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

3 **DEFINITIONS**

4 **SECTION 1.** A new Section 31-9-1. NMSA 1978 is enacted to read:

5 **"31-9-1.[NEW MATERIAL] DEFINITIONS.--As used in Chapter 31, Article 9 NMSA**
6 **1978:**

7 A. "assent" requires only a minimal level of mental competence, accompanied by an
8 affirmative indication of agreement with a particular course of action, to include the ability or
9 to grasp and accept the concept of diversion after an explanation of the likely consequences of
10 the action

11 B. "assisted outpatient treatment" has the same meaning as set forth in the Assisted Outpatient
12 Treatment Act.

13 C. "community competency restoration" means a competency restoration program that may be
14 residential or outpatient and is provided in a community-based setting rather than in a hospital
15 or institutional setting. [NOTE: Consider defining "residential" and "institutional" (and perhaps
16 "hospital"). There was some confusion about this in the discussions]

17 D. "competency diversion program" means diversion from the legal system directly to
18 resources and wraparound services including, if needed, mental health or substance abuse
19 treatment in the community with additional supportive structures such as case management;
20

21 E. "competency restoration program" means a program to restore a person to the legal standard
22 of competency. A "competency restoration program" may include services beyond those
23 required solely for restoring someone to competency;
24

25 F. "developmental or intellectual disability" means significantly subaverage general
26 intellectual functioning existing concurrently with deficits in adaptive behavior. An
27 intelligence quotient of seventy or below on a reliably administered intelligence quotient test
28 shall be presumptive evidence of developmental or a previously diagnosed intellectual or
29 disability.

30 G. "least drastic means" means that the habilitation or treatment and the conditions of
31 habilitation or treatment for the client, separately and in combination:

32 (1) are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment
33 objectives for the client;

34 (2) involve no restrictions on physical movement and no requirement for residential care
35 except as reasonably necessary for the administration of treatment or for the protection of the
36 client or others from physical injury; and

37 (3) are conducted at the suitable available facility close to the client's place of residence;

1
2 H. “non-violent felony case” means a case where the most serious charge is a felony charge
3 that is not a violent felony.

4 I. “residential competency restoration program” means a residential treatment facility that is
5 not a locked institution or hospital and has a specialized competency restoration program.

6 J. “violent felony case” means a case where the most serious charge is a felony that includes
7 any type of homicide, criminal sexual penetration, criminal sexual contact of a minor,
8 aggravated stalking, first and second degree child abuse, kidnapping, child solicitation, sexual
9 exploitation of a minor (possession, distributing and manufacturing), aggravated indecent
10 exposure, aggravated arson, human trafficking, dangerous use of explosives, or any other
11 felony crime committed with the use of a firearm .

12
13 **SECTION 2.** Section 31-9-1.1 NMSA 1978 (being Laws 1988, Chapter 107, Section 1 and
14 Laws 1988, Chapter 108, Section 1, as amended by Laws 1993, Chapter 240, Section 1 and by
15 Laws 1993, Chapter 249, Section 1) is repealed and a new Section 31-9-1.1 NMSA 1978 is
16 enacted to read:

17
18 **"31-9-1.1. [NEW MATERIAL] DETERMINATION OF COMPETENCY--RAISING THE**
19 **ISSUE--REFERRING TO DIVERSION PROGRAMS**

20
21 A. Whenever in a criminal case one of the parties or the court has a good-faith basis that
22 there is concern relating to a defendant's competency to proceed, the case shall be stayed
23 and the court shall:

24
25 (1) order a competency evaluation or

26
27 (2) with agreement of the parties and assent of the defendant or the defendant’s guardian,
28 the court may order the defendant to participate in a competency diversion program.

29
30 (a) For a misdemeanor case:

31
32 (1) if a defendant is under an order to receive assisted outpatient treatment
33 under the Assisted Outpatient Treatment Act, the case shall be dismissed
34 [no committee consensus as to whether it is dismissed with or without
35 prejudice here and in the section below regarding non-violent felonies as
36 well as other sections]; and

37
38 (2) for defendants not under an assisted outpatient treatment order under the
39 Assisted Outpatient Treatment Act, the court may refer the defendant for
40 participation in a competency diversion program for no longer than six
41 months. If the defendant participates in a competency diversion program,
42 the case shall remain in the originating court.

