

CHAPTER 74

CHAPTER 74, LAWS 2002

AN ACT

RELATING TO THREATENING COMMUNICABLE DISEASES; PROVIDING FOR THE REPRESENTATION BY COUNSEL OF THE DETAINEE; CLARIFYING BURDEN OF PROOF REQUIREMENTS; REQUIRING THE SEALING OF RECORDS OF THE PROCEEDINGS; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 24-1-15 NMSA 1978 (being Laws 1973, Chapter 359, Section 15, as amended) is amended to read:

"24-1-15. REPORTING OF CONTAGIOUS DISEASES.--

A. When a physician or other person knows that a person is infected with a threatening communicable disease, he shall promptly notify a public health official or his authorized agent.

B. A public health official who has knowledge that a person is infected with a threatening communicable disease and has refused voluntary treatment, detention or observation shall petition the court for an order to detain the person who is infected with the threatening communicable disease until the person is no longer a contagious threat to the public or the person voluntarily complies with the appropriate treatment and contagion precautions.

C. The petition shall be made under oath or shall be accompanied by a sworn affidavit setting out specific facts showing that the person is infected with a threatening communicable disease.

D. The petition shall state that the person to be detained:

(1) is actively infectious with a threatening communicable disease or presents a substantial likelihood of having a threatening communicable disease based on credible medical evidence;

(2) poses a substantial likelihood of transmission of the threatening communicable disease to others because of inadequate separation from others; and

(3) after being advised of his condition and the risks posed thereby, has refused voluntary treatment.

E. Upon the filing of a petition the court shall:

(1) immediately grant ex parte a temporary order of protection to isolate the person infected with the threatening communicable disease if there is probable cause from the specific facts shown by the affidavit or by the petition to give the judge reason to believe that the person infected with a threatening communicable disease poses a substantial threat to the public health and safety;

(2) cause the temporary order of protection, notice of hearing and an advisement of the terms of the temporary protective order, including his right to representation and re-petition for termination of any protective order that removes and detains the infected person, to be immediately served on the allegedly infected person; and

(3) within five days after the granting of the temporary order of protection, hold an evidentiary hearing to determine if the court shall continue the order.

F. A person held pursuant to a temporary protective order as set forth in Subsection E of this section shall be:

(1) entitled to representation by counsel at the evidentiary hearing and at all hearings thereafter for the duration of the period of removal and detention; and

(2) permitted to communicate on any matter, including his removal and detention, with persons by telephone, or other reasonably available means, that do not expose other persons to the risk of infection for the duration of the period of removal and detention.

G. Counsel may be retained by the person held or shall be appointed by the court if the court determines that the person held cannot afford legal representation or if the court determines that appointment of counsel is required in the interest of justice.

H. At the evidentiary hearing the court shall review the circumstances surrounding the temporary order and, if the petitioner can show by clear and convincing evidence that the person being held has not voluntarily complied or will not voluntarily comply with appropriate treatment and contagion precautions, the court may continue the detention of the person infected with a threatening communicable disease. The court shall order regular review of the order to detain by providing the person being held with a subsequent hearing within ninety days of the temporary order's issuance and every ninety days thereafter. The detention order shall be terminated and the person shall be released if:

(1) the person being held is certified by a public health official to pose no further risk of infecting others;

(2) at a hearing, the petitioner, whose burden of proof continues under a clear and convincing standard, can no longer show that the person being held is infected with a threatening communicable disease and that he will not comply with appropriate treatment and contagion precautions voluntarily; or

(3) exceptional circumstances exist warranting the termination of the temporary protective order.

I. The provisions of this section do not permit the forcible administration of medications.

J. The proceedings shall be recorded stenographically, electronically, mechanically or by other appropriate means. The proceedings shall be closed to the general public and the records shall be sealed from public inspection.

K. A person who in good faith reports another person infected with a threatening communicable disease shall not be held liable for civil damages as a result of the report; provided that the person reported as being infected with a threatening communicable disease shall have the right to sue for damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of information to an unauthorized person.

L. For purposes of this section:

(1) "court" means the district court of the judicial district where the person who is alleged to be infected with a threatening communicable disease resides or is found;

(2) "public health official" means a district health officer, the director of the public health division of the department of health, a chief medical officer or a person designated by the secretary of health to carry out the duties provided in this section; and

(3) "threatening communicable disease" means a disease that causes death or great bodily harm, passes from one person to another and for which there is no means by which the public reasonably can avoid the risk of contracting the disease."