

HOUSE BILL 8

**57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

INTRODUCED BY

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and Kathleen Cates and Charlotte Little

AN ACT

RELATING TO PUBLIC SAFETY; PROVIDING THAT A REPORT OF A  
COMPETENCY EVALUATION SHALL INCLUDE A QUALIFIED PROFESSIONAL'S  
OPINION AS TO WHETHER A DEFENDANT IS COMPETENT TO STAND TRIAL  
AND IF, IN THE OPINION OF THE PROFESSIONAL, THE DEFENDANT IS  
NOT COMPETENT, TO INCLUDE AN OPINION AS TO WHETHER THE  
DEFENDANT SATISFIES THE CRITERIA FOR INVOLUNTARY COMMITMENT OR  
ASSISTED OUTPATIENT TREATMENT; PROVIDING FOR COMMUNITY-BASED  
COMPETENCY RESTORATION FOR NON-DANGEROUS DEFENDANTS; EXPANDING  
THE LIST OF CRIMES FOR WHICH A DEFENDANT MAY BE CRIMINALLY  
COMMITTED; PROVIDING FOR THE COURT TO ADVISE A DISTRICT  
ATTORNEY TO CONSIDER INITIATING PROCEEDINGS FOR INVOLUNTARY  
COMMITMENT OR ASSISTED OUTPATIENT TREATMENT UPON DISMISSAL OF A  
CRIMINAL CASE; ALLOWING A COURT TO AUTHORIZE A DISTRICT  
ATTORNEY OR THE DEPARTMENT OF HEALTH TO USE THE REPORT OF A  
COMPETENCY EVALUATION IN INVOLUNTARY COMMITMENT AND ASSISTED

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1       OUTPATIENT TREATMENT PROCEEDINGS; AMENDING THE ASSISTED  
2       OUTPATIENT TREATMENT ACT TO AUTHORIZE A DISTRICT ATTORNEY OR  
3       THE ATTORNEY GENERAL TO FILE A PETITION FOR ASSISTED OUTPATIENT  
4       TREATMENT AND TO ALLOW A PETITION TO BE FILED UP TO THIRTY DAYS  
5       AFTER A QUALIFIED PROFESSIONAL HAS EXAMINED A DEFENDANT OR  
6       RESPONDENT; MAKING CONFORMING AMENDMENTS.

7  
8       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

13               "31-9-1. DETERMINATION OF COMPETENCY--RAISING THE  
14       ISSUE.--~~[Whenever it appears that there is a question as to the~~  
15       ~~defendant's competency to proceed in a criminal case, any~~  
16       ~~further proceeding in the cause]~~

17               A. When a party or the court raises a question as  
18       to a defendant's competency to stand trial in a criminal case,  
19       the proceeding shall be suspended until the issue is  
20       determined. ~~[Unless the case is dismissed upon motion of a~~  
21       ~~party, when the question is raised in a court other than the~~  
22       ~~district court or a metropolitan court, the proceeding shall be~~  
23       ~~suspended and the cause transferred to the district court. If~~  
24       ~~the question of a defendant's competency is raised in the~~  
25       ~~metropolitan court and the court determines that the defendant~~

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1 ~~is incompetent to proceed in a criminal case, the cause, if not~~  
2 ~~dismissed upon motion of a party, shall be transferred to the~~  
3 ~~district court.]~~

4 B. Unless the case is dismissed upon motion of a  
5 party or through diversion:

6 (1) if the question of a defendant's  
7 competency is raised in a court other than a district court or  
8 a metropolitan court, the case shall be transferred to the  
9 district court; or

10 (2) if the question of a defendant's  
11 competency is raised in a metropolitan court and the court  
12 determines that the defendant is not competent to stand trial,  
13 the case shall be transferred to the district court."

14 SECTION 2. Section 31-9-1.1 NMSA 1978 (being Laws 1988,  
15 Chapter 107, Section 2 and Laws 1988, Chapter 108, Section 2,  
16 as amended by Laws 1993, Chapter 240, Section 2 and also by  
17 Laws 1993, Chapter 249, Section 2) is amended to read:

18 "31-9-1.1. DETERMINATION OF COMPETENCY--EVALUATION AND  
19 DETERMINATION.--[The]

20 A. A defendant's competency shall be  
21 [professionally] evaluated by a psychologist or psychiatrist or  
22 other qualified professional recognized by the district court  
23 as an expert. [and a report shall be submitted] The qualified  
24 professional who evaluates a defendant's competency shall  
25 prepare an evaluation report and submit the report as ordered

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1 by the court.

