

HOUSE FLOOR SUBSTITUTE FOR  
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 INCREASING THE PENALTY FOR A FELON AND A SERIOUS VIOLENT FELON  
2 FOUND IN POSSESSION OF A FIREARM; PROVIDING THAT A PERSON  
3 CONVICTED OF POSSESSION OF A FIREARM OR DESTRUCTIVE DEVICE IS  
4 NOT ELIGIBLE FOR EARNED MERITORIOUS DEDUCTIONS; INCREASING THE  
5 PENALTIES FOR CERTAIN AUTOMOBILE THEFT FELONY OFFENSES;  
6 PROVIDING A MINIMUM TERM OF IMPRISONMENT FOR TRAFFICKING A  
7 CONTROLLED SUBSTANCE; PROVIDING THAT TRAFFICKING A CONTROLLED  
8 SUBSTANCE THAT RESULTS IN DEATH IS A FIRST DEGREE FELONY;  
9 PROVIDING AN ADDITIONAL PENALTY FOR DISTRIBUTION TO A MINOR;  
10 AMENDING DEFINITIONS IN THE DELINQUENCY ACT; AMENDING THE  
11 REQUIREMENTS TO OBTAIN A WARRANT TO TEST THE BLOOD OF A PERSON  
12 SUSPECTED OF OPERATING A MOTOR VEHICLE WHILE UNDER THE  
13 INFLUENCE OF INTOXICATING LIQUOR OR DRUGS AND ALLOWING CERTAIN  
14 MEDICAL PROFESSIONALS TO DRAW BLOOD FOR THE PURPOSES OF  
15 CHEMICAL BLOOD TESTS.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

22 "31-9-1. DETERMINATION OF COMPETENCY--RAISING THE  
23 ISSUE.--~~[Whenever it appears that there is a question as to the~~  
24 ~~defendant's competency to proceed in a criminal case, any~~  
25 ~~further proceeding in the cause]~~

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1           A. When a party or the court raises a question as  
 2 to a defendant's competency to stand trial in a criminal case,  
 3 the proceeding shall be suspended until the issue is  
 4 determined. [~~Unless the case is dismissed upon motion of a~~  
 5 party, when the question is raised in a court other than the  
 6 district court or a metropolitan court, the proceeding shall be  
 7 suspended and the cause transferred to the district court. If  
 8 the question of a defendant's competency is raised in the  
 9 metropolitan court and the court determines that the defendant  
 10 is incompetent to proceed in a criminal case, the cause, if not  
 11 dismissed upon motion of a party, shall be transferred to the  
 12 district court.]

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

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

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

23           SECTION 2. Section 31-9-1.1 NMSA 1978 (being Laws 1988,  
 24 Chapter 107, Section 2 and Laws 1988, Chapter 108, Section 2,  
 25 as amended by Laws 1993, Chapter 240, Section 2 and also by

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1 Laws 1993, Chapter 249, Section 2) is amended to read:

2 "31-9-1.1. DETERMINATION OF COMPETENCY--EVALUATION AND  
3 DETERMINATION.--[The]

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

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

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

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

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

21 C. If, in the opinion of the qualified  
22 professional, a defendant is not competent to stand trial, an  
23 evaluation report shall include the qualified professional's  
24 opinion as to whether the defendant:

25 (1) satisfies the criteria for involuntary

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1 commitment in accordance with the Mental Health and  
2 Developmental Disabilities Code and whether:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24                   "31-9-1.2. DETERMINATION OF COMPETENCY--COMMITMENT--  
25 REPORT.--

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1           A. ~~[When]~~ If, after a competency hearing, a court  
 2 determines that a defendant is not competent to ~~[proceed in a~~  
 3 ~~criminal case and the court does not find that]~~ stand trial,  
 4 the court shall determine if the defendant is dangerous. A  
 5 defendant who is not competent is dangerous if the court finds  
 6 by clear and convincing evidence that the defendant presents a  
 7 serious threat of:

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

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

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

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

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

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

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

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

24                   (9) committing any "serious violent offense"  
 25 enumerated in Subparagraphs (a) through (n) of Paragraph (4) of

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

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

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

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

22 C. A community-based competency restoration program  
23 is a court-approved program that is designed to restore a  
24 defendant to competency and provided in an outpatient setting  
25 in the community where the defendant resides. A court may



1 order a defendant to participate in a community-based  
2 competency restoration program for no longer than ninety days,  
3 and:

4 (1) within thirty days of the date that the  
5 defendant was ordered to participate in a community-based  
6 competency restoration program, the person supervising the  
7 defendant's competency restoration program shall submit a  
8 progress report to the court and both parties that includes:

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

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

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

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

22 (2) no later than ninety days from the date  
23 that the court ordered the defendant to participate in a  
24 community-based competency restoration program, the court shall  
25 hold a review hearing and determine if the defendant has been

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1 restored to competency and at least seven days prior to the  
2 review hearing, the person supervising the defendant's  
3 competency restoration program shall submit a written report  
4 that includes:

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

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

11 (c) if the defendant remains not  
12 competent, an opinion as to whether the defendant satisfies the  
13 criteria for involuntary commitment in accordance with the  
14 Mental Health and Developmental Disabilities Code and whether:

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

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

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

25 1) has a primary diagnosis of a mental disorder; 2) has

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

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

19 ~~[B. When a district]~~ D. If the court determines  
 20 that a [defendant charged with a felony is incompetent to  
 21 proceed in the criminal case, but does not dismiss the criminal  
 22 case, and the district court at that time makes a specific  
 23 finding that the] defendant who is not competent is dangerous,  
 24 the district court may commit the defendant as provided in this  
 25 section for [treatment to attain competency to proceed in a

