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HOUSE BILL 903

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO CRIMINAL PROCEDURE; REVISING CRITERIA REGARDING
DISPOSITION OF A CRIMINAL DEFENDANT WHO IS MENTALLY RETARDED.

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

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

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

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

B. If the district 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~~

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 ~~within a reasonable period of time not to exceed nine months~~
2 ~~from the date of the original finding of incompetency, then,~~
3 ~~no later than sixty days from notification to the secretary of~~
4 ~~health or his designee of the court's findings, the department~~
5 ~~of health shall perform an evaluation to determine whether the~~
6 ~~defendant presents a likelihood of serious harm to himself or~~
7 ~~a likelihood of serious harm to others.~~

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

19 D. ~~The criminal charges shall be dismissed without~~
20 ~~prejudice after the hearing pursuant to Chapter 43, Article 1~~
21 ~~NMSA 1978 or upon expiration of fourteen months from the~~
22 ~~court's initial determination that the defendant is~~
23 ~~incompetent to proceed in a criminal case] finds by clear and~~
24 ~~convincing evidence that the defendant committed murder in the~~
25 ~~first degree, first degree criminal sexual penetration,~~

underscored material = new
[bracketed material] = delete

1 criminal sexual contact of a minor or arson; finds that the
2 defendant is incompetent to proceed in a criminal case; and
3 finds that the defendant remains dangerous to himself or
4 others:

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

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

13 (3) the department of health shall report in
14 writing to the district court, the prosecuting attorney and
15 the defendant's attorney regarding significant changes in the
16 defendant's condition, including competency to stand trial and
17 dangerousness; and

18 (4) at least every two years, the district
19 court shall conduct a hearing upon notice to the prosecuting
20 attorney, the defendant's attorney and the department of
21 health. At the hearing, the court shall enter findings on the
22 issues of trial competency and dangerousness:

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

underscored material = new
[bracketed material] = delete

1 (b) if the defendant continues to be
2 incompetent to proceed in a criminal case and dangerous, the
3 district court shall review the defendant's competency and
4 dangerousness every two years until expiration of the period
5 of commitment equal to the maximum sentence to which the
6 defendant would have been subject had he been convicted in a
7 criminal proceeding; and

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

11 [~~E-~~] C. As used in this section, "mental
12 retardation" means significantly subaverage general
13 intellectual functioning existing concurrently with deficits
14 in adaptive behavior. An intelligence quotient of seventy or
15 below on a reliably administered intelligence quotient test
16 shall be presumptive evidence of mental retardation."

17 Section 2. EFFECTIVE DATE. --The effective date of the
18 provisions of this act is July 1, 2001.