2 B. An evaluation report shall include a qualified  
3 professional's opinion as to whether a defendant is competent  
4 to stand trial and has:

5 (1) a sufficient, present ability to consult  
6 with the defendant's lawyer with a reasonable degree of  
7 rational understanding;

8 (2) a rational and factual understanding of  
9 the proceedings against the defendant; and

10 (3) the capacity to assist in the defendant's  
11 own defense and to comprehend the reasons for punishment.

12 C. If, in the opinion of the qualified  
13 professional, a defendant is not competent to stand trial, an  
14 evaluation report shall include the qualified professional's  
15 opinion as to whether the defendant:

16 (1) satisfies the criteria for involuntary  
17 commitment in accordance with the Mental Health and  
18 Developmental Disabilities Code and whether:

19 (a) as a result of a mental disorder,  
20 the defendant presents a likelihood of serious harm to the  
21 defendant's self or others;

22 (b) the defendant needs and is likely to  
23 benefit from involuntary commitment and treatment; and

24 (c) the proposed commitment is  
25 consistent with the treatment needs of the defendant and with

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1 the least drastic means principle; or

2 (2) satisfies the criteria for involuntary  
3 treatment in accordance with the Assisted Outpatient Treatment  
4 Act and whether the defendant:

5 (a) has a primary diagnosis of a mental  
6 disorder;

7 (b) has demonstrated a history of lack  
8 of compliance with treatment for a mental disorder;

9 (c) is unwilling or unlikely, as a  
10 result of a mental disorder, to voluntarily participate in  
11 outpatient treatment that would enable the person to live  
12 safely in the community without court supervision;

13 (d) is in need of assisted outpatient  
14 treatment as the least restrictive appropriate alternative to  
15 prevent a relapse or deterioration likely to result in serious  
16 harm to the defendant's self or others; and

17 (e) will likely benefit from assisted  
18 outpatient treatment and have the defendant's best interests  
19 served.

20 D. A competency hearing [on the issue of the  
21 competency of] shall be held:

22 (1) within thirty days from the date an  
23 evaluation report is submitted to the court for an incarcerated  
24 defendant charged with a felony; [shall be held by the district  
25 court within a reasonable time, but in no event later than

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1 ~~thirty days after notification to the court of completion of~~  
2 ~~the diagnostic evaluation. In the case of]~~

3 (2) within ten days from the date an  
4 evaluation report is submitted to the court for an incarcerated  
5 defendant not charged with a felony; [the court shall hold a  
6 hearing and determine his competency within ten days of  
7 notification to the court of completion of the diagnostic  
8 evaluation] and

9 (3) within a reasonable time after an  
10 evaluation report is submitted to the court for a defendant who  
11 is not incarcerated."

12 SECTION 3. Section 31-9-1.2 NMSA 1978 (being Laws 1988,  
13 Chapter 107, Section 3 and Laws 1988, Chapter 108, Section 3,  
14 as amended) is amended to read:

15 "31-9-1.2. DETERMINATION OF COMPETENCY--COMMITMENT--  
16 REPORT.--

17 A. [~~When~~] If, after a competency hearing, a court  
18 determines that a defendant is not competent to [proceed in a  
19 criminal case and the court does not find that] stand trial,  
20 the court shall determine if the defendant is dangerous. A  
21 defendant who is not competent is dangerous if the court finds  
22 by clear and convincing evidence that the defendant presents a  
23 serious threat of:

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

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

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

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

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

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

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

13                   (8) committing a felony involving the use of a  
14 firearm; or

15                   (9) committing aggravated arson, as provided  
16 in Section 30-17-6 NMSA 1978.

17                   B. If the court determines that a defendant is not  
18 dangerous, the court may order the defendant to participate in  
19 a community-based competency restoration program or dismiss the  
20 criminal case without prejudice in the interests of justice;

21 ~~[Upon dismissal the court may advise, the district attorney to~~  
22 ~~consider initiation of proceedings under the Mental Health and~~  
23 ~~Developmental Disabilities Code and order the defendant~~  
24 ~~confined for a maximum of seven days to facilitate preparation~~  
25 ~~and initiation of a petition pursuant to that code] provided~~

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1 that if the court dismisses the case, the court may:

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

7 (2) advise the district attorney to consider  
8 initiation of proceedings in accordance with the Assisted  
9 Outpatient Treatment Act but may not detain the defendant for  
10 that purpose.

