

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO BEHAVIORAL HEALTH; AMENDING SECTIONS OF THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE TO PROVIDE FOR THE DETENTION AND TRANSPORT OF CERTAIN PERSONS FOR EMERGENCY MENTAL HEALTH EVALUATION AND TREATMENT AND TO ALLOW ENTRY INTO STRUCTURES IN CERTAIN CIRCUMSTANCES TO PROVIDE TRANSPORT OF PERSONS FOR EVALUATION AND CARE; PROVIDING PENALTIES.

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

SECTION 1. Section 43-1-3 NMSA 1978 (being Laws 1977, Chapter 279, Section 2, as amended) is amended to read:

"43-1-3. DEFINITIONS.--As used in the Mental Health and Developmental Disabilities Code:

A. "admitting professional" means a physician or a psychologist who has been granted admitting privileges at a hospital licensed by the department of health, if such

underscoring material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

1 privileges are required, or at an evaluation facility;

2 B. "authorized professional" means a:

3 (1) physician;

4 (2) psychologist;

5 (3) nurse having the authority to prescribe
6 psychotropic medication;

7 (4) qualified mental health professional who
8 is affiliated with a community mental health center or core
9 service agency; or

10 (5) peace officer;

11 ~~[A.]~~ C. "aversive stimuli" means anything that,
12 because it is believed to be unreasonably unpleasant,
13 uncomfortable or distasteful to ~~[the]~~ a client, is administered
14 or done to the client for the purpose of reducing the frequency
15 of a behavior, but does not include verbal therapies, physical
16 restrictions to prevent imminent harm to the client's self or
17 ~~[others]~~ another or psychotropic medications that are not used
18 for purposes of punishment;

19 ~~[B.]~~ D. "client" means ~~[any patient]~~ a person who:

20 (1) is requesting or receiving or who may be
21 in need of mental health services; ~~[or any person]~~

22 (2) is requesting or receiving developmental
23 disabilities services; ~~[or who]~~

24 (3) is present in a mental health ~~[or~~
25 ~~developmental disabilities]~~ facility for the purpose of

underscoring material = new
[bracketed material] = delete

1 receiving [~~such~~] mental health services; [~~or who~~]

2 (4) has been placed in a mental health [~~or~~
3 ~~developmental disabilities~~] facility by the person's parent or
4 guardian or [~~by any~~] pursuant to a court order;

5 (5) is the subject of an application for an
6 emergency order pursuant to Section 43-1-10 NMSA 1978; or

7 (6) is detained and transported, or sought to
8 be detained and transported, for emergency mental health
9 evaluation and treatment pursuant to Section 43-1-10 NMSA 1978;

10 [~~G.~~] E. "code" means the Mental Health and
11 Developmental Disabilities Code;

12 [~~D.~~] F. "consistent with the least drastic means
13 principle" means that the habilitation or treatment and the
14 conditions of habilitation or treatment for [~~the~~] a client,
15 separately and in combination:

16 (1) are no more harsh, hazardous or intrusive
17 than necessary to achieve acceptable treatment objectives for
18 the client;

19 (2) involve no restrictions on physical
20 movement and no requirement for residential care except as
21 reasonably necessary for the administration of treatment or for
22 the protection of the client or others from physical injury;
23 and

24 (3) are conducted at the suitable available
25 facility closest to the client's place of residence;

.215844.3

underscored material = new
[bracketed material] = delete

1 ~~[E.]~~ G. "convulsive treatment" means any form of
2 mental health treatment that depends upon creation of a
3 convulsion by any means, including ~~[but not limited to]~~
4 electroconvulsive treatment and insulin coma treatment;

5 ~~[F.]~~ H. "court" means a district court of New
6 Mexico;

7 I. "crisis intervention" means the provision of
8 assistance:

9 (1) using de-escalation management techniques
10 to prevent harm in a situation involving a person who appears
11 to have a mental disorder and who may be in distress; and

12 (2) by a peace officer or a team of
13 individuals, which peace officer or team is trained in de-
14 escalation management techniques;

15 ~~[G.]~~ J. "department" or "division" means the
16 behavioral health services division of the human services
17 department;

18 K. "developmental disabilities professional" means
19 a physician or other professional who by training or experience
20 is qualified to work with persons with a developmental
21 disability;

22 ~~[H.]~~ L. "developmental disability" means ~~[a~~
23 ~~disability of a person that is attributable to mental~~
24 ~~retardation, cerebral palsy, autism or neurological dysfunction~~
25 ~~that requires treatment or habilitation similar to that~~

underscored material = new
[bracketed material] = delete

1 ~~provided to persons with mental retardation]~~:

2 (1) in a person who is at least nine years of
3 age, a severe, chronic disability of the person, which
4 disability:

5 (a) is attributable to a mental or
6 physical impairment or combination of mental and physical
7 impairments;

8 (b) is manifested before the person has
9 reached twenty-two years of age;

10 (c) is likely to continue indefinitely;

11 (d) results in substantial functional
12 limitations in three or more of the following areas of major
13 life activity: 1) self-care; 2) receptive and expressive
14 language; 3) learning; 4) mobility; 5) self-direction; 6)
15 capacity for independent living; or 7) economic self-
16 sufficiency; and

17 (e) reflects the person's need for a
18 combination and sequence of special, interdisciplinary or
19 generic services; individualized supports; or other forms of
20 assistance that are of lifelong or extended duration and are
21 individually planned and coordinated; or

22 (2) in a person under nine years of age, a
23 condition that:

24 (a) is a substantial developmental delay
25 or specific congenital or acquired condition;

.215844.3

underscored material = new
[bracketed material] = delete

1 (b) meets three or more of the criteria
2 described in Items 1) through 7) of Subparagraph (d) of
3 Paragraph (1) of this subsection; and

4 (c) without services and supports, has a
5 high probability of meeting three or more of the criteria
6 described in Items 1) through 7) of Subparagraph (d) of
7 Paragraph (1) of this subsection later in life;

