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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v. **No. S-1-SC-41150**

JAMES BENJAMIN CARTER,

Defendant-Appellee.

STATE OF NEW MEXICO'S BRIEF IN CHIEF

On Certification from the Court of Appeals, No. A-1-CA-41915
Appeal from the Second Judicial District Court
Bernalillo County, New Mexico
Cindy Leos, District Judge

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Citations to the Record

Citations to the record proper are in the following form: **[RP (pg.)]**.

References to the digitally recorded audio compact disc of the proceedings are cited, at first occurrence, in a full-form citation indicating the date of recording followed by "CD" and the time of the passage. For example, January 2, 2024, counter 12:34:56 to 12:34:57 is cited as **[1-2-24 CD 12:34:56–57]**. Where appropriate, a short-form citation is used—e.g., **[*Id.* 12:34:56–57]**.

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Introduction

In the context of mentally ill defendants who are dangerous, incompetent to stand trial, and committed for treatment, a statute directs the district court to conduct competency and dangerousness reviews until the defendant's commitment expires. The court here began Defendant James Carter's review before that time, but decided it could not finish because his commitment had expired. In the court's view, that expiration meant jurisdiction over the case was lost.

The question in this appeal is whether the Legislature intended for the court's jurisdiction to so cease.

Generally speaking, such a severe consequence will only be recognized when enunciated by the Legislature. The statute at issue here does not even implicitly provide for that consequence. Nor is there any indication of a legislative intent to curtail the power under which the hearing could have been concluded: the court's inherent power to manage its docket, a power that allows the court to schedule hearings according to the court's and parties' needs.

As another general rule, statutory time provisions are treated as imperative only if the circumstances call for it: where, e.g., the provision serves an essential function in the statutory scheme it is a part of, or it guards against prejudice to the defendant. In this case, the time provision can be fairly characterized as more of a guideline than a necessity. If anything, treating the provision as a jurisdictional cutoff would thwart an essential function of the statutory scheme: protecting the societal interests in public safety and holding offenders accountable for their crimes.

In view of all this, the most compelling conclusion reached is that the district court did not lose jurisdiction as thought. On top of that, this case is even less susceptible to affirmance given the doctrine of substantial compliance, which would allow this Court to overlook the district's court's technical deviation from the statute in light of the fact that the hearing began before Defendant's commitment expired.

Background

Defendant James Carter was indicted on three counts of first-degree kidnapping, two counts of criminal sexual contact of a minor (CSCM), two counts of aggravated battery (great bodily harm), three counts of aggravated assault, and one count of public nuisance. **[RP 1–3]** His competency to stand trial was questioned, so the statutory scheme outlining procedures for mentally ill and incompetent defendants (i.e., NMSA 1978, Sections 31-9-1 through 1.5 (1988, amended 1999)[1]) came into play.

[1] These statutes were amended in 2025, after the district court proceedings in this case. The pre-2025 versions of the applicable statutes thus governed the proceedings and are cited here.

Early on, Defendant was committed to state custody for treatment to attain competency. **[RP 39–41]** This was accomplished through a stipulated order closely conforming with the statutory scheme and finding that Defendant was not competent; was accused of a felony; and met the statutory definition of dangerous. **[*Id.*]**

Sometime later, the court issued a second such stipulated order, this time for Defendant's continued commitment. **[RP 46–48]** It was based on the findings that there was not a substantial probability Defendant would become competent within a reasonable period of time; that he was still dangerous; and that there was clear and convincing evidence he had committed the two counts of CSCM and the aggravated battery. **[*Id.*]** The order provided for Defendant's release on either March 15, 2024[2] or on an earlier date, if ordered by the court. **[*Id.*]** The order further provided for periodic review of Defendant's condition and directed that any significant changes in his condition be reported to the court. **[*Id.*]**

Such a change was detected. Sometime before June of 2023, doctors at the facility where Defendant was committed formed the opinion—disputed by Defendant—that he had been treated to competency. **[RP 94–115, 145 ¶ 2]**

[2] March 15, 2024 was the date six years from when Defendant's commitment began. **[RP 47]** The six years represented the maximum sentence Defendant could have served had he been convicted of the two counts of CSCM and the one count of aggravated battery. **[RP 47]**

The court began a competency hearing on that June 12. **[RP 116]** An issue concerning the authenticity of some exhibits arose, so the hearing did not end that day. **[RP 116–18, 145 ¶ 3]** For various reasons, the hearing did not resume until February 21, 2024. **[RP 121–30, 145 ¶¶ 3–4]**

On that day, the State presented its remaining evidence, but time did not allow for the defense to introduce its evidence, so the court proposed that the hearing continue on March 29. **[2-21-24 CD 11:46:14–11:49:32]** Counsel for the parties and the defense witnesses all confirmed the date would work for them. **[*Id.*]** The court scheduled the third setting accordingly. **[RP 131]**

