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HOUSE BILL 469

**44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

INTRODUCED BY

Art Hawkins

AN ACT

RELATING TO CRIMINAL PROCEDURE; AMENDING PROVISIONS REGARDING  
INVOLUNTARY COMMITMENT OF INCOMPETENT DEFENDANTS.

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

Section 1. Section 31-9-1.2 NMSA 1978 (being Laws 1988, Chapter 107, Section 3 and Laws 1988, Chapter 108, Section 3, as amended by Laws 1993, Chapter 240, Section 3 and also by Laws 1993, Chapter 249, Section 3) is amended to read:

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

A. When, after hearing, a court determines that a defendant is not competent to proceed in a criminal case and the court does not find that the defendant is dangerous, the court may dismiss the criminal case without prejudice in the interests of justice. Upon dismissal, the court may advise

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1 the district attorney to consider initiation of proceedings  
2 under the Mental Health and Developmental Disabilities Code.

3 B. When a district court determines that a  
4 defendant is incompetent to stand trial, but does not dismiss  
5 the criminal case, and the district court at that time makes a  
6 specific finding that the defendant is dangerous, the district  
7 court may order treatment to attain competency to proceed in a  
8 criminal case for a period not to exceed one year. The court  
9 shall enter an appropriate transport order [~~which~~] that also  
10 provides for return of the defendant to the local facilities  
11 of the court upon completion of the treatment. The defendant  
12 so committed shall be admitted, upon availability of  
13 accommodations, to a facility designated for the treatment of  
14 defendants who are incompetent to stand trial and dangerous.  
15 If there is a waiting list for entry to the facility, the  
16 administrator of the facility or his designee may determine  
17 order of admission based on clinical judgment of severity of  
18 need. If a facility does not have the ability to meet the  
19 medical needs of a defendant ordered committed to the  
20 facility, the administrator of the facility or his designee  
21 may refuse admission to the defendant upon certification in  
22 writing to the committing court of the lack of ability to meet  
23 the medical needs of the defendant. A defendant committed  
24 pursuant to this subsection shall be provided with treatment  
25 available to involuntarily committed persons, and:

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

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

7 C. 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 D. Within thirty days of an incompetent  
12 defendant's admission to a facility to undergo treatment to  
13 attain competency to proceed in a criminal case, the person  
14 supervising the defendant's treatment shall file with the  
15 district court, the state and the defense an initial  
16 assessment and treatment plan and a report on the defendant's  
17 amenability to treatment to render him competent to proceed in  
18 a criminal case, an assessment of the facility's or program's  
19 capacity to provide appropriate treatment for the defendant  
20 and an opinion as to the probability of the defendant's  
21 attaining competency within a period of one year from the date  
22 of the original finding of incompetency to proceed in a  
23 criminal case. "

1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
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6 February 22, 1999  
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8 Mr. Speaker:  
9

10 Your JUDICIARY COMMITTEE, to whom has been referred  
11

12 HOUSE BILL 469  
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14 has had it under consideration and reports same with  
15 recommendation that it DO NOT PASS, but that

16 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
17 HOUSE BILL 469  
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19 DO PASS.  
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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

HJC/HB 469

Page 5

Respectfully submitted,

\_\_\_\_\_  
R. David Pederson, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Luna, Mallory, Sanchez, Pederson

Absent: None

J: \99Billswp\H0469

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 469

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

RELATING TO CRIMINAL PROCEDURE; AMENDING PROVISIONS REGARDING  
INVOLUNTARY COMMITMENT OF INCOMPETENT DEFENDANTS.

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

Section 1. Section 31-9-1.2 NMSA 1978 (being Laws 1988, Chapter 107, Section 3 and Laws 1988, Chapter 108, Section 3, as amended by Laws 1993, Chapter 240, Section 3 and also by Laws 1993, Chapter 249, Section 3) is amended to read:

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

A. When, after hearing, a court determines that a defendant is not competent to proceed in a criminal case and the court does not find that the defendant is dangerous, the court may dismiss the criminal case without prejudice in the interests of justice. Upon dismissal, the court may advise the district attorney to consider initiation of proceedings under the Mental Health and Developmental Disabilities Code and order the defendant confined for a maximum of seven days

to facilitate preparation and initiation of a petition pursuant to that code.