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1 ~~criminal case. The court shall enter an appropriate transport~~  
2 ~~order that also provides for return of the defendant to the~~  
3 ~~local facilities of the court upon completion of the~~  
4 ~~treatment. The defendant so committed] competency restoration.~~

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

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

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

19 ~~[G.]~~ E. The department of health shall admit a  
20 defendant for competency restoration within thirty days of  
21 receipt of the court's order of commitment of an incompetent  
22 defendant and of the necessary and available documents  
23 reasonably required for admission pursuant to written policies  
24 adopted by the secretary of health or [his designee, the  
25 defendant shall be admitted to a facility designated for the

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

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

22 E.) F. Within thirty days of [~~an incompetent~~] a  
 23 defendant's admission to a department of health facility [~~to~~  
 24 ~~undergo treatment to attain competency to proceed in a criminal~~  
 25 ~~case, the person supervising the defendant's treatment] or an~~

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1 inpatient psychiatric hospital for competency restoration, the  
2 department shall file with the [~~district~~] court, the state and  
3 the defense:

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

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

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

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

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

21 "31-9-1.3. DETERMINATION OF COMPETENCY--NINETY-DAY  
22 REVIEW--REPORTS--CONTINUING TREATMENT.--

23 A. Within ninety days [~~of the entry of the order~~  
24 ~~committing an incompetent defendant to undergo treatment, the~~  
25 ~~district court~~] after a court issues an order committing a

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1 defendant for competency restoration, the court, sitting  
 2 without a jury, shall conduct a review hearing, unless waived  
 3 by the defense, and shall determine:

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

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

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

16 B. At least seven days prior to the review hearing,  
 17 the treatment supervisor shall submit a written progress report  
 18 to the court, the state and the defense [~~indicating]~~ that  
 19 includes:

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

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

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

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

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

20 C. If the district court finds that the defendant  
21 [~~to be competent~~] is restored to competency, the district court  
22 shall set the matter for trial; provided that if the defendant  
23 is in need of continued care or treatment and the [~~supervisor~~  
24 ~~of the defendant's treatment~~] department of health agrees to  
25 continue to provide it, the district court may [~~enter any~~]



1 order ~~[it deems appropriate for the]~~ continued care or  
 2 treatment of the defendant ~~[by the facility or program pending]~~  
 3 until the conclusion of the criminal proceedings.

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

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

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

19 E. If the district court finds that the defendant  
 20 ~~[is still]~~ remains not competent, that ~~[he]~~ the defendant is  
 21 not making progress toward ~~[attaining]~~ being restored to  
 22 competency and that there is not a substantial probability that  
 23 ~~[he]~~ the defendant will ~~[attain]~~ be restored to competency  
 24 within nine months from the date ~~[of the original finding of~~  
 25 ~~incompetency the district court]~~ the court determined the

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1 defendant is not competent to stand trial, the court shall  
2 proceed pursuant to Section 31-9-1.4 NMSA 1978. However, if  
3 the defendant is in need of continued care and treatment and  
4 the [~~supervisor of the defendant's treatment~~] department of  
5 health agrees to continue to provide it, the district court may  
6 [~~enter any~~] order [~~it deems appropriate for the~~] continued care  
7 or treatment of the defendant by the [~~facility or program~~  
8 ~~pending~~] department until the conclusion of the criminal  
9 proceedings."

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

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

22 A. [~~hear the matter pursuant to~~] hold a criminal  
23 commitment hearing in accordance with Section 31-9-1.5 NMSA  
24 1978 within three months if the defendant is charged with [~~a~~  
25 ~~felony that involves the infliction of great bodily harm on~~

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1 ~~another person; a felony that involves the use of a firearm;~~  
 2 ~~aggravated arson, as provided in Section 30-17-6 NMSA 1978;~~  
 3 ~~criminal sexual penetration, as provided in Section 30-9-11~~  
 4 ~~NMSA 1978; or criminal sexual contact of a minor, as provided~~  
 5 ~~in Section 30-9-13 NMSA 1978];~~

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

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

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

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

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

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

19 (7) human trafficking, as provided in Section  
 20 30-52-1 NMSA 1978;

21 (8) aggravated arson, as provided in Section  
 22 30-17-6 NMSA 1978; or

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

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

3 C. dismiss the criminal case without prejudice in  
4 the interest of justice; provided that if the treatment  
5 supervisor [~~has issued a report finding~~] reports to the court  
6 that the defendant satisfies the criteria for involuntary  
7 commitment [~~contained~~] in accordance with the Mental Health and  
8 Developmental Disabilities Code, the department of health shall  
9 [~~commence~~] initiate those proceedings [~~pursuant to Chapter 43,~~  
10 ~~Article 1 NMSA 1978~~], and the court may order the defendant  
11 confined for a maximum of seven days to facilitate [~~preparation~~  
12 ~~and~~] the initiation of [~~a petition pursuant to the Mental~~  
13 ~~Health and Developmental Disabilities code. The district court~~  
14 ~~may refer the defendant to the district attorney for possible~~  
15 ~~initiation of proceedings under the Mental Health and~~  
16 ~~Developmental Disabilities Code~~] those proceedings; and  
17 provided further that the district attorney may initiate  
18 involuntary commitment proceedings in the department's stead."