Four days before March 29, however, the defense filed a motion to dismiss. **[RP 132–42]** Through it Defendant asserted that he had been released from the facility on the 15th (the court-ordered commitment-expiration date); that the court no longer had jurisdiction over him; and that the charges should be dismissed. **[RP 136 ¶ 18, 139–41]** He likened his commitment to a criminal sentence and compared his circumstance to probation. **[*Id.*]** In that context, he noted, a court is powerless to revoke the probation of a defendant from the moment the probationary period ends—even if the violation occurred before that time, and even if a hearing on the matter had already begun. **[*Id.*]** Defendant relied also on some of the text of NMSA 1978, Section 31-9-1.5(D)(4)(b) (1999), a part of the criminal-commitment statutory scheme, to argue that "[t]he Court's jurisdiction to review [his] competency extended only ‘until expiration of the period of commitment’ . . . .” **[RP 140]**

The parties and court reconvened as scheduled. The prosecutor noted she did not have an opportunity to respond in writing to the motion and asked the court for more time to research the issue. **[3-29-24 CD 9:14:15–9:16:24]** The court felt the need to avoid further delay, however, so instead of taking evidence on the question of competency, it heard argument on the motion and ultimately ruled on it. **[*Id.* 9:16:25–9:25:26, 9:44:04–9:53:45]** In so doing, the court expressed its desire for guidance from the Court of Appeals. **[*Id.* 9:49:59–9:50:11]** To that end, the court instructed defense counsel to draft an order from which the State could take an interlocutory appeal—one finding that jurisdiction had lapsed, but not dismissing the charges. **[*Id.* 9:50:12–9:53:02]**

The parties did as the court instructed. **[RP 144–51]** Following the parties’ appellate briefing, the Court of Appeals asked this Court to accept certification of the case.[3] In its application, the Court of Appeals identified the following four issues.

1. Whether and to what extent the district court has jurisdiction over the defendant upon the expiration of the period of commitment;

2. Whether Section 31-9-1.5(D)(4)(b) (1999)[, the statute governing criminal commitment,] bars the district court from conducting or

[3] Order of Certification to the New Mexico Supreme Court, *State v. Carter*, A-1-CA-41915 (N.M. Ct. App. Oct. 20, 2025).

completing a competency hearing after the expiration of the period of commitment;

3. Whether Section 31-9-1.5(D) (1999) requires the district court to dismiss *all* of the criminal charges upon the expiration of period of commitment—including charges for offenses that were either not include[d] within the scope of, or that the district court has not considered under, Section 31-9-1.5 (1999); and

4. If dismissal is required, in whole or in part, whether the dismissal is with or without prejudice—a question not addressed by either party. Further, if the dismissal is without prejudice, additional questions arise. For example, there is a question as to the effect of a commitment period on the relevant statute of limitations, a matter that has the potential to impact the State's ability to refile charges. *See State v. Padilla*, ___-NMSC-___, ¶ 2, ___P.3d___ (S-l-SC-39897, July 15, 2025) (concluding that "a timely filed criminal information dismissed without prejudice" does not toll the statute of limitations such that the State may refile the charges after the limitations period has passed). As well, if the State subsequently re-files the charge(s) and obtains a conviction, there is a question as to whether or how the time spent in criminal commitment should be counted toward the ultimate sentence imposed. *See State v. Baca*, 2019-NMSC-014, ¶ 16 n.3, 448 P.3d 576 (citing *State v. La Badie,* 1975-NMCA-032, 87 N.M. 391, 534 P.2d 483, for the proposition that the State must credit a defendant for presentence confinement while committed); *Rotherham,* 1996-NMSC-048, ¶ 53 (stating that "because the state seeks to treat an incompetent [defendant] and to protect the community from danger, detention serves a regulatory rather than a punitive function").

This Court granted the Court of Appeals' request and ordered the parties to brief all issues raised by that court, along with one other:

5. Whether the stipulation supporting Defendant's criminal commitment precludes the State from pursuing some or all of the charges against him after his release, including charges that would have supported a longer commitment period if proven at the time of his commitment.[4]

[4] Order, *State v. Carter*, S-1-SC-41150 (N.M. Dec. 11, 2025).

This brief in chief is filed in compliance with this Court's order.

