

1 SENATE BILL 10  
2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2024**

3 INTRODUCED BY  
4 Mark Moores  
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10 AN ACT

11 RELATING TO COMPETENCY PROCEEDINGS; REQUIRING THE COURT TO  
12 ADVISE THE DISTRICT ATTORNEY TO CONSIDER INITIATION OF  
13 PROCEEDINGS UNDER THE MENTAL HEALTH AND DEVELOPMENTAL  
14 DISABILITIES CODE IN CERTAIN CIRCUMSTANCES; REQUIRING THE  
15 CONFINEMENT OF A DEFENDANT IN CERTAIN CIRCUMSTANCES; PROVIDING  
16 FOR THE INITIATION OF CIVIL COMMITMENT PROCEEDINGS UNDER  
17 CERTAIN CIRCUMSTANCES.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. 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. When, after a hearing, a court determines that a

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1 defendant is not competent to proceed in a criminal case and  
2 the court does not find that the defendant is dangerous, the  
3 court may dismiss the criminal case without prejudice in the  
4 interests of justice. Upon dismissal, the court ~~may~~ shall  
5 advise the district attorney to consider initiation of  
6 proceedings under the Mental Health and Developmental  
7 Disabilities Code and may order the defendant confined for a  
8 maximum of seven days to facilitate preparation and initiation  
9 of a petition pursuant to that code; provided that if the  
10 criminal charge against the defendant is a serious violent  
11 offense as defined in Section 33-2-34 NMSA 1978 or a felony  
12 that involved the use of a firearm or the defendant was  
13 previously found incompetent to stand trial by the court two or  
14 more times within a one-year period, the district attorney  
15 shall initiate proceedings under the Mental Health and  
16 Developmental Disabilities Code and the court shall order the  
17 defendant confined for a maximum of seven days to facilitate  
18 preparation and initiation of a petition pursuant to that code.

19 B. When a district court determines that a  
20 defendant charged with a felony is incompetent to proceed in  
21 the criminal case, but does not dismiss the criminal case, and  
22 the district court at that time makes a specific finding that  
23 the defendant is dangerous, the district court may commit the  
24 defendant as provided in this section for treatment to attain  
25 competency to proceed in a criminal case. The court shall

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1 enter an appropriate transport order that also provides for  
2 return of the defendant to the local facilities of the court  
3 upon completion of the treatment. A court shall hold a hearing  
4 within seventy-two hours after the return of the defendant to  
5 the local facilities of the court. The defendant [se]  
6 committed for treatment to attain competency to proceed in a  
7 criminal case shall be provided with treatment available to  
8 involuntarily committed persons, and:

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

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

15 C. Within thirty days of receipt of the court's  
16 order of commitment of an incompetent defendant and of the  
17 necessary and available documents reasonably required for  
18 admission pursuant to written policies adopted by the secretary  
19 of health or ~~his~~ the secretary's designee, the defendant  
20 shall be admitted to a facility designated for the treatment of  
21 defendants who are incompetent to stand trial and dangerous.

22 If, after conducting an investigation, the secretary determines  
23 that the department of health does not have the ability to meet  
24 the medical needs of a defendant ordered committed to a  
25 facility, the secretary or ~~his~~ the secretary's designee may

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1 refuse admission to the defendant upon written certification to  
2 the committing court and the parties of the lack of ability to  
3 meet the medical needs of the defendant. The certification  
4 must be made within fourteen days of the receipt of the court's  
5 order of commitment and necessary and available documents  
6 reasonably required for admission pursuant to written policies  
7 adopted by the secretary or ~~[his]~~ the secretary's designee.  
8 Within ten days of filing of the certification, the court  
9 ~~[shall conduct]~~ may order a hearing to consider assisted  
10 outpatient treatment and for further disposition of the  
11 criminal case.

12 D. As used in Sections 31-9-1 through 31-9-1.5 NMSA  
13 1978, "dangerous" means that, if released, the defendant  
14 presents a serious threat of inflicting great bodily harm on  
15 another or of violating Section 30-9-11 or 30-9-13 NMSA 1978.  
16 A finding of dangerousness need not be based on a psychological  
17 evaluation or on expert testimony.