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

22 "31-9-1.5. DETERMINATION OF COMPETENCY--CRIMINAL  
23 COMMITMENT--EVIDENTIARY HEARING.--

24 A. [~~As provided for in Subsection A of Section~~  
25 ~~31-9-1.4 NMSA 1978, A~~] If the court determines that there is

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1 not a substantial probability that a defendant who is not  
 2 competent to stand trial will be restored to competency, a  
 3 commitment hearing to determine the sufficiency of the evidence  
 4 of the defendant's guilt shall be held if [the case is not  
 5 dismissed and if] the defendant is charged with [a felony that  
 6 involves the infliction of great bodily harm on another person;  
 7 a felony that involves the use of a firearm; aggravated arson,  
 8 as provided in Section 30-17-6 NMSA 1978; criminal sexual  
 9 penetration, as provided in Section 30-9-11 NMSA 1978; or  
 10 criminal sexual contact of a minor, as provided in Section  
 11 30-9-13 NMSA 1978. Such]:

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

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

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

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

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

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

25 (7) human trafficking, as provided in Section

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1 30-52-1 NMSA 1978;

2 (8) aggravated arson, as provided in Section  
3 30-17-6 NMSA 1978; or

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

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

16 ~~[B.]~~ C. If the evidence does not establish by clear  
17 and convincing evidence that the defendant committed ~~[a felony~~  
18 ~~that involves the infliction of great bodily harm on another~~  
19 ~~person; a felony that involves the use of a firearm; aggravated~~  
20 ~~arson, as provided in Section 30-17-6 NMSA 1978; criminal~~  
21 ~~sexual penetration, as provided in Section 30-9-11 NMSA 1978;~~  
22 ~~or criminal sexual contact of a minor, as provided in Section~~  
23 ~~30-9-13 NMSA 1978]~~ the crime charged, the district court shall  
24 dismiss the criminal case with prejudice. ~~[however, nothing in~~  
25 ~~this section shall prevent the state from initiating~~

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1 ~~proceedings under the provisions of the Mental Health and~~  
 2 ~~Developmental Disabilities Code, and the court may order the~~  
 3 ~~defendant confined for a maximum of seven days to facilitate~~  
 4 ~~preparation and initiation of a petition pursuant to that code.~~

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

15           D.] E. If the district court finds by clear and  
 16 convincing evidence that the defendant committed [~~a felony that~~  
 17 ~~involves the infliction of great bodily harm on another person;~~  
 18 ~~a felony that involves the use of a firearm; aggravated arson;~~  
 19 ~~as provided in Section 30-17-6 NMSA 1978; criminal sexual~~  
 20 ~~penetration, as provided in Section 30-9-11 NMSA 1978; or~~  
 21 ~~criminal sexual contact of a minor, as provided in Section~~  
 22 ~~30-9-13 NMSA 1978] the crime charged and enters a finding that  
 23 the defendant remains [~~incompetent to proceed~~] not competent to  
 24 stand trial and remains dangerous [~~pursuant to~~] as determined  
 25 by the court in accordance with Section 31-9-1.2 NMSA 1978:~~

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

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

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

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

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

21 (b) if the defendant continues to ~~[be~~  
22 ~~incompetent to proceed in a criminal case]~~ remain not competent  
23 to stand trial and dangerous ~~[pursuant to]~~ in accordance with  
24 Section 31-9-1.2 NMSA 1978, the court shall review the  
25 defendant's competency and dangerousness every two years until

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1 expiration of the period of commitment equal to the maximum  
 2 sentence to which the defendant would have been subject had [he  
 3 or she] the defendant been convicted in a criminal proceeding;  
 4 [~~provided that if the treatment supervisor recommends that the~~  
 5 ~~defendant be committed pursuant to the Mental Health and~~  
 6 ~~Developmental Disabilities Code, the court may at any time~~  
 7 ~~proceed pursuant to Subsection C of Section 31-9-1.4 NMSA 1978]~~  
 8 and

9 (c) [~~if the defendant is not committed~~  
 10 ~~pursuant to Sections 31-9-1 through 31-9-1.5 NMSA 1978 or]~~ if  
 11 the court finds upon its two-year review hearing that the  
 12 defendant is no longer dangerous, [~~as defined in Section~~  
 13 ~~31-9-1.2 NMSA 1978]~~ the defendant shall be released.

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

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

3           "31-9-1.6. HEARING TO DETERMINE DEVELOPMENTAL OR  
4 INTELLECTUAL DISABILITY.--

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

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

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1 sixty days of receipt of the court's notification, the  
 2 department of health shall determine whether the defendant  
 3 presents a likelihood of serious harm to the defendant's self  
 4 or others.

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

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

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

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

25 (4) criminal sexual contact of a minor, as

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1 provided in Section 30-9-13 NMSA 1978;

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

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

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

8 (8) aggravated arson, as provided in Section  
9 30-17-6 NMSA 1978; or

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

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

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

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1 disability."

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

4 "31-9-2. COMPETENCY EVALUATION--MENTAL OR FUNCTIONAL  
5 EXAMINATION.--

6 A. Upon motion of any defendant, the court shall  
7 order a mental examination of the defendant before making any  
8 determination of the defendant's competency. [~~under Sections~~  
9 ~~41-13-3 or 41-13-3.1 New Mexico Statutes Annotated, 1953~~  
10 ~~Compilation. Where~~] If the defendant is determined to be  
11 indigent, the court shall pay for the costs of the examination  
12 from funds available to the court.

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

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

23 "43-1B-4. PETITION TO THE COURT.--

24 A. A petition for an order authorizing assisted  
25 outpatient treatment may be filed in the district court for the

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~~[bracketed material] = delete~~

1 county in which the respondent is present or reasonably  
2 believed to be present; provided that such district court is a  
3 party to a memorandum of understanding with a participating  
4 municipality or county.

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

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

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

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

12 provided that the sibling or child is eighteen years of age or  
13 older;

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

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

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

23 (7) a surrogate decision-maker; or

24 (8) a district attorney or the attorney

25 general.

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

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

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

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

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

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

21 (2) no more than ten days prior to the filing  
22 of the petition, the qualified professional or the qualified  
23 professional's designee has unsuccessfully attempted to  
24 persuade the respondent to submit to an examination, that the  
25 qualified professional has reason to believe that the

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1 respondent meets the criteria for assisted outpatient treatment  
2 and that the qualified professional is willing and able to  
3 examine the respondent and testify at the hearing on the  
4 petition either in person or by contemporaneous transmission  
5 from a different location."

