

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

1 ALLOWING CERTAIN MEDICAL PROFESSIONALS TO DRAW BLOOD FOR THE  
2 PURPOSES OF CHEMICAL BLOOD TESTS; MAKING CONFORMING  
3 AMENDMENTS.

4  
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

10 "31-9-1. DETERMINATION OF COMPETENCY--RAISING THE  
11 ISSUE.--

12 A. When a party or the court raises a question as  
13 to a defendant's competency to stand trial in a criminal  
14 case, the proceeding shall be suspended until the issue is  
15 determined.

16 B. Unless the case is dismissed upon motion of a  
17 party or through diversion, if the question of a defendant's  
18 competency is raised in a court other than a district court,  
19 the case shall be transferred to the district court."

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

24 "31-9-1.1. DETERMINATION OF COMPETENCY--EVALUATION AND  
25 DETERMINATION.--

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

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

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

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

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

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

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

25                         (a) as a result of a mental disorder,

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

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

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

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

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

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

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

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

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

1 D. A competency hearing shall be held:

2 (1) within thirty days from the date an  
3 evaluation report is submitted to the court for an  
4 incarcerated defendant charged with a felony;

5 (2) within ten days from the date an  
6 evaluation report is submitted to the court for an  
7 incarcerated defendant not charged with a felony; and

8 (3) within ninety days after an evaluation  
9 report is submitted to the court for a defendant who is not  
10 incarcerated."

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

14 "31-9-1.2. DETERMINATION OF COMPETENCY--COMMITMENT--  
15 REPORT.--

16 A. If, after a competency hearing, a court  
17 determines that a defendant is not competent to stand trial,  
18 the court shall determine if the defendant is dangerous. A  
19 defendant who is not competent is dangerous if the court  
20 finds by clear and convincing evidence that the defendant  
21 presents a serious threat of:

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

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

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

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

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

7 (6) violating a provision of the Sexual  
8 Exploitation of Children Act;

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

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

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

17 B. If the court determines that a defendant is not  
18 dangerous, the court may order the defendant to participate  
19 in a community-based competency restoration program or  
20 dismiss the criminal case without prejudice in the interests  
21 of justice; provided that if the court dismisses the case,  
22 the court may:

23 (1) advise the district attorney to consider  
24 the initiation of involuntary civil commitment proceedings in  
25 accordance with the Mental Health and Developmental

1 Disabilities Code and may detain the defendant for a maximum  
2 of seven days to facilitate initiation of those proceedings;  
3 or

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

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

15 (1) within thirty days of the date that the  
16 defendant was ordered to participate in a community-based  
17 competency restoration program, the person supervising the  
18 defendant's competency restoration program shall submit a  
19 progress report to the court and both parties that includes:

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

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

25 (c) an assessment of the program's

1 capacity to provide appropriate programming for the  
2 defendant; and

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

8 (2) no later than ninety days from the date  
9 that the court ordered the defendant to participate in a  
10 community-based competency restoration program, the court  
11 shall hold a review hearing and determine if the defendant  
12 has been restored to competency and at least seven days prior  
13 to the review hearing, the person supervising the defendant's  
14 competency restoration program shall submit a written report  
15 that includes:

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

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

22 (c) if the defendant remains not  
23 competent, an opinion as to whether the defendant satisfies  
24 the criteria for involuntary commitment in accordance with  
25 the Mental Health and Developmental Disabilities Code and



1 whether: 1) as a result of mental disorder, the defendant  
2 presents a likelihood of serious harm to the defendant's self  
3 or others; 2) the defendant needs and is likely to benefit  
4 from involuntary commitment and treatment; and 3) the  
5 proposed commitment is consistent with the treatment needs of  
6 the defendant and with the least drastic means principle; and

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

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

23 (3) if, after a review hearing, the court  
24 finds that the defendant is competent, the case shall proceed  
25 to trial, but if the court finds that the defendant remains

1 not competent, the case shall be dismissed without prejudice  
2 and the court may advise the district attorney to consider  
3 initiating proceedings in accordance with the Mental Health  
4 and Developmental Disabilities Code or the Assisted  
5 Outpatient Treatment Act.

