

1 SENATE BILL 486

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Gregory A. Baca

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10 AN ACT

11 RELATING TO CRIME; TEMPORARILY REQUIRING THE RELINQUISHMENT OF
12 FIREARMS AND AMMUNITION OF CRIMINAL DEFENDANTS WHO CLAIM
13 INCOMPETENCY TO STAND TRIAL.

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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. A new section of Chapter 31, Article 9 NMSA
17 1978 is enacted to read:

18 "[NEW MATERIAL] CLAIM OF INCOMPETENCY--RELINQUISHMENT OF
19 FIREARMS AND AMMUNITION--RETURN OF FIREARMS AND AMMUNITION UPON
20 FINDING OF COMPETENCY.--

21 A. From the time that a defendant in a criminal
22 trial makes a claim of incompetency to stand trial until the
23 court makes a determination of the defendant's competency, the
24 defendant shall relinquish all firearms and ammunition.

25 B. Upon a claim of incompetency pursuant to

.212812.1

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1 Subsection A of this section, and a finding of probable cause
2 that the defendant has custody or control of, owns or possesses
3 a firearm or ammunition, the court shall issue, and there shall
4 be executed, a search warrant describing the firearm or
5 ammunition and authorizing a search of the location where the
6 firearm or ammunition is reasonably believed to be and
7 authorizing the seizure of any firearm or ammunition discovered
8 pursuant to the search.

9 C. A law enforcement officer executing the search
10 shall request that all firearms and ammunition in the
11 defendant's custody or control or that the defendant possesses
12 or owns be immediately relinquished. The officer shall take
13 possession of all firearms and ammunition that are
14 relinquished, in plain sight or discovered pursuant to a lawful
15 search.

16 D. A law enforcement officer taking possession of
17 firearms or ammunition pursuant to Subsection C of this section
18 shall give to the defendant a copy of the inventory of firearms
19 and ammunition taken. Within seventy-two hours of executing
20 the search, the law enforcement officer shall file the original
21 inventory with the court that issued the search warrant and
22 shall ensure that the law enforcement agency retains a copy of
23 the inventory.

24 E. If court has probable cause to believe a
25 defendant has custody or control of, owns or possesses firearms

.212812.1

underscoring material = new
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1 or ammunition that the defendant failed to relinquish pursuant
2 to this section, or who has received or purchased a firearm or
3 ammunition from the time that a defendant made a claim of
4 incompetency to stand trial to the time the court made a
5 determination of the defendant's competency, the court shall
6 issue, and there shall be executed, a search warrant describing
7 the firearm or ammunition and authorizing a search of the
8 location where the firearm or ammunition is reasonably believed
9 to be and authorizing the seizure of any firearm or ammunition
10 discovered pursuant to the search.

11 F. A law enforcement agency may not charge the
12 defendant any fee for storing a firearm or ammunition
13 relinquished pursuant to this section for the duration of the
14 time necessary for the defendant to comply with this section or
15 as directed by the court.

16 G. Upon a finding by the court that the defendant
17 is competent to stand trial, the court shall return all
18 firearms and ammunition that were relinquished by the
19 defendant."

20 SECTION 2. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2019.