6 SECTION 10. Section 30-7-16 NMSA 1978 (being Laws 1981,  
7 Chapter 225, Section 1, as amended) is amended to read:

8 "30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT,  
9 TRANSPORTATION OR POSSESSION BY CERTAIN PERSONS--PENALTY.--

10 A. It is unlawful for the following persons to  
11 receive, transport or possess a firearm or destructive device  
12 in this state:

13 (1) a felon;

14 (2) a person subject to an order of protection  
15 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978; or

16 (3) a person convicted of any of the following  
17 crimes:

18 (a) battery against a household member  
19 pursuant to Section 30-3-15 NMSA 1978;

20 (b) criminal damage to property of a  
21 household member pursuant to Section 30-3-18 NMSA 1978;

22 (c) a first offense of stalking pursuant  
23 to Section 30-3A-3 NMSA 1978; or

24 (d) a crime listed in 18 U.S.C. 921.

25 B. A felon found in possession of a firearm shall

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1 be guilty of a [~~third~~] second degree felony and shall be  
2 sentenced to a minimum term of nine years imprisonment.

3 C. A serious violent felon that is found to be in  
4 possession of a firearm shall be guilty of a [~~third~~] second  
5 degree felony, and notwithstanding the provisions of Section  
6 31-18-15 NMSA 1978, shall be sentenced to a basic term of [~~six~~]  
7 twelve years imprisonment.

8 D. Any person subject to an order of protection  
9 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978 or convicted  
10 of a crime listed in Paragraph (3) of Subsection A of this  
11 section who receives, transports or possesses a firearm or  
12 destructive device is guilty of a misdemeanor.

13 E. A person convicted under this section is not  
14 eligible for earned meritorious deductions pursuant to Section  
15 33-2-34 NMSA 1978.

16 [~~E.~~] F. As used in this section:

17 (1) except as provided in Paragraph (2) of  
18 this subsection, "destructive device" means:

19 (a) any explosive, incendiary or poison  
20 gas: 1) bomb; 2) grenade; 3) rocket having a propellant charge  
21 of more than four ounces; 4) missile having an explosive or  
22 incendiary charge of more than one-fourth ounce; 5) mine; or 6)  
23 similar device;

24 (b) any type of weapon by whatever name  
25 known that will, or that may be readily converted to, expel a

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1 projectile by the action of an explosive or other propellant,  
2 the barrel or barrels of which have a bore of more than one-  
3 half inch in diameter, except a shotgun or shotgun shell that  
4 is generally recognized as particularly suitable for sporting  
5 purposes; or

6 (c) any combination of parts either  
7 designed or intended for use in converting any device into a  
8 destructive device as defined in this paragraph and from which  
9 a destructive device may be readily assembled;

10 (2) the term "destructive device" does not  
11 include any device that is neither designed nor redesigned for  
12 use as a weapon or any device, although originally designed for  
13 use as a weapon, that is redesigned for use as a signaling,  
14 pyrotechnic, line throwing, safety or similar device;

15 (3) "felon" means a person convicted of a  
16 felony offense by a court of the United States or of any state  
17 or political subdivision thereof and:

18 (a) less than ten years have passed  
19 since the person completed serving a sentence or period of  
20 probation for the felony conviction, whichever is later;

21 (b) the person has not been pardoned for  
22 the felony conviction by the proper authority; and

23 (c) the person has not received a  
24 deferred sentence;

25 (4) "firearm" means any weapon that will or is

1 designed to or may readily be converted to expel a projectile  
2 by the action of an explosion or the frame or receiver of any  
3 such weapon; and

4 (5) "serious violent felon" means a person  
5 convicted of an offense enumerated in Subparagraphs (a) through  
6 (n) of Paragraph (4) of Subsection L of Section 33-2-34 NMSA  
7 1978; provided that:

8 (a) less than ten years have passed  
9 since the person completed serving a sentence or a period of  
10 probation for the felony conviction, whichever is later;

11 (b) the person has not been pardoned for  
12 the felony conviction by the proper authority; and

13 (c) the person has not received a  
14 deferred sentence and completed the total term of deferment as  
15 provided in Section 31-20-9 NMSA 1978."

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

20 "30-16D-1. UNLAWFUL TAKING OF A VEHICLE OR MOTOR  
21 VEHICLE.--

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

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1 vehicle or motor vehicle is guilty of a  
2 ~~[(1) fourth degree felony for a first offense;~~  
3 ~~(2) third degree felony for a second offense;~~  
4 and  
5 ~~(3) second degree felony for a third or~~  
6 ~~subsequent offense]~~ felony as provided in Section 30-16D-4.1  
7 NMSA 1978.

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

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

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

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1 "30-16D-2. EMBEZZLEMENT OF A VEHICLE OR MOTOR VEHICLE.--

2 A. Embezzlement of a vehicle or motor vehicle  
3 consists of a person embezzling or converting to the person's  
4 own use a vehicle or motor vehicle as defined by the Motor  
5 Vehicle Code, with which the person has been entrusted, with  
6 the fraudulent intent to deprive the owner of the vehicle or  
7 motor vehicle.

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

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

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

12 and

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

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

19 "30-16D-3. FRAUDULENTLY OBTAINING A VEHICLE OR MOTOR  
20 VEHICLE.--

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

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

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

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

5 and

6                   ~~(3) second degree felony for a third or~~

7 ~~subsequent offense] felony as provided in Section 30-16D-4.1~~

8 NMSA 1978."

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

13           "30-16D-4. RECEIVING OR TRANSFERRING STOLEN VEHICLES OR  
14 MOTOR VEHICLES.--

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

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1           B. Whoever commits receiving or transferring a  
 2 stolen vehicle or motor vehicle is guilty of a  
 3           ~~[(1) fourth degree felony for a first offense;~~  
 4           ~~(2) third degree felony for a second offense;~~  
 5 and  
 6           ~~(3) second degree felony for a third or~~  
 7 ~~subsequent offense] felony as provided in Section 30-16D-4.1~~  
 8 NMSA 1978."