8 [~~F.~~] M. "evaluation facility" means a community
9 mental health or developmental disability program or a medical
10 facility that:

11 (1) has psychiatric or developmental
12 disability services available, including the New Mexico
13 behavioral health institute at Las Vegas, the Los Lunas medical
14 center or, if none of the foregoing is reasonably available or
15 appropriate, the office of a physician or a [~~certified~~]
16 psychologist; and [~~that~~]

17 (2) is capable of performing a mental status
18 examination adequate to determine the need for involuntary
19 treatment;

20 [~~J.~~] N. "experimental treatment" means any mental
21 health or developmental disabilities treatment that presents
22 significant risk of physical harm, but does not include
23 accepted treatment used in competent practice of medicine and
24 psychology and supported by scientifically acceptable studies;

25 [~~K.~~] O. "grave passive neglect" means failure to

.215844.3

underscored material = new
[bracketed material] = delete

1 provide for basic personal or medical needs or for one's own
2 safety to such an extent that it is more likely than not that
3 serious bodily harm will result in the near future;

4 ~~[L.]~~ P. "habilitation" means the process by which
5 professional persons and their staff assist a client with a
6 developmental disability in acquiring and maintaining those
7 skills and behaviors that enable the ~~[person]~~ client to cope
8 more effectively with the demands of the ~~[person's]~~ client's
9 self and environment and to raise the level of the ~~[person's]~~
10 client's physical, mental and social efficiency.

11 "Habilitation" includes ~~[but is not limited to]~~ programs of
12 formal, structured education and treatment;

13 ~~[M. "likelihood of serious harm to oneself" means~~
14 ~~that it is more likely than not that in the near future the~~
15 ~~person will attempt to commit suicide or will cause serious~~
16 ~~bodily harm to the person's self by violent or other self-~~
17 ~~destructive means, including grave passive neglect;~~

18 ~~N. "likelihood of serious harm to others" means~~
19 ~~that it is more likely than not that in the near future a~~
20 ~~person will inflict serious, unjustified bodily harm on another~~
21 ~~person or commit a criminal sexual offense, as evidenced by~~
22 ~~behavior causing, attempting or threatening such harm, which~~
23 ~~behavior gives rise to a reasonable fear of such harm from the~~
24 ~~person;]~~

25 Q. "likelihood of serious harm to another" means

.215844.3

underscored material = new
[bracketed material] = delete

1 that it is more likely than not that in the near future a
2 client will inflict serious, unjustified bodily harm on another
3 person or commit a criminal sexual offense, as evidenced by
4 behavior causing, attempting or threatening serious harm, which
5 behavior gives rise to a reasonable fear of serious harm from
6 the client;

7 R. "likelihood of serious harm to the client's
8 self" means that it is more likely than not that in the near
9 future a client will attempt to commit suicide or will cause
10 serious bodily harm to the client's self by violent or other
11 self-destructive means, including grave passive neglect;

12 ~~[Ø.]~~ S. "mental disorder" means substantial
13 disorder of a person's emotional processes, thought or
14 cognition that grossly impairs judgment, behavior or capacity
15 to recognize reality, but does not mean developmental
16 disability;

17 ~~[P.]~~ T. "mental health [or developmental
18 disabilities] professional" means a physician or other licensed
19 professional who by training or experience is qualified to work
20 with [persons] clients with a mental disorder; [or a
21 developmental disability;

22 ~~Q. "physician" or "certified psychologist", when~~
23 ~~used for the purpose of hospital admittance or discharge, means~~
24 ~~a physician or certified psychologist who has been granted~~
25 ~~admitting privileges at a hospital licensed by the department~~

.215844.3

underscored material = new
[bracketed material] = delete

1 of health, ~~if such privileges are required;~~

2 ~~R.]~~ U. "protected health information" means
3 individually identifiable health information transmitted by or
4 maintained in an electronic form or any other form or media
5 that relates to the:

6 (1) past, present or future physical or mental
7 health or condition of [~~an individual~~] a person;

8 (2) provision of health care to [~~an~~
9 ~~individual~~] a person; or

10 (3) payment for the provision of health care
11 to [~~an individual~~] a person;

12 ~~S.]~~ V. "psychosurgery":

13 (1) means those operations currently referred
14 to as lobotomy, psychiatric surgery and behavioral surgery and
15 all other forms of brain surgery if the surgery is performed
16 for the purpose of the following:

17 (a) modification or control of thoughts,
18 feelings, actions or behavior rather than the treatment of a
19 known and diagnosed physical disease of the brain;

20 (b) treatment of abnormal brain function
21 or normal brain tissue in order to control thoughts, feelings,
22 actions or behavior; or

23 (c) treatment of abnormal brain function
24 or abnormal brain tissue in order to modify thoughts, feelings,
25 actions or behavior when the abnormality is not an established

.215844.3

underscored material = new
[bracketed material] = delete

1 cause for those thoughts, feelings, actions or behavior; and

2 (2) does not include prefrontal sonic
3 treatment in which there is no destruction of brain tissue;

4 ~~[F.]~~ W. "qualified mental health professional"
5 ~~[licensed for independent practice]~~ means any of the following
6 professionals who are licensed for independent practice and who
7 by training and experience are qualified to work with clients
8 with a mental disorder:

9 (1) an independent social worker;

10 (2) a licensed professional clinical mental
11 health counselor;

12 (3) a marriage and family therapist;

13 (4) a certified nurse practitioner; or

14 (5) a clinical nurse specialist with a
15 specialty in mental health; ~~[all of whom by training and~~
16 ~~experience are qualified to work with persons with a mental~~
17 ~~disorder;~~

18 ~~U.]~~ X. "residential treatment or habilitation
19 program" means diagnosis, evaluation, care, treatment or
20 habilitation rendered inside or on the premises of a mental
21 health or developmental disabilities ~~[facility]~~ service
22 provider agency, hospital, clinic, institution or supervisory
23 residence or nursing home when ~~[the]~~ a client resides on the
24 premises; ~~[and]~~

25 Y. "structure" means an interior or exterior

underscored material = new
[bracketed material] = delete

1 enclosed space, including a building, whether any part of it is
2 used for temporary or permanent human habitation, a vehicle, a
3 boat or other space where a client may reasonably be found; and

4 [V.] Z. "treatment" means any effort to accomplish
5 a significant change in the mental or emotional condition or
6 behavior of [the] a client."