6 D. If the court determines that a defendant who is  
7 not competent is dangerous, the district court may commit the  
8 defendant as provided in this section for competency  
9 restoration. If the court orders commitment, the court shall  
10 enter a transport order that provides for the defendant's  
11 return to the local jail within seventy-two hours upon the  
12 defendant being restored to competency, completion of the  
13 competency restoration program or as otherwise required by  
14 the court. A defendant committed for competency restoration  
15 shall be provided with treatment available to persons subject  
16 to civil commitment, and:

17 (1) shall be detained by the department of  
18 health in a secure, locked facility; and

19 (2) shall not be released from that facility  
20 except pursuant to an order of the court that committed the  
21 defendant.

22 E. The department of health shall admit a  
23 defendant for competency restoration within fifteen days of  
24 receipt of the court's order of commitment of an incompetent  
25 defendant and of the necessary and available documents

1 reasonably required for admission pursuant to written  
2 policies adopted by the secretary of health or 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 needs of the defendant,  
6 the secretary or the secretary's designee may refuse  
7 admission by providing written certification to the  
8 committing court and the parties of the department's  
9 inability to meet the needs of the defendant. The  
10 certification shall be made within seven days of the receipt  
11 of the court's order of commitment and necessary and  
12 available documents reasonably required for admission  
13 pursuant to written policies adopted by the secretary or the  
14 secretary's designee. Within ten days of filing of the  
15 certification, the court shall conduct a hearing for further  
16 disposition of the criminal case.

17 F. Within thirty days of a defendant's admission  
18 to a department of health facility or an inpatient  
19 psychiatric hospital for competency restoration, the  
20 department shall file with the court, the state and the  
21 defense:

22 (1) an initial assessment of the defendant  
23 and treatment plan;

24 (2) a report on the defendant's amenability  
25 to competency restoration;

1 (3) an assessment of the department's  
2 capacity to provide appropriate treatment for the defendant;  
3 and

4 (4) an opinion as to the probability of the  
5 defendant being restored to competency within nine months  
6 from the date the court determined the defendant is not  
7 competent to stand trial."

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

11 "31-9-1.3. DETERMINATION OF COMPETENCY--NINETY-DAY  
12 REVIEW--REPORTS--CONTINUING TREATMENT.--

13 A. Within ninety days after a court issues an  
14 order committing a defendant for competency restoration, the  
15 court, sitting without a jury, shall conduct a review  
16 hearing, unless waived by the defense, and shall determine:

17 (1) whether the defendant has been restored  
18 to competency or remains not competent to stand trial;

19 (2) if the defendant remains not competent,  
20 whether the defendant is making progress toward being  
21 restored to competency within nine months from the date the  
22 court determined the defendant is not competent to stand  
23 trial; and

24 (3) whether the defendant remains dangerous  
25 as determined by the court in accordance with Section

1 31-9-1.2 NMSA 1978.

2 B. At least seven days prior to the review  
3 hearing, the treatment supervisor shall submit a written  
4 progress report to the court, the state and the defense that  
5 includes:

6 (1) the clinical findings regarding the  
7 defendant's progress toward competency restoration and the  
8 facts upon which the findings are based;

9 (2) an opinion as to whether the defendant  
10 has been restored to competency or as to whether the  
11 defendant is making progress toward being restored to  
12 competency within nine months from the date the court  
13 determined the defendant is not competent to stand trial and  
14 whether there is a substantial probability that the defendant  
15 will be restored to competency within nine months from the  
16 date the court determined the defendant is not competent to  
17 stand trial;

18 (3) an opinion as to whether the defendant  
19 remains dangerous as determined by the court in accordance  
20 with Section 31-9-1.2 NMSA 1978; and

21 (4) if the defendant is receiving  
22 medication, information from the prescribing physician  
23 indicating the type, the dosage and the effect of the  
24 medication on the defendant's appearance, actions and  
25 demeanor.

1           C. If the district court finds that the defendant  
2 is restored to competency, the district court shall set the  
3 matter for trial; provided that if the defendant is in need  
4 of continued care or treatment and the department of health  
5 agrees to continue to provide it, the district court may  
6 order continued care or treatment of the defendant until the  
7 conclusion of the criminal proceedings.

