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SENATE BILL 950

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Leonard Tsosie

AN ACT

RELATING TO COMMITMENT PROCEDURES; ENACTING THE DETOXIFICATION REFORM ACT; PROVIDING FOR PROTECTIVE CUSTODY AND COMMITMENT OF PERSONS IMPAIRED BY ALCOHOL OR DRUGS; ESTABLISHING REQUIREMENTS FOR DISCHARGE OF VOLUNTARY CLIENTS; LIMITING CIVIL LIABILITY.

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

Section 1. A new section of Chapter 43, Article 2 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE. -- Chapter 43, Article 2 NMSA 1978 may be cited as the "Detoxification Reform Act". "

Section 2. Section 43-2-2 NMSA 1978 (being Laws 1977, Chapter 374, Section 1, as amended) is amended to read:

"43-2-2. DEFINITIONS. -- As used in [~~Sections 43-2-2 through 43-2-15 NMSA 1978~~] the Detoxification Reform Act:

A. [~~"alcoholic"~~] "alcohol-impaired person" means a

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1 person who [~~habitually lacks self-control as to the use of~~
2 ~~alcoholic beverages or~~] uses alcoholic beverages to the extent
3 that [~~his~~] the person's health [~~is~~] and well-being are
4 substantially impaired or endangered; [~~or his social or~~
5 ~~economic function is substantially disrupted;~~

6 B. ~~"approved private treatment facility" means a~~
7 ~~private facility meeting the standards prescribed in~~
8 ~~regulations of the division for the care and treatment of~~
9 ~~alcoholics or drug-impaired persons;~~

10 C. ~~"approved public treatment facility" means any~~
11 ~~institution under the supervision of the division and approved~~
12 ~~by the substance abuse bureau for the care and treatment of~~
13 ~~alcoholics or drug-impaired persons, or any public institution~~
14 ~~approved by the bureau for the care and treatment of alcoholics~~
15 ~~or drug-impaired persons; but not specifically under the~~
16 ~~supervision of the division;]~~

17 B. "authorized person" means a physician or police
18 officer;

19 C. "consistent with the least drastic means
20 principle" means that the habilitation, protective custody or
21 treatment and the conditions of habilitation, protective
22 custody or treatment separately and in combination:

23 (1) are no more harsh, hazardous or intrusive
24 than necessary to achieve acceptable treatment objectives or
25 protection for the person committed; and

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1 (2) involve no restrictions on physical
2 movement except as reasonably necessary for the administration
3 of treatment, for the security of the facility or for the
4 protection of the person committed or another from physical
5 injury;

6 D. "department" means the ~~[health and environment]~~
7 department of health;

8 ~~[E. "division" means the behavioral health services~~
9 ~~division of the health and environment department;~~

10 F.] E. "drug-impaired person" means a person who
11 ~~[habitually lacks self-control as to the use of drugs or]~~ uses
12 drugs to the extent that ~~[his]~~ the person's health ~~[is]~~ and
13 well-being are substantially impaired or endangered; ~~[or his~~
14 ~~social or economic function is substantially disrupted;~~

15 ~~G.]~~ F. "incapacitated ~~[by alcohol or drugs]~~ person"
16 means ~~[that]~~ a person who, as a result of the use of alcohol or
17 drugs, is unconscious or has ~~[his]~~ the person's judgment
18 otherwise so impaired that ~~[he]~~ the person is incapable of
19 realizing and making rational decisions;

20 ~~[H.]~~ G. "intoxicated person" means a person whose
21 mental or physical functioning is substantially impaired as a
22 result of the use of alcohol or drugs;

23 H. "likely to inflict serious physical harm on
24 another" means that it is more likely than not that in the near
25 future the person will inflict serious, unjustified bodily harm

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1 on another person or commit a criminal sexual offense as
2 evidenced by behavior causing, attempting or threatening such
3 harm, which behavior gives rise to a reasonable fear of such
4 harm from that person;

5 I. "likely to inflict serious physical harm on
6 himself" means that it is more likely than not that in the near
7 future the person will attempt to commit suicide or will cause
8 serious bodily harm to himself by violent or passive or other
9 self-destructive means as evidenced by behavior causing,
10 attempting or threatening the infliction of serious bodily harm
11 to himself;

