

HOUSE BILL 52

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

INTRODUCED BY

Andrea Reeb and Luis M. Terrazas

AN ACT

RELATING TO STATUTORY RECONCILIATION; CORRECTING CROSS-
REFERENCES TO SECTION 33-2-34 NMSA 1978 (BEING LAWS 1999,
CHAPTER 238, SECTION 1, AS AMENDED BY LAWS 2025, CHAPTER 29,
SECTION 1 AND BY LAWS 2025, CHAPTER 79, SECTION 4) BY MAKING
CONFORMING AMENDMENTS TO SECTION 30-7-16 NMSA 1978 (BEING LAWS
1981, CHAPTER 225, SECTION 1, AS AMENDED), SECTION 31-3-12 NMSA
1978 (BEING LAWS 2022, CHAPTER 56, SECTION 28), SECTION
31-9-1.2 NMSA 1978 (BEING LAWS 1988, CHAPTER 107, SECTION 3 AND
LAWS 1988, CHAPTER 108, SECTION 3, AS AMENDED), SECTION
31-9-1.4 NMSA 1978 (BEING LAWS 1988, CHAPTER 107, SECTION 5 AND
LAWS 1988, CHAPTER 108, SECTION 5, AS AMENDED), SECTION
31-9-1.5 NMSA 1978 (BEING LAWS 1988, CHAPTER 107, SECTION 6 AND
LAWS 1988, CHAPTER 108, SECTION 6, AS AMENDED), SECTION
31-9-1.6 NMSA 1978 (BEING LAWS 1997, CHAPTER 153, SECTION 1, AS
AMENDED). SECTION 31-18-16 NMSA 1978 (BEING LAWS 1977, CHAPTER

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1 216, SECTION 5, AS AMENDED), SECTION 33-2A-3 NMSA 1978 (BEING
2 LAWS 2002, CHAPTER 8, SECTION 3) AND SECTION 33-11-3 NMSA 1978
3 (BEING LAWS 1988, CHAPTER 78, SECTION 3, AS AMENDED).

4

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

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

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

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

13 (1) a felon;

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

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

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

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

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

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

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

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1 be guilty of a third degree felony.

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

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

12 E. As used in this section:

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

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

20 (b) any type of weapon by whatever name
21 known that will, or that may be readily converted to, expel a
22 projectile by the action of an explosive or other propellant,
23 the barrel or barrels of which have a bore of more than one-
24 half inch in diameter, except a shotgun or shotgun shell that
25 is generally recognized as particularly suitable for sporting

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purposes; or

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

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

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

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

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

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

(4) "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion or the frame or receiver of any such weapon; and

(5) "serious violent felon" means a person

convicted of an offense enumerated in Subparagraphs (a) through (n) of Paragraph (4) of Subsection [L] N of Section 33-2-34 NMSA 1978; provided that:

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

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

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

SECTION 2. Section 31-3-12 NMSA 1978 (being Laws 2022, Chapter 56, Section 28) is amended to read:

"31-3-12. AVAILABILITY OF GLOBAL POSITIONING SYSTEM DATA ON DEFENDANTS ON PRETRIAL RELEASE.--Any public entity that possesses or controls global positioning system data with respect to a defendant on pretrial release shall make that data available without a warrant to a law enforcement officer pursuant to an ongoing and pending criminal investigation for which there is reasonable suspicion to believe the data will be probative. Any data provided to the law enforcement officer shall be limited to data that relates to the criminal investigation and is not more than one year old. The data shall not be made a part of any public record unless admitted as evidence during a criminal trial. The law enforcement

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1 officer may request immediate access to the data if it involves
2 an investigation of:

3 A. any of the following serious violent felony
4 offenses:

5 (1) murder in the first degree;
6 (2) first or second degree felony human
7 trafficking of a child;

8 (3) first degree felony abuse of a child;
9 (4) sexual exploitation of a child

10 constituting at least a second degree felony; or

11 (5) a serious violent felony offense as
12 provided in Subparagraphs (a) through (n) of Paragraph (4) of
13 Subsection [E] N of Section 33-2-34 NMSA 1978;

14 B. a felony offense during which a firearm was
15 brandished pursuant to Section 31-18-16 NMSA 1978 or during
16 which a firearm was discharged; or

17 C. a felony offense during which great bodily harm
18 was inflicted as defined in Section 30-1-12 NMSA 1978 or that
19 caused the death of a person."

