

HOUSE BILL 4

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

INTRODUCED BY

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AN ACT

RELATING TO CRIMINAL COMPETENCY; PROVIDING THAT A REPORT OF A  
COMPETENCY EVALUATION SHALL INCLUDE A QUALIFIED PROFESSIONAL'S  
OPINION AS TO WHETHER A DEFENDANT IS COMPETENT TO STAND TRIAL  
AND, IF THE PROFESSIONAL BELIEVES THE DEFENDANT IS NOT  
COMPETENT, TO INCLUDE AN OPINION AS TO WHETHER THE DEFENDANT  
SATISFIES THE CRITERIA FOR INVOLUNTARY COMMITMENT OR ASSISTED  
OUTPATIENT TREATMENT; PROVIDING FOR COMMUNITY-BASED COMPETENCY  
RESTORATION FOR NON-DANGEROUS DEFENDANTS; EXPANDING THE LIST OF  
CRIMES FOR WHICH A DEFENDANT MAY BE CRIMINALLY COMMITTED;  
PROVIDING FOR THE COURT TO ADVISE A DISTRICT ATTORNEY TO  
CONSIDER INITIATING PROCEEDINGS FOR INVOLUNTARY COMMITMENT OR  
ASSISTED OUTPATIENT TREATMENT UPON DISMISSAL OF A CRIMINAL  
CASE; ALLOWING A COURT TO AUTHORIZE A DISTRICT ATTORNEY OR THE  
DEPARTMENT OF HEALTH TO USE THE REPORT OF A COMPETENCY  
EVALUATION IN INVOLUNTARY COMMITMENT AND ASSISTED OUTPATIENT

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1 TREATMENT PROCEEDINGS; AMENDING THE ASSISTED OUTPATIENT  
2 TREATMENT ACT TO AUTHORIZE A DISTRICT ATTORNEY OR THE ATTORNEY  
3 GENERAL TO FILE A PETITION FOR ASSISTED OUTPATIENT TREATMENT  
4 AND TO ALLOW A PETITION TO BE FILED UP TO THIRTY DAYS AFTER A  
5 QUALIFIED PROFESSIONAL HAS EXAMINED A DEFENDANT OR RESPONDENT;  
6 MAKING CONFORMING AMENDMENTS.

7

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

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

13 "31-9-1. DETERMINATION OF COMPETENCY--RAISING THE  
14 ISSUE.--~~[Whenever it appears that there is a question as to the~~  
15 ~~defendant's competency to proceed in a criminal case, any~~  
16 ~~further proceeding in the cause]~~

17 A. When a party or the court raises a question as  
18 to a defendant's competency to stand trial in a criminal case,  
19 the proceeding shall be suspended until the issue is  
20 determined.

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

23 (1) is raised in a court other than the  
24 district court or a metropolitan court, the [proceeding] case  
25 shall be [suspended and the cause] transferred to the district

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1 court; [~~If the question of a defendant's competency~~] and  
2 (2) is raised in the metropolitan court and  
3 the court determines that the defendant is [~~incompetent to~~  
4 ~~proceed in a criminal case, the cause, if not dismissed upon~~  
5 ~~motion of a party~~] not competent to stand trial, the case shall  
6 be transferred to the district court."

7 SECTION 2. Section 31-9-1.1 NMSA 1978 (being Laws 1988,  
8 Chapter 107, Section 2 and Laws 1988, Chapter 108, Section 2,  
9 as amended by Laws 1993, Chapter 240, Section 2 and also by  
10 Laws 1993, Chapter 249, Section 2) is amended to read:

11 "31-9-1.1. DETERMINATION OF COMPETENCY--EVALUATION AND  
12 DETERMINATION.--[The]

13 A. A defendant's competency shall be  
14 [~~professionally~~] evaluated by a [~~psychologist or psychiatrist~~  
15 ~~or other~~] qualified professional recognized by the district  
16 court as an expert. [~~and a report shall be submitted~~] The  
17 qualified professional who evaluates a defendant's competency  
18 shall prepare an evaluation report and submit the report as  
19 ordered by the court.