12 J. "protective custody" means voluntary or
13 involuntary confinement of an intoxicated person, for a period
14 not less than twelve hours or more than seventy-two hours in
15 length and under conditions consistent with the least drastic
16 means principle;

17 [~~F.~~] K. "treatment" means the broad range of
18 emergency, outpatient, intermediate and inpatient services and
19 care, including protective custody, diagnostic evaluation,
20 medical, psychiatric, psychological and social service care,
21 vocational rehabilitation and career counseling, which may be
22 extended to [~~alcoholics~~] alcohol-impaired, drug-impaired and
23 intoxicated persons; and

24 [~~J.~~] "~~consistent with the least drastic means~~
25 ~~principle" means that the habilitation or treatment and the~~

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1 ~~conditions of habilitation or treatment for the client~~
2 ~~separately and in combination:~~

3 ~~(1) are no more harsh, hazardous or intrusive~~
4 ~~than necessary to achieve acceptable treatment objectives for~~
5 ~~such client;~~

6 ~~(2) involve no restrictions on physical~~
7 ~~movement and require no residential care except as reasonably~~
8 ~~necessary for the administration of treatment or for the~~
9 ~~protection of such client or another from physical injury; and~~

10 ~~(3) are conducted at the suitable available~~
11 ~~facility closest to the client's place of residence;~~

12 ~~K. "likely to inflict serious physical harm on~~
13 ~~himself" means that it is more likely than not that in the near~~
14 ~~future the person will attempt to commit suicide or will cause~~
15 ~~serious bodily harm to himself by violent or passive or other~~
16 ~~self-destructive means as evidenced by behavior causing,~~
17 ~~attempting or threatening the infliction of serious bodily harm~~
18 ~~to himself; and~~

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

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1 L. "treatment facility" means:

2 (1) an institution under the supervision of
3 the department and approved by the department for the care and
4 treatment of alcohol-impaired persons or drug-impaired persons;

5 (2) a public institution approved by the
6 department for the care and treatment of alcohol-impaired
7 persons or drug-impaired persons, but not specifically under
8 the supervision of the department;

9 (3) a detention center providing protective
10 custody; or

11 (4) any other facility that provides any of
12 the services specified in the Detoxification Reform Act and is
13 licensed by the department for those services. "

14 Section 3. Section 43-2-3 NMSA 1978 (being Laws 1989,
15 Chapter 378, Section 4) is amended to read:

16 "43-2-3. POLICY OF STATE REGARDING [ALCOHOLISM] SUBSTANCE
17 ABUSE. --It is the policy of this state that [alcoholics and]
18 intoxicated and incapacitated persons may not be subjected to
19 criminal prosecution [because of their consumption of alcoholic
20 beverages], but rather should be afforded protection. It is
21 further the policy of this state that alcohol-impaired persons
22 and drug-impaired persons should be afforded a continuum of
23 treatment in order that they may lead normal lives as
24 productive members of society."

25 Section 4. Section 43-2-5 NMSA 1978 (being Laws 1949,

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1 Chapter 114, Section 3, as amended) is amended to read:

2 "43-2-5. DUTIES OF [~~SUBSTANCE ABUSE BUREAU~~] THE
3 DEPARTMENT. -- The [~~substance abuse bureau of the division~~]
4 department shall study the problem of alcoholism and drug
5 abuse, including methods and facilities available for the care,
6 custody, detention, treatment, employment and rehabilitation of
7 persons addicted to the intemperate use of spirituous or
8 intoxicating liquors or drugs. The [~~bureau~~] department shall
9 promote meetings for the discussion of problems confronting
10 treatment facilities, clinics and agencies engaged in [~~the~~]
11 protective custody, treatment and rehabilitation of
12 [~~alcoholics~~] alcohol-impaired persons and drug-impaired persons
13 and shall disseminate information on the subject of alcoholism
14 and drug abuse for the assistance and guidance of residents and
15 courts of the state. [~~The bureau shall suggest to the division~~
16 ~~reasonable regulations respecting the care and treatment of~~
17 ~~patients and persons committed to state institutions by reason~~
18 ~~of alcoholism or impairment due to drugs being a primary or~~
19 ~~contributory factor to the cause for such commitment, and the~~
20 ~~division with the approval of the secretary of health, and~~
21 ~~environment]~~ The department shall make such reasonable
22 [~~regulations~~] rules respecting the care and treatment of
23 [~~patients and~~] persons committed to [~~the bureau's care and the~~
24 ~~management of the bureau's affairs~~] a treatment facility as it
25 deems necessary, [~~The health and environment department shall~~

