

**CITY of ALBUQUERQUE
TWENTY SIXTH COUNCIL**

COUNCIL BILL NO. M-24-2 ENACTMENT NO. M-2024-002

SPONSORED BY: Joaquín Baca, Brook Bassan

1 MEMORIAL
2 DECLARING SUPPORT FOR PROPOSED STATE LEGISLATION REGARDING
3 CRIMINAL COMPETENCY DETERMINATION (HOUSE BILL 233 AND SENATE
4 BILL 16).

5 WHEREAS, Comprehensive reforms to the criminal justice system must be
6 responsive to the mental health needs of the community, including the needs
7 of individuals who have been charged with a crime; and

8 WHEREAS, Under New Mexico’s current criminal procedure rules,
9 individuals who are found incompetent to stand trial often have their charges
10 dismissed and are merely given information about mental health services,
11 which they may elect to pursue themselves; and

12 WHEREAS, Empowering judges, prosecutors, and defense attorneys to
13 refer individuals for mental health evaluations and treatment increases
14 immediate access to mental health resources; and

15 WHEREAS, These mental health evaluations allow for a comprehensive
16 assessment of an individual’s mental well-being, ensuring that underlying
17 mental health issues are identified and addressed appropriately; and

18 WHEREAS, Treating an individual’s underlying mental health issues
19 promotes rehabilitation, addresses the root causes of criminal conduct, and
20 can help reduce recidivism; and

21 WHEREAS, Two bills, House Bill 233 (HB 233) and Senate Bill 16 (SB 16),
22 have been introduced at the 2024 Legislative Session that aim to address
23 issues related to determining a defendant’s competency to stand trial,
24 establish programs for competency restoration, and ensure the provision of
25 State-funded mental health examinations; and

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 **WHEREAS, HB 233 and SB 16 propose that individuals who are found**
2 **incompetent are provided access to mental health treatment like drug and/or**
3 **alcohol treatment, and upon completion of a competency restoration program,**
4 **charges can be dismissed for misdemeanors and non-violent felonies; and**

5 **WHEREAS, Prior to the start of the 2024 Legislative Session, Governor**
6 **Michelle Lujan-Grisham said, “This bill SB 16 reflects our commitment to a**
7 **justice system that is fair, compassionate, and responsive to the mental health**
8 **needs of individuals involved in the legal process. I urge the Legislature to**
9 **support this important measure for the well-being of our communities.”; and**

10 **WHEREAS, In a post-Legislative Session press conference, the Governor**
11 **commented on the recent deadly stabbing of Las Cruces Officer, Jonah**
12 **Hernandez, stating, “Officer Hernandez was fatally attacked by a repeat**
13 **offender who, based on the information we all have, had a mental illness, and**
14 **a drug abuse, substance abuse problem. Individuals need both our help for**
15 **treatment, but they also need to be in a system that can be accountable in the**
16 **context of keeping everyone else safe.”; and**

17 **WHEREAS, The Governor also noted, “We need a tool for folks who are**
18 **repeat offenders because of these issues - substance abuse, behavioral**
19 **health, mental health issues - to make sure that they can get the required**
20 **treatment.”; and**

21 **WHEREAS, Addressing the mental health needs of individuals charged**
22 **with a crime is an essential component of criminal justice reform efforts.**
23 **BE IT MEMORIALIZED BY THE COUNCIL, THE GOVERNING BODY OF THE**
24 **CITY OF ALBUQUERQUE:**

25 **SECTION 1. The Albuquerque City Council supports House Bill 233 and**
26 **Senate Bill 16.**

27 **SECTION 2. The Albuquerque City Council urges the Governor of New**
28 **Mexico to call a special legislative session to allow the adoption of legislation**
29 **focused on addressing criminal and civil competency.**

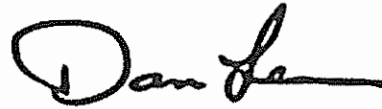
30 **SECTION 3. The City Clerk is directed to transmit copies of this Memorial**
31 **to the City of Albuquerque lobbyist, the City of Albuquerque State Legislative**
32 **Delegation, the Governor of New Mexico, and the New Mexico Legislature.**

33 X:\CL\SHARE\CL-Staff_Legislative Staff\Legislation\26 Council\M-2final.docx

1 PASSED AND ADOPTED THIS 21st DAY OF February, 2024
2 BY A VOTE OF: 6 FOR 3 AGAINST.

3
4 For: Baca, Bassan, Champine, Fiebelkorn, Grout, Sanchez

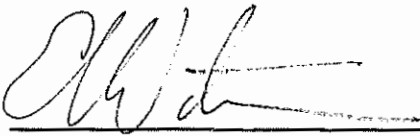
5 Against: Lewis, Peña, Rogers
6

7
8 

9
10 _____
11 Dan Lewis, President
12 City Council
13
14
15
16
17

18 Bill No. M-24-2
19

20
21
22
23 ATTEST:

24 
25
26 _____

27 Ethan Watson, City Clerk
28
29
30
31
32

[+Bracketed/Underscored Material+] - New
[-Bracketed/Strikethrough Material-] - Deletion

1 HOUSE BILL 233

2 56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

3 INTRODUCED BY

4 Tara L. Lujan and Gerald Ortiz y Pino

5
6
7
8
9
10 AN ACT

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

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 31-9-1 NMSA 1978 (being Laws 1988,
19 Chapter 107, Section 1 and Laws 1988, Chapter 108, Section 1,
20 as amended by Laws 1993, Chapter 240, Section 1 and by Laws
21 1993, Chapter 249, Section 1) is repealed and a new Section
22 31-9-1 NMSA 1978 is enacted to read:

23 "31-9-1. NEW MATERIAL DETERMINATION OF COMPETENCY--
24 RAISING THE ISSUE.--

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

.226370.1

underscored material = new
[bracketed material] = delete

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 suspended and the
3 issue of competency may be resolved pursuant to Section
4 31-9-1.1 NMSA 1978 or, prior to or instead of ordering a
5 competency evaluation, the court may:

6 (1) order that the defendant be assessed for
7 suitability to be diverted to a treatment program either by
8 agreement of the parties or at the court's discretion if such
9 programs are available to the jurisdiction of the referring
10 court and available within a reasonable time; or

11 (2) refer the defendant for an assessment to
12 determine if the defendant is a candidate for civil commitment
13 or assisted outpatient treatment pursuant to the Assisted
14 Outpatient Treatment Act, if agreed to by the parties.

15 B. In misdemeanor cases, a defendant may be ordered
16 to participate in a diversion to treatment program for no
17 longer than six months. In misdemeanor cases when a defendant
18 is diverted to treatment under this subsection, the case shall
19 not transfer to district court.

20 C. In nonviolent felony cases, the court may order,
21 or the parties may agree, that the defendant be assessed for
22 participation in an available diversion to treatment program
23 for no longer than eighteen months. Upon completion of the
24 program, a defendant's charges shall be dismissed. The
25 defendant shall not be required to undergo a competency

.226370.1

underscored material = new
[bracketed material] = delete

1 evaluation for the case while the defendant is participating in
2 a diversion to treatment program.

3 D. If a defendant who has been assigned to a
4 diversion to treatment program refuses or is unable to comply
5 with court-ordered treatment, the court may, in the interest of
6 justice, dismiss the charges pending against the defendant or,
7 if the parties agree, make a referral to determine if the
8 defendant is eligible for the civil commitment process or
9 assisted outpatient treatment pursuant to the Assisted
10 Outpatient Treatment Act."

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

15 "31-9-1.1. DETERMINATION OF COMPETENCY--EVALUATION AND
16 DETERMINATION.--~~[The defendant's competency shall be~~
17 ~~professionally evaluated]~~

18 A. When a court determines that an individual
19 requires a competency evaluation, the evaluation shall be
20 conducted by a psychologist or psychiatrist or other qualified
21 professional recognized by the district court as an expert and
22 a report shall be submitted as ordered by the court.

23 Competency evaluations shall include a provisional diagnosis,
24 or full diagnosis when possible, linking symptom interference
25 with competency capacities, as well as appropriate treatment

.226370.1

underscored material = new
~~[bracketed material] = delete~~

1 recommendations.

2 B. A hearing on the same day regarding the issue of
3 ~~[the]~~ competency and dangerousness of an incarcerated defendant
4 charged with a felony shall be held by the district court
5 within a reasonable time, but in no event later than thirty
6 days after notification to the court of completion of the
7 diagnostic evaluation. ~~[In the case of an incarcerated~~
8 ~~defendant not charged with a felony, the court shall hold a~~
9 ~~hearing and determine his competency within ten days of~~
10 ~~notification to the court of completion of the diagnostic~~
11 ~~evaluation.]"~~

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 repealed and a new Section 31-9-1.2 NMSA 1978 is
15 enacted to read:

16 "31-9-1.2. [NEW MATERIAL] DETERMINATION OF COMPETENCY--
17 COMPETENCY RESTORATION PROGRAMS--COMMITMENT--REPORT.--

18 A. A court shall hold a hearing on the same day to
19 determine whether a defendant is incompetent to proceed in a
20 criminal case and whether the defendant is dangerous, and the
21 court may dismiss the criminal case without prejudice in the
22 interest of justice or may stay the case and refer the
23 defendant to a competency restoration program if such a program
24 exists, is available to the referring jurisdiction and is
25 available within a reasonable time period from the date of

