

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 233

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

AN ACT

RELATING TO CRIMINAL PROCEDURE; PROVIDING FOR THE DETERMINATION
OF COMPETENCY; PROVIDING A PROCESS FOR RAISING THE ISSUE OF
COMPETENCY; ESTABLISHING COMPETENCY RESTORATION PROGRAMS;
REQUIRING ADDITIONAL REPORTS; PROVIDING DEFINITIONS; REQUIRING
THE STATE TO PAY FOR MENTAL EXAMINATIONS.

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

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1993, Chapter 249, Section 1) is repealed and a new Section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

"31-9-1. [NEW MATERIAL] DETERMINATION OF COMPETENCY--
RAISING THE ISSUE.--

A. Whenever one of the parties or the court has a

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underscored material = new
[bracketed material] = delete

1 good-faith basis that there is concern relating to a
2 defendant's competence, the case shall be stayed, the court
3 shall order a competency evaluation and the issue of competency
4 may be resolved pursuant to Section 31-9-1.1 NMSA 1978 or,
5 prior to, or instead of ordering a competency evaluation:

6 (1) if the parties agree, the court may order
7 that the defendant be diverted to a treatment program if such
8 programs are available to the jurisdiction of the referring
9 court and available within a reasonable time; or

10 (2) if the parties agree, the parties shall
11 file a stipulated petition requesting that the defendant be
12 considered for assisted outpatient treatment.

13 B. In misdemeanor cases, if the parties agree, a
14 defendant may be ordered to participate in a diversion to
15 treatment program for no longer than six months. When a
16 defendant is diverted to treatment in a misdemeanor case in
17 magistrate court under the provisions of this subsection, the
18 case shall not transfer to district court. A misdemeanor case
19 in the metropolitan court shall remain within the jurisdiction
20 of the metropolitan court regardless of whether the defendant
21 is diverted to a treatment program.

22 C. In nonviolent felony cases, the parties may
23 agree, with approval of the court, that the defendant be
24 referred for participation in an available diversion to
25 treatment program for no longer than eighteen months.

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1 D. The defendant's charges shall be dismissed after
 2 the time period for completion of the diversion program has
 3 elapsed or upon the defendant's acceptance into assisted
 4 outpatient treatment. The defendant shall not be required to
 5 undergo a competency evaluation for the case while the
 6 defendant is participating in a diversion to treatment
 7 program."

8 **SECTION 2.** Section 31-9-1.1 NMSA 1978 (being Laws 1988,
 9 Chapter 107, Section 2 and Laws 1988, Chapter 108, Section 2,
 10 as amended by Laws 1993, Chapter 240, Section 2 and by Laws
 11 1993, Chapter 249, Section 2) is amended to read:

12 "31-9-1.1. DETERMINATION OF COMPETENCY--EVALUATION AND
 13 DETERMINATION.--~~[The defendant's competency shall be~~
 14 ~~professionally evaluated]~~

15 A. When a court determines that an individual
 16 requires a competency evaluation, the evaluation shall be
 17 conducted by a psychologist or psychiatrist or other qualified
 18 professional recognized by the [~~district~~] court as an expert
 19 and a report shall be submitted as ordered by the court.
 20 Competency evaluations shall include a provisional diagnosis,
 21 or full diagnosis when possible, linking symptom interference
 22 with competency capacities, as well as appropriate treatment
 23 recommendations.

24 B. A hearing on the same day regarding the issue of
 25 [the] competency and dangerousness of an incarcerated defendant

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1 charged with a felony shall be held by the district court
2 within a reasonable time, but in no event later than thirty
3 days after notification to the court of completion of the
4 diagnostic evaluation. [~~In the case of 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.]"~~

9 SECTION 3. Section 31-9-1.2 NMSA 1978 (being Laws 1988,
10 Chapter 107, Section 3 and Laws 1988, Chapter 108, Section 3,
11 as amended) is repealed and a new Section 31-9-1.2 NMSA 1978 is
12 enacted to read:

13 "31-9-1.2. [NEW MATERIAL] DETERMINATION OF COMPETENCY--
14 COMPETENCY RESTORATION PROGRAMS--COMMITMENT--REPORT.--

15 A. A court shall hold a hearing on the same day to
16 determine whether a defendant is incompetent to proceed in a
17 criminal case and whether the defendant is dangerous. If the
18 defendant is found competent, the stay shall be lifted and the
19 case shall be scheduled for trial or any other type of hearing
20 the court deems appropriate. If the defendant is determined to
21 be incompetent and not dangerous, the court shall dismiss the
22 criminal case without prejudice. If the defendant is
23 determined by the court to be incompetent and dangerous, the
24 court shall order treatment in the least restrictive setting
25 consistent with the goal of restoration to competency. The