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1 ~~adopt and may amend and repeal rules and regulations for~~
2 ~~acceptance of persons into treatment programs, considering~~
3 ~~available treatment resources and facilities, for the purpose~~
4 ~~of early and effective treatment of alcoholics, intoxicated~~
5 ~~persons and persons impaired by drugs]~~ including such rules it
6 deems appropriate for minors. In establishing the rules [~~and~~
7 ~~regulations]~~ with respect to persons committed pursuant to
8 Section 43-2-9 NMSA 1978, the [~~division]~~ department shall be
9 guided by the following standards:

10 A. if possible, a [~~patient]~~ person shall be treated
11 on a voluntary rather than an involuntary basis;

12 B. a [~~patient]~~ person shall be initially assigned
13 or transferred to outpatient or intermediate treatment, unless
14 [~~he]~~ the person is found to require inpatient treatment;

15 C. a person shall not be denied treatment solely
16 because [~~he]~~ the person has withdrawn from treatment against
17 medical advice on a prior occasion or because [~~he]~~ the person
18 has relapsed after earlier treatment;

19 D. an individual treatment plan shall be prepared
20 and maintained on a current basis for each [~~patient]~~ person;
21 and

22 E. provisions shall be made for a continuum of
23 coordinated treatment services, so that a person who leaves a
24 facility or a form of treatment will have available and utilize
25 other appropriate treatment."

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1 Section 5. Section 43-2-8 NMSA 1978 (being Laws 1977,
2 Chapter 374, Section 5, as amended) is amended to read:

3 "43-2-8. ~~[EMERGENCY COMMITMENT]~~ PROTECTIVE CUSTODY. --

4 A. An intoxicated or ~~[drug-impaired]~~ incapacitated
5 person may be committed to ~~[an approved public or private]~~ a
6 treatment facility at the request of an authorized person for
7 ~~[emergency treatment]~~ protective custody, if ~~[he]~~ the
8 authorized person has probable cause to believe that the person
9 to be committed:

10 (1) is disorderly in a public place;

11 (2) is unable to care for the person's own
12 safety;

13 ~~[(1)]~~ (3) has threatened, attempted or
14 inflicted physical harm on himself or another;

15 (4) has threatened, attempted or inflicted
16 damage to the property of another;

17 ~~[(2)]~~ (5) is likely to inflict serious
18 physical harm on himself;

19 ~~[(3)]~~ (6) is likely to inflict serious
20 physical harm on another ~~[unless committed];~~ or

21 ~~[(4)]~~ (7) is incapacitated by alcohol or
22 drugs. ~~[or~~

23 ~~(5) has been taken into protective custody~~
24 ~~three or more times within thirty consecutive days by a peace~~
25 ~~officer or public service officer because of his intoxicated or~~

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1 ~~drug-impaired condition as provided for in Subsection C of~~
2 ~~Section 43-2-18 NMSA 1978, provided there is space available in~~
3 ~~a treatment facility for that person.]~~

4 A refusal to undergo treatment does not constitute
5 conclusive evidence of lack of judgment as to the need for
6 treatment.

7 B. ~~[The certifying physician, spouse, guardian or~~
8 ~~relative of the person to be committed or any other responsible~~
9 ~~person, including a public employee or elected official, may]~~

10 An authorized person shall make a written application for
11 commitment under this section, directed to the [administrator]
12 administration of the [approved public] treatment facility [or
13 ~~the district attorney where the proposed patient is in~~
14 ~~residence or is present who shall direct the application to the~~
15 ~~administrator of an approved public or private treatment~~
16 ~~facility]. The application shall state facts [to] in support
17 of the need for [emergency treatment consistent with the least
18 ~~drastic means principle, and, unless a medical examination has~~
19 ~~been refused, shall be accompanied by a physician's~~
20 ~~certificate, except as provided in this section, stating that~~
21 ~~he has examined the person sought to be committed within two~~
22 ~~days before the certificate's date and facts supporting the~~
23 ~~need for emergency treatment. A physician employed by the~~
24 ~~admitting facility or the division is not eligible to be the~~
25 ~~certifying physician. A peace officer or public service~~~~