18 E. Within thirty days of an incompetent defendant's  
19 admission to a facility to undergo treatment to attain  
20 competency to proceed in a criminal case, the person  
21 supervising the defendant's treatment shall file with the  
22 district court, the state and the defense an initial assessment  
23 and treatment plan and a report on the defendant's amenability  
24 to treatment to render ~~[him]~~ the defendant competent to proceed  
25 in a criminal case, an assessment of the facility's or

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1 program's capacity to provide appropriate treatment for the  
2 defendant and an opinion as to the probability of the  
3 defendant's attaining competency within a period of nine months  
4 from the date of the original finding of incompetency to  
5 proceed in a criminal case.

6 F. Upon dismissal of a criminal case pursuant to  
7 this section, the city or county attorney or any other person  
8 authorized by law may request that the district attorney  
9 initiate proceedings under the Mental Health and Developmental  
10 Disabilities Code. The person making the request to the  
11 district attorney may present any medical report or other  
12 evidence in order to make a petition but is not required to  
13 produce any particular evidence or report in order to make a  
14 petition. The district attorney shall act on the request  
15 within seventy-two hours. If the district attorney determines  
16 that reasonable grounds exist to commit the person, the  
17 district attorney shall initiate proceedings for civil  
18 commitment pursuant to the Mental Health and Developmental  
19 Disabilities Code. Notwithstanding a referral from the court,  
20 the city or county attorney or any other person authorized by  
21 law, the district attorney shall file a petition with the court  
22 under the Mental Health and Developmental Disabilities Code  
23 requesting that the court initiate civil commitment proceedings  
24 if any of the initial charges were a serious violent offense as  
25 defined in Section 33-2-34 NMSA 1978 or a felony that involved

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1 the use of a firearm or the person was previously found  
2 incompetent to stand trial by the court two or more times  
3 within a one-year period."

4 SECTION 2. Section 31-9-1.4 NMSA 1978 (being Laws 1988,  
5 Chapter 107, Section 5 and Laws 1988, Chapter 108, Section 5,  
6 as amended) is amended to read:

7 "31-9-1.4. DETERMINATION OF COMPETENCY--INCOMPETENT  
8 DEFENDANTS.--If at any time the district court determines that  
9 there is not a substantial probability that the defendant will  
10 become competent to proceed in a criminal case within a  
11 reasonable period of time not to exceed nine months from the  
12 date of the original finding of incompetency, the district  
13 court [~~may~~] shall:

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

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

24 ~~G.]~~ B. dismiss the criminal case without prejudice  
25 in the interest of justice. If the treatment supervisor has

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1 issued a report finding that the defendant satisfies the  
2 criteria for involuntary commitment contained in the Mental  
3 Health and Developmental Disabilities Code, the department of  
4 health shall commence proceedings pursuant to ~~[Chapter 43,~~  
5 ~~Article 1 NMSA 1978, and]~~ the Mental Health and Developmental  
6 Disabilities Code, the court ~~[may]~~ shall order the defendant  
7 confined for a maximum of seven days to facilitate preparation  
8 and initiation of a petition pursuant to ~~[the Mental Health and~~  
9 ~~Developmental Disabilities]~~ that code, and the local district  
10 attorney shall file a petition in the district court for  
11 involuntary civil commitment under that code. ~~[The district~~  
12 ~~court may refer the defendant to the district attorney for~~  
13 ~~possible initiation of proceedings under the Mental Health and~~  
14 ~~Developmental Disabilities code.]"~~

15 SECTION 3. Section 43-1-10 NMSA 1978 (being Laws 1977,  
16 Chapter 279, Section 9, as amended) is amended to read:

17 "43-1-10. EMERGENCY MENTAL HEALTH EVALUATION AND  
18 CARE.--

19 A. A peace officer may detain and transport a  
20 person for emergency mental health evaluation and care in the  
21 absence of a legally valid order from the court only if:

22 (1) the person is otherwise subject to lawful  
23 arrest;

24 (2) the peace officer has reasonable grounds  
25 to believe the person has just attempted suicide;