Argument

To answer these five questions as they apply to the facts of this case:

1. The expiration of Defendant's commitment did not give rise to a loss of jurisdiction, because the Legislature did not intend that result.
2. For many of the same reasons, Section 31-9-1.5 (1999) did not bar the district court from completing Defendant's competency hearing after his commitment expired.
3. Under no reading of Section 31-9-1.5(D) (1999) can it be concluded that any of Defendant's criminal charges had to have been dismissed once his commitment expired.
4. For many of the same reasons, the question of whether the dismissal contemplated in the third question would be with or without prejudice—as well as the subsequent hypothetical questions—need not be answered.
5. The stipulation supporting Defendant's commitment does not preclude the State from pursuing some or all of the charges against him, including charges that would have supported a longer commitment period if proven at the time of his commitment, because neither the stipulations nor the statutory scheme contemplate that result.

These questions raise issues of jurisdiction and statutory construction for which the standard of review is de novo. *See, e.g.*, *Atherton v. Gopin*, 2015-NMCA-087, ¶ 14; *Aragon v. Martinez*, 2025-NMSC-046, ¶ 15. In resolving these issues, this Court's central aim is to discern and effectuate the Legislature's intent. *See, e.g.*, *Aragon*, 2025-NMSC-046, ¶ 21.

1. The expiration of Defendant's commitment did not give rise to a loss of jurisdiction, because the Legislature did not intend that result.

The question at the heart of this appeal is whether the district court's order embodying the want-of-jurisdiction conclusion should be set aside. This issue was preserved insofar as the prosecutor argued at the hearing that the court retained its jurisdiction. **[3-29-24 CD 9:14:47–9:16:25, 9:23:00–9:24:04; 9:46:48–9:48:13]**

The order is heavy on procedural facts, but devoid of legal authority and analysis. **[RP 144–46]** It must be presumed, then, that to reach its conclusion, the court was embracing the arguments Defendant made in his motion to dismiss.

None of those arguments, however, are valid.

A. *The statutory provision should not be read as having deprived the court of jurisdiction.*

Beginning with the statutory argument Defendant relied on in his motion to dismiss, the statute at the center of this case reads as follows: "[T]he court shall review the defendant's competency and dangerousness every two years until expiration of the [commitment] period . . . ." Section 31-9-1.5(D)(4)(b) (1999).

Defendant apparently interpreted the provision to say that the court could not review his competency after his commitment expired, and that to do so would be acting outside its jurisdiction. **[RP 140]**

While at first blush the provision might seem to establish a cutoff past which the court may not review competency, a closer look tells otherwise.

Under a plain reading of this text—the starting point for any statutory construction analysis—Defendant had it wrong. *See, e.g.*, *State v. Cooley*, 2023-NMCA-089, ¶ 17 ("We start [a statutory construction analysis] by looking at the statute's plain language . . . ."). The more reasonable view is that the provision speaks to what the court *must* do—not to what it must *not* do. What it must do is conduct the reviews. The provision then directs how often—and until what point in time—those reviews should be conducted.

Relatedly, consider what the statute does not say. The Legislature chose not to express itself in either of the following ways which would support Defendant's interpretation.

- "The court shall review the defendant's competency and dangerousness every two years, but [only until] [not after] expiration of the commitment period."
- "The court shall review the defendant's competency and dangerousness every two years. Once the commitment period expires, the court shall [not conduct further review] [cease all such review]."

Had the Legislature intended for the provision to mean what Defendant thought it did, it could have opted for language along one of these two lines. The fact that it did not use words to this effect helps show that Defendant's interpretation is not what the Legislature intended. And the fact that in other parts of the statutory scheme, the Legislature proved itself capable of establishing firm deadlines helps show that it could have put one here had one been intended. Consider, for example, NMSA 1978, Section 31-9-1.1 (1993), which says that a hearing on competency "shall be held by the district court within a reasonable time, but *in no event later than thirty days* after notification" and that "the court shall hold a hearing and determine competency *within ten days* of notification . . . ." (Emphases added.)

That said, insofar as the provision might be seen as establishing a cutoff past which the court may not review competency, the truth is that the measure need not be thought of in such black-and-white terms.

Courts, including those in New Mexico, distinguish between "mandatory" and "directory" statutes for purposes of deciding what consequence, if any, flows from a failure to comply with the statute's command.

> Legislatures do not intend for anyone to disregard any written law. But at the same time, not all statutory instructions have equal force. When statutes do not prescribe the consequences of not obeying them in every particular, courts must judicially determine them, and necessarily must ask: How important is the literal and meticulous observance of a questionable provision to the legislature's object? If it is essential, the provision is mandatory [as opposed to directory], and departure from it is fatal to any proceeding to execute the statute or obtain its benefit.

> [3 Shambie Singer, *Sutherland Statutes and Statutory Construction* § 57:1 (8th ed. 2025) (footnote omitted); *see also N.M. Dep't of Health v. Compton*, 2000-NMCA-078, ¶ 13, 129 N.M. 474; *Aragon*, 2025-NMSC-046, ¶ 21.]