7 SECTION 2. Section 43-1-10 NMSA 1978 (being Laws 1977,
8 Chapter 279, Section 9, as amended) is amended to read:

9 "43-1-10. EMERGENCY DETENTION AND TRANSPORT FOR MENTAL
10 HEALTH EVALUATION AND [CARE] TREATMENT--EMERGENCY ORDER.--

11 A. A peace officer may detain and transport a
12 client for emergency mental health evaluation and treatment:

13 (1) pursuant to an emergency order issued in
14 accordance with the provisions of Subsection B of this section;
15 or

16 (2) in the absence of an emergency order, in
17 accordance with the provisions of Subsection P of this section.

18 B. To obtain an emergency order, an applicant with
19 knowledge of the facts that support the application for an
20 emergency order shall apply to a court through a peace officer
21 or, if a peace officer is the applicant, by the peace officer
22 after a peace officer's investigation, setting forth the
23 following in the application for an emergency order, if known:

24 (1) the name and date of birth of the client
25 to be evaluated; the client's phone number; a description of

.215844.3

underscored material = new
[bracketed material] = delete

1 the client's physical appearance; the address, location or
2 structure where the client may be located; and the approximate
3 length of time during which the client has been at that
4 address, location or structure;

5 (2) the specific underlying facts, including a
6 salient summary of the client's prior mental health diagnosis
7 and treatment and information relating to the place where the
8 client was last treated, that constitute or support reasonable
9 grounds to believe that:

10 (a) the client is otherwise subject to
11 lawful arrest;

12 (b) the client has just attempted
13 suicide;

14 (c) the client, as a result of a mental
15 disorder, presents a likelihood of serious harm to the client's
16 self or a likelihood of serious harm to another and that
17 immediate detention and transport are necessary to prevent
18 serious harm;

19 (d) an emergency exists; and

20 (e) the client may be located in a
21 specified structure;

22 (3) a risk assessment, based on known facts,
23 that details:

24 (a) the client's access to weapons;

25 (b) statements or conduct that suggest

.215844.3

underscored material = new
[bracketed material] = delete

1 that the client will commit a violent or dangerous act;

2 (c) signs of the client's extreme
3 agitation, rambling or incoherent thoughts and speech;

4 (d) the client's inability to
5 communicate effectively; and

6 (e) the client's delusions, flashbacks,
7 hallucinations or other disability impairing the client's
8 ability to understand;

9 (4) the following information:

10 (a) what attempts have been made to
11 convince the client to consent to detention, transport and an
12 emergency mental health evaluation and treatment;

13 (b) whether the client has experienced a
14 divorce or legal separation, a pending divorce or legal
15 separation or child custody dispute with an applicant who is
16 not an authorized professional or with a person who seeks an
17 application for an emergency order through an authorized
18 professional, a family member or an acquaintance of the
19 applicant;

20 (c) efforts to contact the client's
21 family members, treatment guardian or guardian; and

22 (d) the last time that the client was
23 known to have had contact with another person and any
24 observation of the client's behavior and demeanor during that
25 contact;

.215844.3

underscored material = new
[bracketed material] = delete

1 (5) a summary of facts and findings, including
2 the time and place, of the peace officer's investigation and
3 the peace officer's determination of whether:

4 (a) the client is otherwise subject to
5 lawful arrest;

6 (b) reasonable grounds exist to believe
7 that the client has just attempted suicide;

8 (c) reasonable grounds exist to believe
9 that the client, as a result of a mental disorder, presents a
10 likelihood of serious harm to the client's self or a likelihood
11 of serious harm to another and that immediate detention and
12 transport are necessary to prevent serious harm;

13 (d) reasonable grounds exist to believe
14 that an emergency exists; and

15 (e) reasonable grounds exist to believe
16 that the client may be located in a specified structure; and

17 (6) the signature of the applicant and an
18 indication of the applicant's relationship to the client.

19 C. If the applicant is unaware of facts that are to
20 be submitted, the applicant shall indicate that the applicant
21 has no knowledge of those facts.

22 D. The following individuals shall sign an
23 application for an emergency order in the following manner:

24 (1) an applicant who is not an authorized
25 professional shall sign in the presence of a peace officer, and

.215844.3

underscored material = new
[bracketed material] = delete

1 the peace officer shall sign as a witness to the signing of the
2 application for an emergency order;

3 (2) an applicant who is an authorized
4 professional who is not a peace officer shall sign the
5 application for an emergency order without a witness and
6 deliver the application for an emergency order to the peace
7 officer; and

8 (3) an applicant who is a peace officer shall
9 sign the application for an emergency order without a witness
10 and deliver the application for an emergency order to the
11 court.

12 E. When an authorized professional signs an
13 application for an emergency order, the authorized professional
14 shall designate the evaluation facility where the client shall
15 be transported if the emergency order is granted. If acting in
16 good faith, the authorized professional shall not be subject to
17 civil liability for actions arising from issuing or failing to
18 issue a certificate for evaluation or application for an
19 emergency order. If, forty-eight hours prior to the
20 presentment to a peace officer of the application for an
21 emergency order, a peace officer conducted an investigation and
22 did not detain and transport the client in accordance with
23 Subsection P of this section, a peace officer need not conduct
24 a second investigation before delivering the application for an
25 emergency order to the court. If a second investigation is not

.215844.3

underscored material = new
[bracketed material] = delete

1 necessary, the peace officer shall notify the court in writing
2 when presenting the application for an emergency order whether:
3 the client is otherwise subject to lawful arrest; reasonable
4 grounds exist to believe that the client has just attempted
5 suicide; the client, as a result of a mental disorder, presents
6 a likelihood of serious harm to the client's self or a
7 likelihood of serious harm to another and immediate detention
8 and transport are necessary to prevent serious harm; an
9 emergency exists; or the client may be located in a specific
10 structure. If a certificate for evaluation has been issued, it
11 shall be presented to the court. A new investigation shall be
12 conducted by a peace officer if one was not conducted within
13 forty-eight hours.