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1 ~~officer submitting an application for emergency commitment~~
2 ~~pursuant to Paragraph (5) of Subsection A of this section shall~~
3 ~~not be required to present with the application a physician's~~
4 ~~certificate or evidence of refusal of medical examination, but~~
5 ~~shall certify three or more dates from the record of protective~~
6 ~~custody maintained as required by Subsection D of Section~~
7 ~~43-2-22 NMSA 1978 on which the intoxicated or drug-impaired~~
8 ~~person was placed in protective custody, which dates are within~~
9 ~~the thirty days preceding the date upon which the application~~
10 ~~is submitted] protective custody.~~

11 C. Upon approval of the form of the application by
12 the [administrator] administration in charge of the [approved
13 public or private] treatment facility, the person shall be
14 [brought to the facility by the applicant for commitment the
15 person's spouse, the person's guardian, any other interested
16 person or by a peace officer if the applicant for commitment,
17 the person's spouse, the person's guardian or any other
18 interested person is unable to bring the person to the facility
19 or by a peace officer or public service officer if the
20 application for commitment was submitted pursuant to Paragraph
21 (5) of Subsection A of this section. ~~The person shall be]~~
22 retained at the facility to which [he] the person was admitted
23 or transferred to another appropriate [public or private]
24 treatment facility until discharged under Subsection E of this
25 section.

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1 D. The ~~[administrator]~~ administration in charge of
2 ~~[an approved public or private]~~ a treatment facility ~~[shall]~~
3 may refuse an application if ~~[in his opinion the application~~
4 ~~and certificate fail to sustain the grounds for commitment]~~ the
5 treatment facility is at its relevant capacity or if the person
6 to be committed is deemed too ill, injured, disruptive or
7 dangerous to himself or another to be managed at the treatment
8 facility.

9 E. ~~[When on the advice of the medical staff the~~
10 ~~administrator determines that the grounds for commitment no~~
11 ~~longer exist, he shall discharge a person committed under this~~
12 ~~section. No person committed under this section may be~~
13 ~~detained in any treatment facility for more than five days.]~~ An
14 intoxicated person transported to a treatment facility pursuant
15 to this subsection shall not be detained at the facility:

16 (1) once the person's blood or breath alcohol
17 concentration level is zero, if alcohol-impaired, and there is
18 no probable cause to believe the person remains at risk of
19 physical harm to himself or another; or

20 (2) for more than seventy-two hours after
21 admission, absent pendency of a petition filed pursuant to
22 Section 43-2-9 NMSA 1978.

23 F. An intoxicated person held in protective custody
24 pursuant to the Detoxification Reform Act shall not be
25 considered to have been arrested or charged with any crime.

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1 G. A record of protective custody shall not be
2 considered as an arrest or criminal record.

3 H. If a petition for involuntary commitment under
4 Section 43-2-9 NMSA 1978 has been filed within ~~[the five days~~
5 ~~and]~~ seventy-two hours of the admission of the person, the
6 ~~[administrator]~~ administration in charge of ~~[an approved public~~
7 ~~or private]~~ a treatment facility ~~[finds that grounds for~~
8 ~~emergency commitment still exist, he may]~~ shall detain the
9 person until the petition has been heard and determined, but no
10 longer than ten days after filing the petition.

11 ~~[F.]~~ I. A copy of the written application for
12 commitment and ~~[the physician's certificate and]~~ a written
13 explanation of the person's right to contact counsel shall be
14 given by the administration to the person ~~[and to the district~~
15 ~~attorney within twelve hours]~~ as soon as practicable after
16 commitment ~~[by the administrator, who].~~ The administration
17 shall also provide a reasonable opportunity for the person to
18 ~~[consult]~~ contact counsel.

19 J. A person committed to protective custody under
20 this section may at any time seek to be discharged from
21 commitment by writ of habeas corpus. The venue for proceedings
22 under this section is the district court for the county in
23 which the person to be committed resides or is present."