In other words, not all statutes—even those providing that someone or something "shall" act in a given way—should be treated as having fatal consequences when imperfectly adhered to. *See id.*; *Stennis v. City of Santa Fe*, 2010-NMCA-108, ¶ 9, 149 N.M. 92; *Harrow v. Dep't of Def.*, 601 U.S. 480, 485 (2024).

Statutes articulating procedural requirements like this one are no different, in that something less than strict compliance is at times tolerated. *See Harrow*, 601 U.S. at 483; 3 Singer, *supra*, § 57:22.

And at times it is not. Occupying this realm are so-called jurisdictional requirements, or those that "mark[] the bounds of a court's power" and have consequences even more severe than when mandatory requirements are violated. *Harrow*, 601 U.S. at 484 (alteration, internal quotation marks, and citation omitted); *see Stephens v. N.M. Transp. Dep't*, 1987-NMCA-095, ¶ 9, 106 N.M. 198. When a jurisdictional requirement is not adhered to, the court is deprived of authority to hear the case, and dismissal is appropriate. *See Harrow*, 601 U.S. at 484; *Aragon*, 2025-NMSC-046, ¶ 21; *Compton*, 2000-NMCA-078, ¶ 15.

To determine the statute's classification as directory, mandatory, or jurisdictional, one applies the rules of statutory construction. 3 Singer, *supra*, § 57:1; *Aragon*, 2025-NMSC-046, ¶ 21; *In re Estate of McElveny*, 2017-NMSC-

024, ¶ 13. The aim is to identify what the Legislature intended in enacting the statute. *See, e.g.*, *McElveny*, 2017-NMSC-024, ¶ 13; *Aragon*, 2025-NMSC-046, ¶ 21.

In discerning legislative intent in this context,

> courts look to the subject matter, the importance of the requirement, and its relation to the general object intended to be secured by the act. Those directions in the statute which are not the essence of the things to be done are not commonly mandatory, particularly where, by failure to obey, no prejudice will result to those whose rights are protected by the statute. [*Stokes v. Tatman*, 1990-NMSC-113, ¶ 10, 111 N.M. 188 (internal quotation marks and citation omitted); *see State v. Lindwood*, 1968-NMCA-063, ¶ 5, 79 N.M. 439.]

Courts also ask what consequences will ensue if the requirement is construed as jurisdictional. *See Aragon*, 2025-NMSC-046, ¶ 21; 3 Singer, *supra*, § 57:6.

In the particular case of statutory time provisions, including those that establish a deadline by which a court must act, the inquiry is “a bit unique, as interpretation may be informed less by a search for legislative intent alone, and more by policy and equitable considerations aimed at avoiding harsh, unfair, or absurd consequences.” 3 Singer, *supra*, § 57:17.

Policy and equitable considerations, that is, can often influence the analysis such that seemingly hard and fast provisions are treated as merely directory. *See id.*; 3 Singer, *supra*, § 25:2; *Littlefield v. State ex rel. Tax’n & Revenue Dep’t*, 1992-NMCA-083, ¶ 15, 114 N.M. 390; *Harrow*, 601 U.S. at 484 (observing that most time bars are not jurisdictional, even when expressed in mandatory terms—especially when those terms speak not of the court's jurisdiction).

Take, for example, the case of *New Mexico Department of Health v. Compton*, which both this Court and our Court of Appeals considered. 2001-NMSC-032, 131 N.M. 204; 2000-NMCA-078. Compton was involuntarily committed under civil commitment procedures. 2000-NMCA-078, ¶¶ 1–2. The district court granted two state petitions that were originally scheduled for hearing within the statutorily prescribed deadline (of three and seven days, respectively, from the commitment date)—but which ended up not being heard until after the deadlines due to the presiding judge's illness. *Id.*

Both appellate courts concluded that, though the time provisions were stated in mandatory terms, they were not jurisdictional requirements, in that they did not affect the essential power of the court to hear the case, and dismissal was not an appropriate remedy for the court's having acted past the deadline. 2001-NMSC-032, ¶¶ 18 n.3, 24, 29; 2000-NMCA-078, ¶¶ 12, 15, 18.

These conclusions were echoed in this Court's recent opinion in *Aragon v. Martinez*, 2025-NMSC-046. The statute at issue there provided that when a paroled sex offender serves the initial five years of parole, and every two and a half years thereafter, the Parole Board "shall" conduct a review hearing. *Id.* ¶ 18. This Court held that while these timing provisions were mandatory, they were not jurisdictional, in that the board was not divested of jurisdiction over a given parolee whose hearing was held past the five- or two-and-a-half-year mark. *See id.* ¶¶ 18, 22. The failure to hold the hearing on time, in other words, did not entitle the sex offender to immediate release from parole. *See id.* ¶ 2.

This case compels a similar conclusion: the provision at issue is not jurisdictional, and the district court was not divested of jurisdiction before it would have finished the competency hearing.