.226370.1

underscoring material = new
~~[bracketed material] = delete~~

1 referral. The court shall order treatment in the least
2 restrictive setting consistent with the goal of restoration to
3 competency. The court may refer the defendant to:

4 (1) an outpatient competency restoration
5 program, which may be provided in person or by electronic
6 means, provided by a state hospital or a county, community or
7 private institution or a facility that is authorized by the
8 department of health or the health care authority department to
9 provide outpatient competency restoration. Outpatient
10 competency restoration facilities and providers shall provide a
11 written report to the court every thirty days regarding the
12 defendant's status, participation in the program and possible
13 changes to necessary level of care. In addition, facilities
14 and providers shall notify the court immediately if outpatient
15 services are terminated due to a mental health condition or
16 behavior or for any other reason. A defendant will only be
17 eligible for outpatient competency restoration if the court
18 finds that the placement will not pose an unreasonable risk to
19 the health and safety of the defendant, any person or the
20 community; or

21 (2) an inpatient competency restoration
22 program, which consists of competency restoration services
23 provided in a residential setting that provides additional
24 treatment services and is a provider of competency restoration
25 services authorized by the department of health or the health

.226370.1

underscoring material = new
~~[bracketed material]~~ = delete

1 care authority department. If the defendant is initially
2 committed to a state hospital or secure treatment facility or
3 program and is subsequently transferred to any other facility
4 or program, copies of the documents specific to treatment shall
5 be electronically transferred or taken with the defendant to
6 each subsequent facility to which the defendant is transferred.

7 B. In the event of dismissal of a criminal case,
8 the court, the city attorney, the county attorney, the district
9 attorney and anyone else authorized by law may refer for
10 assessment to civil commitment proceedings under the Mental
11 Health and Developmental Disabilities Code, and the court may
12 order the defendant confined for a maximum of seven days to
13 facilitate the filing of an order referring the defendant for
14 an assessment to determine eligibility for civil commitment.

15 C. The court shall hold a hearing on the same day
16 to determine whether a defendant charged with a felony is
17 incompetent to proceed in the criminal case, and, if the court
18 makes a specific finding that the defendant is dangerous, the
19 court may order the defendant to a competency program. The
20 defendant so committed shall be provided with treatment
21 available to involuntarily committed persons, and:

22 (1) the defendant shall be detained by the
23 department of health in a secure, locked facility until
24 completion of treatment, and appropriate communication shall be
25 provided with all parties listed in this subsection;

.226370.1

underscored material = new
~~[bracketed material]~~ = delete

1 (2) upon the defendant's completion of
2 treatment and the submission of a final report to the state,
3 defense counsel and the court, the court shall enter an order
4 to transport the defendant to the appropriate county detention
5 facility, if applicable; and

6 (3) upon release, the committing facility
7 shall forward a discharge plan and treatment documents to the
8 receiving provider or facility, if applicable.

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

17 E. If, after conducting an investigation, the
18 secretary of health or the secretary's designee determines that
19 the department of health does not have the ability to meet the
20 medical needs of a defendant ordered to commitment, the
21 secretary or the secretary's designee may refuse admission of
22 the defendant upon written certification to the committing
23 court and the parties of the lack of ability to meet the
24 medical needs of the defendant. The certification shall be
25 made within fourteen days of the receipt of the court's order

.226370.1

underscored material = new
~~[bracketed material]~~ = delete

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

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

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

11 A. Within thirty days of an incompetent defendant's
12 admission to an inpatient or outpatient facility to undergo
13 competency restoration treatment, the treatment supervisor
14 shall file with the district court, the state and the defense
15 an initial assessment and treatment plan and a report on the
16 defendant's amenability to treatment to render the defendant
17 competent to proceed in a criminal case or to proceed with
18 diversion, if available; an assessment of the facility's
19 capacity to provide appropriate treatment for the defendant;
20 and an opinion as to the probability of the defendant attaining
21 competency within a period of nine months from the date of
22 admission.