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

23 **"31-9-1.2. DETERMINATION OF COMPETENCY--COMMITMENT--**
24 **REPORT.--**

25 A. If, after a competency hearing, a court

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determines that a defendant is not competent to stand trial, the court shall determine if the defendant is dangerous. A defendant who is not competent is dangerous if the court finds by clear and convincing evidence that the defendant presents a serious threat of:

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

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

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

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

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

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

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

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

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

1 B. If the court determines that a defendant is not
2 dangerous, the court may order the defendant to participate in
3 a community-based competency restoration program or dismiss the
4 criminal case without prejudice in the interests of justice;
5 provided that if the court dismisses the case, the court may:

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

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

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

22 (1) within thirty days of the date that the
23 defendant was ordered to participate in a community-based
24 competency restoration program, the person supervising the
25 defendant's competency restoration program shall submit a

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1 progress report to the court and both parties that includes:

2 (a) an initial assessment of the
3 defendant and a description of the competency restoration
4 programming that will be provided to the defendant;

5 (b) a report on the defendant's
6 amenability to competency restoration;

7 (c) an assessment of the program's
8 capacity to provide appropriate programming for the defendant;
9 and

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

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 supervising the defendant's
21 competency restoration program shall submit a written report
22 that 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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medication, information from the prescribing physician about the type, dosage and effect of the medication on the defendant's appearance, actions and demeanor;

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

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

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

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

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

(1) shall be detained by the department of health in a secure, locked facility; and
(2) shall not be released from that facility

except pursuant to an order of the court that committed the defendant.

E. The department of health shall admit a defendant for competency restoration within fifteen 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 the secretary's designee. If the secretary of health or the secretary's designee determines that the department of health does not have the ability to meet the needs of the defendant, the secretary or the secretary's designee may refuse admission by providing written certification to the committing court and the parties of the department's inability to meet the needs of the defendant. The certification shall be made within seven 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 the secretary's designee.

Within ten days of filing of the certification, the court shall conduct a hearing for further disposition of the criminal case.

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

(1) an initial assessment of the defendant and

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1 treatment plan;

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

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

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

10 SECTION 4. 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 be restored to competency within nine months from the date the
17 court determined the defendant is not competent to stand trial,
18 the district court may:

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

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

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

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1 another person;

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

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

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

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

10 (7) human trafficking, as provided in Section
11 30-52-1 NMSA 1978;

12 (8) aggravated arson, as provided in Section
13 30-17-6 NMSA 1978; or

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

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

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

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1 days to facilitate the initiation of those proceedings; and
2 provided further that the district attorney may initiate
3 involuntary commitment proceedings in the department's stead."

4 SECTION 5. 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;

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

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

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

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

B. A criminal commitment 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.

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

D. If the district court finds by clear and convincing evidence that the defendant committed the crime charged and has not made a finding of dangerousness in

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1 accordance with Section 31-9-1.2 NMSA 1978, the district court
2 shall dismiss the criminal case without prejudice.

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

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

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

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

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

25 (a) upon a finding that the defendant is

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competent to proceed in a criminal case, the court shall continue with the criminal proceeding;

(b) if the defendant continues to remain not competent to stand trial and dangerous in accordance with 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 the defendant been convicted in a criminal proceeding; and

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

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

SECTION 6. Section 31-9-1.6 NMSA 1978 (being Laws 1997,
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1 Chapter 153, Section 1, as amended) is amended to read:

2 **"31-9-1.6. HEARING TO DETERMINE DEVELOPMENTAL OR**
3 **INTELLECTUAL DISABILITY.--**

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

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

22 C. If the department of health determines that the
23 defendant presents a likelihood of serious harm to self or
24 others, the department shall initiate involuntary commitment
25 proceedings in accordance with the Mental Health and

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Developmental Disabilities Code if the defendant is charged with:

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

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

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

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

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

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

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

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

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

D. After the involuntary commitment hearing or upon expiration of fourteen months from the court's initial determination that the defendant is not competent to stand

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1 trial, the criminal case shall be dismissed without prejudice.