14 F. Prior to delivering an application for an
15 emergency order from an authorized professional to the court, a
16 peace officer shall conduct an investigation without
17 unnecessary delay for the purpose of detaining and transporting
18 a client to an evaluation facility in accordance with
19 Subsection P of this section. Prior to delivering an
20 application for an emergency order to the court from an
21 individual who is not an authorized professional, a peace
22 officer shall conduct without unnecessary delay an
23 investigation and may detain and transport a client in
24 accordance with Subsection P of this section to determine
25 whether:

.215844.3

underscored material = new
[bracketed material] = delete

1 (1) the client is otherwise subject to lawful
2 arrest;

3 (2) reasonable grounds exist to believe that
4 the client has just attempted suicide;

5 (3) reasonable grounds exist to believe that
6 the client, as a result of a mental disorder, presents a
7 likelihood of serious harm to the client's self or a likelihood
8 of serious harm to another and immediate detention and
9 transport are necessary to prevent serious harm;

10 (4) reasonable grounds exist to believe that
11 an emergency exists; or

12 (5) reasonable grounds exist to believe that
13 the client may be located in a specified structure.

14 G. If acting in good faith, a peace officer shall
15 not be subject to civil liability for the failure of the peace
16 officer to begin or complete an investigation without
17 unnecessary delay or to deliver an application for an emergency
18 order to the court without unnecessary delay.

19 H. If a peace officer fails to take action in
20 accordance with Subsection P of this section, the peace officer
21 shall advise without unnecessary delay the person requesting
22 police involvement of the right to apply to the court for an
23 emergency order. The peace officer shall immediately provide
24 an application for an emergency order form to the person who
25 sought the peace officer investigation. If a peace officer

.215844.3

underscored material = new
[bracketed material] = delete

1 fails to take action in accordance with Subsection P of this
2 section, and the person who sought the peace officer
3 investigation has completed an application for an emergency
4 order, the peace officer shall without unnecessary delay
5 deliver the signed application for an emergency order to a
6 district court judge even if the court is closed. Failure to
7 begin or complete an investigation without unnecessary delay is
8 not a jurisdictional defect. Failure to deliver an application
9 for an emergency order to the district court judge without
10 unnecessary delay is not a jurisdictional defect.

11 I. Upon receipt of a completed application for an
12 emergency order, a district court judge may immediately issue
13 an emergency order to detain and transport a client to an
14 evaluation facility when the facts in an application for an
15 emergency order support a finding that:

16 (1) the client is otherwise subject to lawful
17 arrest;

18 (2) reasonable grounds exist to believe that
19 the client has just attempted suicide; or

20 (3) reasonable grounds exist to believe that
21 the client, as a result of a mental disorder, presents a
22 likelihood of serious harm to the client's self or a likelihood
23 of serious harm to another and immediate detention and
24 transport are necessary to prevent serious harm.

25 J. The court may also order that a peace officer

.215844.3

underscored material = new
[bracketed material] = delete

1 enter a structure if the court makes the finding provided in
2 Subsection I of this section and also finds that:

3 (1) reasonable grounds exist to believe that:

4 (a) the client is present in that
5 structure;

6 (b) an emergency exists and there is an
7 immediate need for assistance to protect or aid a person or to
8 protect property; and

9 (c) there is a reasonable basis to
10 associate the emergency with the identified structure; and

11 (2) the application for an emergency order is
12 primarily motivated by a strong sense of emergency and not by
13 another motive.

14 K. Before making an order provided for in
15 Subsection J of this section, the court shall weigh the purpose
16 and nature of the peace officer's entry into the structure, the
17 exigency of the situation based upon known facts and the
18 availability, feasibility and effectiveness of alternatives to
19 the officer's entry into the structure, including any attempts
20 made to convince the client to be taken into custody
21 voluntarily and the imminent risk involved, based upon known
22 facts.

23 L. When a peace officer enters a structure under an
24 order provided for in Subsection J of this section or in
25 accordance with Subsection T of this section, or when a peace

.215844.3

underscored material = new
[bracketed material] = delete

1 officer is otherwise legally permitted entry into a structure,
2 the peace officer shall take only those actions that are
3 reasonably necessary to execute the court's order, ascertain
4 whether a person is in need of assistance and conduct a
5 reasonable sweep of the structure to ensure the safety of the
6 client who is the subject of the order and all other persons.

7 M. If a court denies an emergency order for
8 evaluation or for entry into a structure, the court shall
9 inform the applicant in writing of the right to an immediate
10 appeal and the reasons for denial. The applicant shall be
11 provided, without cost, copies of filed documents.

12 N. A peace officer shall, whenever feasible,
13 provide crisis intervention to an individual who appears to
14 have a mental disorder and who may be in need of detention or
15 transport for evaluation or treatment.

16 O. A filing fee shall not be assessed when an
17 application for an emergency order is filed pursuant to this
18 section.