43
44 (b) For a non-violent felony case:

- 1
2 (1) if a defendant is under an order to receive assisted outpatient treatment
3 under the Assisted Outpatient Treatment Act, the case shall be dismissed if
4 the defendant completes the assisted outpatient treatment program; and
5
6 (2) for defendants not under an assisted outpatient treatment order under the
7 Assisted Outpatient Treatment Act, if the parties agree and the defendant
8 assents or defendant's guardian consents, the court may refer the
9 defendant for participation in a competency diversion program for no
10 longer than eighteen months.

11
12 D. After the time period for completion of a diversion program ordered under the Subsection
13 A(2) has elapsed, the case shall be dismissed.

14
15 E. The defendant shall not be required to have a competency evaluation while the defendant
16 is participating in a competency diversion program unless the defendant requests a competency
17 evaluation.

18
19 F. Nothing in this section shall preclude a defendant's participation in other pre-prosecution
20 or pre-arrest diversion programs.

21
22 **SECTION 3.** Section 31-9-1.2 NMSA 1978 (being Laws 1988, Chapter 107, Section 2 and
23 Laws 1988, Chapter 108, Section 2, as amended by Laws 1993, Chapter 240, Section 2 and by
24 Laws 1993, Chapter 249, Section 2) is repealed and a new Section 31-9-1.2 NMSA 1978 is
25 enacted to read:

26
27 **"31-9-1.2. DETERMINATION OF COMPETENCY--EVALUATION AND**
28 **DETERMINATION**

29
30 A. When either party or the court raises, in good faith, a concern as to whether the defendant
31 is competent to stand trial, and diversion is not agreed upon by the parties, the court shall
32 order a competency evaluation, and the evaluation shall be conducted by a psychologist or
33 psychiatrist or other qualified professional recognized by the court as an expert and a report
34 shall be submitted as ordered by the court. The report shall contain an opinion regarding the
35 defendant's competence to proceed.

36
37 B. In a misdemeanor case, a court shall hold a hearing to determine whether a defendant is
38 competent to proceed in the defendant's criminal case. If the defendant is:
39 (1) determined to be incompetent, the court shall dismiss the criminal case, or
40 (2) found competent, then the stay shall be lifted and, the case shall be scheduled
41 for trial or any other type of hearing the court deems appropriate.

42 C. In felony cases, if the opinion of the evaluator is that the defendant is not competent to
43 proceed, the evaluator should include in the report a written recommendation, as to which
44 competency restoration program or combination of programs is most appropriate for the
45 defendant to attain competency. The evaluator shall consider the least drastic means for the
46 defendant to attain competence. The recommendation shall be provided to all parties.

1
2 D. When the question of competency is raised in a court other than the district court or a
3 metropolitan court, and the defendant is not participating in a competency diversion
4 program, the case shall be transferred to the district court of the jurisdiction of the court
5 for the determination of competency. If the defendant is determined to be competent
6 under the procedures outlined in this Section, the case will be remanded to the originating
7 court for further proceedings.
8

9 E. In felony cases, a hearing shall be held on the issue of competency of defendant within a
10 reasonable time. If the defendant is found to be incompetent, the state may request a
11 competency restoration hearing to determine whether the defendant shall be ordered to a
12 competency restoration program.
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14

15 **SECTION 4.** Section 31-9-1.3 NMSA 1978 (being Laws 1988, Chapter 107, Section 3 and
16 Laws 1988, Chapter 108, Section 3, as amended by Laws 1993, Chapter 240, Section 3 and by
17 Laws 1993, Chapter 249, Section 3) is repealed and a new Section 31-9-1.3 NMSA 1978 is
18 enacted to read:
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20 **31-9-1.3. [NEW MATERIAL] DETERMINATION OF COMPETENCY –DIVERSION IN**
21 **LIEU OF RESTORATION AND COMPETENCY RESTORATION PROGRAMS--**
22 **COMMITMENT—REPORT**
23

24 A. In a hearing to determine competency under Section 31-9-1.2 NMSA 1978, if the
25 defendant is found competent, the stay issued under Subsection A of Section 31-9.1.1
26 NMSA 1978 shall be lifted.
27

28 B. If a defendant is found incompetent after a competency hearing in a felony case, the
29 court may hold a competency restoration hearing to determine whether the defendant
30 shall be ordered to a competency restoration program.
31

32 C. Unless the defendant is eligible for a diversion program or ordered to AOT under
33 Section F, the Court shall order the defendant to a competency restoration program in a
34 felony case if:
35

