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## Statutory Proposals for Expanding Outpatient Treatment in New Mexico

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# STATUTORY PROPOSALS FOR EXPANDING OUTPATIENT TREATMENT IN NEW MEXICO

From a medical standpoint, a mentally ill person who has committed a crime is no different from any other patient.<sup>1</sup> He is only a person to be helped and treated. Yet New Mexico statutes, born in an earlier day of our social and medical history, restrict treatment of the mentally ill "criminal"<sup>2</sup> on an outpatient or non-hospital basis. The mental institution has for too long played a needless custodial function. Public pressure has in the past demanded that "lunatics" be put away.<sup>3</sup> And although it is not suggested that a maximum security ward is needless—for there are those few patients, hopeless for the present, who can be kept nowhere but in a locked ward—the advent of psychosurgical treatment<sup>4</sup> and tranquilizing and psychic energizing drugs<sup>5</sup> has significantly lowered the usefulness of such a ward. Dramatic instances show that many violent persons now may be calmed enough to take their place in the community, and this is as true for the patient who has committed a crime as for the one who has not. For society to make an *a priori* decision that such persons are not to be released as convalescents from a mental hospital is needlessly to deprive those persons of beneficial treatment on the usually faulty assumption that society needs protecting, and yet New Mexico, through its statutes, has made just such a decision.

It is for that reason that statutory changes are here suggested which, if made, would provide not for ultimate release of such persons but for the possibility of temporary release until such time as the mental illness could be cured. Criminals who have broken legs are not denied the latest medical treatment. Similarly, "criminals" who are mentally ill should not categorically be denied outpatient treatment.

The need for outpatient treatment arose because mental institutions, in a sense, manufacture their own patients. They promote chronicity of illness by their administrative procedures<sup>6</sup> and can be anti-therapeutic if larger than twelve or

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1. Remarks of Dr. Warren T. Brown, Albuquerque psychiatrist, in the Law and Psychiatry Seminar at the University of New Mexico Law School, 1961.

2. Accurately, the patient has not committed a crime; he has committed an act which but for his mental condition would have been a crime. This is rather a mouthful, however, and for the purpose of straightforwardness the word "crime" has been used throughout the article, even though the patient may be criminally irresponsible.

3. Robert C. Hunt, M.D., Ingredients of a Rehabilitation Program, address to conference on An Approach to the Prevention of Disability from Chronic Psychoses, sponsored in 1958 by the Milbank Memorial Fund in New York, as quoted by Caplan, *op. cit. infra* note 10, at 1.

4. For a description of psychosurgical treatment, see Guttmachar & Weihofen, *Psychiatry and The Law* 78-79 (1952).

5. Ostow, *The New Drugs*, *The Atlantic* 92 (July 1961); Southard, *op. cit. infra*, note 6, at 5.

6. Curtis G. Southard, M.D., Recent Advances in the Mental Health Field 6, a paper presented at the Conf. of the Georgia Pub. Health Ass'n, Savannah, Ga., May 12, 1959. Dr. Southard is Chief of the Community Services Branch of the National Institute of Mental Health.

fifteen hundred patients.<sup>7</sup> They are, in short, inadequate as the sole means of treatment.

In answer to this inadequacy, alternatives to treatment in the traditional mental hospital with its high walls, bars, and deep-shaded lawns have developed and are an important development<sup>8</sup> in mental health. These alternatives include the open hospital,<sup>9</sup> the psychiatric ward of the general hospital,<sup>10</sup> specialized institutions such as the night hospital,<sup>11</sup> and the day hospital,<sup>12</sup> and finally,

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7. *Id.* at 7.