23 [~~A.~~] B. Within ninety days of the entry of the
24 order committing an incompetent defendant to undergo treatment,
25 the district court, sitting without a jury, shall conduct a

.226370.1

underscored material = new
[bracketed material] = delete

1 hearing, unless waived by the defense, and shall determine:

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

4 (2) whether the defendant is making progress
5 under treatment toward attainment of competency within nine
6 months from the date of the original finding of incompetency;
7 and

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

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

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

16 (2) the opinion of the treatment supervisor as
17 to whether the defendant has attained competency or ~~[as to~~
18 ~~whether the defendant]~~ is making progress under treatment
19 toward attaining competency within nine months from the date of
20 the original finding of incompetency and whether there is a
21 substantial probability that the defendant will attain
22 competency within nine months from the date of the original
23 finding of incompetency;

24 (3) whether the defendant is dangerous as that
25 term is defined in Section ~~[31-9-1.2]~~ 31-9-1.7 NMSA 1978 or

.226370.1

underscored material = new
[bracketed material] = delete

1 whether the defendant satisfies the criteria for involuntary
2 commitment contained in the Mental Health and Developmental
3 Disabilities Code; and

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

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

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

22 (1) the question of the defendant's competency
23 shall be reviewed again not later than nine months from the
24 original determination of incompetency to proceed in a criminal
25 case; and

.226370.1

underscored material = new
~~[bracketed material] = delete~~

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

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

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

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

.226370.1

underscored material = new
[bracketed material] = delete

1 A. hear the matter pursuant to Section 31-9-1.5
2 NMSA 1978 within three months if the defendant is charged with
3 a felony that involves the infliction of great bodily harm on
4 another person; a felony that involves the use of a firearm;
5 aggravated arson, as provided in Section 30-17-6 NMSA 1978;
6 criminal sexual penetration, as provided in Section 30-9-11
7 NMSA 1978; or criminal sexual contact of a minor, as provided
8 in Section 30-9-13 NMSA 1978;

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~~] that code, and the court may order the
18 defendant confined for a maximum of seven days to facilitate
19 preparation and initiation of a petition pursuant to [~~the~~
20 ~~Mental Health and Developmental Disabilities~~] that code. The
21 district court, the department of health, the state, the family
22 or the health care provider may refer the defendant to the
23 district attorney for [~~possible initiation of proceedings under~~
24 ~~the Mental Health and Developmental Disabilities code~~] an
25 assessment of whether the defendant is eligible for civil

.226370.1

underscored material = new
[bracketed material] = delete

1 commitment."

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

5 "31-9-1.5. DETERMINATION OF COMPETENCY--EVIDENTIARY
6 HEARING.--

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

25 B. If the evidence does not establish by clear and

.226370.1

underscored material = new
~~[bracketed material] = delete~~

1 convincing evidence that the defendant committed a felony that
2 involves the infliction of great bodily harm on another person;
3 a felony that involves the use of a firearm; aggravated arson,
4 as provided in Section 30-17-6 NMSA 1978; criminal sexual
5 penetration, as provided in Section 30-9-11 NMSA 1978; or
6 criminal sexual contact of a minor, as provided in Section
7 30-9-13 NMSA 1978, the district court shall dismiss the
8 criminal case with prejudice; however, nothing in this section
9 shall prevent the state from initiating proceedings under the
10 provisions of the Mental Health and Developmental Disabilities
11 Code, and the court may order the defendant confined for a
12 maximum of seven days to facilitate preparation and initiation
13 of a petition pursuant to that code.

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

23 D. If the district court finds by clear and
24 convincing evidence that the defendant committed a felony that
25 involves the infliction of great bodily harm on another person;

.226370.1

underscored material = new
[bracketed material] = delete

1 a felony that involves the use of a firearm; aggravated arson,
2 as provided in Section 30-17-6 NMSA 1978; criminal sexual
3 penetration, as provided in Section 30-9-11 NMSA 1978; or
4 criminal sexual contact of a minor, as provided in Section
5 30-9-13 NMSA 1978 and enters a finding that the defendant
6 remains incompetent to proceed and remains dangerous pursuant
7 to Section 31-9-1.2 NMSA 1978:

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

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

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

20 (4) at least every two years, the district
21 court shall conduct a hearing upon notice to the parties and
22 the department of health charged with detaining the defendant.
23 At the hearing, the court shall enter findings on the issues of
24 trial competency and dangerousness:

25 (a) upon a finding that the defendant is

.226370.1

underscored material = new
[bracketed material] = delete

1 competent to proceed in a criminal case, the court shall
2 continue with the criminal proceeding;

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

15 (c) if the defendant is not committed
16 pursuant to Sections 31-9-1 through 31-9-1.5 NMSA 1978 or if
17 the court finds upon its two-year review hearing that the
18 defendant is no longer dangerous ~~[as defined in Section~~
19 ~~31-9-1.2 NMSA 1978]~~, the defendant shall be released with a
20 treatment plan and case management services in place."

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

23 "31-9-1.6. HEARING TO DETERMINE DEVELOPMENTAL OR
24 INTELLECTUAL DISABILITY.--

25 A. Upon motion of the defense requesting a ruling,

.226370.1

underscored material = new
[bracketed material] = delete

1 the court shall hold a hearing to determine whether the
2 defendant has a developmental or intellectual disability as
3 defined in [~~Subsection E of this~~] Section 31-9-1.7 NMSA 1978.