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

9 SECTION 7. Section 31-18-16 NMSA 1978 (being Laws 1977,
10 Chapter 216, Section 5, as amended) is amended to read:

11 "31-18-16. USE, BRANDISHING OR DISCHARGE OF FIREARM--
12 ALTERATION OF BASIC SENTENCE--SUSPENSION AND DEFERRAL
13 LIMITED--

14 A. When a separate finding of fact by the court or
15 jury shows that a firearm was used in relation to a drug
16 transaction or during the commission of aggravated burglary
17 pursuant to Section 30-16-4 NMSA 1978 or a serious violent
18 offense, the basic sentence of imprisonment prescribed for the
19 offense in Section 31-18-15 NMSA 1978 shall be increased by one
20 year, except that when the offender is a serious youthful
21 offender or a youthful offender who received an adult sentence,
22 the sentence imposed by this subsection may be increased by one
23 year.

24 B. When a separate finding of fact by the court or
25 jury shows that a firearm was brandished in the commission of a

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1 noncapital felony, the basic sentence of imprisonment
2 prescribed for the offense in Section 31-18-15 NMSA 1978 shall
3 be increased by three years, except that when the offender is a
4 serious youthful offender or a youthful offender that received
5 an adult sentence, the sentence imposed by this subsection may
6 be increased by one year.

7 C. When a separate finding of fact by the court or
8 jury shows that a firearm was discharged in the commission of a
9 noncapital felony, the basic sentence of imprisonment
10 prescribed for the offense in Section 31-18-15 NMSA 1978 shall
11 be increased by five years, except that when the offender is a
12 serious youthful offender or a youthful offender who received
13 an adult sentence, the sentence imposed by this subsection may
14 be increased by three years.

15 D. For a second or subsequent offense, when a
16 separate finding of fact by the court or jury shows that a
17 firearm was used, brandished, or discharged in relation to a
18 drug transaction or during the commission of aggravated
19 burglary pursuant to Section 30-16-4 NMSA 1978 or a serious
20 violent offense, the sentence shall be increased by five years,
21 except that when the offender is a serious youthful offender or
22 a youthful offender, the sentence imposed by this section may
23 be increased by three years.

24 E. If the case is tried before a jury and if a
25 prima facie case has been established showing that a firearm

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1 was used, brandished or discharged in relation to a drug
2 transaction or during the commission of aggravated burglary
3 pursuant to Section 30-16-4 NMSA 1978 or a serious violent
4 offense, the court shall submit the issue to the jury by
5 special interrogatory. If the case is tried by the court, the
6 court shall decide the issue and shall make a separate finding
7 of fact thereon.

8 F. When a separate finding of fact by the court or
9 jury shows that a firearm was used, brandished or discharged in
10 relation to a drug transaction or during the commission of
11 aggravated burglary pursuant to Section 30-16-4 NMSA 1978 or a
12 serious violent offense, the firearm is subject to seizure and
13 forfeiture as an instrumentality pursuant to the provisions of
14 the Forfeiture Act.

15 G. As used in this section:

16 (1) "brandished" means displaying or making a
17 firearm known to another person while the firearm is present on
18 the person of the offending party with intent to intimidate or
19 injure a person;

20 (2) "in relation to a drug transaction" means
21 participating or attempting to participate in the trafficking
22 of a controlled substance pursuant to Section 30-31-20 NMSA
23 1978, distribution of a controlled substance to a minor
24 pursuant to Section 30-31-21 NMSA 1978 or distribution of a
25 controlled or counterfeit substance pursuant to Section

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1 30-31-22 NMSA 1978 as a seller, purported seller or as an
2 accomplice; and

3 (3) "serious violent offense" means an offense
4 enumerated in Subparagraphs (a) through (n) of Paragraph (4) of
5 Subsection [L] N of Section 33-2-34 NMSA 1978."