8. *Ibid.*

9. Patients in an open hospital are behind no bars. They can walk off the grounds at any time, although they are not authorized to do so. This permissive atmosphere is more conducive to treatment than the atmosphere in a closed institution because cooperation and confidence between doctor and patient are easier to establish. Southard, *op. cit. supra*, note 6. The open hospital was conceived abroad, *Ibid.*, but came of age in this country at least in 1958 when the Veterans Administration announced an "open door" policy for its hospitals. *Ann. Rep., Nat'l Ass'n for Mental Health 5 (1959)*. The potential of the open hospital is not yet fully explored or developed. Suggesting further development, Dr. Robert H. Felix has said the hospital door, in addition to being open, should swing. He offers, as an instance, the bringing of art exhibits to the hospital as well as the visiting of art museums by patients. The avenue between the community and the hospital would then be two-way. *Open Door Must Swing Both Ways, Cal. Mental Health Progress, Jan. 1961, p. 9, col. 1.*

10. The general hospital's psychiatric ward provides a place for short-term treatment, not ordinarily available in a mental institution. Dr. Gerald Caplan says that too often we think in terms of drawn-out psycho-analytic treatment when in fact the best treatment may be short-term and that such treatment need not be superficial. Caplan, *Comprehensive Community Psychiatry*, lecture delivered at Inst. on Community Mental Health organized by State Health Dept., Honolulu, Hawaii, Oct. 8, 1960. (Dr. Caplan is Assoc. Prof. of Mental Health, Harvard School of Public Health). Findings of the Health Information Foundation bear out Dr. Caplan and indicate that treatment in mental hospitals today is both more effective and more rapid and thus leads to an earlier release than ever before. The findings report a decline in the number of persons in mental hospitals in 1958, the last year for which complete statistics available. But those same hospitals have shown an increase in admissions. The explanation of the apparent inconsistency is that although the number of patients being treated on any one day are less, the total number of patients treated cannot be less than admissions, and therefore there is a larger and more rapid turnover of patients. This, the article says, is due to more effective treatment and hence earlier release. The findings are reported in *National Decline in Hospital Mental Cases, Cal. Mental Health Progress, Jan. 1961, p. 9, col. 1.*

More psychiatric facilities exist in general hospitals than might be supposed. Ninety percent of the 180 general hospitals in the nation larger than 500 beds have psychiatric wards. Such wards provided treatment for more patients in 1958 than did all the nation's mental institutions, and incomplete statistics for 1959 and 1960 show the trend to be a continuing one according to a survey by the Joint Information Service of the Nat'l Ass'n for Mental Health and the American Psychiatric Ass'n, as reported in *Mental Admissions To Local Hospitals Top State Facilities, Cal. Mental Health Progress, Jan. 1961, p. 5, col. 1.*

11. Consider the drug addict who is able to work during the day, but who must not be subjected to the temptations of an evening's leisure. He can be treated satisfactorily in a night hospital and still take a part in community life. For a description of facilities like the night hospital, and their relation to the community, see Caplan, *op. cit. supra* note 10.

12. The peculiar needs of another patient might indicate only daytime treatment, if he has a home to go to at night. The day hospital was conceived for him. Both the day and

treatment that is completely non-institutional.<sup>13</sup> In addition to new treatment facilities, new post-treatment facilities have been developing. They include the publicized "half-way house,"<sup>14</sup> foster homes,<sup>15</sup> workshops, and social clubs.<sup>16</sup>

Although development in New Mexico of new treatment and post-treatment facilities lags,<sup>17</sup> it is hoped that such facilities eventually will be more widely

night hospitals are designed to meet individual needs. If enough patients had need of a hospital from two to four o'clock in the afternoon, presumably we would have two-to-four o'clock in the afternoon hospitals. The scope of the specialty institution is limited only by the needs of patients and the imagination of mental health authorities.

13. A patient may need no more than consultative guidance from a psychiatrist or perhaps a social worker. Such true outpatient treatment, is of course, at the opposite extreme from treatment in the traditional hospital.