1 B. When a district court determines that a  
2 defendant is incompetent to [~~stand trial~~] proceed in the  
3 criminal case, but does not dismiss the criminal case, and the  
4 district court at that time makes a specific finding that the  
5 defendant is dangerous, the district court may [~~order~~] commit  
6 the defendant as provided in this section for treatment to  
7 attain competency to proceed in a criminal case [~~for a period~~  
8 ~~not to exceed one year~~]. The court shall enter an appropriate  
9 transport order [~~which~~] that also provides for return of the  
10 defendant to the local facilities of the court upon completion  
11 of the treatment. The defendant so committed shall be  
12 provided with treatment available to involuntarily committed  
13 persons, and:

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

16 (2) the defendant, during the period of  
17 commitment, shall not be released from that secure facility  
18 except pursuant to an order of the district court [~~which~~] that  
19 committed him.

20 C. Within thirty days of receipt of the court's  
21 order of commitment of an incompetent defendant and of the  
22 necessary and available documents reasonably required for  
23 admission pursuant to written policies adopted by the  
24 secretary of health or his designee, the defendant shall be  
25 admitted to a facility designated for the treatment of  
defendants who are incompetent to stand trial and dangerous.  
If, after conducting an investigation, the secretary  
determines that the department of health does not have the  
ability to meet the medical needs of a defendant ordered  
committed to a facility, the secretary or his designee may

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

11           ~~[C.]~~ D. As used in Sections 31-9-1 through  
12 31-9-1.5 NMSA 1978, "dangerous" means that, if released, the  
13 defendant presents a serious threat of inflicting great bodily  
14 harm on another or of violating Section 30-9-11 or 30-9-13  
15 NMSA 1978.

16           ~~[D.]~~ E. Within thirty days of an incompetent  
17 defendant's admission to a facility to undergo treatment to  
18 attain competency to proceed in a criminal case, the person  
19 supervising the defendant's treatment shall file with the  
20 district court, the state and the defense an initial  
21 assessment and treatment plan and a report on the defendant's  
22 amenability to treatment to render him competent to proceed in  
23 a criminal case, an assessment of the facility's or program's  
24 capacity to provide appropriate treatment for the defendant  
25 and an opinion as to the probability of the defendant's  
attaining competency within a period of ~~[one year]~~ nine months  
from the date of the original finding of incompetency to  
proceed in a criminal case. "



1 Section 2. Section 31-9-1.3 NMSA 1978 (being Laws 1988,  
2 Chapter 107, Section 4 and Laws 1988, Chapter 108, Section 4,  
3 as amended by Laws 1993, Chapter 240, Section 4 and also by  
4 Laws 1993, Chapter 249, Section 4) is amended to read:

5 "31-9-1.3. DETERMINATION OF COMPETENCY- - NINETY-DAY  
6 REVIEW- - REPORTS- - CONTINUING TREATMENT. - -

7 A. Within ninety days of the entry of the order  
8 committing an incompetent defendant to undergo treatment, the  
9 district court, sitting without a jury, shall conduct a  
10 hearing, unless waived by the defense, and shall determine:

11 (1) whether the defendant is competent to  
12 ~~[stand trial or to plead]~~ proceed in the criminal case; and,  
13 if not,

14 (2) whether the defendant is making progress  
15 under treatment toward attainment of competency within [ ~~one~~  
16 year] nine months from the date of the original finding of  
17 incompetency; and

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

20 B. At least seven days prior to the review  
21 hearing, the treatment supervisor shall submit a written  
22 progress report to the court, the state and the defense  
23 indicating:

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

(2) the opinion of the treatment supervisor  
as to whether the defendant has attained competency or as to  
whether the defendant is making progress under treatment

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1 toward attaining competency within [~~one year~~] nine months from  
2 the date of the original finding of incompetency and whether  
3 there is a substantial probability that the defendant will  
4 attain competency within nine months from the date of the  
5 original finding of incompetency;

6 (3) whether the defendant is dangerous as  
7 that term is defined in Section 31-9-1.2 NMSA 1978 or whether  
8 the defendant satisfies the criteria for involuntary  
9 commitment contained in the Mental Health and Developmental  
10 Disabilities Code; and

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

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

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

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1 that:

2 (1) the question of the defendant's  
3 competency shall be reviewed again not later than [~~one year~~]  
4 nine months from the original determination of incompetency to  
5 proceed in a criminal case; and

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

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

21 Section 3. Section 31-9-1.4 NMSA 1978 (being Laws 1988,  
22 Chapter 107, Section 5 and Laws 1988, Chapter 108, Section 5,  
23 as amended by Laws 1993, Chapter 240, Section 5, and also by  
24 Laws 1993, Chapter 249, Section 5) is amended to read:

25 "31-9-1.4. DETERMINATION OF COMPETENCY--INCOMPETENT  
DEFENDANTS.--If at any time the district court determines that  
there is not a substantial probability that the defendant will  
become competent to proceed in a criminal case within a