8           D. If the district court finds that the defendant  
9 remains not competent but that the defendant is making  
10 progress toward being restored to competency, the district  
11 court may continue or modify its original commitment order  
12 entered pursuant to Section 31-9-1.2 NMSA 1978; provided  
13 that:

14                   (1) the question of the defendant's  
15 competency shall be reviewed again not later than nine months  
16 from the date the court determined the defendant is not  
17 competent to stand trial; and

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

21           E. If the district court finds that the defendant  
22 remains not competent, that the defendant is not making  
23 progress toward being restored to competency and that there  
24 is not a substantial probability that the defendant will be  
25 restored to competency within nine months from the date the

1 court determined the defendant is not competent to stand  
2 trial, the court shall proceed pursuant to Section 31-9-1.4  
3 NMSA 1978. However, if the defendant is in need of continued  
4 care and treatment and the department of health agrees to  
5 continue to provide it, the district court may order  
6 continued care or treatment of the defendant by the  
7 department until the conclusion of the criminal proceedings."

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

11 "31-9-1.4. DETERMINATION OF COMPETENCY--INCOMPETENT  
12 DEFENDANTS.--If at any time the district court determines  
13 that there is not a substantial probability that the  
14 defendant will be restored to competency within nine months  
15 from the date the court determined the defendant is not  
16 competent to stand trial, the district court may:

17 A. hold a criminal commitment hearing in  
18 accordance with Section 31-9-1.5 NMSA 1978 within three  
19 months if the defendant is charged with:

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

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

25 (3) criminal sexual penetration, as provided

1 in Section 30-9-11 NMSA 1978;

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

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

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

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

10 (8) aggravated arson, as provided in Section  
11 30-17-6 NMSA 1978; or

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

16 B. release the defendant from custody and dismiss  
17 the criminal case with prejudice; or

18 C. dismiss the criminal case without prejudice in  
19 the interest of justice; provided that if the treatment  
20 supervisor reports to the court that the defendant satisfies  
21 the criteria for involuntary commitment in accordance with  
22 the Mental Health and Developmental Disabilities Code, the  
23 department of health shall initiate those proceedings, and  
24 the court may order the defendant confined for a maximum of  
25 seven days to facilitate the initiation of those proceedings;



1 and provided further that the district attorney may initiate  
2 involuntary commitment proceedings in the department's  
3 stead."

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

7 "31-9-1.5. DETERMINATION OF COMPETENCY--CRIMINAL  
8 COMMITMENT--EVIDENTIARY HEARING.--

9 A. If the court determines that there is not a  
10 substantial probability that a defendant who is not competent  
11 to stand trial will be restored to competency, a commitment  
12 hearing to determine the sufficiency of the evidence of the  
13 defendant's guilt shall be held if the defendant is charged  
14 with:

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

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

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

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

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

1                   (6) a crime provided for in the Sexual  
2 Exploitation of Children Act;

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

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

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

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

20                 C. If the evidence does not establish by clear and  
21 convincing evidence that the defendant committed the crime  
22 charged, the district court shall dismiss the criminal case  
23 with prejudice.

24                 D. If the district court finds by clear and  
25 convincing evidence that the defendant committed the crime

1 charged and has not made a finding of dangerousness in  
2 accordance with Section 31-9-1.2 NMSA 1978, the district  
3 court shall dismiss the criminal case without prejudice.

4 E. If the district court finds by clear and  
5 convincing evidence that the defendant committed the crime  
6 charged and enters a finding that the defendant remains not  
7 competent to stand trial and remains dangerous as determined  
8 by the court in accordance with Section 31-9-1.2 NMSA 1978:

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

11 (2) the defendant shall not be released from  
12 that secure facility except pursuant to an order of the court  
13 that committed the defendant or upon expiration of the period  
14 of time equal to the maximum sentence to which the defendant  
15 would have been subject had the defendant been convicted in a  
16 criminal proceeding;

17 (3) significant changes in the defendant's  
18 condition, including trial competency and dangerousness,  
19 shall be reported in writing to the district court, state and  
20 defense; and

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

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

4 (b) if the defendant continues to  
5 remain not competent to stand trial and dangerous in  
6 accordance with Section 31-9-1.2 NMSA 1978, the court shall  
7 review the defendant's competency and dangerousness every two  
8 years until expiration of the period of commitment equal to  
9 the maximum sentence to which the defendant would have been  
10 subject had the defendant been convicted in a criminal  
11 proceeding; and

12 (c) if the court finds upon its two-  
13 year review hearing that the defendant is no longer  
14 dangerous, the defendant shall be released.

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

1 hospital."

