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INTRODUCE LEGISLATION THAT WOULD ALLOW TREATMENT TO COMPETENCY IN AN OUTPATIENT SETTING

In recent years, governments across the nation have been experiencing difficulties fulfilling their competency restoration duties due to increased demand for restoration services alongside dwindling community mental health resources and chronic bed shortages in state psychiatric hospitals. This has led to many people with serious psychiatric needs languishing in local jails while waiting to be transferred to a hospital for competency restoration services.

Bernalillo County is no exception. One individual has been waiting for a long term bed for over six months. Others have been waiting several months for a bed in order to be treated to competency. And, as is not uncommon, others have been treated to competency only to return and be found incompetent again resulting in an ongoing cycle of jail and the state hospital.

In response to these challenges, state governments are increasingly pursuing alternative service models for providing competency restoration to defendants found to be incompetent. As of 2009, 35 states authorized competency restoration treatment in a setting other than a secure hospital. Outpatient competency restoration (OCR) programs provide restoration treatment in a community-based setting such as a community mental health center or via an intensive case management team, or residential treatment center. There are currently 36 states that allow OCR, and ten states that do not statutorily permit OCR, New Mexico being one of the latter.

The National Judicial College opines that it is a best practice for the court to order community restoration for individuals if all of the following apply: (a) the community has a program that is suitable for the treatment needs of the defendant; (b) the program provides individualized competency training tailored to the case and the defendant's particular deficits; (c) the defendant has a stable living arrangement with individuals who can assist with treatment; and (d) the defendant is compliant with treatment, and not abusing substances.

Outpatient competency restoration is cost effective as the cost of outpatient competency restoration is typically a fraction of the cost of an inpatient hospital stay. Additional benefits include: 1) Outpatient competency restoration programs respect an individual's right to the least restrictive treatment alternative; 2) Access to community supports may increase the likelihood of competency restoration; 3) Individuals receiving OCR can remain in the community once they are restored; 4) Reduced waiting times and availability of hospital beds for the most severe cases; and 5) Potential to reduce recidivism and hospitalizations.

Allowing treatment to competency in an outpatient setting would require a revision of Section 31-9-1.2(B) NMSA 1978 to allow for treatment in other than a locked facility operated by the Department of Health.

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