

AN ACT

RELATING TO CRIMINAL PROCEDURE; AMENDING PROVISIONS REGARDING
INVOLUNTARY COMMITMENT OF INCOMPETENT DEFENDANTS.

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

Section 1. Section 31-9-1.2 NMSA 1978 (being Laws 1988, Chapter 107, Section 3 and Laws 1988, Chapter 108, Section 3, as amended by Laws 1993, Chapter 240, Section 3 and also by Laws 1993, Chapter 249, Section 3) is amended to read:

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

A. When, after hearing, a court determines that a defendant is not competent to proceed in a criminal case and the court does not find that the defendant is dangerous, the court may dismiss the criminal case without prejudice in the interests of justice. Upon dismissal, the court may advise the district attorney to consider initiation of proceedings under the Mental Health and Developmental Disabilities Code and order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to that code.

B. When a district court determines that a defendant charged with a felony is incompetent to proceed in the criminal case, but does not dismiss the criminal case,

and the district court at that time makes a specific finding that the defendant is dangerous, the district court may commit the defendant as provided in this section for treatment to attain competency to proceed in a criminal case. The court shall enter an appropriate transport order that also provides for return of the defendant to the local facilities of the court upon completion of the treatment. The defendant so committed shall be provided with treatment available to involuntarily committed persons, and:

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

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

C. Within thirty days of receipt of the court's order of commitment of an incompetent defendant and of the necessary and available documents reasonably required for admission pursuant to written policies adopted by the secretary of health or his designee, the defendant shall be admitted to a facility designated for the treatment of defendants who are incompetent to stand trial and dangerous. If, after conducting an investigation, the secretary determines that the department of health does not have the ability to meet the medical needs of a defendant ordered

committed to a facility, the secretary or his designee may refuse admission to the defendant upon written certification to the committing court and the parties of the lack of ability to meet the medical needs of the defendant. The certification must be made within fourteen days of the receipt of the court's order of commitment and necessary and available documents reasonably required for admission pursuant to written policies adopted by the secretary or his designee. Within ten days of filing of the certification the court shall conduct a hearing for further disposition of the criminal case.

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

E. Within thirty days of an incompetent defendant's admission to a facility to undergo treatment to attain competency to proceed in a criminal case, the person supervising the defendant's treatment shall file with the district court, the state and the defense an initial assessment and treatment plan and a report on the defendant's amenability to treatment to render him competent to proceed in a criminal case, an assessment of the facility's or program's capacity to provide appropriate treatment for the

defendant and an opinion as to the probability of the defendant's attaining competency within a period of nine months from the date of the original finding of incompetency to proceed in a criminal case."

Section 2. Section 31-9-1.3 NMSA 1978 (being Laws 1988, Chapter 107, Section 4 and Laws 1988, Chapter 108, Section 4, as amended by Laws 1993, Chapter 240, Section 4 and also by Laws 1993, Chapter 249, Section 4) is amended to read:

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

A. Within ninety days of the entry of the order committing an incompetent defendant to undergo treatment, the district court, sitting without a jury, shall conduct a hearing, unless waived by the defense, and shall determine:

(1) whether the defendant is competent to proceed in the criminal case; and, if not,

(2) whether the defendant is making progress under treatment toward attainment of competency within nine months from the date of the original finding of incompetency; and

(3) whether the defendant remains dangerous as that term is defined in Section 31-9-1.2 NMSA 1978.

B. At least seven days prior to the review hearing, the treatment supervisor shall submit a written

progress report to the court, the state and the defense indicating:

(1) the clinical findings of the treatment supervisor and the facts upon which the findings are based;

(2) the opinion of the treatment supervisor as to whether the defendant has attained competency or as to whether the defendant is making progress under treatment toward attaining competency within nine months from the date of the original finding of incompetency and whether there is a substantial probability that the defendant will attain competency within nine months from the date of the original finding of incompetency;

(3) whether the defendant is dangerous as that term is defined in Section 31-9-1.2 NMSA 1978 or whether the defendant satisfies the criteria for involuntary commitment contained in the Mental Health and Developmental Disabilities Code; and

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

C. If the district court finds the defendant to be competent, the district court shall set the matter for trial, provided that if the defendant is in need of continued

care or treatment and the supervisor of the defendant's treatment agrees to continue to provide it, the district court may enter any order it deems appropriate for the continued care or treatment of the defendant by the facility or program pending the conclusion of the criminal proceedings.