19 ~~[A.]~~ P. A peace officer may detain and transport a
20 ~~[person]~~ client for emergency mental health evaluation and
21 ~~[care]~~ treatment in the absence of ~~[a legally valid]~~ an
22 emergency order ~~[from the court]~~ only if:

23 (1) the ~~[person]~~ client is otherwise subject
24 to lawful arrest;

25 (2) the peace officer has reasonable grounds

underscoring material = new
[bracketed material] = delete

1 to believe that the ~~[person]~~ client has just attempted suicide;

2 (3) the peace officer, based upon the peace
3 officer's own observation and investigation, has reasonable
4 grounds to believe that the ~~[person]~~ client, as a result of a
5 mental disorder, presents a likelihood of serious harm to
6 ~~[himself or herself or]~~ the client's self or a likelihood of
7 serious harm to ~~[others]~~ another and that immediate detention
8 ~~[is]~~ and transport are necessary to prevent ~~[such]~~ serious
9 harm. Immediately upon arrival at the evaluation facility, the
10 peace officer shall:

11 (a) provide a certificate for
12 evaluation, copies of the application for an emergency order or
13 emergency order and a report to the admitting professional or
14 the admitting professional's designee; and

15 (b) be interviewed by the admitting
16 ~~[physician]~~ professional or the admitting ~~[physician's]~~
17 professional's designee; or

18 (4) ~~[a physician, a psychologist or a~~
19 ~~qualified mental health professional licensed for independent~~
20 ~~practice who is affiliated with a community mental health~~
21 ~~center or core service agency has certified that the person, as~~
22 ~~a result of a mental disorder, presents a likelihood of serious~~
23 ~~harm to himself or herself or to others and that immediate~~
24 ~~detention is necessary to prevent such harm. Such~~
25 ~~certification shall]~~ an authorized professional has issued a

.215844.3

underscored material = new
[bracketed material] = delete

1 certificate for evaluation.

2 Q. The certificate for evaluation shall constitute
3 authority to transport the [person] client to an evaluation
4 facility.

5 ~~[B.] R. An [emergency] evaluation [under this~~
6 ~~section shall be accomplished upon the request of a peace~~
7 ~~officer or jail or detention facility administrator or that~~
8 ~~person's designee or upon the certification of a physician, a~~
9 ~~psychologist or a qualified mental health professional licensed~~
10 ~~for independent practice who is affiliated with a community~~
11 ~~mental health center or core service agency. A court order is~~
12 ~~not required under this section. If an application is made to~~
13 ~~a court, the court's power to act in furtherance of an~~
14 ~~emergency admission shall be limited to ordering that:~~

15 ~~(1) the client be seen by a certified~~
16 ~~psychologist or psychiatrist prior to transport to an~~
17 ~~evaluation facility; and~~

18 ~~(2) a peace officer transport the person to an~~
19 ~~evaluation facility] shall be performed upon a client's arrival~~
20 at an evaluation facility.

21 S. Before entering a structure to detain and
22 transport a client for emergency mental health evaluation and
23 treatment, a peace officer shall encourage the client to exit
24 the structure voluntarily, unless this encouragement is
25 reasonably believed to threaten the safety of the client or any

.215844.3

underscored material = new
[bracketed material] = delete

1 other person.

2 T. A peace officer has authority to enter a
3 structure in accordance with an order provided for in
4 Subsection J of this section, when legally permitted or
5 whenever reasonable grounds exist to believe that an emergency
6 exists, that there is an immediate need for assistance to
7 protect or aid a person or protect property and that there is a
8 reasonable basis for associating the emergency with the
9 identified structure. The entry shall be primarily motivated
10 by a strong sense of emergency and not by another motive. When
11 a peace officer enters the home under the emergency exception,
12 the peace officer shall weigh the exigency of the situation,
13 based upon known facts, and the availability, feasibility and
14 effectiveness of alternatives to the officer's entry into the
15 structure, including any attempts made to convince the client
16 to be taken voluntarily into custody, and the imminent risk
17 involved, based upon known facts.

18 ~~[G.]~~ U. An evaluation facility may accept for an
19 emergency-based admission ~~[any person]~~ a client when ~~[a~~
20 ~~physician or certified psychologist certifies]~~ the admitting
21 professional determines that ~~[such person]~~ reasonable grounds
22 exist to believe that the client, as a result of a mental
23 disorder, presents a likelihood of serious harm to ~~[himself or~~
24 ~~herself]~~ the client's self or a likelihood of serious harm to
25 ~~[others]~~ another and that immediate detention ~~[is]~~ and

.215844.3

underscored material = new
[bracketed material] = delete

1 transport are necessary to prevent [~~such~~] serious harm. [~~Such~~
2 ~~certification~~] The admitting professional's determination shall
3 constitute authority to transport the [~~person~~] client for
4 emergency mental health evaluation and treatment at a
5 residential treatment or habilitation program.

6 [~~D-~~] V. A [~~person~~] client detained [~~under~~] pursuant
7 to an emergency order or in accordance with the provisions of
8 Subsection P of this section shall, whenever possible, be taken
9 immediately to an evaluation facility. Detention facilities
10 shall be used as temporary shelter for [~~such persons~~] detained
11 clients only in cases of extreme emergency for protective
12 custody, and [~~no person~~] a client taken into custody under the
13 provisions of the code shall remain in a detention facility no
14 longer than necessary and in no case longer than twenty-four
15 hours. If use of a detention facility is necessary, the
16 [~~proposed~~] client:

17 (1) shall not be held in a cell with
18 prisoners;

19 (2) shall not be identified on records used to
20 record custody of prisoners;

21 (3) shall be provided adequate protection from
22 possible suicide attempts; and

23 (4) shall be treated with the respect and
24 dignity due every [~~citizen~~] person who is neither accused nor
25 convicted of a crime.

.215844.3

underscored material = new
[bracketed material] = delete

1 [E.—The] W. An admitting [~~physician or certified~~
2 ~~psychologist~~] professional shall evaluate whether reasonable
3 grounds exist to detain the [~~proposed~~] client for emergency
4 mental health evaluation and treatment, and, if reasonable
5 grounds are found, the [~~proposed~~] client shall be detained
6 further. If the admitting [~~physician or certified~~
7 ~~psychologist~~] professional determines that reasonable grounds
8 do not exist to further detain the [~~proposed~~] client for
9 emergency mental health evaluation and treatment, the
10 [~~proposed~~] client shall [~~not~~] be [~~detained~~] released from
11 detention.