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1 (3) the peace officer, based upon the peace  
2 officer's own observation and investigation, has reasonable  
3 grounds to believe that the person, as a result of a mental  
4 disorder, presents a likelihood of serious harm to himself or  
5 herself or to others and that immediate detention is necessary  
6 to prevent such harm. Immediately upon arrival at the  
7 evaluation facility, the peace officer shall be interviewed by  
8 the admitting physician or the admitting physician's designee;  
9 or

10 (4) a physician, a psychologist or a qualified  
11 mental health professional licensed for independent practice  
12 who is affiliated with a community mental health center or core  
13 service agency has certified that the person, as a result of a  
14 mental disorder, presents a likelihood of serious harm to  
15 himself or herself or to others and that immediate detention is  
16 necessary to prevent such harm. Such certification shall  
17 constitute authority to transport the person.

18 B. An emergency evaluation under this section shall  
19 be accomplished upon the request of a peace officer or jail or  
20 detention facility administrator or that person's designee or  
21 upon the certification of a physician, a psychologist or a  
22 qualified mental health professional licensed for independent  
23 practice who is affiliated with a community mental health  
24 center or core service agency. A court order is not required  
25 under this section. If an application is made to a court, the

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1 court's power to act in furtherance of an emergency admission  
2 shall be limited to ordering ~~[that]~~:

3 (1) that the client be seen by a certified  
4 psychologist or psychiatrist prior to transport to an  
5 evaluation facility; ~~[and]~~

6 (2) that a peace officer transport the person  
7 to an evaluation facility; or

8 (3) assisted outpatient treatment with a  
9 qualified health care provider upon a finding by the evaluation  
10 facility that the person is not suitable for an emergency-based  
11 admission to the evaluation facility.

12 C. An evaluation facility may accept for an  
13 emergency-based admission any person when a physician or  
14 certified psychologist certifies that such person, as a result  
15 of a mental disorder, presents a likelihood of serious harm to  
16 himself or herself or to others and that immediate detention is  
17 necessary to prevent such harm. Such certification shall  
18 constitute authority to transport the person.

19 D. A person detained under this section shall,  
20 whenever possible, be taken immediately to an evaluation  
21 facility. Detention facilities shall be used as temporary  
22 shelter for such persons only in cases of extreme emergency for  
23 protective custody, and no person taken into custody under the  
24 provisions of the code shall remain in a detention facility  
25 longer than necessary and in no case longer than twenty-four

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1 hours. If use of a detention facility is necessary, the  
2 proposed client:

3 (1) shall not be held in a cell with  
4 prisoners;

5 (2) shall not be identified on records used to  
6 record custody of prisoners;

7 (3) shall be provided adequate protection from  
8 possible suicide attempts; and

9 (4) shall be treated with the respect and  
10 dignity due every citizen who is neither accused nor convicted  
11 of a crime.

12 E. The admitting physician or certified  
13 psychologist shall evaluate whether reasonable grounds exist to  
14 detain the proposed client for evaluation and treatment, and,  
15 if reasonable grounds are found, the proposed client shall be  
16 detained. If the admitting physician or certified psychologist  
17 determines that reasonable grounds do not exist to detain the  
18 proposed client for evaluation and treatment, the proposed  
19 client shall not be detained.

20 F. Upon arrival at an evaluation facility, the  
21 proposed client shall be informed orally and in writing by the  
22 evaluation facility of the purpose and possible consequences of  
23 the proceedings, the right to a hearing within seven days, the  
24 right to counsel and the right to communicate with an attorney  
25 and a mental health professional of the proposed client's own

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1 choosing and shall have the right to receive necessary and  
2 appropriate treatment.

3 G. A peace officer who transports a proposed client  
4 to an evaluation facility under the provisions of this section  
5 shall not require a court order to be reimbursed by the  
6 referring county."