Considering that the provision does not expressly forbid review past the contemplated timeframe, it arguably should be viewed as merely directory. *See* 3 Singer, *supra*, § 57:17 (observing that "[s]tatutes that regulate the duties of public officers and state the time for their performance, without any language denying performance after a specified time, usually are directory"—and that the rule applies to the scheduling of judicial proceedings); *id.* § 25.2 ("Where the words [of a statute] are affirmative, and relate to the manner in which the power or jurisdiction vested in a public officer or body is to be exercised, and not to the limits of the power or jurisdiction itself, they may be and often have been construed as directory." (alterations, internal quotation marks, and citation omitted)); *cf. Aragon*, 2025-NMSC-046, ¶ 22 (holding that the statutory deadline at issue was not jurisdictional foremost because the statute not only was silent on the consequence of a failure to meet the deadline, but also did not prohibit action past the deadline).

Regardless, even if the provision is deemed as more than merely directory, it most assuredly falls short of being jurisdictional. This can be seen in what is absent from the provision: words to the effect that jurisdiction is lost once the defendant is released from commitment. *See Harrow*, 601 U.S. at 484 ("[T]his Court will treat a procedural requirement as jurisdictional only if Congress clearly states that it is." (internal quotation marks and citation omitted)); *id.* at 485 ("What matters . . . is whether a time bar speaks to a court's authority to hear a case." (internal quotation marks and citation omitted)); 21 C.J.S. *Courts* § 89 (2025) ("Jurisdiction, once properly acquired, is not divested by irregularities or errors of the court or parties."). In the face of this statutory silence, no such words should be judicially read into the provision. *See, e.g.*, *Stennis*, 2010-NMCA-108, ¶ 10 (observing that courts are prohibited from reading into a statute language which is not there, particularly if the statute makes sense as written).

As further reason to conclude jurisdiction is not lost, the defendant in this situation suffers no prejudice. Since release does not hinge on the outcome of the hearing, no loss of liberty can be pointed to as a harm wrought by the court's post-release review. *Cf. Tatman*, 1990-NMSC-113, ¶¶ 9, 11 (overlooking a party's failure to comply with a procedural requirement partly because the opposing party suffered no prejudice from the failure); *Compton*, 2001-NMSC-032, ¶ 25 (concluding that the district court did not err in postponing the commitment hearing in part because the postponement did not prolong the commitment).

On the other hand, to read such a loss of jurisdiction into the statute would work a harm on the public, whose interests the Legislature took into account when enacting the statutory scheme. One of its aims was "to protect society from dangerous criminals." *State v. Chorney*, 2001-NMCA-050, ¶ 11, 130 NM. 638; *see Compton*, 2001-NMSC-032, ¶ 7 ("[T]he state . . . has authority under its police power to protect the community from the dangerous tendencies of some who are mentally ill." (internal quotation marks and citation omitted)). It would frustrate this aim to conclude that in circumstances like those here, the district court is stripped of jurisdiction. *See Stennis*, 2010-NMCA-108, ¶ 10 ("We must construe statutes in the most beneficial way of which their language is susceptible to prevent absurdity, hardships or injustice, to favor public convenience, and to oppose all prejudice to public interests." (internal quotation marks and citation omitted)); *cf. Aragon*, 2025-NMSC-046, ¶ 22 (refusing to construe the procedural time requirement as jurisdictional, where to do so would defeat one of its intended purposes, public safety).

Reading such a loss of jurisdiction into the statute would also produce another undesirable outcome: the defendant could profit from his own manufactured delay.

Furthermore, it must be recognized that the time provision is not essential to the proper operation of the broader statute, as it would have to be for it to be deemed jurisdictional. *See Aragon*, 2025-NMSC-046, ¶ 21. The provision does not refer to some momentous point in time, but rather establishes a general timeline for when the court must conduct its reviews. Take the "every two years" aspect of the provision. No reasonable person would insist that it must be followed to a T: to do so would mean that Defendant's first two-year review would have had to happen on a Sunday. If the two-year provision, then, is capable of being relaxed to accommodate the court's and parties' scheduling needs—there is no reason the expiration-of-commitment provision cannot also be.

Along those lines, and as a final point, it must be remembered that like all district courts, the court here possessed an inherent power to manage its docket and respond to exigencies that arise in cases like this. *See Compton*, 2001-NMSC-032, ¶ 23. Like that in *Compton*, nothing about the time provision at issue here indicates that the Legislature intended to curb this power. *See id.* ¶¶ 23, 21. Accordingly, it must be concluded that flexibility was intended. *See id.*

B. *The comparisons of commitment to criminal sentences and probation are inapt.*

Given these many indications that the Legislature intended flexibility in the timing of a competency-review hearing—as opposed to the loss of jurisdiction at the termination of a defendant's commitment—it must be wondered why

Defendant thought the court's jurisdiction had ended. The answer: in his mind, his commitment was akin to a criminal sentence or akin to probation. In both situations, certain losses of jurisdiction have been recognized by our courts.