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1 court may refer the defendant to a community competency
2 restoration program, which may be outpatient or residential and
3 may be provided in person or by electronic means. The
4 community competency restoration program may be provided by a
5 state hospital or a county, community or private institution or
6 a facility that is authorized by the department of health or
7 the health care authority department to provide competency
8 restoration. Competency restoration facilities and providers
9 shall provide a written report to the court every thirty days
10 regarding the defendant's status, participation in the program
11 and possible changes to necessary level of care. In addition,
12 facilities and providers shall notify the court immediately if
13 services are terminated. A defendant will only be eligible for
14 community competency restoration if the court finds that the
15 placement will not pose an unreasonable risk to the health and
16 safety of the defendant, any person or the community. If the
17 defendant is committed to a state hospital for competency
18 restoration and is subsequently transferred to any other
19 facility or program, copies of the documents specific to
20 treatment shall be electronically transferred or taken with the
21 defendant to each subsequent facility to which the defendant is
22 transferred.

23 B. In the event of dismissal of a criminal case,
24 the court, the city attorney, the county attorney, the district
25 attorney or anyone else authorized by law may refer the

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1 defendant for an eligibility determination for civil commitment
2 proceedings under the Mental Health and Developmental
3 Disabilities Code, and the court may order the defendant
4 confined for a maximum of seven days to facilitate the filing
5 of an order referring the defendant for an assessment to
6 determine eligibility for civil commitment.

7 C. The court shall hold a hearing on the same day
8 to determine whether a defendant charged with a felony is
9 incompetent to proceed in the criminal case, and, if the court
10 makes a specific finding that the defendant is dangerous, the
11 court may order the defendant to a competency restoration
12 program. If the defendant is ineligible for competency
13 restoration, the defendant shall be committed and provided with
14 treatment available to involuntarily committed persons, and:

15 (1) if the defendant is committed to the state
16 hospital, the defendant shall be detained by the department of
17 health in a secure, locked facility until completion of
18 treatment, and appropriate communication shall be provided with
19 all parties listed in this subsection;

20 (2) upon the defendant's completion of
21 competency restoration and the submission of a final report to
22 the state, defense counsel and the court, the court shall enter
23 an order to transport the defendant to the appropriate county
24 detention facility, if applicable; and

25 (3) upon release, the committing facility

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1 shall forward a discharge plan and treatment documents to the
2 receiving provider or facility, if applicable.

3 D. Within thirty days of receipt of the court's
4 order of commitment of an incompetent defendant and of the
5 necessary and available documents reasonably required for
6 admission pursuant to written policies adopted by the secretary
7 of health or the secretary's designee, the defendant shall be
8 admitted to an inpatient or outpatient facility designated for
9 the treatment of defendants who are incompetent to stand trial
10 and dangerous.

11 E. If, after conducting an investigation, the
12 secretary of health or the secretary's designee determines that
13 the department of health does not have the ability to meet the
14 medical needs of a defendant ordered to commitment, the
15 secretary or the secretary's designee may refuse admission of
16 the defendant upon written certification to the committing
17 court and the parties of the lack of ability to meet the
18 medical needs of the defendant. The certification shall be
19 made within fourteen days of the receipt of the court's order
20 of commitment and necessary and available documents reasonably
21 required for admission pursuant to written policies adopted by
22 the secretary or the secretary's designee. Within ten days of
23 filing of certification, the court shall conduct a hearing for
24 further disposition of the criminal case."

25 SECTION 4. Section 31-9-1.3 NMSA 1978 (being Laws 1988,

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1 Chapter 107, Section 4 and Laws 1988, Chapter 108, Section 4,
2 as amended) is amended to read:

3 "31-9-1.3. DETERMINATION OF COMPETENCY--NINETY-DAY
4 REVIEW--REPORTS--CONTINUING TREATMENT.--

5 A. Within thirty days of an incompetent defendant's
6 admission to an inpatient or outpatient facility to undergo
7 community competency restoration, the competency restoration
8 supervisor shall file with the district court, the state and
9 the defense an initial assessment and treatment plan and a
10 report on the likelihood of the defendant attaining competency.
11 The report shall include an assessment of the facility's
12 capacity to provide appropriate competency restoration for the
13 defendant; and an opinion as to the probability of the
14 defendant attaining competency within a period of nine months
15 from the date of admission.