24 Section 6. Section 43-2-9 NMSA 1978 (being Laws 1977,
25 Chapter 374, Section 6, as amended) is amended to read:

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1 "43-2-9. COMMITMENT-- HEARING. --

2 A. A person may be committed to the custody of [~~the~~
3 ~~substance abuse bureau of the division or to an approved~~
4 ~~licensed private~~] a treatment facility by the district court
5 upon the petition of the district attorney on behalf of the
6 person's spouse, guardian or relative or the certifying
7 physician [~~or the administrator in charge of any approved~~
8 ~~public or private treatment facility~~]. The petition shall
9 allege that the person is [~~an alcoholic~~] alcohol-impaired or
10 [~~drug-impaired~~] drug-impaired and habitually lacks self-control
11 as to the use of alcoholic beverages or drugs and that [~~he~~] the
12 person has threatened, attempted or inflicted physical harm on
13 himself or another and that unless committed is likely to
14 inflict physical harm on himself or another or that [~~he~~] the
15 person is incapacitated by alcohol or drugs. A refusal to
16 undergo treatment does not constitute evidence of lack of
17 judgment as to the need for treatment. The petition shall be
18 accompanied by a certificate of a licensed physician who has
19 examined the person within two days before submission of the
20 petition, unless the person whose commitment is sought has
21 refused to submit to a medical examination, in which case the
22 fact of refusal shall be alleged in the petition. The
23 certificate shall set forth the physician's findings in support
24 of the allegations of the petition.

25 B. Upon filing the petition, the court shall fix a

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1 date for a hearing no later than ten days after the date the
2 petition was filed. The person whose commitment is sought
3 shall be represented by counsel at all stages of the proceeding
4 regardless of ~~[his]~~ the person's wishes. The court shall
5 appoint counsel if the person whose commitment is sought is
6 indigent. A copy of the petition and notice of hearing,
7 including the date fixed by the court and appointed counsel,
8 shall be served on the petitioner, the person whose commitment
9 is sought, a parent or a ~~[legal]~~ guardian if ~~[he]~~ the person is
10 a minor, the ~~[administrator]~~ administration in charge of ~~[an~~
11 ~~approved public or private]~~ a treatment facility to which ~~[he]~~
12 the person has been committed for ~~[emergency care]~~ protective
13 custody and any other person the court believes advisable.
14 Also to be served upon the person whose commitment is sought is
15 an advice of rights informing the person that ~~[he]~~ the person
16 has a right to be examined by a licensed physician of ~~[his]~~ the
17 person's choice prior to the hearing date. If the person is
18 unable to obtain a licensed physician and requests examination
19 by a physician within five days of service of the petition, the
20 court shall employ a licensed physician. If the person whose
21 commitment is sought refuses to see a licensed physician and
22 the prosecuting attorney believes that such examination is
23 necessary, the prosecuting attorney upon motion may ask the
24 court to grant leave for an examination to be ordered against
25 the person whose commitment is sought. Cost for the

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1 examination shall be borne by the county in which the person
2 resides if [~~he~~] the person is indigent. Upon the court
3 granting such motion, the court may issue an order to the
4 person informing him that he shall be examined by a licensed
5 physician at the date, time and place stated in the order, and
6 the hearing shall be continued for a period not to exceed seven
7 days.

8 C. At the hearing, the court shall hear all
9 relevant testimony, including, if possible, the testimony of at
10 least one licensed physician who has examined the person whose
11 commitment is sought. The person shall be present unless the
12 court or [~~his~~] the person's counsel believes that [~~his~~] the
13 person's presence is likely to be injurious to [~~him~~] the person
14 or [~~he~~] the person is so incapacitated that [~~he~~] the person
15 cannot understand the nature of the proceeding. The person
16 shall at all times be represented by counsel. The court shall
17 examine the person in open court or, if advisable, shall
18 examine the person out of court. If the person has failed to
19 appear at a court-ordered examination prior to the hearing and
20 there is sufficient evidence to believe that the allegations of
21 the petition are true or if the court believes that more
22 medical evidence is necessary, the court may make a temporary
23 order committing [~~him~~] the person to [~~the substance abuse~~
24 ~~bureau or an approved licensed private~~] a treatment facility
25 for a period of not more than five days for the purposes of

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1 diagnostic examination.

2 D. If after hearing all relevant evidence,
3 including the results of any diagnostic examination by [~~the~~
4 ~~substance abuse bureau or an approved licensed private~~] a
5 treatment facility, the court finds that grounds for
6 involuntary commitment have been established by clear and
7 convincing proof, it shall make an order of commitment to [~~the~~
8 ~~substance abuse bureau or to an approved licensed private~~] a
9 treatment facility. It shall not order commitment of a person
10 unless it determines that the appropriate treatment for [~~him~~
11 the person] is available and the treatment is likely to be
12 beneficial.