It is easy to see where Defendant went wrong in drawing the comparisons. For the first, he quoted the rule that "[o]nce a defendant has completely served his or her underlying sentence, the district court loses jurisdiction to enhance that sentence, even if the state filed the supplemental information before the defendant finished serving the underlying sentence." *State v. Godkin*, 2015-NMCA-114, ¶ 20 (alterations, internal quotation marks, and citation omitted). **[RP 139]**

The main problem with this comparison is that Defendant was committed to a state facility, not serving a criminal sentence. Commitment and criminal sentences are two fundamentally different things, in that commitment is not punishment for crime. *See, e.g.*, *State v. Quintana*, 2019-NMCA-030, ¶ 17 ("[C]ommitment pursuant to Section 31-9-1.5 is not punishment." (alteration, internal quotation marks, and citation omitted). In the sentencing context, the reason the court loses jurisdiction to enhance an already served sentence is intrinsically linked to the criminal nature of the sentence: the contemplated enhancement would put the defendant in double jeopardy. *See State v. Roybal*, 1995-NMCA-097, ¶ 8, 120 N.M. 507. In Defendant's case, by contrast, jeopardy has yet to attach. *See, e.g.*, *State v. James*, 1979-NMSC-096, ¶ 7, 93 N.M. 605 ("Jeopardy is said to attach at that point when a jury is impaneled or, in a non-jury situation, when the [s]tate presents at least some evidence." (citations omitted)). It follows that no action of the court, including having held the hearing on March 29, could have put him in double jeopardy.

Defendant's comparison of his situation to probation is likewise problematic. Here he quoted the rule that "[a] court generally loses jurisdiction to revoke probation when the term of probation expires, even when the probation violation took place during the term of probation and a motion to revoke probation was filed prior to the expiration of the probationary term." *State v. Sosa*, 2014-NMCA-091, ¶ 8. **[RP 139]**

There is good reason for this loss of jurisdiction in the probationary context: the Legislature intended it. It expressed that intent through its plain language. Compare the probation statute with that at issue here.

> Whenever the period of suspension [of sentence] expires without revocation of the [probation] order, the defendant is relieved of any obligations imposed on him by the order of the court and has satisfied his criminal liability for the crime. He shall thereupon be entitled to a certificate from the court so reciting such facts . . . . NMSA 1978, § 31-20-8 (1977).

> [T]he court shall review the defendant's competency and dangerousness every two years until expiration of the [commitment] period . . . . Section 31-9-1.5(D)(4)(b) (1999).

The probation-revocation statute is, to quote our Court of Appeals, “clear.” *State v. Lara*, 2000-NMCA-073, ¶ 7, 129 N.M. 391. “When the term of probation ends without a revocation of probation, the trial court is mandated by statute to issue a certificate of satisfactory completion.” *Id.* “Therefore,” the court concluded, “the trial court is without jurisdiction to enter an order of unsatisfactory completion . . . .” *Id.* ¶ 12.

For the commitment statute to be sufficiently analogous to the probation-revocation statute to rationally conclude that the district court here lost jurisdiction, the statute would have to include words to the effect that, once the commitment expires, the state is barred from pursuing the charges against the defendant, or the charges must be dismissed with prejudice. Yet, like so many others that would support Defendant’s position, none of these words appear in the statute.

C. *The district court could also have appropriately conducted the March 29 hearing under the doctrine of substantial compliance.*

There is another reason it would have been proper for the district court to continue taking evidence on March 29: the doctrine of substantial compliance would apply. That doctrine “recognizes the reality that legislatures cannot predict all possible applications when drafting a statute.” *Stennis*, 2010-NMCA-108, ¶ 9. To use this case as an example, the Legislature can hardly be blamed for not predicting that a competency-review hearing might begin roughly in accordance with the statutory timeline, but—for a host of reasons—need to be continued after the defendant's commitment ends. By the same token, the Legislature can hardly be blamed for not explicitly stating that such a post-commitment continuation is permissible.

Under the doctrine of substantial compliance, a court may inquire "whether an actor follows a statute sufficiently so as to carry out the intent for which the statute was adopted and in a manner that accomplishes the reasonable objectives of the statute." *Id.* ¶ 17. To put it another way, "Where there is compliance as to all matters of substance[,] technical deviations are not to be given the stature of noncompliance." 3 Singer, *supra*, § 57:26 (internal quotation marks and citation omitted).