14. Essentially a privately-owned boarding house, the halfway house provides the ex-patient with the security of group living that he is not yet ready to forego. The halfway house provides a social atmosphere in which small blunders are not as conspicuous as they would be in the community. The ex-patient is at this time usually able to work and thus pay his own way. Half-way Houses Are Proving Successful, *Albuquerque Journal*, May 10, 1961, p. , col. . Independence and self-reliance are thus re-established. The Veterans Administration uses three half-way houses. One is in Ft. Lyon, Colorado, another in Sepulveda, California, and the third in Los Angeles. *Ibid.* According to Dr. Paul Eisele of the Albuquerque Veterans Hospital, the half-way houses are "highly successful." *Ibid.*

15. Where the half-way houses are unavailable, placement of the patient in a foster home may allow him to make a successful transition from institution to home. Placement in a foster home may even be necessary on permanent basis. Caplan, *op. cit. supra*, note 10 at 7..

16. Again only imagination and individual needs limit the development of post-treatment facilities. Workshops and social clubs are only two suggestions put forth by Dr. Caplan, *op. cit. supra* note 10 at 7. Others may be imagined.

17. One source reports that 889 outpatients are being treated on convalescent leave from the State Hospital at Las Vegas. (*Police Warned to Let Patients Have Medicine*, *Albuquerque Journal*, May 13, 1961, § A, p. 5, col. 4), and others are "paroled" from the hospital for mentally defective persons at Los Lunas. (At least this is the procedure allowed by N.M. Stat. Ann. § 34-3-7 (1953)). In addition, the Las Vegas hospital, as well as the Veterans Administration hospital in Albuquerque, is conducted on an open basis. But no specialty institutions for either treatment or post-treatment are to be found in the state.

It is, perhaps, too much to expect that they would be. The hospital at Los Lunas is so desperately overcrowded that one of its juvenile parolees, after committing a crime, had to wait in the Curry County jail for re-admission to the hospital. See [1956] N.M. Att'y Gen. Ops. 6519-56-504. Perhaps there are more pressing needs than the development of specialty institutions.

There is little real justification, however, for crowded conditions in existing facilities or for failure to establish new ones. New Mexico has not strained its budget. The state ranks 49th in the nation for the percent of its tax funds it spends per capita on mental health. *Fifteen Indices: An Aid in Reviewing State and Local Mental Health and Hospital Programs 33* (1960), a publication of the Joint Information Service of the Am. Psychiatric Ass'n and the Nat'l Ass'n for Mental Health. Yet it ranks 12th in the nation for general per capita expenditures. *Id.* at 29. If the state spent on mental health what it is willing to spend elsewhere, that is if we also ranked 12th in the nation for per capita mental health expenditures, the funds would go far toward expanding existing facilities as well as establishing new ones. Some persons might say that, since the state ranks 50th in the nation for average daily resident patients per 100,000 population (*id.* at 7), we do not need to spend as much as other states. Bu the low percentage of our population that is hospitalized does not mean that we have fewer mentally ill

available in this state and it is appropriate, therefore, to examine New Mexico statutes dealing with outpatient treatment.

### I. THE NON-CRIMINAL

The mentally ill person who has committed no crime may be treated in a minimum security institution or on a non-hospital basis. Amendments are suggested, however, which will clarify this result and, in addition, substantively effect the treatment of the "criminal" as a later discussion of that category will show. Other amendments are suggested which will merely increase fluidity of movement from one institution to another.

The mentally ill non-criminal may be hospitalized in the hospital for the mental ill at Las Vegas (hereafter referred to as Las Vegas) voluntarily under Section 34-2-2<sup>18</sup> or by judicial proceedings brought against him (involuntary hospitalization) under Section 34-2-5.<sup>19</sup> In either event, he becomes a "patient," which is defined as "an individual under observation, care or treatment in a hospital pursuant to this act [Chapter 34, Article 2]."<sup>20</sup> The classification as a "patient" is important, because "patients" are eligible for release on "convalescent leave," subject at any time to re-hospitalization when such release is "in

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persons in our state. As the statistical compilers point out, *Id.* at 6, there is no necessary correlation between the percentage of population hospitalized and the number of mentally ill in that state. Indeed, the over-crowded conditions at Los Lunas indicate that our low hospitalization rate may be due, at least partially, to lack of facilities. Thus there is no real reason to believe that New Mexico has justification for spending proportionally less on mental health than it does for other public needs.