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

18 (1) within thirty days of the date that the  
19 defendant was ordered to participate in a community-based  
20 competency restoration program, the person supervising the  
21 defendant's competency restoration program shall submit a  
22 progress report to the court and both parties that includes:

23 (a) an initial assessment of the  
24 defendant and a description of the competency restoration  
25 programming that will be provided to the defendant;

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

3                   (c) an assessment of the program's  
4 capacity to provide appropriate programming for the defendant;  
5 and

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

11                   (2) no later than ninety days from the date  
12 that the court ordered the defendant to participate in a  
13 community-based competency restoration program, the court shall  
14 hold a review hearing and determine if the defendant has been  
15 restored to competency and at least seven days prior to the  
16 review hearing, the person supervising the defendant's  
17 competency restoration program shall submit a written report  
18 that includes:

19                   (a) an opinion as to whether the  
20 defendant has been restored to competency;

21                   (b) if the defendant is receiving  
22 medication, information from the prescribing physician about  
23 the type, dosage and effect of the medication on the  
24 defendant's appearance, actions and demeanor;

25                   (c) if the defendant remains not

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1 competent, an opinion as to whether the defendant satisfies the  
2 criteria for involuntary commitment in accordance with the  
3 Mental Health and Developmental Disabilities Code and whether:  
4 1) as a result of mental disorder, the defendant presents a  
5 likelihood of serious harm to the defendant's self or others;  
6 2) the defendant needs and is likely to benefit from  
7 involuntary commitment and treatment; and 3) the proposed  
8 commitment is consistent with the treatment needs of the  
9 defendant and with the least drastic means principle; and  
10 (d) if the defendant remains not  
11 competent, an opinion as to whether the defendant satisfies the  
12 criteria for involuntary treatment in accordance with the  
13 Assisted Outpatient Treatment Act and whether the defendant:  
14 1) has a primary diagnosis of a mental disorder; 2) has  
15 demonstrated a history of lack of compliance with treatment for  
16 a mental disorder; 3) is unwilling or unlikely, as a result of  
17 a mental disorder, to voluntarily participate in outpatient  
18 treatment that would enable the defendant to live safely in the  
19 community without court supervision; 4) is in need of assisted  
20 outpatient treatment as the least restrictive appropriate  
21 alternative to prevent a relapse or deterioration likely to  
22 result in serious harm to the defendant's self or others; and  
23 5) will likely benefit from assisted outpatient treatment and  
24 have the defendant's best interests served; and  
25 (3) if, after a review hearing, the court

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1 finds that the defendant is competent, the case shall proceed  
2 to trial, but if the court finds that the defendant remains not  
3 competent, the case shall be dismissed without prejudice and  
4 the court may advise the district attorney to consider  
5 initiating proceedings in accordance with the Mental Health and  
6 Developmental Disabilities Code or the Assisted Outpatient  
7 Treatment Act.

8 ~~[B. When a district]~~ D. If the court determines  
9 that a [defendant charged with a felony is incompetent to  
10 proceed in the criminal case, but does not dismiss the criminal  
11 case, and the district court at that time makes a specific  
12 finding that the] defendant who is not competent is dangerous,  
13 the district court may commit the defendant as provided in this  
14 section for [treatment to attain competency to proceed in a  
15 criminal case. The court shall enter an appropriate transport  
16 order that also provides for return of the defendant to the  
17 local facilities of the court upon completion of the  
18 treatment. The defendant so committed] competency restoration.  
19 If the court orders commitment, the court shall enter a  
20 transport order that provides for the defendant's return to the  
21 local jail within seventy-two hours upon the defendant being  
22 restored to competency, completion of the competency  
23 restoration program or as otherwise required by the court. A  
24 defendant committed for competency restoration shall be  
25 provided with treatment available to [involuntarily committed]

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1 persons subject to civil commitment, and:

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

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

8 [~~G.~~] E. The department of health shall admit a  
9 defendant for competency restoration within thirty days of  
10 receipt of the court's order of commitment of an incompetent  
11 defendant and of the necessary and available documents  
12 reasonably required for admission pursuant to written policies  
13 adopted by the secretary of health or [~~his designee, the~~  
14 ~~defendant shall be admitted to a facility designated for the~~  
15 ~~treatment of defendants who are incompetent to stand trial and~~  
16 ~~dangerous. If after conducting an investigation~~] the  
17 secretary's designee. If the secretary of health or the  
18 secretary's designee determines that the department of health  
19 does not have the ability to meet the [~~medical~~] needs of [~~a~~]  
20 the defendant [~~ordered committed to a facility~~], the secretary  
21 or [~~his~~] the secretary's designee may refuse admission [~~to the~~  
22 ~~defendant upon~~] by providing written certification to the  
23 committing court and the parties of the [~~lack of ability~~]  
24 department's inability to meet the [~~medical~~] needs of the  
25 defendant. The certification [~~must~~] shall be made within

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1 fourteen days of the receipt of the court's order of commitment  
2 and necessary and available documents reasonably required for  
3 admission pursuant to written policies adopted by the secretary  
4 or ~~[his]~~ the secretary's designee. Within ten days of filing  
5 of the certification, the court shall conduct a hearing for  
6 further disposition of the criminal case.

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

11 ~~E.]~~ F. Within thirty days of ~~[an incompetent]~~ a  
12 defendant's admission to a department of health facility ~~[to~~  
13 ~~undergo treatment to attain competency to proceed in a criminal~~  
14 ~~case, the person supervising the defendant's treatment]~~ or an  
15 inpatient psychiatric hospital for competency restoration, the  
16 department shall file with the ~~[district]~~ court, the state and  
17 the defense:

18 (1) an initial assessment of the defendant and  
19 treatment plan; ~~[and]~~

20 (2) a report on the defendant's amenability to  
21 ~~[treatment to render him competent to proceed in a criminal~~  
22 ~~case]~~ competency restoration;

23 (3) an assessment of the ~~[facility's or~~  
24 ~~program's]~~ department's capacity to provide appropriate  
25 treatment for the defendant; and

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1                   (4) an opinion as to the probability of the  
2     ~~[defendant's attaining]~~ defendant being restored to competency  
3     within ~~[a period of]~~ nine months from the date ~~[of the original~~  
4     ~~finding of incompetency to proceed in a criminal case]~~ the  
5     court determined the defendant is not competent to stand  
6     trial."

7                   SECTION 4. Section 31-9-1.3 NMSA 1978 (being Laws 1988,  
8     Chapter 107, Section 4 and Laws 1988, Chapter 108, Section 4,  
9     as amended) is amended to read:

10                   "31-9-1.3. DETERMINATION OF COMPETENCY--NINETY-DAY  
11     REVIEW--REPORTS--CONTINUING TREATMENT.--

12                   A. Within ninety days ~~[of the entry of the order~~  
13     ~~committing an incompetent defendant to undergo treatment, the~~  
14     ~~district court]~~ after a court issues an order committing a  
15     defendant for competency restoration, the court, sitting  
16     without a jury, shall conduct a review hearing, unless waived  
17     by the defense, and shall determine:

18                             (1) whether the defendant ~~[is competent to~~  
19     ~~proceed in the criminal case; and, if not]~~ has been restored to  
20     competency or remains not competent to stand trial;

21                             (2) if the defendant remains not competent,  
22     whether the defendant is making progress ~~[under treatment]~~  
23     toward ~~[attainment of]~~ being restored to competency within nine  
24     months from the date ~~[of the original finding of incompetency]~~  
25     the court determined the defendant is not competent to stand

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1 trial; and

2 (3) whether the defendant remains dangerous as  
3 [~~that term is defined in~~] determined by the court in accordance  
4 with Section 31-9-1.2 NMSA 1978.