36 (1) the defendant was previously found incompetent or convicted on a separate felony
37 charge in the previous two years; or
38

39 (2) the state proves that, if released, the defendant presents a serious threat of
40 inflicting great bodily harm to another person; or a serious threat of committing a
41 felony crime involving a deadly weapon; or a serious threat of committing felony
42 child abuse, criminal sexual penetration, criminal sexual contact of a minor, criminal
43 sexual exploitation of a minor (possession, distributing and manufacturing), human
44 trafficking or aggravated arson.
45

1 D. If the defendant meets the criteria for competency restoration, the court shall order
2 competency restoration in the least restrictive setting after taking into consideration the
3 recommendation of the forensic evaluator when considering the appropriate placement
4 for competency restoration. The parties and court may agree that defendant will
5 complete AOT or a diversion program in lieu of competency restoration under Section
6 F.

7
8 E. If the defendant is not ordered to a competency restoration program, the court shall
9 dismiss the criminal case without prejudice.

10
11 F. [NOTE: Discussion point: whether this section should only apply to non-violent felonies
12 or whether the court and parties should have discretion to evaluate on a case by case
13 basis] In lieu of a defendant being ordered to a competency restoration program, the
14 parties may agree, with approval of the court, that:

15
16 1. the case be held in abeyance pending the defendant's participation in a diversion
17 program. The prosecutor and the defense attorney must agree that such diversion
18 would be preferable to an order for restoration of competence to proceed, and the
19 defendant shall assent or defendant's guardian shall consent to such diversion. If
20 the defendant successfully completes the diversion program, the case shall be
21 dismissed; or

22
23 2. if the defendant is currently ordered to assisted outpatient treatment in a civil
24 case, the defendant may complete assisted outpatient treatment in lieu of a
25 competency restoration program. If proof of completion of assisted outpatient
26 treatment is provided to the court, the defendant's case shall be dismissed.

27
28 G. If the court orders the defendant to a competency restoration program, the court may
29 order that the restoration to competency be outpatient, residential or the court may order
30 the defendant be committed to the state forensic hospital. The competency restoration
31 program shall be provided by a facility that is authorized by the department of health or
32 the health care authority department. Facilities and providers shall notify the court
33 immediately if services are terminated and a hearing shall be held.

34 H. If the defendant is ineligible for a community competency restoration program, the
35 defendant shall be committed for competency restoration at a state forensic hospital and

36 (1) if the defendant is committed to the state forensic hospital the defendant shall
37 be detained by the department of health in a secure, locked facility until completion of
38 competency restoration or a recommendation by the facility that the defendant can
39 continue restoration to competency at a community competency restoration program.

40 (2) upon the defendant's completion of competency restoration and the
41 submission of a final report to the state, defense counsel and the court, the court shall
42 enter an order to transport the defendant to the appropriate county detention facility, and

1 (3) upon release, the committing facility shall forward a discharge plan and
2 treatment documents to the receiving provider or facility.

3 I. Within thirty days the person supervising the defendant's competency restoration shall
4 file with the court, the state and the defense an initial assessment and plan and a report on
5 the defendant's amenability to be restored to competency; whether the person can
6 continue restoration to competency at a community competency restoration program, and
7 if not, an assessment of the facility's or program's capacity to provide appropriate
8 competency restoration for the defendant. If the defendant is in a competency restoration
9 program at a forensic hospital, an opinion as to the probability of the defendant's
10 attaining competency within a period of 120 days from the date the defendant was
11 admitted into the competency restoration program. If the defendant is in a community
12 competency restoration program, an opinion as to the probability of the defendant's
13 attaining competency within a period of 210 days from the date the defendant was
14 admitted into the competency restoration program. If the program or facility determines
15 that a defendant is unlikely to attain competency the case will proceed as outlined in
16 Section 31-9-1.4 NMSA 1978.

17 In addition to restoring the defendant to competency, the person supervising defendant's
18 competency restoration program may recommend a treatment plan and may refer the
19 defendant to case management and/or other services upon discharge for continuing care.