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1 reasonable period of time not to exceed [ ~~one year~~ ] nine months  
2 from the date of the original finding of incompetency, the  
3 district court may:

4 A. [ ~~set the matter for hearing~~ ] if the defendant  
5 is charged with murder in the first degree, first degree  
6 criminal sexual penetration, criminal sexual contact of a  
7 minor or arson, hear the matter pursuant to Section 31-9-1.5  
8 NMSA 1978 within three months;

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

11 C. dismiss the criminal case without prejudice in  
12 the interest of justice. If the treatment supervisor has  
13 issued a report finding that the defendant satisfies the  
14 criteria for involuntary commitment contained in the Mental  
15 Health and Developmental Disabilities Code, the department of  
16 health shall commence proceedings pursuant to Chapter 43,  
17 Article 1 NMSA 1978, and the court may order the defendant  
18 confined for a maximum of seven days to facilitate preparation  
19 and initiation of a petition pursuant to the Mental Health and  
20 Developmental Disabilities Code. The district court may refer  
21 the defendant to the district attorney for possible initiation  
22 of proceedings under the Mental Health and Developmental  
23 Disabilities Code. "

24 Section 4. Section 31-9-1.5 NMSA 1978 (being Laws 1988,  
25 Chapter 107, Section 6 and Laws 1988, Chapter 108, Section 6,  
as amended by Laws 1993, Chapter 240, Section 6 and also by  
Laws 1993, Chapter 249, Section 6) is amended to read:

"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 murder in the first degree,  
6 first degree criminal sexual penetration, criminal sexual  
7 contact of a minor or arson. Such hearing shall be conducted  
8 by the district court without a jury. The state and the  
9 defendant may introduce evidence relevant to the question of  
10 the defendant's guilt of the crime charged. The district  
11 court may admit hearsay or affidavit evidence on secondary  
12 matters such as testimony to establish the chain of possession  
13 of physical evidence, laboratory reports, authentication of  
14 transcripts taken by official reporters, district court and  
15 business records and public documents.

16 B. If the evidence does not establish by clear and  
17 convincing evidence that the defendant committed [~~a crime~~]  
18 murder in the first degree, first degree criminal sexual  
19 penetration, criminal sexual contact of a minor or arson, the  
20 district court shall dismiss the criminal case with prejudice;  
21 however, nothing [~~herein~~] in this section shall prevent the  
22 state from initiating proceedings under the provisions of the  
23 Mental Health and Developmental Disabilities Code, and the  
24 court may order the defendant confined for a maximum of seven  
25 days to facilitate preparation and initiation of a petition  
pursuant to that code.

26 C. If the district court finds by clear and  
27 convincing evidence that the defendant committed a crime and

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1 has not made a finding of dangerousness, pursuant to  
2 [~~Subsections B and C of~~] Section [~~39-1-1.2~~] 31-9-1.2 NMSA  
3 1978, the district court shall dismiss the charges without  
4 prejudice. The state may initiate proceedings pursuant to 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.

8 D. If the district court finds by clear and  
9 convincing evidence that the defendant committed [~~a crime~~]  
10 murder in the first degree, first degree criminal sexual  
11 penetration, criminal sexual contact of a minor or arson and  
12 [~~has previously made~~] enters a finding that the defendant [~~is~~]  
13 remains incompetent to proceed and remains dangerous pursuant  
14 to [~~Subsections B and C of~~] Section 31-9-1.2 NMSA 1978:

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

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

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

(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  
 4 of trial competency and dangerousness:

5 (a) upon a finding that the defendant  
 6 is 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 and dangerous  
 10 pursuant to Section 31-9-1.2 NMSA 1978, the court shall review  
 11 the defendant's competency and dangerousness every two years  
 12 until expiration of the period of commitment equal to the  
 13 maximum sentence to which the defendant would have been  
 14 subject had he or she been convicted [~~subject~~] in a criminal  
 15 proceeding; provided, that if the treatment supervisor  
 16 recommends that the defendant be committed pursuant to the  
 17 Mental Health and Developmental Disabilities Code, the court  
 18 may at any time proceed pursuant to Subsection C of Section  
 19 31-9-1.4, NMSA 1978; and

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

26 Section 5. Section 31-9-1.6 NMSA 1978 (being Laws 1997,  
 27 Chapter 153, Section 1) is amended to read:

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

1           A. Upon motion of the defense requesting a ruling,  
2 the court shall hold a hearing [~~prior to one year after a~~  
3 ~~defendant was determined to be incompetent to stand trial~~] to  
4 determine whether the defendant has mental retardation as  
5 defined in Subsection E of this section.