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

11           "30-16D-4.1. [NEW MATERIAL] PENALTIES.--

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

- 14                   (1) fourth degree felony for a first offense;  
 15                   (2) third degree felony for a second offense,  
 16 regardless of which provision was the first offense; and

17                   (3) second degree felony for a third or  
 18 subsequent offense, regardless of which provision was the first  
 19 or second offense.

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

24           SECTION 16. Section 30-31-20 NMSA 1978 (being Laws 1972,  
 25 Chapter 84, Section 20, as amended) is amended to read:

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1 "30-31-20. TRAFFICKING CONTROLLED SUBSTANCES--  
2 VIOLATION.--

3 A. As used in the Controlled Substances Act,  
4 "traffic" means the:

5 (1) manufacture of a controlled substance  
6 enumerated in Schedules I through V or a controlled substance  
7 analog [~~as defined in Subsection W of Section 30-31-2 NMSA~~  
8 ~~1978~~];

9 (2) distribution, sale, barter or giving away  
10 of:

11 (a) a controlled substance enumerated in  
12 Schedule I or II that is a narcotic drug;

13 (b) a controlled substance analog of a  
14 controlled substance enumerated in Schedule I or II that is a  
15 narcotic drug; or

16 (c) methamphetamine, its salts, isomers  
17 and salts of isomers; or

18 (3) possession with intent to distribute:

19 (a) a controlled substance enumerated in  
20 Schedule I or II that is a narcotic drug;

21 (b) a controlled substance analog of a  
22 controlled substance enumerated in Schedule I or II that is a  
23 narcotic drug; or

24 (c) methamphetamine, its salts, isomers  
25 and salts of isomers.

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1           B. Except as authorized by the Controlled  
2 Substances Act, it is unlawful for a person to intentionally  
3 traffic. A person who violates this subsection is:

4                   (1) for the first offense, guilty of a second  
5 degree felony, and [~~shall be sentenced pursuant to~~]  
6 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
7 shall be sentenced to a term of imprisonment of nine years,  
8 three of which shall not be suspended, deferred or taken under  
9 advisement; and

10                   (2) for the second and subsequent offenses,  
11 guilty of a first degree felony and shall be sentenced pursuant  
12 to the provisions of Section 31-18-15 NMSA 1978.

13           C. A person who violates Subsection B of this  
14 section and the violation results in the death of a human being  
15 is guilty of a first degree felony and shall be sentenced  
16 pursuant to the provisions of Section 31-18-15 NMSA 1978.

17           [~~G.~~] D. A person who knowingly violates Subsection  
18 B of this section within a drug-free school zone excluding  
19 private property residentially zoned or used primarily as a  
20 residence is guilty of a first degree felony and shall be  
21 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
22 1978."

23           SECTION 17. Section 30-31-21 NMSA 1978 (being Laws 1972,  
24 Chapter 84, Section 21, as amended) is amended to read:

25           "30-31-21. DISTRIBUTION TO A MINOR.--

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1           A. Except as authorized by the Controlled  
2 Substances Act, no person who is eighteen years of age or older  
3 shall intentionally distribute a controlled substance to a  
4 person under the age of eighteen years. [~~Any~~]

5           B. Except as provided in Subsection C of this  
6 section, a person who violates this section with respect to a  
7 controlled substance enumerated in Schedule I, II, III or IV or  
8 a controlled substance analog of any controlled substance  
9 enumerated in Schedule I, II, III or IV is:

10                   (1) for the first offense, guilty of a second  
11 degree felony and shall be sentenced pursuant to the provisions  
12 of Section 31-18-15 NMSA 1978; and

13                   (2) for the second and subsequent offenses,  
14 guilty of a first degree felony and shall be sentenced pursuant  
15 to the provisions of Section 31-18-15 NMSA 1978.

16           C. A person who violates this section with respect  
17 to a controlled substance enumerated in Schedule I or II that  
18 is a narcotic drug, a controlled substance analog of a  
19 controlled substance enumerated in Schedule I or II that is a  
20 narcotic drug, or methamphetamine, its salts, isomers and salts  
21 of isomers is guilty of a first degree felony and shall be  
22 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
23 1978."

24           SECTION 18. Section 32A-2-3 NMSA 1978 (being Laws 1993,  
25 Chapter 77, Section 32, as amended) is amended to read:

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1 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

2 A. "delinquent act" means an act committed by a  
3 child that would be designated as a crime under the law if  
4 committed by an adult, not including a violation of Section  
5 30-9-2 NMSA 1978, including the following offenses:

6 (1) any of the following offenses pursuant to  
7 municipal traffic codes or the Motor Vehicle Code:

8 (a) driving while under the influence of  
9 intoxicating liquor or drugs;

10 (b) failure to stop in the event of an  
11 accident causing ~~death~~ personal injury or damage to property;

12 (c) unlawful taking of a vehicle or  
13 motor vehicle;

14 (d) receiving or transferring of a  
15 stolen vehicle or motor vehicle;

16 ~~[(e) homicide by vehicle;~~

17 ~~(f)]~~ (e) injuring or tampering with a  
18 vehicle;

19 ~~[(g)]~~ (f) altering or changing of an  
20 engine number or other vehicle identification numbers;

21 ~~[(h)]~~ (g) altering or forging of a  
22 driver's license or permit or any making of a fictitious  
23 license or permit;

