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HOUSE BILL 233

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

INTRODUCED BY

Tara L. Lujan and 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Chapter 108, Section 1, as amended by Laws 1993, Chapter 240, Section 1 and by Laws 1993, Chapter 249, Section 1) is repealed and a new Section 31-9-1 NMSA 1978 is enacted to read: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

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

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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

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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

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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

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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;

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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

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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

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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

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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

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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:

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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

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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

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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;

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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

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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,

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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.

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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;

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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

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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

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the court."