12 [F.—] X. Upon arrival at an evaluation facility, the
13 [~~proposed~~] client shall be informed orally and in writing by
14 the evaluation facility of the purpose and possible
15 consequences of the proceedings, the right to a hearing within
16 seven days, the right to counsel and the right to communicate
17 with an attorney and a mental health professional of the
18 [~~proposed~~] client's own choosing and shall have the right to
19 receive necessary and appropriate treatment.

20 [G.— ~~A peace officer who transports a proposed~~
21 ~~client to an evaluation facility under the provisions of this~~
22 ~~section shall not require a court order to be reimbursed by the~~
23 ~~referring county.~~]

24 Y. An admitting professional or an admitting
25 professional's designee at an evaluation facility or

underscored material = new
[bracketed material] = delete

1 residential treatment or habilitation program shall provide a
2 copy of the application for an emergency order, emergency
3 order, certificate for evaluation and peace officer's report to
4 the client. If it is determined that it is not in the best
5 interest of the client to receive copies of the documents upon
6 admission or emergency mental health evaluation, the reason for
7 not providing the documents shall be noted in the medical
8 record. The client's attorney shall be provided a copy of the
9 documents upon request.

10 Z. A county in which a client is initially detained
11 for transport for emergency mental health evaluation and
12 treatment pursuant to this section shall reimburse a law
13 enforcement agency for the client's transport. A county that
14 fails to make reimbursement in a timely manner in accordance
15 with this subsection shall be liable for and shall pay to the
16 law enforcement agency a penalty in an amount that equals three
17 times the law enforcement agency's cost of transport.

18 AA. A person who makes an intentional
19 misrepresentation or omission of fact in any of the following
20 circumstances is guilty of a petty misdemeanor and shall be
21 sentenced pursuant to the provisions of Section 31-19-1 NMSA
22 1978:

23 (1) in providing underlying facts to a peace
24 officer or a peace officer's agent or an authorized
25 professional or an authorized professional's agent to establish

.215844.3

1 reasonable grounds to believe that:

2 (a) the client just attempted suicide;

3 (b) as a result of a mental disorder,

4 the client presents a likelihood of serious harm to the

5 client's self or a likelihood of serious harm to another and

6 immediate detention and transport are necessary to prevent

7 serious harm;

8 (c) the client is subject to lawful

9 arrest;

10 (d) an emergency exists; or

11 (e) the client may be located in a

12 specified structure;

13 (2) in obtaining entry into a structure using

14 the process provided for in this section;

15 (3) in an application for an emergency order;

16 (4) in a certificate for evaluation; or

17 (5) in obtaining a certificate for evaluation.

18 BB. As used in this section:

19 (1) "applicant" means a person, including a
20 peace officer, who files an application for an emergency order;

21 (2) "certificate for evaluation" means a form
22 on which an authorized professional has:

23 (a) certified that a client: 1) just
24 attempted suicide; or 2) as a result of a mental disorder,

25 presents a likelihood of serious harm to the client's self or a

underscored material = new
[bracketed material] = delete

1 likelihood of serious harm to another and immediate detention
2 and transport are necessary to prevent serious harm;

3 (b) provided specific underlying facts
4 for believing that a client: 1) just attempted suicide; or 2)
5 as a result of a mental disorder, presents a likelihood of
6 serious harm to the client's self or a likelihood of serious
7 harm to another and immediate detention and transport are
8 necessary to prevent serious harm; and

9 (c) obtained a risk assessment, based on
10 known facts, that details: 1) the client's access to weapons;
11 2) statements or conduct that suggest that the client will
12 commit a violent or dangerous act; 3) signs of the client's
13 extreme agitation, rambling or incoherent thoughts and speech;
14 4) the client's inability to communicate effectively; and 5)
15 the client's delusions, flashbacks, hallucinations or other
16 disability impairing the client's ability to understand; and

17 (3) "emergency order" means a court order to
18 detain and transport a client for emergency mental health
19 evaluation and treatment issued in accordance with the
20 provisions of this section."

21 SECTION 3. Section 43-1-11 NMSA 1978 (being Laws 1977,
22 Chapter 279, Section 10, as amended) is amended to read:

23 "43-1-11. COMMITMENT OF ADULTS FOR THIRTY-DAY PERIOD.--

24 A. Every adult client involuntarily admitted to an
25 evaluation facility pursuant to Section 43-1-10 NMSA 1978 has

.215844.3

underscoring material = new
[bracketed material] = delete

1 the right to a hearing within seven days of admission unless
2 waived after consultation with counsel. If a physician or
3 evaluation facility decides to seek commitment of the client
4 for evaluation and treatment, a petition shall be filed with
5 the court within five days of admission requesting the
6 commitment. The petition shall include a description of the
7 specific behavior or symptoms of the client that evidence a
8 likelihood of serious harm to the ~~[client or others]~~ client's
9 self or likelihood of serious harm to another and shall include
10 an initial screening report by the evaluating physician
11 individually or with the assistance of a mental health
12 professional or, if a physician is not available, by a mental
13 health professional acceptable to the court. The petition
14 shall list the prospective witnesses for commitment and a
15 summary of the matters to which they will testify. Copies of
16 the petition shall be served on the client, the client's
17 guardian, and treatment guardian if one has been appointed, and
18 the client's attorney.

19 B. At the hearing, the client shall be represented
20 by counsel and shall have the right to present evidence on the
21 client's behalf, including testimony by an independent mental
22 health professional of the client's own choosing, to cross-
23 examine witnesses and to be present at the hearing. The
24 presence of the client may be waived upon a showing to the
25 court that the client knowingly and voluntarily waives the

.215844.3

underscored material = new
[bracketed material] = delete

1 right to be present. A complete record of all proceedings
2 shall be made.