24 ~~[(i)]~~ (h) reckless driving;

25 ~~[(j)]~~ (i) driving with a suspended or

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1       revoked license; or

2                               ~~(k)~~ (j) an offense punishable as a  
3       felony;

4                               (2) buying, attempting to buy, receiving,  
5       possessing or being served any alcoholic liquor or being  
6       present in a licensed liquor establishment, other than a  
7       restaurant or a licensed retail liquor establishment, except in  
8       the presence of the child's parent, guardian, custodian or  
9       adult spouse. As used in this paragraph, "restaurant" means an  
10      establishment where meals are prepared and served primarily for  
11      on-premises consumption and that has a dining room, a kitchen  
12      and the employees necessary for preparing, cooking and serving  
13      meals. "Restaurant" does not include an establishment, as  
14      defined in regulations promulgated by the director of the  
15      special investigations unit of the New Mexico state police  
16      division of the department of public safety, that serves only  
17      hamburgers, sandwiches, salads and other fast foods;

18                               (3) a violation of Section 30-29-2 NMSA 1978,  
19      regarding the illegal use of a glue, aerosol spray product or  
20      other chemical substance;

21                               (4) a violation of the Controlled Substances  
22      Act;

23                               (5) escape from the custody of a law  
24      enforcement officer or a juvenile probation or parole officer  
25      or from any placement made by the department by a child who has

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1 been adjudicated a delinquent child;

2 (6) a violation of Section 30-15-1.1 NMSA 1978  
3 regarding unauthorized graffiti on personal or real property;

4 (7) a violation of an order of protection  
5 issued pursuant to the provisions of the Family Violence  
6 Protection Act; or

7 (8) trafficking cannabis as provided in  
8 Section 26-2C-28 NMSA 1978;

9 B. "delinquent child" means a child who has  
10 committed a delinquent act;

11 C. "delinquent offender" means a delinquent child  
12 who is subject to juvenile sanctions only and who is not a  
13 youthful offender or a serious youthful offender;

14 D. "detention facility" means a place where a child  
15 may be detained under the Children's Code pending a court  
16 hearing and does not include a facility for the care and  
17 rehabilitation of an adjudicated delinquent child;

18 E. "felony" means an act that would be a felony if  
19 committed by an adult;

20 F. "misdemeanor" means an act that would be a  
21 misdemeanor or petty misdemeanor if committed by an adult;

22 G. "restitution" means financial reimbursement by  
23 the child to the victim or community service imposed by the  
24 court and is limited to easily ascertainable damages for injury  
25 to or loss of property, actual expenses incurred for medical,

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1 psychiatric and psychological treatment for injury to a person  
2 and lost wages resulting from physical injury, which are a  
3 direct and proximate result of a delinquent act. "Restitution"  
4 does not include reimbursement for damages for mental anguish,  
5 pain and suffering or other intangible losses. As used in this  
6 subsection, "victim" means a person who is injured or suffers  
7 damage of any kind by an act that is the subject of a complaint  
8 or referral to law enforcement officers or juvenile probation  
9 authorities. Nothing contained in this definition limits or  
10 replaces the provisions of Subsections A and B of Section  
11 32A-2-27 NMSA 1978;

12 H. "serious youthful offender" is not a delinquent  
13 child and means [an individual fifteen] a child fourteen to  
14 eighteen years of age who is charged with [and indicted or  
15 bound over for trial for first degree murder. A "serious  
16 youthful offender" is not a delinquent child as defined  
17 pursuant to the provisions of this section] at least one of the  
18 following crimes:

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

21 (2) voluntary manslaughter, as provided in  
22 Section 30-2-3 NMSA 1978;

23 (3) robbery while armed with a deadly weapon,  
24 as provided in Section 30-16-2 NMSA 1978; or

25 (4) shooting at a dwelling or occupied

1 building that results in great bodily harm to another person or  
 2 shooting at or from a motor vehicle that results in great  
 3 bodily harm to another person, as provided in Section 30-3-8  
 4 NMSA 1978;

5 I. "supervised release" means the release of a  
 6 juvenile, whose term of commitment has not expired, from a  
 7 facility for the care and rehabilitation of adjudicated  
 8 delinquent children, with specified conditions to protect  
 9 public safety and promote successful transition and  
 10 reintegration into the community. A juvenile on supervised  
 11 release is subject to monitoring by the department until the  
 12 term of commitment has expired and may be returned to custody  
 13 for violating conditions of release; and

14 J. "youthful offender" means a delinquent child  
 15 subject to adult or juvenile sanctions who is ~~[(+)]~~ fourteen to  
 16 eighteen years of age ~~[at the time of the offense and who is~~  
 17 ~~adjudicated for at least one of the following offenses:~~

18 ~~(a) second degree murder, as provided in~~  
 19 ~~Section 30-2-1 NMSA 1978] and is:~~

20 (1) charged with at least one of the following  
 21 offenses:

22 ~~[(b)]~~ (a) assault with intent to commit  
 23 a violent felony, as provided in Section 30-3-3 NMSA 1978;

24 ~~[(e)]~~ (b) kidnapping, as provided in  
 25 Section 30-4-1 NMSA 1978;

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1                   ~~[(d)]~~ (c) aggravated battery, as  
2 provided in Subsection C of Section 30-3-5 NMSA 1978;

3                   ~~[(e)]~~ (d) aggravated battery against a  
4 household member, as provided in Subsection C of Section  
5 30-3-16 NMSA 1978;

6                   ~~[(f)]~~ (e) aggravated battery upon a  
7 peace officer, as provided in Subsection C of Section 30-22-25  
8 NMSA 1978;