20
21 **SECTION 5.** Section 31-9-1.3 NMSA 1978 (being Laws 1988, Chapter 107, Section 3 and
22 Laws 1988, Chapter 108, Section 3 as amended) is amended to read:

23 ~~31-9-1.3~~ **31-9-1.4 DETERMINATION OF COMPETENCY--NINETY-DAY REVIEW--**
24 **REPORTS--CONTINUING TREATMENT**

25 A. Within ninety days of the entry of the order requiring an incompetent defendant to undergo
26 competency restoration, the district court, sitting without a jury, shall conduct a hearing,
27 unless waived by the defense, and shall determine:

28
29 (1) whether the defendant has been restored to competency and can ~~is competent to~~
30 proceed in the criminal case; and, if not,

31 (2) whether the defendant is making progress toward attainment of competency
32 within the time period set forth in Section 31-9-1.3(J); and

33 (3) ~~whether the defendant remains dangerous as that term is defined in Section 31-~~
34 ~~9-1.2 NMSA 1978~~ if in a secure, inpatient facility, remains a serious threat to
35 others.

36 B. At least seven days prior to the review hearing, the competency restoration supervisor
37 shall submit a written progress report to the court, the state and the defense indicating:

38 (1) the clinical findings of the ~~treatment~~ competency restoration supervisor and the

1 facts upon which the findings are based;

2 (2) the opinion of the ~~treatment~~ competency restoration supervisor as to whether the
3 defendant has attained competency or as to whether the defendant is making progress
4 ~~under treatment~~ toward attaining competency within nine months from the date of the
5 original finding of incompetency and whether there is a substantial probability that
6 the defendant will attain competency within the time period set forth in Section 31-
7 9-1.3(J);

8 (3) whether the defendant is ~~dangerous as that term is defined in Section 31-9-1.2~~
9 ~~NMSA 1978~~ a serious threat of inflicting great bodily harm on another, a serious
10 threat of committing a felony crime involving a firearm or a serious threat of
11 committing aggravated arson, criminal sexual penetration or criminal sexual contact
12 of a minor or whether the defendant satisfies the criteria for involuntary commitment
13 contained in the Mental Health and Developmental Disabilities Code;¹ and

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

17
18 (c) If the district court finds the defendant to be competent, the district court shall set the
19 matter for trial, provided that if the defendant is in need of continued care or treatment
20 and the supervisor of the defendant's treatment agrees to continue to provide it, the
21 district court may enter any order it deems appropriate for the continued care or treatment
22 of the defendant by the facility or program pending the conclusion of the criminal
23 proceedings.

24 D. If the district court finds that the defendant is still not competent to proceed in a criminal
25 case but that he is making progress toward attaining competency, the district court may
26 continue or modify its original ~~treatment~~ competency restoration order entered pursuant
27 to ~~Section 31-9-1.2~~ 31-9-1.3 NMSA 1978, provided that:

28 (1) the question of the defendant's competency shall be reviewed again within the
29 time period set forth in Section 31-9-1.3(J); and

30 (2) the competency restoration supervisor shall submit a written progress report as
31 specified in Subsection B of this section at least seven days prior to such hearing.
32

33 (d) If the district court finds that the defendant is still not competent, that he is not
34 making progress toward attaining competency and that there is not a substantial
35 probability that he will attain competency within ~~nine months~~ 180 days from the
36 date of the original finding of incompetency, the district court shall proceed
37 pursuant to ~~Section 31-9-1.2~~ 31-9-1.4 NMSA 1978.
38

39 ~~(e) If the defendant is in need of continued care and treatment and the supervisor of the~~
40 ~~defendant's treatment agrees to continue to provide it, the district court may enter~~
41 ~~any order it deems appropriate for the continued care or treatment by the facility or~~

1 program pending the conclusion of the proceedings.
2

3 **SECTION 6.** Section 31-9-1.4 NMSA 1978 (being Laws 1988, Chapter 107, Section 4 and
4 Laws 1988, Chapter 108, Section 4 as amended) is amended to read:
5

6 ~~31-9-1.4~~ **31-9-1.5 DETERMINATION OF COMPETENCY; INCOMPETENT**
7 **DEFENDANTS**

8 If at any time the district court determines that there is not a substantial probability that the
9 defendant will become competent to proceed in a criminal case within a reasonable period of time
10 not to exceed the time period set forth in Section 31-9-1.3(J), the district court may:
11

12 A. hear the matter pursuant to ~~Section 31-9-1.5 1.~~ NMSA 1978 within three months if the
13 defendant is charged with a felony that involves the infliction of great bodily harm on
14 another person; a felony that involves the use of a firearm; aggravated arson, ~~as provided~~
15 ~~in Section 30-17-6 NMSA 1978~~; criminal sexual penetration, ~~as provided in Section 30-9-~~
16 ~~11 NMSA 1978~~; or criminal sexual contact of a minor, ~~as provided in Section 30-9-13~~
17 NMSA 1978;