D. If the district court finds that the defendant is still not competent to proceed in a criminal case but that he is making progress toward attaining competency, the district court may continue or modify its original treatment order entered pursuant to Section 31-9-1.2 NMSA 1978, provided that:

(1) the question of the defendant's competency shall be reviewed again not later than nine months from the original determination of incompetency to proceed in a criminal case; and

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

E. If the district court finds that the defendant is still not competent, that he is not making progress toward attaining competency and that there is not a substantial probability that he will attain competency within nine months from the date of the original finding of incompetency, the district court shall proceed pursuant to Section 31-9-1.4

NMSA 1978. However, if the defendant is in need of continued care and treatment and the supervisor of the defendant's treatment agrees to continue to provide it, the district court may enter any order it deems appropriate for the continued care or treatment by the facility or program pending the conclusion of the proceedings."

Section 3. Section 31-9-1.4 NMSA 1978 (being Laws 1988, Chapter 107, Section 5 and Laws 1988, Chapter 108, Section 5, as amended by Laws 1993, Chapter 240, Section 5, and also by Laws 1993, Chapter 249, Section 5) is amended to read:

"31-9-1.4. DETERMINATION OF COMPETENCY--INCOMPETENT DEFENDANTS.--If at any time the district court determines that there is not a substantial probability that the defendant will become competent to proceed in a criminal case within a reasonable period of time not to exceed nine months from the date of the original finding of incompetency, the district court may:

A. hear the matter pursuant to Section 31-9-1.5 NMSA 1978 within three months if the defendant is charged with a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a

minor, as provided in Section 30-9-13 NMSA 1978;

B. release the defendant from custody and dismiss with prejudice the charges against him; or

C. dismiss the criminal case without prejudice in the interest of justice. If the treatment supervisor has issued a report finding that the defendant satisfies the criteria for involuntary commitment contained in the Mental Health and Developmental Disabilities Code, the department of health shall commence proceedings pursuant to Chapter 43, Article 1 NMSA 1978, and the court may order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to the Mental Health and Developmental Disabilities Code. The district court may refer the defendant to the district attorney for possible initiation of proceedings under the Mental Health and Developmental Disabilities Code."

Section 4. Section 31-9-1.5 NMSA 1978 (being Laws 1988, Chapter 107, Section 6 and Laws 1988, Chapter 108, Section 6, as amended by Laws 1993, Chapter 240, Section 6 and also by Laws 1993, Chapter 249, Section 6) is amended to read:

"31-9-1.5. DETERMINATION OF COMPETENCY--EVIDENTIARY HEARING.--

A. As provided for in Subsection A of Section 31-9-1.4 NMSA 1978, a hearing to determine the sufficiency of

the evidence shall be held if the case is not dismissed and if the defendant is charged with a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978. Such hearing shall be conducted by the district court without a jury. The state and the defendant may introduce evidence relevant to the question of the defendant's guilt of the crime charged. The district court may admit hearsay or affidavit evidence on secondary matters such as testimony to establish the chain of possession of physical evidence, laboratory reports, authentication of transcripts taken by official reporters, district court and business records and public documents.

B. If the evidence does not establish by clear and convincing evidence that the defendant committed a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978, the district court shall dismiss the criminal case with prejudice; however, nothing in

this section shall prevent the state from initiating proceedings under the provisions of the Mental Health and Developmental Disabilities Code, and the court may order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to that code.

C. If the district court finds by clear and convincing evidence that the defendant committed a crime and has not made a finding of dangerousness, pursuant to Section 31-9-1.2 NMSA 1978, the district court shall dismiss the charges without prejudice. The state may initiate proceedings pursuant to the provisions of the Mental Health and Developmental Disabilities Code and the court may order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to that code.

D. If the district court finds by clear and convincing evidence that the defendant committed a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978 and enters a finding that the defendant remains incompetent to proceed and remains

dangerous pursuant to Section 31-9-1.2 NMSA 1978:

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

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

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

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

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

(b) if the defendant continues to be incompetent to proceed in a criminal case and dangerous pursuant to Section 31-9-1.2 NMSA 1978, the court shall review the defendant's competency and dangerousness every two

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

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

Section 5. Section 31-9-1.6 NMSA 1978 (being Laws 1997, Chapter 153, Section 1) is amended to read:

"31-9-1.6. HEARING TO DETERMINE MENTAL RETARDATION.--

A. Upon motion of the defense requesting a ruling, the court shall hold a hearing to determine whether the defendant has mental retardation as defined in Subsection E of this section.

B. If the court finds by a preponderance of the evidence that the defendant has mental retardation and that there is not a substantial probability that the defendant will become competent to proceed in a criminal case within a reasonable period of time not to exceed nine months from the

date of the original finding of incompetency, then no later than sixty days from notification to the secretary of health or his designee of the court's findings the department of health shall perform an evaluation to determine whether the defendant presents a likelihood of serious harm to himself or a likelihood of serious harm to others.