Financially, however, it is true that New Mexico is handicapped by its relatively low population. Yet the problem is not insoluble. As the Governor's Advisory Comm. on Mental Health has pointed out, interstate compacts could be negotiated "to fill needs which for any one state are not of sufficient magnitude or are too costly to justify separate installations. . . ." Summary of Report of Mental Health Committees, 5-6 (Sept. 24, 1956), Governor's Advisory Comm. on Mental Health.

Other western states share our plight, and interstate cooperation is one way of solving it.

One thing New Mexico has been able to do, but only by the use of federal funds, is establish a district mental health consultant program. For a complete description of the program, see *A New Mental Health Service for New Mexico*, published by the New Mex. Dept. of Pub. Health, Div. of Mental Health (copies available). Although its function is not to treat, the program is important in helping communities realize their own mental health needs. A Citizens' Advisory Board in each community served presumably interprets the community's needs to the mental health consultant. One suspects that it is the other way around. But in either event the program is too limited in personnel and funds to conduct the full-scale propaganda campaign apparently necessary in this state to arouse public interest in mental health. Through lack of public interest or of publicity, or both, Eddy, Lea, and Chavez counties failed to raise the 25% matching local funds necessary to receive the federal grant under which the program operates. Accordingly, the services in those counties were discontinued early last summer. Three Counties to Lose Mental Health Service, *Albuquerque Journal*, May 12, 1961, § D, p. 8, col. 1.

18. N.M. Stat. Ann. (1953).

19. N.M. Stat. Ann. (1953).

20. N.M. Stat. Ann. § 34-2-1 (b) (1953).

the best interests of the patient."<sup>21</sup> Therefore, persons hospitalized under other statutes (and there are other modes of hospitalization) are not "patients" and do not come within the provision of the convalescent statute.

If the non-criminal person is mentally defective, that is, intellectually deficient, rather than mentally ill, he may be hospitalized in the hospital for mentally defective persons at Los Lunas (hereinafter referred to as Los Lunas).<sup>22</sup> And although such a person was not committed under a Chapter 34 Article 2 proceeding and is therefore not a "patient" eligible for convalescent release, he is nevertheless eligible to be "paroled" from Los Lunas since upon hospitalization in that institution he became an "inmate" of it eligible to be paroled "from time to time as conditions warrant." The "conditions" are not specified.<sup>23</sup>

In addition to being hospitalized originally in the hospital at Los Lunas, a statute authorizes transfer to Los Lunas from Las Vegas, the Girls' Welfare Home or the Reform School, if the person is found to be mentally defective. A transfer, unlike initial hospitalization in Los Lunas, necessitates no formal court action, being merely administrative.<sup>24</sup> Once there, the transferee is an "inmate" of Los Lunas and is eligible for "parole" as if he had been hospitalized initially in that hospital.

If the person is in an institution other than the Girls' Welfare Home or the Reform School or Las Vegas, he still possibly may be transferred to Los Lunas even though not within the statute authorizing transfer from one of the three mentioned institutions. Section 34-3-6<sup>25</sup> says that proceedings to hospitalize one in Los Lunas may be brought by any person over twenty-one years of age against a person "within the jurisdiction of the court." This language is broad enough to allow the head of an institution in which a person already is to bring the proceedings against him, since even though the person is in another institution he is still within the *territorial* jurisdiction of the court. To be certain, however, that this meaning is given the statute, the words "regardless of whether the person is in another institution, public or private" should be inserted in Section 34-3-6<sup>26</sup> after the words "within the jurisdiction of said court." Treatment in the proper institution should, it seems, precede consideration of methods of treatment.