6           B. If the court finds by a preponderance of the  
7 evidence that the defendant [~~is mentally retarded, then no~~  
8 ~~later than one year from the court's initial determination~~  
9 ~~that the defendant is incompetent to stand trial~~] has mental  
10 retardation and that there is not a substantial probability  
11 that the defendant will become competent to proceed in a  
12 criminal case within a reasonable period of time not to exceed  
13 nine months from the date of the original finding of  
14 incompetency, then no later than sixty days from notification  
15 to the secretary of health or his designee of the court's  
16 findings the department of health shall perform an evaluation  
17 to determine whether the defendant presents a likelihood of  
18 serious harm to himself or a likelihood of serious harm to  
19 others.

20           C. If the department of health evaluation results  
21 in a finding that the defendant presents a likelihood of  
22 serious harm to himself or a likelihood of serious harm to  
23 others, within sixty days of the department's evaluation the  
24 department [~~(1)~~] shall commence proceedings pursuant to  
25 Chapter 43, Article 1 NMSA 1978 if the defendant was charged  
with murder in the first degree, [~~homicide~~] first degree  
criminal sexual penetration, criminal sexual contact of a  
minor or arson in the initial proceedings, and the court



1 presiding over the initial proceedings shall enter a finding  
 2 that the respondent presents a likelihood of harm to others [ ;  
 3 ~~or (2) may commence proceedings pursuant to Chapter 43,~~  
 4 ~~Article 1 NMSA 1978 if the defendant was charged with any~~  
 5 ~~crime other than first degree homicide, first degree sexual~~  
 6 ~~penetration, criminal sexual contact of a minor or arson in~~  
 7 ~~the initial proceedings from which he was referred pursuant to~~  
 8 ~~this section to the department].~~

9 D. The criminal charges shall be dismissed without  
 10 prejudice after the hearing pursuant to Chapter 43, Article 1  
 11 NMSA 1978 or upon expiration of fourteen months from the  
 12 court's initial determination that the defendant is  
 13 incompetent to [~~stand trial~~] proceed in a criminal case.

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

20 Section 6. Section 43-1-1 NMSA 1978 (being Laws 1976,  
 21 Chapter 43, Section 1, as amended by Laws 1993, Chapter 240,  
 22 Section 7 and also by Laws 1993, Chapter 249, Section 7) is  
 23 amended to read:

24 "43-1-1. MENTAL CONDITION OF CRIMINAL DEFENDANTS--  
 25 EVALUATION--TREATMENT.--

26 A. Whenever a district court finds it necessary to  
 27 obtain an evaluation of the mental condition of a defendant in  
 28 a criminal case [~~or of a defendant found incompetent to~~

1 ~~proceed in a criminal case in a proceeding for involuntary~~  
2 ~~hospitalization pursuant to the Mental Health and~~  
3 ~~Developmental Disabilities Code],~~ the court shall order an  
4 evaluation from a qualified professional available to the  
5 local facilities of the court or from a qualified professional  
6 at a local mental health center designated by the secretary of  
7 health, and whenever the court finds it desirable to use state  
8 personnel or facilities to assist in making the evaluation,  
9 the court shall in its order for an evaluation require service  
10 upon the secretary of health of the court's order for  
11 evaluation. The secretary of health shall arrange for a  
12 qualified professional furnished by the state to visit the  
13 defendant in local facilities available to the court or shall  
14 designate suitable available facilities. If the secretary of  
15 health designates a local mental health center or a state  
16 facility for the defendant's evaluation within forty-eight  
17 hours of service of the evaluation order, the secretary of  
18 health shall notify the court of such designation. The court  
19 shall then enter an appropriate transport order which also  
20 provides for the return of the defendant to the local  
21 facilities of the court. The defendant shall be transported  
22 by the county to facilities designated by the secretary of  
23 health for the purpose of making an evaluation. Misdemeanor  
24 defendants shall be evaluated locally.

25 B. If the secretary of health elects to have the  
defendant retained at the district court's local facilities,  
the qualified professional furnished by the state ~~[ will ]~~ shall  
visit the local facilities not later than two weeks from the

1 time of service of the court's evaluation order upon the  
2 secretary of health and:

3 (1) after the evaluation of the defendant is  
4 completed, the qualified professional furnished by the state  
5 shall be available for deposition to declare his findings.

6 The usual rules of evidence governing the use and admission of  
7 the deposition shall prevail; and

8 (2) if the secretary of health finds that the  
9 qualified professional will be unable to initiate the  
10 evaluation within two weeks from the time of service of the  
11 court's evaluation order upon the secretary of health, [~~then~~]  
12 the secretary of health shall call upon the county sheriff of  
13 the county in which the defendant is incarcerated and have the  
14 defendant transported to facilities designated by the  
15 secretary of health for the purpose of conducting the  
16 evaluation.