In this case, had the district court taken evidence on March 29, it would have followed the statute closely enough to accomplish the statute's reasonable objectives. The hearing began on June 12 and continued on February 21, dates preceding the expiration of Defendant's commitment. Had the court completed the hearing on March 29, it would have (at the very least) substantially complied with the statute's provision for periodic competency hearings "until" the commitment's expiration.

Another way of thinking about this is that, had the third setting taken place on March 14, the day before Defendant's release, this appeal would never have materialized. The only reason for this appeal is that the setting was to take place after the 14th—specifically, on the 29th, a difference of 15 days. The fact that those 15 days passed, however, pales in significance to the fact that what the Legislature sought to accomplish through the statute—periodic competency reviews for the sake of protecting the public from danger—has been hindered. This hindrance is particularly improper given the absence of prejudice to Defendant.

2. For many of the same reasons, Section 31-9-1.5 (1999) did not bar the district court from completing Defendant's competency hearing after his commitment expired.

As to the second issue, many of the points discussed above apply. The district court was not barred under Section 31-9-1.5 (1999) from completing Defendant's competency hearing.

The section's text contemplates no such bar or loss of jurisdiction, but rather sets forth a general timeline for when competency and dangerousness hearings must be held. In this case, the June 12, February 21, and March 29 settings fell within that general timeframe. The fact that the third setting was to occur 14 days after the expiration of Defendant's commitment is, for purposes of the statutory scheme, insignificant, and does not justify interfering with the scheme.

There is also no reason to think that in this context, the Legislature intended to neutralize the court's inherent power to schedule hearings according to its and the parties' needs. The court would have been acting within that power had it taken evidence on the 29th.

And considering what is lost by reading the provision strictly—an opportunity to complete the competency determination envisioned by the Legislature—neither the loss of jurisdiction nor the loss of inherent power should be grafted onto the statute.

3. Under no reading of Section 31-9-1.5(D) (1999) can it be concluded that any of Defendant's criminal charges had to have been dismissed once his commitment expired.

The third question presented for review poses a justiciability problem, in that it does not arise out of the facts of this case, i.e., is hypothetical. In any event, were it addressed on the merits, it would be answered in the negative: under Section 31-9-1.5(D) (1999), Defendant's charges did not have to be dismissed once his commitment ended.

As framed by the Court of Appeals, the question is whether Section 31-9-1.5(D) (1999) requires the district court to dismiss all of the charges upon the expiration of the commitment period—even the charges corresponding to offenses on which the commitment-term determination is not based. This question presupposes that at least some charges must be dismissed at that time. As explained later on below, however, that is not the case.

First it must be determined whether this question lends itself to proper review. This Court has said it "will not determine abstract questions of law which do not rest on existing facts or rights." *N.M. Health & Soc. Servs. Dep't v. Chavez*, 1973-

NMSC-081, ¶ 6, 85 N.M. 447. Nor will it "make useless orders"; "grant relief that will avail [the] appellant nothing"; or "decide questions that are abstract, hypothetical or moot, where no actual relief will be afforded." *Porter v. Robert Porter & Sons, Inc.*, 1961-NMSC-010, ¶ 18, 68 N.M. 97.

The question posed by the Court of Appeals is not based on the facts of this case. Defendant filed a motion arguing that jurisdiction was lost and asking the court to dismiss the charges, but the court did not grant that relief. Instead it merely agreed with him on the jurisdiction question. Defendant did not then take an appeal from the ensuing order; the State did. As a result, he is not in a position to contest the court's denial of his requested relief—and so the question of whether dismissal was or was not appropriate is not before this Court. *Cf. State v. Thompson*, 2022-NMSC-023, ¶ 27 (observing that the only questions properly before this Court were those raised by the state, the only party to take an appeal). By extension, the more-specific question of whether all of the charges should have been dismissed is not before this Court.

To put it differently, and as noted above, the central question in this appeal is whether this Court should set aside the district court's order, an order concluding jurisdiction was lost. The order did not dismiss the charges against Defendant. The question of whether the court should or should not have dismissed the charges is thus a hypothetical one.

Relatedly, were this Court to confront the question and decide it in Defendant's favor, the whole point of this appeal would be turned on its head. An appeal is taken so the appellant, not the appellee, might be granted relief. Deciding this question in Defendant's favor would, to use this Court's words, "grant relief that would avail [the] appellant nothing . . . ." *Id.*

Having said all that, this Court would have good reason to not adopt the Court of Appeals' implicit presumption that at least some of the charges must be dismissed. In stark contrast to the other provisions in the statute and the commitment scheme, neither the word "dismissal" nor any of its variations is used in the provision at issue. Consider the following other provisions of the statute and scheme.

- "If the evidence does not establish . . . that the defendant committed [an enumerated crime], *the district court shall dismiss the criminal case with prejudice* . . . ." Section 31-9-1.5(B) (1999) (emphasis added).