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21. N.M. Stat. Ann. § 34-2-11 (1953). The New Mexico statute is substantially the same as § 16 of a Draft Act Governing Hospitalization of the Mentally Ill, prepared in 1952 by the Nat'l Inst. of Mental Health. There is, however, one difference. Although N.M. Stat. Ann. § 34-2-11 (1953) and § 16 of the Draft Act both read that, "Release on convalescent statutes shall include provisions for continuing responsibility to and by the hospital," the New Mexico legislators at this point deleted a phrase of the Draft act that reads, "including a plan of treatment on an outpatient or nonhospital patient basis." The reason for the deletion may have been to avert a possible interpretation that such treatment was mandatory because of the use of the word "shall" in the Draft Act. Nevertheless, the import of the statute remains and clearly contemplates outpatient and non-hospital treatment.

22. N.M. Stat. Ann. § 34-3-6 (1953).

23. N.M. Stat. Ann. § 34-3-7 (1953).

24. N.M. Stat. Ann. § 34-3-9 (1953).

25. N.M. Stat. Ann. (1953).

26. N.M. Stat. Ann (1953).

Section 34-3-9,<sup>27</sup> providing specifically for transfer from one of the three institutions already mentioned should then be repealed. It would be superfluous in the first place, since persons in the Girls' Welfare Home, the Reform School or the hospital at Las Vegas would be subject to hospitalization proceedings brought against them under Section 34-3-6<sup>28</sup> (if amended as suggested) by the head of the institution in which they are. In the second place, it would avert a possible construction by the court that the legislature, having specified three institutions from which a person could be transferred to Los Lunas, meant to exclude transfer from any other institution.

Repeal of Section 34-3-9<sup>29</sup> (transfer from one of the three mentioned institutions), it is true, would necessitate formal court action that the statute does not now require. That is, persons could then be admitted only under the general provision in question, it may be that the formal court action now required is not the preferable way to determine whether conditions precedent to admission exist; but, if this is the method to be used for hospitalization of persons who are not in another institution, then it should also be used for commitment of persons who are, unless some very good reason for the distinction exists and none has been pointed out. Whatever safeguards the formal court action affords the person not already in an institution should also be afforded the person unfortunate enough already to be in an institution.

The elimination of an administrative transfer statute providing transfer from only three institutions to Los Lunas would be consistent with the processes by which one is hospitalized at Las Vegas.<sup>30</sup> These processes are the same for the person not already in another institution as they are for the person who is. The attorney general has ruled that the heads of public institutions may institute Chapter 34, Article 2 proceedings to commit one of their wards to Las Vegas.<sup>31</sup> Section 34-2-5<sup>32</sup> (involuntary hospitalization) does say that the proceedings may be commenced by "the head of any public or private institution in which such individual may be," but regardless of who may commence the proceedings, the statute does not say (although it clearly contemplates) that the person in another institution is subject to hospitalization. To insure that result, the statute could be amended to include the sentence: "An individual is subject to involuntary hospitalization regardless of whether he is in another institution, public or private."

The attorney general has also ruled that a person in another public institution may voluntarily hospitalize himself in the hospital at Las Vegas under the authority of Section 34-2-2.<sup>33</sup> The language of this section is broad enough to allow

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27. N.M. Stat. Ann. (1953).

28. N.M. Stat. Ann. (1953).

29. N.M. Stat. Ann. (1953).

30. N.M. Stat. Ann. §§ 34-2-2 and 34-2-6 (1953).

31. Ops. of N.M. Att'y Gen. 6314-55-272 (1955) and 6219-55-173 (1955).

32. N.M. Stat. Ann. (1953).

33. N.M. Stat. Ann. (1953). See note 44, *infra*.

voluntary hospitalization by one in another institution, for the statute says "any individual who is mentally ill" is subject to voluntary hospitalization. Amendment does not seem necessary, until such time as the court might overturn the attorney general's ruling.

In addition to the attorney general's ruling, Section 13-4-11<sup>34</sup> provides specifically for transfer from St. Vincent's Hospital to Las Vegas. This transfer, however, is not merely an administrative transfer done upon certification by a physician. It must be "pursuant to law," which seems to contemplate Chapter 34, Article 2 proceedings. The statute is merely reiterative of the attorney general's ruling and of the authority contained in the suggested amendment<sup>35</sup> to Section 34-2-5<sup>36</sup> (if not in the present statute) that allows the head of an institution to bring proceedings against one of the patients in the institution. Since re-iterative, Section 13-4-11<sup>37</sup> should be repealed.