17 C. If the secretary of health elects to have the  
18 defendant transported to the facilities designated by the  
19 secretary of health for the purpose of evaluation, the  
20 evaluation shall be commenced as soon as possible after the  
21 admission of the defendant to the facility, but, in no event,  
22 shall the evaluation be commenced later than seventy-two hours  
23 after the admission. The defendant, at the conclusion of the  
24 evaluation, shall be returned by the county sheriff to the  
25 local facilities of the court upon not less than three days'  
notice. After the evaluation is completed, the qualified  
professional furnished by the state shall be available for  
deposition to declare his findings. The usual rules of

1 evidence governing the use and admissibility of the deposition  
2 shall prevail.

3 D. Documents reasonably required by the secretary  
4 of health to show the medical and forensic history of the  
5 defendant shall be furnished by the court when required.

6 E. After an evaluation and upon reasonable notice,  
7 the district court may commit a dangerous defendant pursuant  
8 to Section 31-9-1.2 NMSA 1978 or may dismiss the charges  
9 without prejudice and refer the defendant to the district  
10 attorney for possible initiation of proceedings under the  
11 Mental Health and Developmental Disabilities Code. A  
12 defendant so committed under the Mental Health and  
13 Developmental Disabilities Code shall be treated as any other  
14 patient committed involuntarily. Whenever the secretary of  
15 health determines that he does not have the ability to meet  
16 the medical needs of a defendant committed pursuant to  
17 Sections 31-9-1.2 through 31-9-1.5 NMSA 1978, the secretary or  
18 his designee shall serve upon the district court and the  
19 parties a written certification of the lack of ability to meet  
20 the medical needs of the defendant. The court shall set a  
21 hearing upon the certification within ten days of its filing  
22 and shall, after the hearing, make a determination regarding  
23 disposition of the criminal case. When deemed by the  
24 secretary of health to be medically appropriate, a dangerous  
25 defendant committed pursuant to Section 31-9-1.2 NMSA 1978 may  
be returned by the county sheriff to the custody of the court  
upon not less than three days' notice. The secretary shall  
provide written notification to the court and parties within

1 three days of the defendant's discharge.

2 F. All acts to be performed by the secretary of  
3 health pursuant to provisions of this section may be performed  
4 by the secretary's designee. "

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1 HJC/HB 469

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3 FORTY- FOURTH LEGISLATURE  
4 FIRST SESSION  
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7 February 25, 1999  
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10 HOUSE FLOOR AMENDMENT number \_\_\_\_\_ to HOUSE JUDICIARY COMMITTEE  
11 SUBSTITUTE FOR HOUSE BILL 469  
12

13 Amendment sponsored by Representative Arthur C. Hawkins  
14

15  
16 1. On page 2, line 7, after "defendant" insert "charged with a  
17 felony".

18 2. On page 8, on lines 1 through 3 strike the underscored  
19 language and strike line 4 through the comma.  
20

21 3. On page 8, line 5, before the semicolon insert:  
22  
23 'if the defendant is charged with a felony that involves the  
24 infliction of great bodily harm on another person; a felony that

FORTY- FOURTH LEGISLATURE  
FIRST SESSION

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HF1/HB 469

Page 23

involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978".

4. On page 9, line 5, after "with" strike the remainder of the line, strike all of line 6, and strike the underscored language on line 7, and insert in lieu thereof:

"a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978".

5. On page 9, lines 18 and 19, strike the underscored language and insert in lieu thereof:

"a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration,

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

HJC/HB 469

HFL/HB 469

Page 24

as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978".

6. On page 10, lines 14 and 15, strike the underscored language and insert in lieu thereof:

'a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978".

7. On page 17, line 3, after "defendant" insert "charged with a felony".

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Arthur C. Hawkins

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

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HF1/HB 469

Page 25

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Date \_\_\_\_\_

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION

HJC/HB 469

Page 26

1 HF1/HB 469

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

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March 14, 1999

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Mr. President:

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Your JUDICIARY COMMITTEE, to whom has been referred

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 469, as amended

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has had it under consideration and reports same with recommendation

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that it DO PASS.

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Respectfully submitted,

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Michael S. Sanchez, Chairman

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION

1 HF1 / HB 469

Page 27

2 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
3 (Chief Clerk) (Chief Clerk)

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9 The roll call vote was  5  For  0  Against

10 Yes: 5

11 No: None

12 Excused: Aragon, Davis, Lopez

13 Absent: None

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