- "If the district court finds . . . that the defendant committed a crime and has not made a finding of dangerousness . . . , *the district court shall dismiss the charges without prejudice*." Section 31-9-1.5(C) (1999) (emphasis added).

- "When . . . a court determines that a defendant is not competent to proceed in a criminal case and the court does not find that the defendant is dangerous, *the court may dismiss the criminal case without prejudice* in the interests of justice." NMSA 1978, Section 31-9-1.2(A) (1999) (emphasis added).

- "If at any time the district court determines that there is not a substantial probability that the defendant will become competent to proceed in a criminal case within a reasonable period of time . . . *the district court may* . . . release the defendant from custody and *dismiss with prejudice the*

> *charges against him*; or . . . *dismiss the criminal case without prejudice* in the interests of justice." NMSA 1978, Section 31-9-1.4 (1999) (emphasis added).

These statements amply demonstrate the Legislature's ability to express its intent regarding the dismissal of charges. In certain cases, it is required. In others, dismissal is for the court to decide. In the case of the provision at issue, Section 31-9-1.5(D)(4)(b) (1999), the Legislature's silence on the subject indicates its intent that no charges be dismissed at all. *Cf.*, *e.g.*, *State v. Maestas*, 2007-NMSC-001, ¶ 13, 140 N.M. 836 (declining to read into the statute at issue a measure that the Legislature demonstrated it knew how, but evidently decided not, to incorporate).

As a general matter, this Court's role is not to second–guess the Legislature's policy decisions; "a statute must be read and given effect as it is written by the Legislature, not as the court may think it should be [written] . . . ." *Id.* ¶ 14 (alteration, internal quotation marks, and citation omitted). To put it another way, the only time an appellate court may (in essence) add words to a statute is when doing so is necessary to clarify an ambiguity or prevent an absurd result. *Id.* ¶¶ 14, 15.

Neither situation is present here. There is no ambiguity in the text. And no absurd result flows from the fact that there might be outstanding charges following a defendant's commitment. To use this case as an example, the charges against

Defendant have not been dismissed, and he can point to nothing that fairly characterizes the circumstance as absurd.

4. For many of the same reasons, the question of whether the dismissal contemplated in the third question would be with or without prejudice—as well as the subsequent hypothetical questions—need not be answered.

Likewise, the fourth issue presented for review: is not based on the facts of this case; ventures into the hypothetical; and is thus not suitable for review. Here the Court of Appeals asks first whether, if the dismissal referred to in the third issue is required, it would be with or without prejudice.

This is a hypothetical question because it emanates from the third question which, as discussed, is itself hypothetical. By the same token, the questions that proceed from this fourth question are hypothetical.

If anything—rather than pinpoint a fact-based, live issue in this case—this question helps prove that the Legislature did not intend dismissal in the first place. Asking whether a dismissal not referred to in a statute should be with or without prejudice underscores the absence of a dismissal provision. Had the Legislature intended dismissal, it not only would have said so, but would have specified (as it did in the other statutory provisions quoted above) what kind of dismissal it should be.

5. The stipulation supporting Defendant's commitment does not preclude the State from pursuing some or all of the charges against him, including charges that would have supported a longer commitment period if proven at the time of his commitment, because neither the stipulations nor the statutory scheme contemplate that result.

The final question concerns the effect of the stipulations underlying the district court's two commitment orders.[5] The question asks whether the State is precluded by the stipulations from pursuing any or all of the charges against Defendant. The answer is no.

The stipulations represent the parties' agreements that Defendant had committed certain crimes and, at the time of stipulation, was dangerous and incompetent to stand trial. The stipulations are nothing more than a mutual acceptance of these facts. They are not, that is, part of a bargain under which Defendant would agree to not contest the finding of dangerousness in exchange for the State's agreement to not pursue charges down the line.

Nor is there any indication in the statutory scheme that a stipulation to facts such as these facts necessitates a dismissal of the charges, or precludes the state from prosecuting the defendant.

There being no reason the stipulations should lead to a bar on prosecution, they should not be seen as having that effect.

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[5] It is not clear whether, in posing this question, this Court is referring to the first stipulation, the second, or both stipulations. The State assumes it is both.

Conclusion

The district court's jurisdiction over a criminal defendant is not something that casually comes and goes. Any statute-based loss of jurisdiction must be clearly intended and, by extension, clearly stated. There is no such intent or statement in the statute in question here. The State thus asks this Court to set aside the district court's order concluding the court was divested of jurisdiction and remand this case to the district court.

Respectfully submitted,

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Certificate of Service

I certify that on February 12, 2026, I filed this document electronically through the Odyssey E-File & Serve System, which caused opposing counsel, Jasmine J. Solomon, to be served electronically.

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