16 [~~A.~~] B. Within ninety days of the entry of the
17 order committing an incompetent defendant to the state hospital
18 to undergo [~~treatment~~] competency restoration, the district
19 court, sitting without a jury, shall conduct a hearing, unless
20 waived by the defense, and shall determine:

21 (1) whether the defendant is competent to
22 proceed in the criminal case; and, if not,

23 (2) whether the defendant is making progress
24 [~~under treatment~~] toward attainment of competency within nine
25 months from the date of the original finding of incompetency;

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1 and

2 (3) whether the defendant remains dangerous as
3 that term is defined in Section 31-9-1.2 NMSA 1978.

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

8 (1) the clinical findings of the treatment
9 supervisor and the facts upon which the findings are based;

10 (2) the opinion of the treatment supervisor as
11 to whether the defendant has attained competency or ~~[as to~~
12 ~~whether the defendant]~~ is making progress under treatment
13 toward attaining competency within nine months from the date of
14 the original finding of incompetency and whether there is a
15 substantial probability that the defendant will attain
16 competency within nine months from the date of the original
17 finding of incompetency;

18 (3) whether the defendant is dangerous as that
19 term is defined in Section ~~[31-9-1.2]~~ 31-9-1.7 NMSA 1978 or
20 whether the defendant satisfies the criteria for involuntary
21 commitment contained in the Mental Health and Developmental
22 Disabilities Code; and

23 (4) if the defendant is receiving medication,
24 information from the prescribing physician indicating the type,
25 the dosage and the effect of the medication on the defendant's

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1 appearance, actions and demeanor.

2 [E-] D. If the district court finds the defendant
3 to be competent, the district court shall set the matter for
4 trial; provided that if the defendant is in need of continued
5 care or treatment and the supervisor of the defendant's
6 treatment agrees to continue to provide it, the district court
7 may enter any order it deems appropriate for the continued care
8 or treatment of the defendant by the facility or program
9 pending the conclusion of the criminal proceedings.

10 [D-] E. If the district court finds that the
11 defendant is still not competent to proceed in a criminal case
12 but that [he] the defendant is making progress toward attaining
13 competency, the district court may continue or modify its
14 original treatment order entered pursuant to Section 31-9-1.2
15 NMSA 1978; provided that:

16 (1) the question of the defendant's competency
17 shall be reviewed again not later than nine months from the
18 original determination of incompetency to proceed in a criminal
19 case; and

20 (2) the [treatment] competency restoration
21 supervisor shall submit a written progress report as specified
22 in Subsection [B] C of this section at least seven days prior
23 to such hearing.

24 [E-] F. If the district court finds that the
25 defendant is still not competent, that [he] the defendant is

1 not making progress toward attaining competency and that there
2 is not a substantial probability that [~~he~~] the defendant will
3 attain competency within nine months from the date of the
4 original finding of incompetency, the district court shall
5 proceed pursuant to Section 31-9-1.4 NMSA 1978. However, if
6 the defendant is in need of continued care and treatment and
7 the supervisor of the defendant's treatment agrees to continue
8 to provide it, the district court may enter any order it deems
9 appropriate for the continued care or treatment by the facility
10 or program pending the conclusion of the proceedings."

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

14 "31-9-1.4. DETERMINATION OF COMPETENCY--INCOMPETENT
15 DEFENDANTS.--If at any time the district court determines that
16 there is not a substantial probability that the defendant will
17 become competent to proceed in a criminal case within a
18 reasonable period of time not to exceed nine months from the
19 date of the original finding of incompetency, the district
20 court may:

21 A. hear the matter pursuant to Section 31-9-1.5
22 NMSA 1978 within three months if the defendant is charged with
23 a felony that involves the infliction of great bodily harm on
24 another person; a felony that involves the use of a firearm;
25 aggravated arson, as provided in Section 30-17-6 NMSA 1978;

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1 criminal sexual penetration, as provided in Section 30-9-11
2 NMSA 1978; or criminal sexual contact of a minor, as provided
3 in Section 30-9-13 NMSA 1978;

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

6 C. dismiss the criminal case without prejudice in
7 the interest of justice. If the treatment supervisor has
8 issued a report finding that the defendant satisfies the
9 criteria for involuntary commitment contained in the Mental
10 Health and Developmental Disabilities Code, the department of
11 health shall commence proceedings pursuant to ~~[Chapter 43,~~
12 ~~Article 1 NMSA 1978]~~ that code, and the court may order the
13 defendant confined for a maximum of seven days to facilitate
14 preparation and initiation of a petition pursuant to ~~[the~~
15 ~~Mental Health and Developmental Disabilities]~~ that code. The
16 district court, the department of health, the state, the family
17 or the health care provider may refer the defendant to the
18 district attorney for ~~[possible initiation of proceedings under~~
19 ~~the Mental Health and Developmental Disabilities code]~~ an
20 assessment of whether the defendant is eligible for civil
21 commitment."