## II. THE "CRIMINAL"

The mentally ill or defective person who has committed a "crime" does not achieve outpatient status as often as the non-criminal. Amendments are suggested in this section which, together with the ones already offered, will facilitate outpatient treatment for the "criminal" as well as the non-criminal.

Most commonly, a person who has committed a crime is hospitalized under Section 41-13-3<sup>38</sup> because he is incompetent to stand trial or because he has been acquitted by reason of insanity. He is not, then, a "patient" eligible for convalescent release as he has been hospitalized under a provision other than one in Chapter 34 Article 2.<sup>39</sup>

By including within the section 34-2-1<sup>40</sup> definition of "patient" a person found incompetent to stand trial or irresponsible under Section 41-13-3,<sup>41</sup> outpatient treatment could be provided since, if a "patient," the person would be subject to convalescent leave as if he had been hospitalized under a Chapter 34 Article 2 provision.

The New Mexico incompetency-irresponsibility statute seems to give the court discretion to hospitalize a person in Los Lunas.<sup>42</sup> Once there, regardless of

34. N.M. Stat. Ann. (1953).

35. Text at 158, 3rd paragraph.

36. N.M. Stat. Ann. (1953).

37. N.M. Stat. Ann. (1953).

38. N.M. Stat. Ann. (1953).

39. As a matter of practice, "criminals" may now be treated as outpatients. The Attorney General takes the position that they may be. See note 44. And in one case the New Mexico Supreme Court did say that the appellant had been adjudged incompetent to stand trial, hospitalized, and then "paroled" before he was ever tried (and he eventually was tried), but the court also said, without comment, that it was not called upon to pass on the validity of the "parole" (not to be confused with the statutory "parole" from Los Lunas). *State v. Folk*, 56 N.M. 583, 586, 247 P.2d 165, 167 (1952).

40. N.M. Stat. Ann (1953).

41. N.M. Stat. Ann (1953).

42. "in such place . . . as to the said court shall seem fit." N.M. Stat. Ann. § 41-13-3 (1953).

the statute under which hospitalized, the person is an "inmate" eligible for "parole." Thus there would be no need for amendment of the "parole" statute to allow a person in Los Lunas to be treated on an outpatient basis.

However, even if the mentally ill person were a "patient" or the mentally defective person an "inmate," the fact remains that the statute under which the person was hospitalized specifies that he be "kept in *strict custody* in such place and in such manner as to the said court shall seem fit . . . so long as the person is of unsound mind." (Emphasis supplied.)<sup>43</sup> On the one hand he must be kept in strict custody and on the other he is subject to release. To resolve this conflict,<sup>44</sup> the incompetency-irresponsibility statute should be amended by deleting the words "in strict custody" and adding after the word "fit" the words "or as is prescribed by Section 34-2-11 [convalescent leave statute] or by Section 34-3-7 ["parole" statute] making it clear that release on an outpatient basis is contemplated for the person hospitalized by reason of the incompetency-irresponsibility statute.<sup>45</sup>

The incompetency-irresponsibility statute is not the sole method of hospitalizing a person who has committed a criminal act. A person convicted of a capital crime, if found "insane" while awaiting execution, may be transferred administratively from prison to Las Vegas<sup>46</sup> and "there kept in *safe confinement* until his reason is restored." (Emphasis supplied.)<sup>47</sup> Again, the person is not eligible for convalescent release since he is not a "patient," having been hospitalized under a provision other than Chapter 34 Article 2. Additionally, whatever may be the precise definition of "safe confinement," it seems at least to exclude treatment in a minimum security institution, and most certainly on a non-hospital basis.

Rather than amend the sections to allow outpatient treatment for capital offenders as a class, the sections should be repealed.<sup>48</sup> The broad provisions of Chapter 34, Article 2, with suggested amendments, would be broad enough to allow the warden to hospitalize the capital as well as the non-capital offender, and the convalescent statute makes no distinction between them.