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

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

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

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

5                   C. If a qualified professional believes a defendant  
6 is not competent to stand trial, an evaluation report shall  
7 include the qualified professional's opinion as to whether the  
8 defendant:

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

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

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

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

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

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

25                   (b) has demonstrated a history of lack

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1 of compliance with treatment for a mental disorder;

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

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

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

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

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

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

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1 ~~evaluation]~~ and

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

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

8 "31-9-1.2. DETERMINATION OF COMPETENCY--COMMITMENT--  
9 REPORT.--

10 A. ~~[When]~~ If, after a competency hearing, a court  
11 determines that a defendant is not competent to ~~[proceed in a~~  
12 ~~criminal case and the court does not find that]~~ stand trial,  
13 the court shall determine if the defendant is dangerous. A  
14 defendant who is not competent is dangerous if the court finds  
15 by clear and convincing evidence that the defendant presents a  
16 serious threat of:

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

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

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

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

25 (5) violating a provision of the Sexual

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1 Exploitation of Children Act;

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

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

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

8 B. If the court determines that a defendant is not  
9 dangerous, the court may order the defendant to participate in  
10 a community-based competency restoration program or dismiss the  
11 criminal case without prejudice in the interests of justice;

12 ~~[Upon dismissal the court may advise, the district attorney to~~  
13 ~~consider initiation of proceedings under the Mental Health and~~  
14 ~~Developmental Disabilities Code and order the defendant~~  
15 ~~confined for a maximum of seven days to facilitate preparation~~  
16 ~~and initiation of a petition pursuant to that code]~~ provided  
17 that if the court dismisses the case, the court may:

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

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

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1 that purpose.

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

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

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

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

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

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

25 (e) an opinion as to whether the

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

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

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

25 (b) if the defendant is receiving

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1 medication, information from the prescribing physician about  
2 the type, dosage and effect of the medication on the  
3 defendant's appearance, actions and demeanor;

4 (c) if the defendant remains not  
5 competent, an opinion as to whether the defendant satisfies the  
6 criteria for involuntary commitment in accordance with the  
7 Mental Health and Developmental Disabilities Code and whether:  
8 1) as a result of mental disorder, the defendant presents a  
9 likelihood of serious harm to the defendant's self or others;  
10 2) the defendant needs and is likely to benefit from  
11 involuntary commitment and treatment; and 3) the proposed  
12 commitment is consistent with the treatment needs of the  
13 defendant and with the least drastic means principle; and

14 (d) if the defendant remains not  
15 competent, an opinion as to whether the defendant satisfies the  
16 criteria for involuntary treatment in accordance with the  
17 Assisted Outpatient Treatment Act and whether the defendant:  
18 1) has a primary diagnosis of a mental disorder; 2) has  
19 demonstrated a history of lack of compliance with treatment for  
20 a mental disorder; 3) is unwilling or unlikely, as a result of  
21 a mental disorder, to voluntarily participate in outpatient  
22 treatment that would enable the defendant to live safely in the  
23 community without court supervision; 4) is in need of assisted  
24 outpatient treatment as the least restrictive appropriate  
25 alternative to prevent a relapse or deterioration likely to

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1 result in serious harm to the defendant's self or others; and  
2 5) will likely benefit from assisted outpatient treatment and  
3 have the defendant's best interests served; and

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

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

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1 completion of the competency restoration program or as  
2 otherwise required by the court. A defendant committed for  
3 competency restoration shall be provided with treatment  
4 available to [~~involuntarily committed~~] persons subject to civil  
5 commitment, and:

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

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

12 [~~G.~~] E. The department of health shall admit a  
13 defendant for competency restoration within thirty days of  
14 receipt of the court's commitment order. [~~of commitment of an~~  
15 ~~incompetent defendant and of the necessary and available~~  
16 ~~documents reasonably required for admission pursuant to written~~  
17 ~~policies adopted by the secretary of health or his designee,~~  
18 ~~the defendant shall be admitted to a facility designated for~~  
19 ~~the treatment of defendants who are incompetent to stand trial~~  
20 ~~and dangerous. If after conducting an investigation] If the  
21 secretary of health or the secretary's designee determines that  
22 the department of health does not have the ability to meet the  
23 [~~medical~~] needs of [~~a~~] the defendant [~~ordered committed to a~~  
24 ~~facility~~], the secretary or [~~his~~] the secretary's designee may  
25 refuse admission [~~to the defendant upon~~] by providing written~~

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1 certification to the committing court and the parties of the  
2 [~~lack of ability~~] department's inability to meet the [~~medical~~]  
3 needs of the defendant. The certification [~~must~~] shall be made  
4 within fourteen days of the receipt of the court's commitment  
5 order [~~of commitment and necessary and available documents~~  
6 ~~reasonably required for admission pursuant to written policies~~  
7 ~~adopted by the secretary or his designee~~]. Within ten days of  
8 filing of the certification, the court shall conduct a hearing  
9 for further disposition of the criminal case.

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

14 E.] F. Within thirty days of [~~an incompetent~~] a  
15 defendant's admission to a department of health facility [~~to~~  
16 ~~undergo treatment to attain competency to proceed in a criminal~~  
17 ~~case, the person supervising the defendant's treatment~~] for  
18 competency restoration, the department shall file with the  
19 [~~district~~] court, the state and the defense:

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

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

25 (3) an assessment of the [~~facility's or~~

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1 ~~program's]~~ department's capacity to provide appropriate  
2 treatment for the defendant; and

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

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

12 "31-9-1.3. DETERMINATION OF COMPETENCY--NINETY-DAY  
13 REVIEW--REPORTS--CONTINUING TREATMENT.--

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

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

23 (2) if the defendant remains not competent,  
24 whether the defendant is making progress [~~under treatment~~]  
25 toward [~~attainment of~~] being restored to competency within nine

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1 months from the date [~~of the original finding of incompetency~~]  
2 the court determined the defendant is not competent to stand  
3 trial; and

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

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

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

15 (2) [~~the~~] an opinion [~~of the treatment~~  
16 ~~supervisor~~] as to whether the defendant has [~~attained~~] been  
17 restored to competency or as to whether the defendant is making  
18 progress [~~under treatment~~] toward [~~attaining~~] being restored to  
19 competency within nine months from the date [~~of the original~~  
20 ~~finding of incompetency~~] the court determined the defendant is  
21 not competent to stand trial and whether there is a substantial  
22 probability that the defendant will [~~attain~~] be restored to  
23 competency within nine months from the date [~~of the original~~  
24 ~~finding of incompetency~~] the court determined the defendant is  
25 not competent to stand trial;

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

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

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

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

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

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

24 (6) if the department of health believes the  
25 defendant remains not competent, an opinion as to whether the

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

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

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

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

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

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

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

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1 treatment of the defendant [~~by the facility or program pending~~]  
2 until the conclusion of the criminal proceedings.

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

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

15 (2) the [~~treatment supervisor~~] department of  
16 health shall submit a written progress report as specified in  
17 Subsection B of this section at least seven days prior to such  
18 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) a felony involving infliction of great  
7 bodily harm, as defined in Section 30-1-12 NMSA 1978, on  
8 another person;

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

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

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

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

17 (6) human trafficking, as provided in Section  
18 30-52-1 NMSA 1978;

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

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

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

25 C. dismiss the criminal case without prejudice in

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

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

20 "31-9-1.5. DETERMINATION OF COMPETENCY--CRIMINAL  
21 COMMITMENT--EVIDENTIARY HEARING.--

22 A. ~~[As provided for in Subsection A of Section~~  
23 ~~31-9-1.4 NMSA 1978, A]~~ If the court determines that there is  
24 not a substantial probability that a defendant not competent to  
25 stand trial will be restored to competency, a commitment

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

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

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

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

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

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

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

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

25 (8) aggravated arson, as provided in Section

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1 30-17-6 NMSA 1978.