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

25 "31-9-1.5. DETERMINATION OF COMPETENCY--EVIDENTIARY

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1 HEARING.--

2 A. As provided for in Subsection A of Section
3 31-9-1.4 NMSA 1978, a hearing to determine the sufficiency of
4 the evidence shall be held if the case is not dismissed and if
5 the defendant is charged with a felony that involves the
6 infliction of great bodily harm on another person; a felony
7 that involves the use of a firearm; aggravated arson, as
8 provided in Section 30-17-6 NMSA 1978; criminal sexual
9 penetration, as provided in Section 30-9-11 NMSA 1978; or
10 criminal sexual contact of a minor, as provided in Section
11 30-9-13 NMSA 1978. Such hearing shall be conducted by the
12 district court without a jury. The state and the defendant may
13 introduce evidence relevant to the question of the defendant's
14 guilt of the crime charged. The district court may admit
15 hearsay or affidavit evidence on secondary matters such as
16 testimony to establish the chain of possession of physical
17 evidence, laboratory reports, authentication of transcripts
18 taken by official reporters, district court and business
19 records and public documents.

20 B. If the evidence does not establish by clear and
21 convincing evidence that the defendant committed a felony that
22 involves the infliction of great bodily harm on another person;
23 a felony that involves the use of a firearm; aggravated arson,
24 as provided in Section 30-17-6 NMSA 1978; criminal sexual
25 penetration, as provided in Section 30-9-11 NMSA 1978; or

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1 criminal sexual contact of a minor, as provided in Section
2 30-9-13 NMSA 1978, the district court shall dismiss the
3 criminal case with prejudice; however, nothing in this section
4 shall prevent the state from initiating proceedings under the
5 provisions of the Mental Health and Developmental Disabilities
6 Code, and the court may order the defendant confined for a
7 maximum of seven days to facilitate preparation and initiation
8 of a petition pursuant to that code.

9 C. If the district court finds by clear and
10 convincing evidence that the defendant committed a crime and
11 has not made a finding of dangerousness, pursuant to Section
12 31-9-1.2 NMSA 1978, the district court shall dismiss the
13 charges without prejudice. The state may initiate proceedings
14 pursuant to the provisions of the Mental Health and
15 Developmental Disabilities Code and the court may order the
16 defendant confined for a maximum of seven days to facilitate
17 preparation and initiation of a petition pursuant to that code.

18 D. If the district court finds by clear and
19 convincing evidence that the defendant committed a felony that
20 involves the infliction of great bodily harm on another person;
21 a felony that involves the use of a firearm; aggravated arson,
22 as provided in Section 30-17-6 NMSA 1978; criminal sexual
23 penetration, as provided in Section 30-9-11 NMSA 1978; or
24 criminal sexual contact of a minor, as provided in Section
25 30-9-13 NMSA 1978 and enters a finding that the defendant

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1 remains incompetent to proceed and remains dangerous pursuant
2 to Section 31-9-1.2 NMSA 1978:

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

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

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

15 (4) at least every two years, the district
16 court shall conduct a hearing upon notice to the parties and
17 the department of health charged with detaining the defendant.
18 At the hearing, the court shall enter findings on the issues of
19 trial competency and dangerousness:

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

23 (b) if the defendant continues to be
24 incompetent to proceed in a criminal case and dangerous
25 pursuant to Section 31-9-1.2 NMSA 1978, the court shall review

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1 the defendant's competency and dangerousness every two years
2 until expiration of the period of commitment equal to the
3 maximum sentence to which the defendant would have been subject
4 had ~~[he or she]~~ the defendant been convicted in a criminal
5 proceeding; provided that if the treatment supervisor
6 recommends that the defendant be committed pursuant to the
7 Mental Health and Developmental Disabilities Code, the court
8 may at any time proceed pursuant to Subsection C of Section
9 31-9-1.4 NMSA 1978; and

10 (c) if the defendant is not committed
11 pursuant to Sections 31-9-1 through 31-9-1.5 NMSA 1978 or if
12 the court finds upon its two-year review hearing that the
13 defendant is no longer dangerous ~~[as defined in Section~~
14 ~~31-9-1.2 NMSA 1978]~~, the defendant shall be released with a
15 treatment plan and case management services in place."