There is no authorization for the mentally defective person in prison to be transferred to Los Lunas even if he is a capital offender awaiting execution (although a possibility exists that he could be sent to Las Vegas if the word "insane" in Section 41-4-4<sup>49</sup> is interpreted to include mentally defective). But

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43. N.M. Stat. Ann. § 41-13-3 (1953).

44. The attorney general has ignored this conflict, ruling that the mentally ill prisoner is subject to ch. 34, art. 2 proceedings. According to the attorney general, not only may the warden in his capacity as head of a public institution bring involuntary proceedings against a prisoner, but the prisoner may hospitalize himself voluntarily—providing, of course, that he is mentally ill in the judgment of the hospital [1956] N.M. Att'y Gen. Ops. 6496-56-471. It is the thesis of this paper that the result reached by the attorney general is desirable; but it is hardly justified under the statutes as they now exist.

45. N.M. Stat. Ann. § 41-13-3 (1953).

46. N.M. Stat. Ann. §§ 41-14-4 and 41-14-6 (1953).

47. N.M. Stat. Ann. § 41-14-6.

48. N.M. Stat. Ann. §§ 41-14-4 and 41-14-6 (1953).

49. N.M. Stat. Ann. (1953).

if the suggested amendment<sup>50</sup> to Section 34-3-6<sup>51</sup> (hospitalization in Los Lunas) is adopted adding the words "regardless of whether the person is in another institution," the offender in prison found mentally defective could be hospitalized in Los Lunas, and without regard to a capital-non-capital distinction. The patient would then be an "inmate" eligible for "parole."

One last category remains. The person who is acquitted because of diminished responsibility, that is, because he did not form the intent necessary for a criminal act,<sup>52</sup> may not come within the incompetency-irresponsibility statute since he may not be considered to have been acquitted by reason of "insanity." But in that event a person can be hospitalized voluntarily or involuntarily under Chapter 34 Article 2, and he would then be a "patient" eligible for convalescent release. No amendment, then, is necessary in this category.

If the other suggested amendments are adopted, an admonition should be added to the "parole" and convalescent statutes.<sup>53</sup> As noted, the standard used to determine whether a patient shall be released as a convalescent is whether such release is in "the best interests of the patient." After those words in Section 34-2-11(a)<sup>54</sup> should be added "and when he [the head of the hospital] believes the patient would not be likely to harm others." Such a codification, while not changing the standards that doctors and hospitals now use, would make clear to the public the conditions necessary for release as an outpatient. The same standard should be invoked in Section 32-2-11(b)<sup>55</sup> dealing with rehospitalization of the convalescent. To the words "to be rehospitalized" should be added "or if there is reason to believe that the patient would be likely to harm others unless rehospitalized."

Similarly, the same standards should be spelled out in the "parole" statute which, as already noted, does not now specify any standard to be used for release. Engrafting the language of Section 34-2-11<sup>56</sup> upon the "parole" statute, Section 34-3-7<sup>57</sup> would read ". . . the board may direct said superintendent to parole inmates of said institution from time to time if they would not be likely to harm others and if parole would be in their best interests."

New Mexico statutes on mental health are in some respects out-dated in light of new medical advances as well as new social attitudes. The amendments suggested do not purport to meet that over-all criticism but it is hoped that in the limited area of outpatient treatment they would make New Mexico statutes more reflective of today's medical practice and social attitudes of out-patient treatment by allowing the mentally ill person who has committed a "crime" to be more effectively treated than a rigid adherence to present statutes permits.

TOM W. NEAL

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50. Text at 157, 3rd full paragraph.

51. N.M. Stat. Ann. (1953).

52. See *State v. White*, 58 N.M. 324, 270 P.2d 727 (1954).

53. N.M. Stat. Ann. §§ 34-3-7 and 34-2-11 (1953), respectively.

54. N.M. Stat. Ann (1953).

55. N.M. Stat. Ann. (1953).

56. N.M. Stat. Ann. (1953).

57. N.M. Stat. Ann. (1953).