6 **SECTION 8.** Section 33-2A-3 NMSA 1978 (being Laws 2002,
7 Chapter 8, Section 3) is amended to read:

8 "33-2A-3. DEFINITIONS.--As used in the Corrections
9 Population Control Act:

10 A. "commission" means the corrections population
11 control commission;

12 B. "female correctional facilities" means:

13 (1) the women's correctional facility, located
14 in Grants; and

15 (2) any other female correctional facility so
16 designated by the corrections department;

17 C. "male correctional facilities" means:

18 (1) the penitentiary of New Mexico, located in
19 Santa Fe;

20 (2) the central New Mexico correctional
21 facility, located in Los Lunas;

22 (3) the southern New Mexico correctional
23 facility, located in Las Cruces;

24 (4) the western New Mexico correctional
25 facility, located in Grants;

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(5) the Roswell correctional facility, located in Hagerman;

(6) the Guadalupe county correctional facility, located in Santa Rosa;

(7) the Lea county correctional facility, located in Hobbs; and

(8) any other male correctional facility so designated by the corrections department;

D. "nonviolent offender" means:

(1) a person convicted only of possession of a controlled substance, pursuant to the provisions of Section 30-31-23 NMSA 1978;

(2) a person incarcerated for violating the conditions of [his] the person's parole plan due to use or possession of a controlled substance whose original conviction was for commission of a nonviolent offense; or

(3) an inmate designated by the commission as a nonviolent offender; provided that the offender was convicted for the commission of a nonviolent offense, as that term is defined in Subsection [L] N of Section 33-2-34 NMSA 1978; and

E. "rated capacity" means the actual general population bed space, including only individual cells and areas designed for the long-term housing of inmates, available in female correctional facilities or male correctional facilities as certified by the secretary of corrections and subject to

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1 applicable state and federal law."

2 **SECTION 9.** Section 33-11-3 NMSA 1978 (being Laws 1988,
3 Chapter 78, Section 3, as amended) is amended to read:

4 **"33-11-3. REGULATIONS.--**

5 A. The corrections department, by July 1, 1988,
6 shall adopt regulations for all adult correctional institutions
7 operated by the department for the implementation of a
8 mandatory education program for all inmates to attain a minimum
9 education standard as set forth in this section.

10 B. The regulations shall apply only to any inmate
11 who:

12 (1) commits a crime after the effective date
13 of the Inmate Literacy Act; and

14 (2) has eighteen months or more remaining to
15 be served on the inmate's sentence of incarceration; and who:

16 (a) is not exempted due to a medical,
17 developmental or learning disability; or

18 (b) does not possess a high school
19 equivalency credential or a high school diploma.

20 C. The regulations adopted shall require that:

21 (1) a minimum education standard shall be met
22 beginning in 1988 and in all subsequent years as follows:

23 (a) in 1988, the education standard
24 shall be the equivalent of grade six in reading and math on the
25 test of adult basic education;

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(b) in 1989, the education standard shall be the equivalent of grade seven in reading and math on the test of adult basic education;

(c) in 1990, the education standard shall be the equivalent of grade eight in reading and math on the test of adult basic education; and

(d) in 1991, the education standard shall be a high school diploma or a high school equivalency credential;

(2) inmates who meet the criteria in Subsection B of this section shall be required to participate in education programs for ninety days. After ninety days, inmates may choose to withdraw from educational programs but will be subject to the provisions of Paragraph (3) of this subsection; and

(3) notwithstanding any other provision of law, inmates who are subject to these regulations but who refuse or choose not to participate shall not be eligible for monetary compensation for work performed or for meritorious deduction as set forth in Subsection [D] E of Section 33-2-34

D. The regulations may:

(1) exclude any inmate who has been incarcerated for less than ninety days in an institution controlled by the corrections department;

(2) exclude any inmate who is assigned a minimum custody classification; or

(3) defer educational requirements for inmates with sentences longer than ten years."

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