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

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

.226370.1

underscored material = new
[bracketed material] = delete

1 D. The criminal charges shall be dismissed without
2 prejudice after the hearing pursuant to [~~Chapter 43, Article 1~~
3 ~~NMSA 1978~~] the Mental Health and Developmental Disabilities
4 Code or upon expiration of fourteen months from the court's
5 initial determination that the defendant is incompetent to
6 proceed in a criminal case.

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

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

16 "31-9-1.7. [NEW MATERIAL] DEFINITIONS.--As used in
17 Chapter 31, Article 9 NMSA 1978:

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

.226370.1

underscored material = new
~~[bracketed material] = delete~~

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

5 C. "developmental or intellectual disability" means
6 significantly subaverage general intellectual functioning
7 existing concurrently with deficits in adaptive behavior. An
8 intelligence quotient of seventy or below on a reliably
9 administered intelligence quotient test shall be presumptive
10 evidence of developmental or intellectual disability;

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

13 E. "diversion to treatment program" means diversion
14 from the legal system directly to mental health or substance
15 abuse treatment in the community with additional supportive
16 structures such as case management;

17 F. "medical needs" means physical medical issues
18 that require additional medical equipment or expertise to
19 adequately treat;

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

22 H. "outpatient competency restoration" means that
23 when a defendant is found to be incompetent, the defendant may
24 be referred to an outpatient competency restoration program if
25 one is available to the jurisdiction under which the defendant

.226370.1

underscored material = new
[bracketed material] = delete

1 has been found incompetent;

2 I. "provisional diagnosis" means a preliminary
3 diagnosis consistent with presenting symptoms but that requires
4 additional time and evaluation to provide a full diagnosis;

5 J. "reasonable time" means within thirty days of
6 referral;

7 K. "treatment program" means any facility or
8 program offering mental health, substance use or other medical
9 treatment; and

10 L. "violent felony" means one of the following
11 enumerated felonies: murder pursuant to Section 30-2-1 NMSA
12 1978, manslaughter pursuant to Section 30-2-3 NMSA 1978,
13 criminal sexual penetration pursuant to Section 30-9-11 NMSA
14 1978, kidnapping pursuant to Section 30-4-1 NMSA 1978 or any
15 crime committed with the use of a deadly weapon or serious
16 threat of inflicting great bodily harm on oneself or another."

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

19 "31-9-2. MENTAL EXAMINATION.--Upon motion of any
20 defendant, the court shall order a mental examination of the
21 defendant before making any determination of competency under
22 [~~Sections 41-13-3 or 41-13-3.1 New Mexico Statutes Annotated,~~
23 ~~1953 Compilation]~~ Section 31-9-1 NMSA 1978. Where the
24 defendant is determined to be indigent, the [court] state shall
25 pay for the costs of the examination from funds available to

.226370.1

underscored material = new
~~[bracketed material]~~ = delete

1 the court."

- 21 -

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

.226370.1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 16

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

INTRODUCED BY

Gerald Ortiz y Pino

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

underscored material = new
[bracketed material] = delete

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 suspended and the
3 issue of competency may be resolved pursuant to Section
4 31-9-1.1 NMSA 1978 or, prior to or instead of ordering a
5 competency evaluation, the court may:

6 (1) order that the defendant be assessed for
7 suitability to be diverted to a treatment program either by
8 agreement of the parties or at the court's discretion if such
9 programs are available to the jurisdiction of the referring
10 court and available within a reasonable time; or

11 (2) refer the defendant for an assessment to
12 determine if the defendant is a candidate for civil commitment
13 or assisted outpatient treatment pursuant to the Assisted
14 Outpatient Treatment Act, if agreed to by the parties.

15 B. In misdemeanor cases, a defendant may be ordered
16 to participate in a diversion to treatment program for no
17 longer than six months. In misdemeanor cases when a defendant
18 is diverted to treatment under this subsection, the case shall
19 not transfer to district court.

20 C. In nonviolent felony cases, the court may order,
21 or the parties may agree, that the defendant be assessed for
22 participation in an available diversion to treatment program
23 for no longer than eighteen months. Upon completion of the
24 program, a defendant's charges shall be dismissed. The
25 defendant shall not be required to undergo a competency

.227194.6GLG

underscored material = new
[bracketed material] = delete

1 evaluation for the case while the defendant is participating in
2 a diversion to treatment program.

3 D. If a defendant who has been assigned to a
4 diversion to treatment program refuses or is unable to comply
5 with court-ordered treatment, the court may, in the interest of
6 justice, dismiss the charges pending against the defendant or,
7 if the parties agree, make a referral to determine if the
8 defendant is eligible for the civil commitment process or
9 assisted outpatient treatment pursuant to the Assisted
10 Outpatient Treatment Act."