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

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

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

14 B. If the court finds by a preponderance of the  
15 evidence that the defendant is not competent to stand trial  
16 due to a developmental or intellectual disability and that  
17 there is not a substantial probability that the defendant  
18 will be restored to competency within nine months from the  
19 date the court determined the defendant is not competent to  
20 stand trial, the court shall notify the department of health  
21 of the court's finding. Within sixty days of receipt of the  
22 court's notification, the department of health shall  
23 determine whether the defendant presents a likelihood of  
24 serious harm to the defendant's self or others.

25 C. If the department of health determines that the HJC/HB 8/a  
Page 21

1 defendant presents a likelihood of serious harm to self or  
2 others, the department shall initiate involuntary commitment  
3 proceedings in accordance with the Mental Health and  
4 Developmental Disabilities Code if the defendant is charged  
5 with:

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  
20 Section 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  
25 Subsection L of Section 33-2-34 NMSA 1978 with the use of a

1 firearm.

2 D. After the involuntary commitment hearing or  
3 upon expiration of fourteen months from the court's initial  
4 determination that the defendant is not competent to stand  
5 trial, the criminal case shall be dismissed without  
6 prejudice.

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

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

16 "31-9-2. COMPETENCY EVALUATION--MENTAL OR FUNCTIONAL  
17 EXAMINATION.--

18 A. Upon motion of a party or the court, the court  
19 shall order a mental examination of the defendant before  
20 making any determination of the defendant's competency. If  
21 the defendant is determined to be indigent, the court shall  
22 pay for the costs of the examination from funds available to  
23 the court.

24 B. A court may authorize a district attorney or  
25 the department of health to use a report of any examination

1 ordered before a determination of a defendant's competency to  
2 stand trial for the purposes of initiating proceedings in  
3 accordance with the Mental Health and Developmental  
4 Disabilities Code or the Assisted Outpatient Treatment Act;  
5 provided that the report remains valid pursuant to the time  
6 limits set forth in that code or 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  
12 the county in which the respondent is present or reasonably  
13 believed to be present; provided that such district court is  
14 a 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  
24 or older;

25 (4) the director of a hospital where the



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  
8 for a mental disorder within the past forty-eight months;

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  
13 of \_\_\_\_\_" 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  
17 belief that the respondent meets each criterion; provided  
18 that the hearing on the petition need not be limited to the  
19 stated 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

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

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

18 SECTION 10. A new section of Chapter 30, Article 7 NMSA  
19 1978 is enacted to read:

20 "UNLAWFUL POSSESSION OF A WEAPON CONVERSION DEVICE--  
21 PENALTY.--

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

1 conversion device.

2 B. A person who commits unlawful possession of a  
3 weapon conversion device is guilty of a third degree felony.

4 C. As used in this section:

5 (1) "fully automatic weapon" means a weapon  
6 that shoots, is designed to shoot automatically or can be  
7 readily restored to fire more than one cartridge or shell,  
8 without manual reloading, by a single function of the  
9 trigger;

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

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

20 SECTION 11. Section 30-16D-1 NMSA 1978 (being Laws  
21 1978, Chapter 35, Section 91, as amended by Laws 2009,  
22 Chapter 253, Section 1 and by Laws 2009, Chapter 261, Section  
23 1) is amended to read:

24 "30-16D-1. UNLAWFUL TAKING OF A VEHICLE OR MOTOR  
25 VEHICLE.--

1           A. Unlawful taking of a vehicle or motor vehicle  
2 consists of a person taking any vehicle or motor vehicle as  
3 defined by the Motor Vehicle Code intentionally and without  
4 consent of the owner. Whoever commits unlawful taking of a  
5 vehicle or motor vehicle is guilty of a felony as provided in  
6 Section 30-16D-4.1 NMSA 1978.

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

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

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

25           "30-16D-2. EMBEZZLEMENT OF A VEHICLE OR MOTOR

1 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 felony as provided in Section  
10 30-16D-4.1 NMSA 1978."

11 SECTION 13. Section 30-16D-3 NMSA 1978 (being Laws  
12 2009, Chapter 253, Section 3 and Laws 2009, Chapter 261,  
13 Section 3) is amended to read:

14 "30-16D-3. FRAUDULENTLY OBTAINING A VEHICLE OR MOTOR  
15 VEHICLE.--

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

21 B. Whoever commits fraudulently obtaining a  
22 vehicle or motor vehicle is guilty of a felony as provided in  
23 Section 30-16D-4.1 NMSA 1978."

