-107 NMSA 1978 upon finding in a law enforcement

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1 officer's written affidavit that there is probable cause to
2 believe that the person has driven a motor vehicle while under
3 the influence of alcohol or a controlled substance thereby
4 causing the death or great bodily injury of another person, or
5 there is probable cause to believe that the person has
6 committed a felony or misdemeanor while under the influence of
7 alcohol or a controlled substance and that chemical tests as
8 provided in Section 66-8-107 NMSA 1978 will produce material
9 evidence in a [~~felony~~] criminal prosecution.

10 B. If a person under arrest for violation of an
11 offense enumerated in the Motor Vehicle Code refuses upon
12 request of a law enforcement officer to submit to chemical
13 tests designated by the law enforcement agency as provided in
14 Subsection A of this section and the person does not cause
15 great bodily injury of another person or there is probable
16 cause to believe the person has committed a misdemeanor while
17 under the influence of alcohol or a controlled substance, the
18 person's charge may be aggravated pursuant to the provisions of
19 Section 66-8-102 NMSA 1978. The department, upon receipt of a
20 statement signed under penalty of perjury from a law
21 enforcement officer stating the officer's reasonable grounds to
22 believe the arrested person had been driving a motor vehicle
23 within this state while under the influence of intoxicating
24 liquor or drugs and that, upon request, the person refused to
25 submit to a chemical test after being advised that failure to

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1 submit could result in revocation of the person's privilege to
2 drive, shall revoke the person's New Mexico driver's license or
3 any nonresident operating privilege for a period of one year or
4 until all conditions for license reinstatement are met,
5 whichever is later.

6 C. The department, upon receipt of a statement
7 signed under penalty of perjury from a law enforcement officer
8 stating the officer's reasonable grounds to believe the
9 arrested person had been driving a motor vehicle within this
10 state while under the influence of intoxicating liquor and that
11 the person submitted to chemical testing pursuant to Section
12 66-8-107 NMSA 1978 and the test results indicated an alcohol
13 concentration in the person's blood or breath of eight one
14 hundredths or more if the person is twenty-one years of age or
15 older, four one hundredths or more if the person is driving a
16 commercial motor vehicle or two one hundredths or more if the
17 person is less than twenty-one years of age, shall revoke the
18 person's license or permit to drive or [~~his~~] the person's
19 nonresident operating privilege for a period of:

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

23 (2) one year or until all conditions for
24 license reinstatement are met, whichever is later, if the
25 person was less than twenty-one years of age at the time of the

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1 arrest, notwithstanding any provision of the Children's Code;
2 or

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

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

13 E. If the person subject to the revocation
14 provisions of this section is a resident or will become a
15 resident within one year and is without a license to operate a
16 motor vehicle in this state, the department shall deny the
17 issuance of a license to [~~him~~] the person for the appropriate
18 period of time as provided in Subsections B and C of this
19 section.

20 F. A statement signed by a law enforcement officer,
21 pursuant to the provisions of Subsection B or C of this
22 section, shall be sworn to by the officer or shall contain a
23 declaration substantially to the effect: "I hereby declare
24 under penalty of perjury that the information given in this
25 statement is true and correct to the best of my knowledge."

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1 The statement may be signed and submitted electronically in a
 2 manner and form approved by the department A law enforcement
 3 officer who signs a statement knowing that the statement is
 4 untrue in any material issue or matter is guilty of perjury as
 5 provided in Section 66-5-38 NMSA 1978."

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

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

11 A. On behalf of the department, a law enforcement
 12 officer requesting a chemical test or directing the
 13 administration of a chemical test pursuant to [~~Section~~]
 14 Sections 66-8-107 and 66-8-111 NMSA 1978 shall serve immediate
 15 written notice of revocation and of right to a hearing before
 16 the administrative hearings office pursuant to the Implied
 17 Consent Act on a person who:

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

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

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

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

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

12 C. The law enforcement officer shall send to the
13 department the signed statement required pursuant to Section
14 66-8-111 NMSA 1978."

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

17 "66-13-1. SHORT TITLE.--~~[Sections 1 through 13 of this~~
18 ~~act]~~ Chapter 66, Article 13 NMSA 1978 may be cited as the
19 "Boating While Intoxicated Act"."

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

22 "66-13-6. [~~BLOOD-ALCOHOL~~] CHEMICAL BLOOD TESTS--PERSONS
23 QUALIFIED TO PERFORM TESTS--RELIEF FROM CIVIL AND CRIMINAL
24 LIABILITY.--Only a physician, licensed professional or
25 practical nurse, [~~or laboratory technician~~] emergency medical

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1 technician or certified phlebotomist or a technologist employed
 2 by a hospital or physician shall withdraw blood from a person
 3 in the performance of a [~~blood-alcohol or drug~~] chemical blood
 4 test. A physician, nurse, technician, phlebotomist or
 5 technologist who withdraws blood from a person in the
 6 performance of a [~~blood-alcohol or drug~~] chemical blood test
 7 that has been directed by a law enforcement officer, or by a
 8 judicial or probation officer, shall not be held liable in a
 9 civil or criminal action for assault, battery, false
 10 imprisonment or any conduct of a law enforcement officer,
 11 except for negligence, nor shall a person assisting in the
 12 performance of the test, or a hospital wherein blood is
 13 withdrawn in the performance of the test, be subject to civil
 14 or criminal liability for assault, battery, false imprisonment
 15 or any conduct of a law enforcement officer, except for
 16 negligence."

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

19 "66-13-7. [~~BLOOD-ALCOHOL~~] CHEMICAL BLOOD TEST--[~~LAW~~
 20 ~~ENFORCEMENT, JUDICIAL OR PROBATION~~] OFFICER UNAUTHORIZED TO
 21 MAKE ARREST OR DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL
 22 DUTIES [~~AUTHORIZED BY LAW~~].--Nothing in the Boating While
 23 Intoxicated Act is intended to authorize a law enforcement
 24 officer, or a judicial or probation officer, to make an arrest
 25 or direct the performance of a [~~blood-alcohol or drug~~] chemical

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1 blood test, except in the performance of [~~his~~] that officer's
2 official duties or as otherwise authorized by law."

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underscoring material = new
[bracketed material] = delete