3 C. A court-appointed guardian for an adult involved
4 in an involuntary commitment proceeding shall have automatic
5 standing to appear at all stages of the proceeding and shall be
6 allowed to testify by telephone or through affidavit if
7 circumstances make live testimony too burdensome.

8 D. The court shall include in its findings the
9 guardian's opinion regarding the need for involuntary treatment
10 or a statement detailing the efforts made to ascertain the
11 guardian's opinion.

12 E. Upon completion of the hearing, the court may
13 order a commitment for evaluation and treatment not to exceed
14 thirty days if the court finds by clear and convincing evidence
15 that:

16 (1) as a result of a mental disorder, the
17 client presents a likelihood of serious harm to the client's
18 ~~[own self or others]~~ self or a likelihood of serious harm to
19 another;

20 (2) the client needs and is likely to benefit
21 from the proposed treatment; and

22 (3) the proposed commitment is consistent with
23 the treatment needs of the client and with the least drastic
24 means principle.

25 F. Once the court has made the findings set forth

underscoring material = new
~~[bracketed material] = delete~~

1 in Subsection E of this section, the court shall hear further
2 evidence as to whether the client is capable of informed
3 consent. If the court determines that the client is incapable
4 of informed consent, the court shall appoint for the client a
5 treatment guardian who shall have only those powers enumerated
6 in Section 43-1-15 NMSA 1978.

7 G. An interested person who reasonably believes
8 that ~~[an adult]~~ a client is suffering from a mental disorder
9 and presents a likelihood of serious harm to the ~~[adult's own~~
10 ~~self or others]~~ client's self or a likelihood of serious harm
11 to another, but does not require emergency care, may request
12 the district attorney to investigate and determine whether
13 reasonable grounds exist to commit the adult for a thirty-day
14 period of evaluation and treatment. The applicant may present
15 to the district attorney any medical reports or other evidence
16 immediately available to the applicant, but shall not be
17 required to obtain a medical report or other particular
18 evidence in order to make a petition. The district attorney
19 shall act on the petition within seventy-two hours. If the
20 district attorney determines that reasonable grounds exist to
21 commit the adult, the district attorney may petition the court
22 for a hearing. The court may issue a summons to the proposed
23 client to appear at the time designated for a hearing, which
24 shall be not less than five days from the date the petition is
25 served. If the proposed client is summoned and fails to appear

.215844.3

underscoring material = new
~~[bracketed material] = delete~~

1 at the proposed time and upon a finding of the court that the
2 proposed client has failed to appear, or appears without having
3 been evaluated, the court may order the proposed client to be
4 detained for evaluation as provided for in Subsection C of
5 Section 43-1-10 NMSA 1978.

6 H. Any hearing provided for pursuant to Subsection G
7 of this section shall be conducted in conformance with the
8 requirements of Subsection B of this section."

9 SECTION 4. Section 43-1-12 NMSA 1978 (being Laws 1977,
10 Chapter 279, Section 11, as amended) is amended to read:

11 "43-1-12. EXTENDED COMMITMENT OF ADULTS.--

12 A. A physician or evaluation facility may file a
13 petition for extended commitment within twenty-one days after
14 the beginning of the thirty-day commitment. The petition shall
15 explain the necessity for extended commitment, specify the
16 treatment that has been provided during the evaluation and
17 include an individual treatment plan for the proposed
18 commitment period. The petition shall list the prospective
19 witnesses for commitment and a summary of the matters to which
20 they will testify. Copies of the petition shall be served on
21 the client, the client's guardian, and treatment guardian if
22 one has been appointed, and the client's attorney.

23 B. A hearing shall be held upon the petition prior to
24 the expiration of the thirty-day commitment period, at which
25 the client shall have all rights granted to the client under

.215844.3

underscored material = new
[bracketed material] = delete

1 Section 43-1-11 NMSA 1978 and in addition shall have a right to
2 a trial by a six-person jury, if requested, and to an
3 expeditious appeal, unless waived.

4 C. A court-appointed guardian for an adult involved
5 in an involuntary commitment proceeding shall have automatic
6 standing to appear at all stages of the proceeding and shall be
7 allowed to testify by telephone or through affidavit if
8 circumstances make live testimony too burdensome.

9 D. The court shall include in its findings the
10 guardian's opinion regarding the need for involuntary treatment
11 or a statement detailing the efforts made to ascertain the
12 guardian's opinion.

13 E. If, at the conclusion of the hearing, the fact-
14 finder determines by clear and convincing evidence that the
15 client presents a likelihood of serious harm to the client's
16 self or [~~to others~~] a likelihood of serious harm to another,
17 that extended treatment is likely to improve the client's
18 condition and that the proposed extended commitment is
19 consistent with the least drastic means principle, the court
20 shall order commitment of the client for a period not to exceed
21 six months, except that when the client has been committed for
22 two consecutive periods of commitment, any commitment
23 commencing thereafter shall not exceed one year. At the
24 expiration of the commitment order, the client may be detained
25 only after a new commitment hearing, unless waived after

.215844.3

underscoring material = new
~~[bracketed material] = delete~~

1 consultation with the client's attorney, and entry of a new
2 order for commitment not to exceed six months.

3 F. A client involuntarily referred for treatment
4 pursuant to this section shall be entitled to a reexamination
5 of the order for the client's involuntary referral for
6 treatment on the client's own petition, or that of the client's
7 legal guardian, parent, spouse, relative or friend, to the
8 district court of the county in which the client resides or is
9 detained. Upon receipt of the petition, the court shall
10 conduct a proceeding in accordance with this section, except
11 that a proceeding shall not be required to be conducted if the
12 petition is filed sooner than sixty days after the issuance of
13 the order for involuntary referral for treatment or sooner than
14 sixty days after the filing of a previous petition under this
15 subsection.