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

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

25 ~~G.]~~ D. If the district court finds by clear and

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

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

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

23 (2) the defendant shall not be released from  
24 that secure facility except pursuant to an order of the  
25 [~~district~~] court [~~which~~] that committed [~~him~~] the defendant or

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1 upon expiration of the period of time equal to the maximum  
2 sentence to which the defendant would have been subject had the  
3 defendant been convicted in a criminal proceeding;

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

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

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

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

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

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

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

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

22 "31-9-1.6. HEARING TO DETERMINE DEVELOPMENTAL OR  
23 INTELLECTUAL DISABILITY.--

24 A. Upon motion of the defense, ~~[requesting a~~  
25 ~~ruling]~~ the court shall hold a hearing to determine whether the

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1 defendant ~~[has]~~ is not competent due to a developmental or  
2 intellectual disability as defined in Subsection E of this  
3 section.

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

21 C. If the department of health ~~[evaluation results~~  
22 ~~in a finding]~~ determines that the defendant presents a  
23 likelihood of serious harm to self or others, ~~[within sixty~~  
24 ~~days of the department's evaluation]~~ the department shall  
25 ~~[commence proceedings pursuant to Chapter 43, Article 1 NMSA~~

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1 ~~1978]~~ initiate involuntary commitment proceedings in accordance  
2 with the Mental Health and Developmental Disabilities Code if  
3 the defendant ~~[was]~~ is charged with ~~[murder in the first~~  
4 ~~degree, first degree criminal sexual penetration, criminal~~  
5 ~~sexual contact of a minor or arson in the initial proceedings,~~  
6 ~~and the court presiding over the initial proceedings shall~~  
7 ~~enter a finding that the respondent presents a likelihood of~~  
8 ~~harm to others]:~~

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

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

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

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

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

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

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

24 (8) aggravated arson, as provided in Section  
25 30-17-6 NMSA 1978.

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

8           E. As used in this section, "developmental or  
9 intellectual disability" means significantly subaverage general  
10 intellectual functioning existing concurrently with deficits in  
11 adaptive behavior. An intelligence quotient of seventy or  
12 below on a reliably administered intelligence quotient test  
13 shall be presumptive evidence of developmental or intellectual  
14 disability."

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

17           "31-9-2. COMPETENCY EVALUATION--MENTAL OR FUNCTIONAL  
18 EXAMINATION.--

19           A. Upon motion of any defendant, the court shall  
20 order a mental examination of the defendant before making any  
21 determination of the defendant's competency. ~~[under Sections~~  
22 ~~41-13-3 or 41-13-3.1 New Mexico Statutes Annotated, 1953~~  
23 ~~Compilation. Where]~~ If the defendant is determined to be  
24 indigent, the court shall pay for the costs of the examination  
25 from funds available to the court.

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

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

9           "43-1B-4. PETITION TO THE COURT.--

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

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

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

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

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

23           provided that the sibling or child is eighteen years of age or  
24           older;

25                   (4) the director of a hospital where the

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1 respondent is hospitalized;

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

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

9 (7) a surrogate decision-maker; or

10 (8) a district attorney or the attorney  
11 general.

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

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

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

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

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

25 (1) the qualified professional has personally

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

7 (2) no more than ten days prior to the filing  
8 of the petition, the qualified professional or the qualified  
9 professional's designee has unsuccessfully attempted to  
10 persuade the respondent to submit to an examination, that the  
11 qualified professional has reason to believe that the  
12 respondent meets the criteria for assisted outpatient treatment  
13 and that the qualified professional is willing and able to  
14 examine the respondent and testify at the hearing on the  
15 petition either in person or by contemporaneous transmission  
16 from a different location."

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