24 SECTION 14. Section 30-16D-4 NMSA 1978 (being Laws  
25 1978, Chapter 35, Section 92, as amended by Laws 2009,

1 Chapter 253, Section 4 and by Laws 2009, Chapter 261, Section  
2 4) is amended to read:

3 "30-16D-4. RECEIVING OR TRANSFERRING STOLEN VEHICLES OR  
4 MOTOR VEHICLES.--

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

16 B. Whoever commits receiving or transferring a  
17 stolen vehicle or motor vehicle is guilty of a felony as  
18 provided in Section 30-16D-4.1 NMSA 1978."

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

21 "30-16D-4.1. PENALTIES.--

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

25 (1) fourth degree felony for a first

1 offense;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

25 or

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

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

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

1 for negligence."

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

4 "66-8-104. CHEMICAL BLOOD TESTS--OFFICER UNAUTHORIZED  
5 TO MAKE ARREST OR DIRECT TEST EXCEPT IN PERFORMANCE OF  
6 OFFICIAL DUTIES.--Nothing in Sections 66-8-103 or 66-8-104  
7 NMSA 1978 is intended to authorize a police officer or a  
8 judicial or probation officer to make an arrest or to direct  
9 the performance of a chemical blood test except in the  
10 performance of that officer's official duties and as  
11 otherwise authorized by law."

12 SECTION 20. Section 66-8-111 NMSA 1978 (being Laws  
13 1978, Chapter 35, Section 519, as amended) is amended to  
14 read:

15 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--  
16 TESTING--GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO  
17 DRIVE.--

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

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

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

22 C. The department, upon receipt of a statement  
23 signed under penalty of perjury from a law enforcement  
24 officer stating the officer's reasonable grounds to believe  
25 the arrested person had been driving a motor vehicle within

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

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

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

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

25 D. The determination of alcohol concentration

1 shall be based on the grams of alcohol in one hundred  
2 milliliters of blood or the grams of alcohol in two hundred  
3 ten liters of breath.

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

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

23 SECTION 21. Section 66-8-111.1 NMSA 1978 (being Laws  
24 1984, Chapter 72, Section 7, as amended) is amended to read:

25 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR

1 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO  
2 HEARING.--

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

10 (1) refuses to permit chemical testing; or

11 (2) submits to a chemical test the results  
12 of which indicate an alcohol concentration in the person's  
13 blood or breath of:

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

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

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

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

1 revocation and right to a hearing shall not be a temporary  
2 license for a driver without any otherwise valid driving  
3 privileges in this state.

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

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

9 "66-13-1. SHORT TITLE.--Chapter 66, Article 13 NMSA  
10 1978 may be cited as the "Boating While Intoxicated Act"."

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

13 "66-13-6. CHEMICAL BLOOD TESTS--PERSONS QUALIFIED TO  
14 PERFORM TESTS--RELIEF FROM CIVIL AND CRIMINAL LIABILITY.--  
15 Only a physician, licensed professional or practical nurse,  
16 emergency medical technician or certified phlebotomist or a  
17 technologist employed by a hospital or physician shall  
18 withdraw blood from a person in the performance of a chemical  
19 blood test. A physician, nurse, technician, phlebotomist or  
20 technologist who withdraws blood from a person in the  
21 performance of a chemical blood test that has been directed  
22 by a law enforcement officer, or by a judicial or probation  
23 officer, shall not be held liable in a civil or criminal  
24 action for assault, battery, false imprisonment or any  
25 conduct of a law enforcement officer, except for negligence,



1 nor shall a person assisting in the performance of the test,  
2 or a hospital wherein blood is withdrawn in the performance  
3 of the test, be subject to civil or criminal liability for  
4 assault, battery, false imprisonment or any conduct of a law  
5 enforcement officer, except for negligence."

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

8 "66-13-7. CHEMICAL BLOOD TEST--OFFICER UNAUTHORIZED TO  
9 MAKE ARREST OR DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL  
10 DUTIES.--Nothing in the Boating While Intoxicated Act is  
11 intended to authorize a law enforcement officer, or a judicial  
12 or probation officer, to make an arrest or direct the  
13 performance of a chemical blood test, except in the  
14 performance of that officer's official duties or as otherwise  
15 authorized by law."

16  
17  
18  
19  
20  
21  
22  
23  
24  
25