5 B. At least seven days prior to the review hearing,  
6 the treatment supervisor shall submit a written progress report  
7 to the court, the state and the defense [~~indicating~~] that  
8 includes:

9 (1) the clinical findings [~~of the treatment~~  
10 ~~supervisor~~] regarding the defendant's progress toward  
11 competency restoration and the facts upon which the findings  
12 are based;

13 (2) [~~the~~] an opinion [~~of the treatment~~  
14 ~~supervisor~~] as to whether the defendant has [~~attained~~] been  
15 restored to competency or as to whether the defendant is making  
16 progress [~~under treatment~~] toward [~~attaining~~] being restored to  
17 competency within nine months from the date [~~of the original~~  
18 ~~finding of incompetency~~] the court determined the defendant is  
19 not competent to stand trial and whether there is a substantial  
20 probability that the defendant will [~~attain~~] be restored to  
21 competency within nine months from the date [~~of the original~~  
22 ~~finding of incompetency~~] the court determined the defendant is  
23 not competent to stand trial;

24 (3) an opinion as to whether the defendant  
25 [~~is~~] remains dangerous as [~~that term is defined in~~] determined

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1 by the court in accordance with Section 31-9-1.2 NMSA 1978 [~~or~~  
2 ~~whether the defendant satisfies the criteria for involuntary~~  
3 ~~commitment contained in the Mental Health and Developmental~~  
4 ~~Disabilities Code~~]; and

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

9 C. If the district court finds that the defendant  
10 [~~to be competent~~] is restored to competency, the district court  
11 shall set the matter for trial; provided that if the defendant  
12 is in need of continued care or treatment and the [~~supervisor~~  
13 ~~of the defendant's treatment~~] department of health agrees to  
14 continue to provide it, the district court may [~~enter any~~]  
15 order [~~it deems appropriate for the~~] continued care or  
16 treatment of the defendant [~~by the facility or program pending~~]  
17 until the conclusion of the criminal proceedings.

18 D. If the district court finds that the defendant  
19 [~~is still~~] remains not competent [~~to proceed in a criminal~~  
20 ~~case~~] but that [~~he~~] the defendant is making progress toward  
21 [~~attaining~~] being restored to competency, the district court  
22 may continue or modify its original [~~treatment~~] commitment  
23 order entered pursuant to Section 31-9-1.2 NMSA 1978; provided  
24 that:

25 (1) the question of the defendant's competency

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1 shall be reviewed again not later than nine months from the  
2 [~~original determination of incompetency to proceed in a~~  
3 ~~criminal case~~] date the court determined the defendant is not  
4 competent to stand trial; and

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

8 E. If the district court finds that the defendant  
9 [~~is still~~] remains not competent, that [~~he~~] the defendant is  
10 not making progress toward [~~attaining~~] being restored to  
11 competency and that there is not a substantial probability that  
12 [~~he~~] the defendant will [~~attain~~] be restored to competency  
13 within nine months from the date [~~of the original finding of~~  
14 ~~incompetency the district court~~] the court determined the  
15 defendant is not competent to stand trial, the court shall  
16 proceed pursuant to Section 31-9-1.4 NMSA 1978. However, if  
17 the defendant is in need of continued care and treatment and  
18 the [~~supervisor of the defendant's treatment~~] department of  
19 health agrees to continue to provide it, the district court may  
20 [~~enter any~~] order [~~it deems appropriate for the~~] continued care  
21 or treatment of the defendant by the [~~facility or program~~  
22 ~~pending~~] department until the conclusion of the criminal  
23 proceedings."

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

2 "31-9-1.4. DETERMINATION OF COMPETENCY--INCOMPETENT  
3 DEFENDANTS.--If at any time the district court determines that  
4 there is not a substantial probability that the defendant will  
5 ~~[become competent to proceed in a criminal case within a~~  
6 ~~reasonable period of time not to exceed nine months from the~~  
7 ~~date of the original finding of incompetency]~~ be restored to  
8 competency within nine months from the date the court  
9 determined the defendant is not competent to stand trial, the  
10 district court may:

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

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

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

25 (3) criminal sexual penetration, as provided

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1 in Section 30-9-11 NMSA 1978;

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

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

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

8 (7) human trafficking, as provided in Section  
9 30-52-1 NMSA 1978;

10 (8) a felony involving the use of a firearm;  
11 or

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

14 B. release the defendant from custody and dismiss  
15 the criminal case with prejudice [~~the charges against him~~]; or

16 C. dismiss the criminal case without prejudice in  
17 the interest of justice; provided that if the treatment  
18 supervisor [~~has issued a report finding~~] reports to the court  
19 that the defendant satisfies the criteria for involuntary  
20 commitment [~~contained~~] in accordance with the Mental Health and  
21 Developmental Disabilities Code, the department of health shall  
22 [~~commence~~] initiate those proceedings [~~pursuant to Chapter 43,~~  
23 ~~Article 1 NMSA 1978~~], and the court may order the defendant  
24 confined for a maximum of seven days to facilitate [~~preparation~~  
25 and] the initiation of [~~a petition pursuant to the Mental~~