7 SECTION 4. Section 43-1-11 NMSA 1978 (being Laws 1977,  
8 Chapter 279, Section 10, as amended) is amended to read:

9 "43-1-11. COMMITMENT OF ADULTS FOR THIRTY-DAY PERIOD.--

10 A. Every adult client involuntarily admitted to an  
11 evaluation facility pursuant to Section 43-1-10 NMSA 1978 has  
12 the right to a hearing within seven days of admission unless  
13 waived after consultation with counsel. If a physician or  
14 evaluation facility decides to seek commitment of the client  
15 for evaluation and treatment, a petition shall be filed with  
16 the court within five days of admission requesting the  
17 commitment. The petition shall include a description of the  
18 specific behavior or symptoms of the client that evidence a  
19 likelihood of serious harm to the client or others and shall  
20 include an initial screening report by the evaluating physician  
21 individually or with the assistance of a mental health  
22 professional or, if a physician is not available, by a mental  
23 health professional acceptable to the court. The petition  
24 shall list the prospective witnesses for commitment and a  
25 summary of the matters to which they will testify. Copies of

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1 the petition shall be served on the client, the client's  
2 guardian, and treatment guardian if one has been appointed, and  
3 the client's attorney.

4 B. At the hearing, the client shall be represented  
5 by counsel and shall have the right to present evidence on the  
6 client's behalf, including testimony by an independent mental  
7 health professional of the client's own choosing, to cross-  
8 examine witnesses and to be present at the hearing. The  
9 presence of the client may be waived upon a showing to the  
10 court that the client knowingly and voluntarily waives the  
11 right to be present. A complete record of all proceedings  
12 shall be made.

13 C. A court-appointed guardian for an adult involved  
14 in an involuntary commitment proceeding shall have automatic  
15 standing to appear at all stages of the proceeding and shall be  
16 allowed to testify by telephone or through affidavit if  
17 circumstances make live testimony too burdensome.

18 D. The court shall include in its findings the  
19 guardian's opinion regarding the need for involuntary treatment  
20 or a statement detailing the efforts made to ascertain the  
21 guardian's opinion.

22 E. Upon completion of the hearing, the court may  
23 order a commitment for evaluation and treatment not to exceed  
24 thirty days if the court finds by clear and convincing evidence  
25 that:

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1           (1) as a result of a mental disorder, the client  
2 presents a likelihood of serious harm to the client's own self  
3 or others;

4           (2) the client needs and is likely to benefit  
5 from the proposed treatment; and

6           (3) the proposed commitment is consistent with  
7 the treatment needs of the client and with the least drastic  
8 means principle.

9           F. Once the court has made the findings set forth in  
10 Subsection E of this section, the court shall hear further  
11 evidence as to whether the client is capable of informed  
12 consent. If the court determines that the client is incapable  
13 of informed consent, the court shall appoint for the client a  
14 treatment guardian who shall have only those powers enumerated  
15 in Section 43-1-15 NMSA 1978.

16           G. An interested person who reasonably believes that  
17 an adult is suffering from a mental disorder and presents a  
18 likelihood of serious harm to the adult's own self or others,  
19 but does not require emergency care, may request the district  
20 attorney to investigate and determine whether reasonable  
21 grounds exist to commit the adult for a thirty-day period of  
22 evaluation and treatment. The applicant may present to the  
23 district attorney any medical reports or other evidence  
24 immediately available to the applicant, but shall not be  
25 required to obtain a medical report or other particular

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1 evidence in order to make a petition. The district attorney  
2 shall act on the petition within seventy-two hours. If the  
3 district attorney determines that reasonable grounds exist to  
4 commit the adult, the district attorney ~~[may]~~ shall petition  
5 the court for a hearing. The court ~~[may]~~ shall issue a summons  
6 to the proposed client to appear at the time designated for a  
7 hearing, which shall be not less than five days from the date  
8 the petition is served. If the proposed client is summoned and  
9 fails to appear at the proposed time and upon a finding of the  
10 court that the proposed client has failed to appear, or appears  
11 without having been evaluated, the court ~~[may]~~ shall order the  
12 proposed client to be detained for evaluation as provided for  
13 in Subsection C of Section 43-1-10 NMSA 1978.

14 H. Any hearing provided for pursuant to Subsection G  
15 of this section shall be conducted in conformance with the  
16 requirements of Subsection B of this section."