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

15 "31-9-1.1. DETERMINATION OF COMPETENCY--EVALUATION AND
16 DETERMINATION.--~~[The defendant's competency shall be~~
17 ~~professionally evaluated]~~

18 A. When a court determines that an individual
19 requires a competency evaluation, the evaluation shall be
20 conducted by a psychologist or psychiatrist or other qualified
21 professional recognized by the district court as an expert and
22 a report shall be submitted as ordered by the court.

23 Competency evaluations shall include a provisional diagnosis,
24 or full diagnosis when possible, linking symptom interference
25 with competency capacities, as well as appropriate treatment

.227194.6GLG

underscored material = new
[bracketed material] = delete

1 recommendations.

2 B. A hearing on the same day regarding the issue of
3 [the] competency and dangerousness of an incarcerated defendant
4 charged with a felony shall be held by the district court
5 within a reasonable time, but in no event later than thirty
6 days after notification to the court of completion of the
7 diagnostic evaluation. [~~In the case of an incarcerated~~
8 ~~defendant not charged with a felony, the court shall hold a~~
9 ~~hearing and determine his competency within ten days of~~
10 ~~notification to the court of completion of the diagnostic~~
11 ~~evaluation.]"~~

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 repealed and a new Section 31-9-1.2 NMSA 1978 is
15 enacted to read:

16 "31-9-1.2. [NEW MATERIAL] DETERMINATION OF COMPETENCY--
17 COMPETENCY RESTORATION PROGRAMS--COMMITMENT--REPORT.--

18 A. A court shall hold a hearing on the same day to
19 determine whether a defendant is incompetent to proceed in a
20 criminal case and whether the defendant is dangerous, and the
21 court may dismiss the criminal case without prejudice in the
22 interest of justice or may stay the case and refer the
23 defendant to a competency restoration program if such a program
24 exists, is available to the referring jurisdiction and is
25 available within a reasonable time period from the date of

.227194.6GLG

underscored material = new
~~[bracketed material]~~ = delete

1 referral. The court shall order treatment in the least
2 restrictive setting consistent with the goal of restoration to
3 competency. The court may refer the defendant to:

4 (1) an outpatient competency restoration
5 program, which may be provided in person or by electronic
6 means, provided by a state hospital or a county, community or
7 private institution or a facility that is authorized by the
8 department of health or the health care authority department to
9 provide outpatient competency restoration. Outpatient
10 competency restoration facilities and providers shall provide a
11 written report to the court every thirty days regarding the
12 defendant's status, participation in the program and possible
13 changes to necessary level of care. In addition, facilities
14 and providers shall notify the court immediately if outpatient
15 services are terminated due to a mental health condition or
16 behavior or for any other reason. A defendant will only be
17 eligible for outpatient competency restoration if the court
18 finds that the placement will not pose an unreasonable risk to
19 the health and safety of the defendant, any person or the
20 community; or

21 (2) an inpatient competency restoration
22 program, which consists of competency restoration services
23 provided in a residential setting that provides additional
24 treatment services and is a provider of competency restoration
25 services authorized by the department of health or the health

.227194.6GLG

underscoring material = new
~~[bracketed material] = delete~~

1 care authority department. If the defendant is initially
2 committed to a state hospital or secure treatment facility or
3 program and is subsequently transferred to any other facility
4 or program, copies of the documents specific to treatment shall
5 be electronically transferred or taken with the defendant to
6 each subsequent facility to which the defendant is transferred.

7 B. In the event of dismissal of a criminal case,
8 the court, the city attorney, the county attorney, the district
9 attorney and anyone else authorized by law may refer for
10 assessment to civil commitment proceedings under the Mental
11 Health and Developmental Disabilities Code, and the court may
12 order the defendant confined for a maximum of seven days to
13 facilitate the filing of an order referring the defendant for
14 an assessment to determine eligibility for civil commitment.

15 C. The court shall hold a hearing on the same day
16 to determine whether a defendant charged with a felony is
17 incompetent to proceed in the criminal case, and, if the court
18 makes a specific finding that the defendant is dangerous, the
19 court may order the defendant to a competency program. The
20 defendant so committed shall be provided with treatment
21 available to involuntarily committed persons, and:

22 (1) the defendant shall be detained by the
23 department of health in a secure, locked facility until
24 completion of treatment, and appropriate communication shall be
25 provided with all parties listed in this subsection;

.227194.6GLG

underscoring material = new
~~[bracketed material]~~ = delete

1 (2) upon the defendant's completion of
2 treatment and the submission of a final report to the state,
3 defense counsel and the court, the court shall enter an order
4 to transport the defendant to the appropriate county detention
5 facility, if applicable; and

6 (3) upon release, the committing facility
7 shall forward a discharge plan and treatment documents to the
8 receiving provider or facility, if applicable.