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

20 C. dismiss the criminal case without prejudice in the interest of justice. If the ~~treatment~~
21 competency restoration supervisor has issued a report finding that the defendant satisfies
22 the criteria for involuntary commitment contained in the Mental Health and Developmental
23 Disabilities Code,¹ the department of health shall commence proceedings pursuant to
24 Chapter 43, Article 1 NMSA 1978, and the court may order the defendant confined for a
25 maximum of seven days to facilitate preparation and initiation of a petition pursuant to the
26 Mental Health and Developmental Disabilities Code or ~~The district court may refer the~~
27 ~~defendant to the district attorney for possible initiation of~~ may file to initiate proceedings
28 under the Mental Health and Developmental Disabilities Code or under the Assisted
29 Outpatient Treatment Act.
30

31 **SECTION 7.** Section 31-9-1.5 NMSA 1978 (being Laws 1988, Chapter 107, Section 5 and
32 Laws 1988, Chapter 108, Section 5 as amended) is amended to read:
33

34 ~~31-9-1.5~~ **31.9-1.6 DETERMINATION OF COMPETENCY; EVIDENTIARY HEARING**

35 A. As provided for in Subsection A of Section 31-9-1.4 1. NMSA 1978, a hearing to
36 determine the sufficiency of the evidence shall be held if the case is not dismissed and if the
37 defendant is charged with a felony that involves the infliction of great bodily harm on another
38 person,; felony that involves the infliction of great bodily harm on another person, a felony that
39 involves the use of a firearm, aggravated arson, ~~as provided in Section 30-17-6 NMSA 1978~~;
40 criminal sexual penetration, ~~as provided in Section 30-9-11 NMSA 1978~~; or criminal sexual

1 contact of a minor, ~~as provided in Section 30-9-13 NMSA 1978~~, Such hearing shall be conducted
2 by the district court without a jury. The state and the defendant may introduce evidence relevant
3 to the question of the defendant's guilt of the crime charged. The district court may admit
4 hearsay or affidavit evidence on secondary matters such as testimony to establish the chain of
5 possession of physical evidence, laboratory reports, authentication of transcripts taken by official
6 reporters, district court and business records and public documents.

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

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

22 D. If the district court finds by clear and convincing evidence that the defendant committed a
23 felony that involves the infliction of great bodily harm on another person; a felony that involves
24 the use of a firearm; aggravated arson, ~~as provided in Section 30-17-6 NMSA 1978;~~ criminal
25 sexual penetration, ~~as provided in Section 30-9-11 NMSA 1978;~~ or criminal sexual contact of a
26 minor, ~~as provided in Section 30-9-13 NMSA 1978~~ and enters a finding that the defendant remains
27 incompetent to proceed and is a serious threat of inflicting great bodily harm on another, a serious
28 threat of committing a felony crime involving a firearm or a serious threat of committing
29 aggravated arson, criminal sexual penetration or criminal sexual contact of a minor and remains
30 dangerous pursuant to Section 31-9-1.2 NMSA 1978:

- 31 (1) the defendant shall be detained by the department of health in a secure, locked facility;
- 32 (2) the defendant shall not be released from that secure facility except pursuant to an order
33 of the district court which committed him or upon expiration of the period of time equal to
34 the maximum sentence to which the defendant would have been subject had the defendant
35 been convicted in a criminal proceeding;
- 36 (3) significant changes in the defendant's condition, including but not limited to trial
37 competency and dangerousness, shall be reported in writing to the district court, state and
38 defense; and
- 39 (4) at least every two years, the district court shall conduct a hearing upon notice to the
40 parties and the department of health charged with detaining the defendant. At the hearing,
41 the court shall enter findings on the issues of trial competency and ~~dangerousness~~ whether

1 the defendant remains a serious threat of inflicting great bodily harm on another or a serious
2 threat of committing aggravated arson, criminal sexual penetration or criminal sexual
3 contact of a minor:

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

6 (b) if the defendant continues to be incompetent to proceed in a criminal case and
7 ~~dangerous pursuant to Section 31-9-1.2 NMSA 1978~~ the defendant remains a
8 serious threat of inflicting great bodily harm on another, a serious threat of
9 committing a felony crime involving a firearm or a serious threat of committing
10 aggravated arson, criminal sexual penetration or criminal sexual contact of a minor,
11 the court shall review the defendant's competency and dangerousness every two
12 years until expiration of the period of commitment equal to the maximum sentence
13 to which the defendant would have been subject had he or she the defendant been
14 convicted in a criminal proceeding; provided, that if the treatment-competency
15 restoration supervisor recommends that the defendant be committed pursuant to the
16 Mental Health and Developmental Disabilities Code, the court may at any time
17 proceed pursuant to Subsection C of Section 31-9-1.4 NMSA 1978; and

18 (c) if the defendant is not committed pursuant to Sections 31-9-1 through 31-9-
19 1.5 NMSA 1978 or if the court finds upon its two-year review hearing that the
20 defendant is no longer remains a serious threat of inflicting great bodily harm on
21 another or a serious threat of committing a felony crime involving a firearm, or a
22 serious threat of committing aggravated arson, criminal sexual penetration or
23 criminal sexual contact of a minor dangerous, as defined in Section 31-9-1.2 NMSA
24 1978, the defendant shall be released.
25

26 **SECTION 8.** Section 31-9-1.6 NMSA 1978 (being Laws 1988, Chapter 107, Section 6 and
27 Laws 1988, Chapter 108, Section 6 as amended) is amended to read:

28 **~~31-9-1.6~~ 31-9-1.7 HEARING TO DETERMINE DEVELOPMENT OR INTELLECTUAL**
29 **DISABILITY**

30 A. Upon motion of the defense requesting a ruling, the court shall hold a hearing to
31 determine whether the defendant has a developmental or intellectual disability as
32 ~~determined in Subsection E of this section.~~
33

34 B. If the court finds by a preponderance of the evidence that the defendant has a
35 developmental or intellectual disability and that there is not a substantial probability
36 that the defendant will become competent to proceed in a criminal case within a
37 reasonable period of time not to exceed the time period set forth in Section 31-9-1.3(J),
38 then, no later than sixty days from notification to the secretary of health or the
39 secretary's designee of the court's findings, the department of health shall perform an
40 evaluation to determine whether the defendant presents a likelihood of serious harm to
41 self or others.

1
2 C. If the department of health evaluation results in a finding that the defendant presents a
3 likelihood of serious harm to self or others, within sixty days of the department's
4 evaluation, the department shall commence proceedings pursuant to the Mental Health
5 and Developmental Disabilities Code Chapter 43, Article 1 NMSA 1978 if the
6 defendant was charged with murder in the first degree, first degree criminal sexual
7 penetration, criminal sexual contact of a minor or arson in the initial proceedings, and
8 the court presiding over the initial proceedings shall enter a finding that the respondent
9 presents a likelihood of harm to others.
10

11 D. The criminal charges shall be dismissed without prejudice after the hearing pursuant to
12 the Mental Health and Developmental Disabilities Code Chapter 43, Article 1 NMSA
13 1978 or upon expiration of fourteen months from the court's initial determination that
14 the defendant is incompetent to proceed in a criminal case.
15

16 **SECTION 9.** Section 31-9-2 NMSA 1978 (being Laws 1988, Chapter 107, Section 3 and
17 Laws 1988, Chapter 108, Section 3 as amended) is amended to read:
18

19 **31-9-2. MENTAL EXAMINATION**

20 Upon motion of any defendant, the court shall order a mental examination of the defendant
21 before making any determination of competency under Sections 41-13-3 or 31-9-1 NMSA
22 1978. Where the defendant is determined to be indigent, the executive branch agency
23 responsible for behavioral health services shall pay for the costs of the examination from
24 funds available to the state.

25 **SECTION 10.**

26 EFFECTIVE DATE:

27 NOTE FROM WORK GROUP

28
29
30 *Currently, the only competency restoration program is at the forensic hospital. New Mexico does not*
31 *have any community-based competency restoration programs. For defendants who are eligible, the draft*
32 *statute provides for diversion or AOT in lieu of competency restoration which provides an alternative to*
33 *restoration at a forensic hospital.*
34

35 *Factors to Consider regarding an Effective Date:*

- 36 - *The availability of diversion or AOT in lieu of competency*
37 - *Lack of outpatient competency restoration programs*
38 - *There is availability for restoration at the forensic hospital*
39 - *Allow for certain sections to have delayed effective dates in order for the designated state*
40 *behavioral health agency to create, then execute a plan for implementation.*