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1 ~~Health and Developmental Disabilities code. The district court~~  
2 ~~may refer the defendant to the district attorney for possible~~  
3 ~~initiation of proceedings under the Mental Health and~~  
4 ~~Developmental Disabilities Code] those proceedings; and~~  
5 provided further that the district attorney may initiate  
6 involuntary commitment proceedings in the department's stead."

7 SECTION 6. Section 31-9-1.5 NMSA 1978 (being Laws 1988,  
8 Chapter 107, Section 6 and Laws 1988, Chapter 108, Section 6,  
9 as amended) is amended to read:

10 "31-9-1.5. DETERMINATION OF COMPETENCY--CRIMINAL  
11 COMMITMENT--EVIDENTIARY HEARING.--

12 A. ~~[As provided for in Subsection A of Section~~  
13 ~~31-9-1.4 NMSA 1978, A] If the court determines that there is~~  
14 ~~not a substantial probability that a defendant who is not~~  
15 ~~competent to stand trial will be restored to competency, a~~  
16 ~~commitment hearing to determine the sufficiency of the evidence~~  
17 ~~of the defendant's guilt shall be held if [the case is not~~  
18 ~~dismissed and if] the defendant is charged with [a felony that~~  
19 ~~involves the infliction of great bodily harm on another person;~~  
20 ~~a felony that involves the use of a firearm; aggravated arson,~~  
21 ~~as provided in Section 30-17-6 NMSA 1978; criminal sexual~~  
22 ~~penetration, as provided in Section 30-9-11 NMSA 1978; or~~  
23 ~~criminal sexual contact of a minor, as provided in Section~~  
24 ~~30-9-13 NMSA 1978. Such]:~~

25 (1) murder in the first or second degree, as

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1 provided in Section 30-2-1 NMSA 1978;

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

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

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

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

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

13 (7) human trafficking, as provided in Section  
14 30-52-1 NMSA 1978;

15 (8) a felony involving the use of a firearm;  
16 or

17 (9) aggravated arson, as provided in Section  
18 30-17-6 NMSA 1978.

19 B. A criminal commitment hearing shall be conducted  
20 by the district court without a jury. The state and the  
21 defendant may introduce evidence relevant to the question of  
22 the defendant's guilt of the crime charged. The district court  
23 may admit hearsay or affidavit evidence on secondary matters  
24 such as testimony to establish the chain of possession of  
25 physical evidence, laboratory reports, authentication of

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1 transcripts taken by official reporters, district court and  
2 business records and public documents.

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

17 ~~G.]~~ D. If the district court finds by clear and  
18 convincing evidence that the defendant committed ~~[a]~~ the crime  
19 charged and has not made a finding of dangerousness ~~[pursuant~~  
20 ~~to]~~ in accordance with Section 31-9-1.2 NMSA 1978, the district  
21 court shall dismiss the ~~[charges]~~ criminal case without  
22 prejudice. ~~[The state may initiate proceedings pursuant to the~~  
23 ~~provisions of the Mental Health and Developmental Disabilities~~  
24 ~~Code and the court may order the defendant confined for a~~  
25 ~~maximum of seven days to facilitate preparation and initiation~~

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1 ~~of a petition pursuant to that code.~~

2           D.] E. If the district court finds by clear and  
3 convincing evidence that the defendant committed [~~a felony that~~  
4 ~~involves the infliction of great bodily harm on another person;~~  
5 ~~a felony that involves the use of a firearm; aggravated arson,~~  
6 ~~as provided in Section 30-17-6 NMSA 1978; criminal sexual~~  
7 ~~penetration, as provided in Section 30-9-11 NMSA 1978; or~~  
8 ~~criminal sexual contact of a minor, as provided in Section~~  
9 ~~30-9-13 NMSA 1978]~~ the crime charged and enters a finding that  
10 the defendant remains [~~incompetent to proceed~~] not competent to  
11 stand trial and remains dangerous [~~pursuant to~~] as determined  
12 by the court in accordance with Section 31-9-1.2 NMSA 1978:

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

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

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

25                   (4) at least every two years, the district

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1 court shall conduct a hearing upon notice to the parties and  
2 the department of health charged with detaining the defendant.  
3 At the hearing, the court shall enter findings on the issues of  
4 trial competency and dangerousness:

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

8 (b) if the defendant continues to ~~[be~~  
9 ~~incompetent to proceed in a criminal case]~~ remain not competent  
10 to stand trial and dangerous ~~[pursuant to]~~ in accordance with  
11 Section 31-9-1.2 NMSA 1978, the court shall review the  
12 defendant's competency and dangerousness every two years until  
13 expiration of the period of commitment equal to the maximum  
14 sentence to which the defendant would have been subject had ~~[he~~  
15 ~~or she]~~ the defendant been convicted in a criminal proceeding;  
16 ~~[provided that if the treatment supervisor recommends that the~~  
17 ~~defendant be committed pursuant to the Mental Health and~~  
18 ~~Developmental Disabilities Code, the court may at any time~~  
19 ~~proceed pursuant to Subsection C of Section 31-9-1.4 NMSA 1978]~~  
20 and

21 (c) ~~[if the defendant is not committed~~  
22 ~~pursuant to Sections 31-9-1 through 31-9-1.5 NMSA 1978 or]~~ if  
23 the court finds upon its two-year review hearing that the  
24 defendant is no longer dangerous, ~~[as defined in Section~~  
25 ~~31-9-1.2 NMSA 1978]~~ the defendant shall be released.

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

13           SECTION 7. Section 31-9-1.6 NMSA 1978 (being Laws 1997,  
14 Chapter 153, Section 1, as amended) is amended to read:

15           "31-9-1.6. HEARING TO DETERMINE DEVELOPMENTAL OR  
16 INTELLECTUAL DISABILITY.--

17           A. Upon motion of the defense, [~~requesting a~~  
18 ~~ruling~~] the court shall hold a hearing to determine whether the  
19 defendant [~~has~~] is not competent due to a developmental or  
20 intellectual disability as defined in Subsection E of this  
21 section, and the evaluator shall be provided with the necessary  
22 and available documents reasonably required for admission  
23 pursuant to written policies adopted by the secretary of health  
24 or the secretary's designee.

25           B. If the court finds by a preponderance of the

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1 evidence that the defendant [~~has~~] is not competent to stand  
2 trial due to a developmental or intellectual disability and  
3 that there is not a substantial probability that the defendant  
4 will [~~become competent to proceed in a criminal case~~] be  
5 restored to competency within [~~a reasonable period of time not~~  
6 ~~to exceed~~] nine months from the date [~~of the original finding~~  
7 ~~of incompetency, then, no later than sixty days from~~  
8 ~~notification to the secretary of health or the secretary's~~  
9 ~~designee of the court's findings, the department of health~~  
10 ~~shall perform an evaluation to~~] the court determined the  
11 defendant is not competent to stand trial, the court shall  
12 notify the department of health of the court's finding. Within  
13 sixty days of receipt of the court's notification, the  
14 department of health shall determine whether the defendant  
15 presents a likelihood of serious harm to the defendant's self  
16 or others.

17 C. If the department of health [~~evaluation results~~  
18 ~~in a finding~~] determines that the defendant presents a  
19 likelihood of serious harm to self or others, [~~within sixty~~  
20 ~~days of the department's evaluation~~] the department shall  
21 [~~commence proceedings pursuant to Chapter 43, Article 1 NMSA~~  
22 ~~1978~~] initiate involuntary commitment proceedings in accordance  
23 with the Mental Health and Developmental Disabilities Code if  
24 the defendant [~~was~~] is charged with [~~murder in the first~~  
25 ~~degree, first degree criminal sexual penetration, criminal~~

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1 ~~sexual contact of a minor or arson in the initial proceedings,~~  
2 ~~and the court presiding over the initial proceedings shall~~  
3 ~~enter a finding that the respondent presents a likelihood of~~  
4 ~~harm to others]:~~

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

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

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

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

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

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

18 (7) human trafficking, as provided in Section  
19 30-52-1 NMSA 1978;

20 (8) a felony involving the use of a firearm;  
21 or

22 (9) aggravated arson, as provided in Section  
23 30-17-6 NMSA 1978.