16 G. Nothing in this section shall limit the right of a
17 client to petition the court for a writ of habeas corpus.

18 H. Nothing in this code shall prohibit a client from
19 seeking voluntary admission under Section 43-1-14 NMSA 1978.

20 I. No mental health treatment facility is required to
21 detain, treat or provide services to a client when the client
22 does not require such detention, treatment or services."

23 SECTION 5. Section 43-1-13 NMSA 1978 (being Laws 1977,
24 Chapter 279, Section 12, as amended) is amended to read:

25 "43-1-13. INVOLUNTARY COMMITMENT OF DEVELOPMENTALLY

.215844.3

underscoring material = new
~~[bracketed material] = delete~~

1 DISABLED ADULTS TO RESIDENTIAL CARE.--

2 A. A guardian appointed pursuant to the Uniform
3 Probate Code may file an application with an evaluation
4 facility seeking residential habilitation services for the
5 protected person. The application shall set forth the basis
6 for the guardian's belief that residential habilitation is
7 necessary and shall include a copy of pertinent medical and
8 psychological evaluations that have been completed.

9 B. Upon receipt of an application filed according to
10 Subsection A of this section, an evaluation facility may accept
11 the proposed client for a period of evaluation and treatment
12 not to exceed fourteen days. An evaluation facility shall
13 prepare an individualized habilitation plan that shall be
14 consistent with the least drastic means principle.

15 C. If the habilitation plan recommends residential
16 services, the evaluation facility shall file with the court a
17 petition for extended residential placement. Upon receipt of
18 the petition, the court shall appoint an attorney to represent
19 the proposed client. Notice of the hearing scheduled on the
20 petition and a copy of the habilitation plan shall be given to
21 the proposed client, the client's attorney and the client's
22 guardian. The petition shall contain a list of the names and
23 addresses of proposed witnesses.

24 D. At the hearing on the petition, the proposed
25 client shall be represented by counsel and shall have the right

underscored material = new
[bracketed material] = delete

1 to present evidence on the proposed client's behalf, including
2 testimony of a developmental disability professional of the
3 proposed client's choosing; to cross-examine witnesses; to be
4 present at the hearing; and to trial by a six-person jury, if
5 requested. A complete record of the hearing shall be made.
6 There shall be a right to an expeditious appeal.

7 E. The guardian of an adult involved in a commitment
8 proceeding for extended residential habilitation services shall
9 have automatic standing to appear at all stages of the
10 proceeding and shall be allowed to testify by telephone or
11 through affidavit if circumstances make live testimony too
12 burdensome.

13 F. The court shall include in its findings the
14 guardian's opinion regarding the need for residential
15 habilitation services or a statement detailing the efforts made
16 to ascertain the guardian's opinion.

17 G. The court shall order residential placement of the
18 proposed client if it is established by clear and convincing
19 evidence that the proposed client has a developmental
20 disability that creates an imminent likelihood of serious harm
21 to the proposed client's self or ~~[to others]~~ a likelihood of
22 serious harm to another, or the person is so greatly disabled
23 that residential services would be in the person's best
24 interest and that such residential placement is, in the
25 person's case, the least drastic means. The court's order of

.215844.3

underscoring material = new
~~[bracketed material] = delete~~

1 residential placement shall be for a period not to exceed six
2 months. At the expiration of the commitment order, the client
3 may be detained only after a new commitment hearing, unless
4 waived after consultation with the client's attorney, and entry
5 of a new order for commitment not to exceed six months.

6 H. The court shall order placement that is least
7 restrictive to the client and may order attendance and
8 participation as a nonresident in habilitation programs
9 conducted at residential or nonresidential facilities.

10 I. Any client involuntarily referred for habilitation
11 treatment shall be entitled to a reexamination of the order for
12 the client's involuntary referral for habilitation and
13 treatment on the client's own petition, or that of the client's
14 legal guardian, parent, spouse, relative or friend, to the
15 district court of the county in which the client resides or is
16 detained. Upon receipt of the petition, the court shall
17 conduct or cause to be conducted by a special commissioner a
18 proceeding in accordance with this section, except that a
19 proceeding shall not be required to be conducted if the
20 petition is filed sooner than sixty days after the issuance of
21 the order for involuntary referral for habilitation and
22 treatment or sooner than sixty days after the filing of a
23 previous petition under this subsection.

24 J. Nothing in this section shall limit the right of a
25 client to petition the court for a writ of habeas corpus.

.215844.3

underscored material = new
[bracketed material] = delete

1 K. No developmental disabilities treatment or
2 habilitation facility is required to detain, treat or provide
3 services to a client when the client does not appear to require
4 detention, treatment or habilitation."

5 SECTION 6. Section 43-1-22 NMSA 1978 (being Laws 1977,
6 Chapter 279, Section 22) is amended to read:

7 "43-1-22. TRANSPORTATION.--Whenever a [~~proposed patient~~
8 client is to be detained and provided emergency mental health
9 evaluation and treatment, committed to a residential mental
10 health [~~or developmental disability~~] facility or [~~to be~~
11 returned to [~~such~~] a [~~facility~~] residential treatment or
12 habilitation program during commitment, the court ordering the
13 commitment or authorizing the return of the [~~patient~~] client
14 may direct the sheriff, the New Mexico state police or other
15 appropriate persons to furnish suitable transportation in order
16 to effect [~~such~~] the detention and emergency mental health
17 evaluation and treatment, commitment or return [~~contacting the~~
18 ~~department for directions as to the destination~~] of the
19 [~~patient~~] client. The evaluation facility may direct the
20 sheriff, the state police or other appropriate person to
21 furnish suitable transportation for returning the client to the
22 county where the client was originally detained, and law
23 enforcement shall comply with that evaluation facility's
24 direction. The county where the person was originally detained
25 shall reimburse law enforcement in a timely manner in

.215844.3

underscoring material = new
[bracketed material] = delete

1 accordance with the provisions of Subsection Z of Section
2 43-1-10 NMSA 1978."

3 - 39 -

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

.215844.3