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

18 "31-9-1.6. HEARING TO DETERMINE DEVELOPMENTAL OR
19 INTELLECTUAL DISABILITY.--

20 A. Upon motion of the defense requesting a ruling,
21 the court shall hold a hearing to determine whether the
22 defendant has a developmental or intellectual disability as
23 defined in ~~[Subsection E of this]~~ Section 31-9-1.7 NMSA 1978.

24 B. If the court finds by a preponderance of the
25 evidence that the defendant has a developmental or intellectual

underscoring material = new
[bracketed material] = delete

1 disability and that there is not a substantial probability that
2 the defendant will become competent to proceed in a criminal
3 case within a reasonable period of time not to exceed nine
4 months from the date of the original finding of incompetency,
5 then, no later than sixty days from notification to the
6 secretary of health or the secretary's designee of the court's
7 findings, the department of health shall perform an evaluation
8 to determine whether the defendant presents a likelihood of
9 serious harm to self or others.

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

21 D. The criminal charges shall be dismissed without
22 prejudice after the hearing pursuant to [~~Chapter 43, Article 1~~
23 ~~NMSA 1978~~] the Mental Health and Developmental Disabilities
24 Code or upon expiration of fourteen months from the court's
25 initial determination that the defendant is incompetent to

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1 proceed in a criminal case.

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

9 SECTION 8. A new Section 31-9-1.7 NMSA 1978 is enacted to
10 read:

11 "31-9-1.7. [NEW MATERIAL] DEFINITIONS.--As used in
12 Chapter 31, Article 9 NMSA 1978:

13 A. "competency restoration program" means the
14 process of administering treatment and education related to the
15 judicial process, capacity to consult with an attorney, factual
16 and rational components of standing trial, ability to assist in
17 one's own defense and capacity to comprehend the reason for
18 punishment. A "competency restoration program" may or may not
19 be accompanied by additional treatment such as psychotropic
20 medication, psychotherapy or addiction services;

21 B. "dangerous" means that, if released, the
22 defendant presents a serious threat of inflicting great bodily
23 harm on the defendant's self, another person or the community
24 or of violating Section 30-9-11 or 30-9-13 NMSA 1978;

25 C. "developmental or intellectual disability" means

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1 significantly subaverage general intellectual functioning
2 existing concurrently with deficits in adaptive behavior. An
3 intelligence quotient of seventy or below on a reliably
4 administered intelligence quotient test shall be presumptive
5 evidence of developmental or intellectual disability;

6 D. "discharge plan" means a written document
7 outlining the steps to be taken after discharge;

8 E. "diversion to treatment program" means diversion
9 from the legal system directly to mental health or substance
10 abuse treatment in the community with additional supportive
11 structures such as case management;

12 F. "medical needs" means physical medical issues
13 that require additional medical equipment or expertise to
14 adequately treat;

15 G. "nonviolent felony" means someone who has not
16 been charged with a crime consistent with a violent felony;

17 H. "outpatient competency restoration" means that
18 when a defendant is found to be incompetent, the defendant may
19 be referred to an outpatient competency restoration program if
20 one is available to the jurisdiction under which the defendant
21 has been found incompetent;

22 I. "provisional diagnosis" means a preliminary
23 diagnosis consistent with presenting symptoms but that requires
24 additional time and evaluation to provide a full diagnosis;

25 J. "reasonable time" means within thirty days of

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1 referral;

2 K. "treatment program" means any facility or
3 program offering mental health, substance use or other medical
4 treatment; and

5 L. "violent felony" means one of the following
6 enumerated felonies: murder pursuant to Section 30-2-1 NMSA
7 1978, manslaughter pursuant to Section 30-2-3 NMSA 1978,
8 criminal sexual penetration pursuant to Section 30-9-11 NMSA
9 1978, kidnapping pursuant to Section 30-4-1 NMSA 1978 or any
10 crime committed with the use of a deadly weapon or serious
11 threat of inflicting great bodily harm on oneself or another."

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

14 "31-9-2. MENTAL EXAMINATION.--Upon motion of any
15 defendant, the court shall order a mental examination of the
16 defendant before making any determination of competency under
17 [~~Sections 41-13-3 or 41-13-3.1 New Mexico Statutes Annotated,~~
18 ~~1953 Compilation]~~ Section 31-9-1 NMSA 1978. Where the
19 defendant is determined to be indigent, the [~~court~~] state shall
20 pay for the costs of the examination from funds available to
21 the court."