9                   ~~[(g)]~~ (f) shooting at a dwelling or  
10 occupied building that does not result in great bodily harm to  
11 another person or shooting at or from a motor vehicle that does  
12 not result in great bodily harm to another person, as provided  
13 in Section 30-3-8 NMSA 1978;

14                   ~~[(h)]~~ (g) dangerous use of explosives,  
15 as provided in Section 30-7-5 NMSA 1978;

16                   ~~[(i)]~~ (h) criminal sexual penetration,  
17 as provided in Section 30-9-11 NMSA 1978;

18                   ~~[(j)]~~ (i) robbery, as provided in  
19 Section 30-16-2 NMSA 1978;

20                   ~~[(k)]~~ (j) aggravated burglary, as  
21 provided in Section 30-16-4 NMSA 1978;

22                   ~~[(l)]~~ (k) aggravated arson, as provided  
23 in Section 30-17-6 NMSA 1978; ~~[(o)]~~

24                   ~~[(m)]~~ (l) abuse of a child that results  
25 in great bodily harm or death to the child, as provided in

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1 Section 30-6-1 NMSA 1978;

2 (m) homicide by vehicle, as provided in  
3 Section 66-8-101 NMSA 1978;

4 (n) involuntary manslaughter, as  
5 provided in Section 30-2-3 NMSA 1978; or

6 (o) failing to stop a vehicle when the  
7 vehicle is involved in an accident that results in injury or  
8 death, as provided in Section 66-7-201 NMSA 1978; or

9 (2) [~~fourteen to eighteen years of age at the~~  
10 ~~time of the offense, who is~~] adjudicated for [any] a felony  
11 offense and who has had three prior, separate felony  
12 adjudications within a three-year time period immediately  
13 preceding the instant offense; provided that:

14 (a) the felony adjudications relied upon  
15 as prior adjudications shall not have arisen out of the same  
16 transaction or occurrence or series of events related in time  
17 and location; and

18 (b) successful completion of a consent  
19 [~~decrees is~~] decree shall not be considered a prior  
20 adjudication for the purposes of this paragraph. [~~or~~

21 ~~(3) fourteen years of age and who is~~  
22 ~~adjudicated for first degree murder, as provided in Section~~  
23 ~~30-2-1 NMSA 1978]"~~

24 SECTION 19. Section 66-8-103 NMSA 1978 (being Laws 1967,  
25 Chapter 160, Section 1) is amended to read:

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1           "66-8-103. CHEMICAL BLOOD TESTS--PERSONS QUALIFIED TO  
2 PERFORM TESTS--RELIEF FROM LIABILITY.--Only a physician,  
3 licensed professional or practical nurse, [~~or laboratory~~  
4 ~~technician~~] emergency medical technician or certified  
5 phlebotomist or a technologist employed by a hospital or  
6 physician shall withdraw blood from [~~any~~] a person in the  
7 performance of a [~~blood-alcohol~~] chemical blood test. No such  
8 physician, nurse, technician, phlebotomist or technologist who  
9 withdraws blood from [~~any~~] a person in the performance of a  
10 [~~blood-alcohol~~] chemical blood test that has been directed by  
11 [~~any~~] a police officer or by [~~any~~] a judicial or probation  
12 officer shall be held liable in any civil or criminal action  
13 for assault, battery, false imprisonment or any conduct of  
14 [~~any~~] a police officer except for negligence, nor shall [~~any~~] a  
15 person assisting in the performance of [~~such a~~] the test or  
16 [~~any~~] a hospital wherein blood is withdrawn in the performance  
17 of [~~such a~~] the test be subject to civil or criminal liability  
18 for assault, battery, false imprisonment or any conduct of  
19 [~~any~~] a police officer except for negligence."

20           SECTION 20. Section 66-8-104 NMSA 1978 (being Laws 1978,  
21 Chapter 35, Section 512) is amended to read:

22           "66-8-104. [~~BLOOD-ALCOHOL~~] CHEMICAL BLOOD TESTS--[~~POLICE,~~  
23 ~~JUDICIAL OR PROBATION~~] OFFICER UNAUTHORIZED TO MAKE ARREST OR  
24 DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL DUTIES  
25 [~~AUTHORIZED BY LAW~~].--Nothing in Sections [~~64-8-103 or 64-8-104~~

1 ~~NMSA 1953]~~ 66-8-103 or 66-8-104 NMSA 1978 is intended to  
 2 authorize [~~any~~] a police officer or [~~any~~] a judicial or  
 3 probation officer to make [~~any~~] an arrest or to direct the  
 4 performance of a [~~blood-alcohol~~] chemical blood test except in  
 5 the performance of [~~his~~] that officer's official duties and as  
 6 otherwise authorized by law."

7 SECTION 21. Section 66-8-111 NMSA 1978 (being Laws 1978,  
 8 Chapter 35, Section 519, as amended) is amended to read:

9 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--  
 10 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

11 A. If a person under arrest for violation of an  
 12 offense enumerated in the Motor Vehicle Code refuses upon  
 13 request of a law enforcement officer to submit to chemical  
 14 tests designated by the law enforcement agency as provided in  
 15 Section 66-8-107 NMSA 1978, none shall be administered except  
 16 when a municipal judge, magistrate or district judge issues a  
 17 search warrant authorizing chemical tests as provided in  
 18 Section 66-8-107 NMSA 1978 upon finding in a law enforcement  
 19 officer's written affidavit that there is probable cause to  
 20 believe that the person has driven a motor vehicle while under  
 21 the influence of alcohol or a controlled substance thereby  
 22 causing the death or great bodily injury of another person, or  
 23 there is probable cause to believe that the person has  
 24 committed a felony or misdemeanor while under the influence of  
 25 alcohol or a controlled substance and that chemical tests as

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1 provided in Section 66-8-107 NMSA 1978 will produce material  
2 evidence in a [~~felony~~] criminal prosecution.