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

17 E. If, after conducting an investigation, the
18 secretary of health or the secretary's designee determines that
19 the department of health does not have the ability to meet the
20 medical needs of a defendant ordered to commitment, the
21 secretary or the secretary's designee may refuse admission of
22 the defendant upon written certification to the committing
23 court and the parties of the lack of ability to meet the
24 medical needs of the defendant. The certification shall be
25 made within fourteen days of the receipt of the court's order

.227194.6GLG

underscoring material = new
~~[bracketed material]~~ = delete

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

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

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

11 A. Within thirty days of an incompetent defendant's
12 admission to an inpatient or outpatient facility to undergo
13 competency restoration treatment, the treatment supervisor
14 shall file with the district court, the state and the defense
15 an initial assessment and treatment plan and a report on the
16 defendant's amenability to treatment to render the defendant
17 competent to proceed in a criminal case or to proceed with
18 diversion, if available; an assessment of the facility's
19 capacity to provide appropriate treatment for the defendant;
20 and an opinion as to the probability of the defendant attaining
21 competency within a period of nine months from the date of
22 admission.

23 [~~A.~~] B. Within ninety days of the entry of the
24 order committing an incompetent defendant to undergo treatment,
25 the district court, sitting without a jury, shall conduct a

.227194.6GLG

underscored material = new
[bracketed material] = delete

1 hearing, unless waived by the defense, and shall determine:

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

4 (2) whether the defendant is making progress
5 under treatment toward attainment of competency within nine
6 months from the date of the original finding of incompetency;
7 and

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

10 [B.] C. At least seven days prior to the ninety-day
11 review hearing, the treatment supervisor shall submit a written
12 progress report to the court, the state and the defense
13 indicating:

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

16 (2) the opinion of the treatment supervisor as
17 to whether the defendant has attained competency or [~~as to~~
18 ~~whether the defendant~~] is making progress under treatment
19 toward attaining competency within nine months from the date of
20 the original finding of incompetency and whether there is a
21 substantial probability that the defendant will attain
22 competency within nine months from the date of the original
23 finding of incompetency;

24 (3) whether the defendant is dangerous as that
25 term is defined in Section [~~31-9-1.2~~] 31-9-1.7 NMSA 1978 or

.227194.6GLG

underscoring material = new
~~[bracketed material] = delete~~

1 whether the defendant satisfies the criteria for involuntary
2 commitment contained in the Mental Health and Developmental
3 Disabilities Code; and

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

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

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

22 (1) the question of the defendant's competency
23 shall be reviewed again not later than nine months from the
24 original determination of incompetency to proceed in a criminal
25 case; and

.227194.6GLG

underscored material = new
~~[bracketed material] = delete~~

1 (2) the treatment supervisor shall submit a
2 written progress report as specified in Subsection ~~[B]~~ C of
3 this section at least seven days prior to such hearing.

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

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

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

.227194.6GLG

underscoring material = new
~~[bracketed material] = delete~~

1 A. hear the matter pursuant to Section 31-9-1.5
2 NMSA 1978 within three months if the defendant is charged with
3 a felony that involves the infliction of great bodily harm on
4 another person; a felony that involves the use of a firearm;
5 aggravated arson, as provided in Section 30-17-6 NMSA 1978;
6 criminal sexual penetration, as provided in Section 30-9-11
7 NMSA 1978; or criminal sexual contact of a minor, as provided
8 in Section 30-9-13 NMSA 1978;

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]~~ that code, and the court may order the
18 defendant confined for a maximum of seven days to facilitate
19 preparation and initiation of a petition pursuant to ~~[the~~
20 ~~Mental Health and Developmental Disabilities]~~ that code. The
21 district court, the department of health, the state, the family
22 or the health care provider may refer the defendant to the
23 district attorney for ~~[possible initiation of proceedings under~~
24 ~~the Mental Health and Developmental Disabilities code]~~ an
25 assessment of whether the defendant is eligible for civil

.227194.6GLG

underscored material = new
[bracketed material] = delete

1 commitment."

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

5 "31-9-1.5. DETERMINATION OF COMPETENCY--EVIDENTIARY
6 HEARING.--

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

25 B. If the evidence does not establish by clear and

.227194.6GLG

underscored material = new
~~[bracketed material] = delete~~

1 convincing evidence that the defendant committed a felony that
2 involves the infliction of great bodily harm on another person;
3 a felony that involves the use of a firearm; aggravated arson,
4 as provided in Section 30-17-6 NMSA 1978; criminal sexual
5 penetration, as provided in Section 30-9-11 NMSA 1978; or
6 criminal sexual contact of a minor, as provided in Section
7 30-9-13 NMSA 1978, the district court shall dismiss the
8 criminal case with prejudice; however, nothing in this section
9 shall prevent the state from initiating proceedings under the
10 provisions of the Mental Health and Developmental Disabilities
11 Code, and the court may order the defendant confined for a
12 maximum of seven days to facilitate preparation and initiation
13 of a petition pursuant to that code.