24 D. ~~[The criminal charges shall be dismissed without~~  
25 ~~prejudice] After the [hearing pursuant to Chapter 43, Article 1~~

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1 ~~NMSA 1978]~~ involuntary commitment hearing or upon expiration of  
2 fourteen months from the court's initial determination that the  
3 defendant is [~~incompetent to proceed in a criminal case~~] not  
4 competent to stand trial, the criminal case shall be dismissed  
5 without prejudice.

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

13 SECTION 8. Section 31-9-2 NMSA 1978 (being Laws 1967,  
14 Chapter 231, Section 3) is amended to read:

15 "31-9-2. COMPETENCY EVALUATION--MENTAL OR FUNCTIONAL  
16 EXAMINATION.--

17 A. Upon motion of any defendant, the court shall  
18 order a mental examination of the defendant before making any  
19 determination of the defendant's competency. [~~under Sections~~  
20 ~~41-13-3 or 41-13-3.1 New Mexico Statutes Annotated, 1953~~  
21 ~~Compilation. Where~~] If the defendant is determined to be  
22 indigent, the court shall pay for the costs of the examination  
23 from funds available to the court.

24 B. A court may authorize a district attorney or the  
25 department of health to use a report of any examination ordered

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1 before a determination of a defendant's competency to stand  
2 trial for the purposes of initiating proceedings in accordance  
3 with the Mental Health and Developmental Disabilities Code or  
4 the Assisted Outpatient Treatment Act; provided that the report  
5 remains valid pursuant to the time limits set forth in that  
6 code or act."

7 SECTION 9. Section 43-1B-4 NMSA 1978 (being Laws 2016,  
8 Chapter 84, Section 4, as amended) is amended to read:

9 "43-1B-4. PETITION TO THE COURT.--

10 A. A petition for an order authorizing assisted  
11 outpatient treatment may be filed in the district court for the  
12 county in which the respondent is present or reasonably  
13 believed to be present; provided that such district court is a  
14 party to a memorandum of understanding with a participating  
15 municipality or county.

16 B. A petition for an order authorizing assisted  
17 outpatient treatment may be filed only by the following  
18 persons:

19 (1) a person eighteen years of age or older  
20 who resides with the respondent;

21 (2) the parent or spouse of the respondent;

22 (3) the sibling or child of the respondent;

23 provided that the sibling or child is eighteen years of age or  
24 older;

25 (4) the director of a hospital where the

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1 respondent is hospitalized;

2 (5) the director of a public or charitable  
3 organization or agency or a home where the respondent resides  
4 and that provides mental health services to the respondent;

5 (6) a qualified professional who either  
6 supervises the treatment of or treats the respondent for a  
7 mental disorder or has supervised or treated the respondent for  
8 a mental disorder within the past forty-eight months; ~~[or]~~

9 (7) a surrogate decision-maker; or

10 (8) a district attorney or the attorney  
11 general.

12 C. The petition shall be entitled "In the Matter of  
13 \_\_\_\_\_" and shall include:

14 (1) each criterion for assisted outpatient  
15 treatment as set forth in Section 43-1B-3 NMSA 1978;

16 (2) facts that support the petitioner's belief  
17 that the respondent meets each criterion; provided that the  
18 hearing on the petition need not be limited to the stated  
19 facts; and

20 (3) whether the respondent is present or is  
21 reasonably believed to be present within the county where the  
22 petition is filed.

23 D. The petition shall be accompanied by an  
24 affidavit of a qualified professional that shall state that:

25 (1) the qualified professional has personally

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1 examined the respondent no more than [~~ten~~] thirty days prior to  
2 the filing of the petition, that the qualified professional  
3 recommends assisted outpatient treatment for the respondent and  
4 that the qualified professional is willing and able to testify  
5 at the hearing on the petition either in person or by  
6 contemporaneous transmission from a different location; or

7 (2) no more than ten days prior to the filing  
8 of the petition, the qualified professional or the qualified  
9 professional's designee has unsuccessfully attempted to  
10 persuade the respondent to submit to an examination, that the  
11 qualified professional has reason to believe that the  
12 respondent meets the criteria for assisted outpatient treatment  
13 and that the qualified professional is willing and able to  
14 examine the respondent and testify at the hearing on the  
15 petition either in person or by contemporaneous transmission  
16 from a different location."