3 B. If a person under arrest for violation of an  
4 offense enumerated in the Motor Vehicle Code refuses upon  
5 request of a law enforcement officer to submit to chemical  
6 tests designated by the law enforcement agency as provided in  
7 Subsection A of this section and the person does not cause  
8 great bodily injury of another person or there is probable  
9 cause to believe the person has committed a misdemeanor while  
10 under the influence of alcohol or a controlled substance, the  
11 person's charge may be aggravated pursuant to the provisions of  
12 Section 66-8-102 NMSA 1978. The department, upon receipt of a  
13 statement signed under penalty of perjury from a law  
14 enforcement officer stating the officer's reasonable grounds to  
15 believe the arrested person had been driving a motor vehicle  
16 within this state while under the influence of intoxicating  
17 liquor or drugs and that, upon request, the person refused to  
18 submit to a chemical test after being advised that failure to  
19 submit could result in revocation of the person's privilege to  
20 drive, shall revoke the person's New Mexico driver's license or  
21 any nonresident operating privilege for a period of one year or  
22 until all conditions for license reinstatement are met,  
23 whichever is later.

24 C. The department, upon receipt of a statement  
25 signed under penalty of perjury from a law enforcement officer

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1 stating the officer's reasonable grounds to believe the  
 2 arrested person had been driving a motor vehicle within this  
 3 state while under the influence of intoxicating liquor and that  
 4 the person submitted to chemical testing pursuant to Section  
 5 66-8-107 NMSA 1978 and the test results indicated an alcohol  
 6 concentration in the person's blood or breath of eight one  
 7 hundredths or more if the person is twenty-one years of age or  
 8 older, four one hundredths or more if the person is driving a  
 9 commercial motor vehicle or two one hundredths or more if the  
 10 person is less than twenty-one years of age, shall revoke the  
 11 person's license or permit to drive or ~~his~~ the person's  
 12 nonresident operating privilege for a period of:

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

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

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

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1 subsection.

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

6 E. If the person subject to the revocation  
7 provisions of this section is a resident or will become a  
8 resident within one year and is without a license to operate a  
9 motor vehicle in this state, the department shall deny the  
10 issuance of a license to [~~him~~] the person for the appropriate  
11 period of time as provided in Subsections B and C of this  
12 section.

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

24 SECTION 22. Section 66-8-111.1 NMSA 1978 (being Laws  
25 1984, Chapter 72, Section 7, as amended) is amended to read:

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1 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR  
 2 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO  
 3 HEARING.--

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

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

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

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

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

21 B. The written notice of revocation and of a right  
 22 to a hearing served on the driver shall be a temporary license  
 23 valid for twenty days or, if the driver requests a hearing  
 24 pursuant to Section 66-8-112 NMSA 1978, valid until the date  
 25 the administrative hearings office issues the order following

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1 that hearing; provided that a written notice of revocation and  
2 right to a hearing shall not be a temporary license for a  
3 driver without any otherwise valid driving privileges in this  
4 state.

5 C. The law enforcement officer shall send to the  
6 department the signed statement required pursuant to Section  
7 66-8-111 NMSA 1978."

8 SECTION 23. Section 66-13-1 NMSA 1978 (being Laws 2003,  
9 Chapter 241, Section 1) is amended to read:

10 "66-13-1. SHORT TITLE.--~~[Sections 1 through 13 of this~~  
11 ~~act]~~ Chapter 66, Article 13 NMSA 1978 may be cited as the  
12 "Boating While Intoxicated Act"."

13 SECTION 24. Section 66-13-6 NMSA 1978 (being Laws 2003,  
14 Chapter 241, Section 6) is amended to read:

15 "66-13-6. [~~BLOOD-ALCOHOL~~] CHEMICAL BLOOD TESTS--PERSONS  
16 QUALIFIED TO PERFORM TESTS--RELIEF FROM CIVIL AND CRIMINAL  
17 LIABILITY.--Only a physician, licensed professional or  
18 practical nurse, [~~or laboratory technician~~] emergency medical  
19 technician or certified phlebotomist or a technologist employed  
20 by a hospital or physician shall withdraw blood from a person  
21 in the performance of a [~~blood-alcohol or drug~~] chemical blood  
22 test. A physician, nurse, technician, phlebotomist or  
23 technologist who withdraws blood from a person in the  
24 performance of a [~~blood-alcohol or drug~~] chemical blood test  
25 that has been directed by a law enforcement officer, or by a

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1 judicial or probation officer, shall not be held liable in a  
 2 civil or criminal action for assault, battery, false  
 3 imprisonment or any conduct of a law enforcement officer,  
 4 except for negligence, nor shall a person assisting in the  
 5 performance of the test, or a hospital wherein blood is  
 6 withdrawn in the performance of the test, be subject to civil  
 7 or criminal liability for assault, battery, false imprisonment  
 8 or any conduct of a law enforcement officer, except for  
 9 negligence."

10 SECTION 25. Section 66-13-7 NMSA 1978 (being Laws 2003,  
 11 Chapter 241, Section 7) is amended to read:

12 "66-13-7. [~~BLOOD-ALCOHOL~~] CHEMICAL BLOOD TEST--~~[LAW~~  
 13 ~~ENFORCEMENT, JUDICIAL OR PROBATION]~~ OFFICER UNAUTHORIZED TO  
 14 MAKE ARREST OR DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL  
 15 DUTIES [~~AUTHORIZED BY LAW~~].--Nothing in the Boating While  
 16 Intoxicated Act is intended to authorize a law enforcement  
 17 officer, or a judicial or probation officer, to make an arrest  
 18 or direct the performance of a [~~blood-alcohol or drug~~] chemical  
 19 blood test, except in the performance of [~~his~~] that officer's  
 20 official duties or as otherwise authorized by law."

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