C. If the department of health evaluation results in a finding that the defendant presents a likelihood of serious harm to himself or a likelihood of serious harm to others, within sixty days of the department's evaluation the department shall commence proceedings pursuant to Chapter 43, Article 1 NMSA 1978 if the defendant was charged with murder in the first degree, first degree criminal sexual penetration, criminal sexual contact of a minor or arson in the initial proceedings, and the court presiding over the initial proceedings shall enter a finding that the respondent presents a likelihood of harm to others.

D. The criminal charges shall be dismissed without prejudice after the hearing pursuant to Chapter 43, Article 1 NMSA 1978 or upon expiration of fourteen months from the court's initial determination that the defendant is incompetent to proceed in a criminal case.

E. As used in this section, "mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive

behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of mental retardation."

Section 6. Section 43-1-1 NMSA 1978 (being Laws 1976, Chapter 43, Section 1, as amended by Laws 1993, Chapter 240, Section 7 and also by Laws 1993, Chapter 249, Section 7) is amended to read:

"43-1-1. MENTAL CONDITION OF CRIMINAL DEFENDANTS--
EVALUATION--TREATMENT.--

A. Whenever a district court finds it necessary to obtain an evaluation of the mental condition of a defendant in a criminal case, the court shall order an evaluation from a qualified professional available to the local facilities of the court or from a qualified professional at a local mental health center designated by the secretary of health, and whenever the court finds it desirable to use state personnel or facilities to assist in making the evaluation, the court shall in its order for an evaluation require service upon the secretary of health of the court's order for evaluation. The secretary of health shall arrange for a qualified professional furnished by the state to visit the defendant in local facilities available to the court or shall designate suitable available facilities. If the secretary of health designates a local mental health center or a state facility for the defendant's evaluation

within forty-eight hours of service of the evaluation order, the secretary of health shall notify the court of such designation. The court shall then enter an appropriate transport order which also provides for the return of the defendant to the local facilities of the court. The defendant shall be transported by the county to facilities designated by the secretary of health for the purpose of making an evaluation. Misdemeanor defendants shall be evaluated locally.

B. If the secretary of health elects to have the defendant retained at the district court's local facilities, the qualified professional furnished by the state shall visit the local facilities not later than two weeks from the time of service of the court's evaluation order upon the secretary of health and:

(1) after the evaluation of the defendant is completed, the qualified professional furnished by the state shall be available for deposition to declare his findings. The usual rules of evidence governing the use and admission of the deposition shall prevail; and

(2) if the secretary of health finds that the qualified professional will be unable to initiate the evaluation within two weeks from the time of service of the court's evaluation order upon the secretary of health, the secretary of health shall call upon the county sheriff of the

county in which the defendant is incarcerated and have the defendant transported to facilities designated by the secretary of health for the purpose of conducting the evaluation.

C. If the secretary of health elects to have the defendant transported to the facilities designated by the secretary of health for the purpose of evaluation, the evaluation shall be commenced as soon as possible after the admission of the defendant to the facility, but, in no event, shall the evaluation be commenced later than seventy-two hours after the admission. The defendant, at the conclusion of the evaluation, shall be returned by the county sheriff to the local facilities of the court upon not less than three days' notice. After the evaluation is completed, the qualified professional furnished by the state shall be available for deposition to declare his findings. The usual rules of evidence governing the use and admissibility of the deposition shall prevail.

D. Documents reasonably required by the secretary of health to show the medical and forensic history of the defendant shall be furnished by the court when required.

E. After an evaluation and upon reasonable notice, the district court may commit a dangerous defendant charged with a felony pursuant to Section 31-9-1.2 NMSA 1978 or may dismiss the charges without prejudice and refer the

defendant to the district attorney for possible initiation of proceedings under the Mental Health and Developmental Disabilities Code. A defendant so committed under the Mental Health and Developmental Disabilities Code shall be treated as any other patient committed involuntarily. Whenever the secretary of health determines that he does not have the ability to meet the medical needs of a defendant committed pursuant to Sections 31-9-1.2 through 31-9-1.5 NMSA 1978, the secretary or his designee shall serve upon the district court and the parties a written certification of the lack of ability to meet the medical needs of the defendant. The court shall set a hearing upon the certification within ten days of its filing and shall, after the hearing, make a determination regarding disposition of the criminal case. When deemed by the secretary of health to be medically appropriate, a dangerous defendant committed pursuant to Section 31-9-1.2 NMSA 1978 may be returned by the county sheriff to the custody of the court upon not less than three days' notice. The secretary shall provide written notification to the court and parties within three days of the defendant's discharge.

F. All acts to be performed by the secretary of health pursuant to provisions of this section may be performed by the secretary's designee." _____