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

23 D. If the district court finds by clear and
24 convincing evidence that the defendant committed a felony that
25 involves the infliction of great bodily harm on another person;

.227194.6GLG

underscored material = new
[bracketed material] = delete

1 a felony that involves the use of a firearm; aggravated arson,
2 as provided in Section 30-17-6 NMSA 1978; criminal sexual
3 penetration, as provided in Section 30-9-11 NMSA 1978; or
4 criminal sexual contact of a minor, as provided in Section
5 30-9-13 NMSA 1978 and enters a finding that the defendant
6 remains incompetent to proceed and remains dangerous pursuant
7 to Section 31-9-1.2 NMSA 1978:

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

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

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

20 (4) at least every two years, the district
21 court shall conduct a hearing upon notice to the parties and
22 the department of health charged with detaining the defendant.
23 At the hearing, the court shall enter findings on the issues of
24 trial competency and dangerousness:

25 (a) upon a finding that the defendant is

.227194.6GLG

underscored material = new
[bracketed material] = delete

1 competent to proceed in a criminal case, the court shall
2 continue with the criminal proceeding;

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

15 (c) if the defendant is not committed
16 pursuant to Sections 31-9-1 through 31-9-1.5 NMSA 1978 or if
17 the court finds upon its two-year review hearing that the
18 defendant is no longer dangerous [~~as defined in Section~~
19 ~~31-9-1.2 NMSA 1978~~], the defendant shall be released with a
20 treatment plan and case management services in place."

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

23 "31-9-1.6. HEARING TO DETERMINE DEVELOPMENTAL OR
24 INTELLECTUAL DISABILITY.--

25 A. Upon motion of the defense requesting a ruling,

.227194.6GLG

underscored material = new
[bracketed material] = delete

1 the court shall hold a hearing to determine whether the
2 defendant has a developmental or intellectual disability as
3 defined in [~~Subsection E of this~~] Section 31-9-1.7 NMSA 1978.

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

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

.227194.6GLG

underscoring material = new
~~[bracketed material] = delete~~

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

5 C. "developmental or intellectual disability" means
6 significantly subaverage general intellectual functioning
7 existing concurrently with deficits in adaptive behavior. An
8 intelligence quotient of seventy or below on a reliably
9 administered intelligence quotient test shall be presumptive
10 evidence of developmental or intellectual disability;

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

13 E. "diversion to treatment program" means diversion
14 from the legal system directly to mental health or substance
15 abuse treatment in the community with additional supportive
16 structures such as case management;

17 F. "medical needs" means physical medical issues
18 that require additional medical equipment or expertise to
19 adequately treat;

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

22 H. "outpatient competency restoration" means that
23 when a defendant is found to be incompetent, the defendant may
24 be referred to an outpatient competency restoration program if
25 one is available to the jurisdiction under which the defendant

.227194.6GLG

underscored material = new
[bracketed material] = delete

1 has been found incompetent;

2 I. "provisional diagnosis" means a preliminary
3 diagnosis consistent with presenting symptoms but that requires
4 additional time and evaluation to provide a full diagnosis;

5 J. "reasonable time" means within thirty days of
6 referral;

7 K. "treatment program" means any facility or
8 program offering mental health, substance use or other medical
9 treatment; and

10 L. "violent felony" means one of the following
11 enumerated felonies: murder pursuant to Section 30-2-1 NMSA
12 1978, manslaughter pursuant to Section 30-2-3 NMSA 1978,
13 criminal sexual penetration pursuant to Section 30-9-11 NMSA
14 1978, kidnapping pursuant to Section 30-4-1 NMSA 1978 or any
15 crime committed with the use of a deadly weapon or serious
16 threat of inflicting great bodily harm on oneself or another."

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

19 "31-9-2. MENTAL EXAMINATION.--Upon motion of any
20 defendant, the court shall order a mental examination of the
21 defendant before making any determination of competency under
22 [~~Sections 41-13-3 or 41-13-3.1 New Mexico Statutes Annotated,~~
23 ~~1953 Compilation]~~ Section 31-9-1 NMSA 1978. Where the
24 defendant is determined to be indigent, the [~~court~~] state shall
25 pay for the costs of the examination from funds available to

.227194.6GLG

underscoring material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the court."

- 21 -