13 E. A person committed under this section shall
14 remain in the custody of [~~the substance abuse bureau or an~~
15 ~~approved licensed private~~] a treatment facility for treatment
16 for a period of thirty days unless sooner discharged. At the
17 end of the thirty-day period, [~~he~~] the person shall be
18 discharged automatically unless [~~the substance abuse bureau or~~
19 ~~an approved licensed private treatment facility~~], before the
20 expiration of the period, [~~obtains~~] a court order is obtained
21 for [~~his~~] the person's recommitment upon the grounds set forth
22 in Subsection A of this section for a period of ninety days
23 unless sooner discharged. [~~If a person has been committed~~
24 ~~because he is likely to inflict physical harm on another, the~~
25 ~~substance abuse bureau or an approved licensed private~~

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1 ~~treatment facility shall apply for recommitment if after~~
2 ~~examination it is determined that the likelihood still exists].~~

3 F. A person recommitment under Subsection E of this
4 section who has not been discharged by [~~the substance abuse~~
5 ~~bureau or an approved licensed private~~] a treatment facility
6 before the end of the ninety-day period shall be discharged at
7 the expiration of that period unless the [~~substance abuse~~
8 ~~bureau or an approved licensed private~~] administration of a
9 treatment facility, before the expiration of the period,
10 obtains a court order on the grounds set forth in Subsection A
11 of this section for recommitment for a further period not to
12 exceed ninety days. [~~If a person has been committed because he~~
13 ~~is likely to inflict physical harm on another, the substance~~
14 ~~abuse bureau or an approved licensed private treatment facility~~
15 ~~shall apply for recommitment if after examination it is~~
16 ~~determined that the likelihood still exists.] Only two
17 recommitment orders under Subsections E and F of this section
18 are permitted.~~

19 G. Upon the filing of a petition for recommitment
20 under Subsection E or F of this section, the court shall fix a
21 date for hearing no later than ten days after the date the
22 petition was filed. A copy of the petition and of the notice
23 of hearing, including the date fixed by the court, shall be
24 served on the petitioner, the person whose commitment is
25 sought, [~~his~~] the person's next of kin other than the

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1 petitioner, the original petitioner under Subsection A of this
2 section, if different from the petitioner for recommitment, one
3 of ~~[his]~~ the person's parents or ~~[his-legal]~~ the person's
4 guardian if ~~[he]~~ the person is a minor, the administration of
5 the treatment facility to which the person has been committed
6 and any other person the court believes advisable. At the
7 hearing, the court shall proceed as provided in Subsection C of
8 this section.

9 H. ~~[The substance abuse bureau or an approved~~
10 ~~licensed private]~~ A treatment facility shall provide for
11 adequate and appropriate treatment of a person committed to its
12 custody. ~~[The substance abuse bureau or an approved licensed~~
13 ~~private]~~ A treatment facility may transfer any person committed
14 to its custody from one ~~[approved public]~~ treatment facility to
15 another only if transfer is medically advisable or if the
16 person's parent, spouse, sibling, adult child or guardian
17 requests transfer and the administration of the second
18 treatment facility consents.

19 I. A person committed to the custody of ~~[the~~
20 ~~substance abuse bureau or an approved licensed private]~~ a
21 treatment facility for treatment shall be discharged at any
22 time before the end of the period for which ~~[he]~~ the person has
23 been committed if either of the following conditions is met:

24 (1) in case of an ~~[alcoholic]~~ alcohol-impaired
25 person or drug-impaired person committed on the grounds of

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1 likelihood of infliction of physical harm upon another, that
2 [he] the person is no longer [~~an alcoholic~~] impaired by alcohol
3 or impaired by drugs or the likelihood no longer exists; or

4 (2) in case of [~~an alcoholic or~~] a person
5 impaired by alcohol or drugs committed on the grounds of the
6 need for treatment and incapacity, that the incapacity no
7 longer exists, further treatment will not be likely to bring
8 about significant improvement in the person's condition or
9 treatment is no longer adequate or appropriate.

10 [~~J. If an approved private treatment facility~~
11 ~~agrees with the request of a patient or his parent, spouse,~~
12 ~~sibling, adult child or guardian to accept the patient for~~
13 ~~treatment, the administrator of the public treatment facility~~
14 ~~shall transfer him to the private treatment facility.~~

15 [~~K.~~] J. A person committed under this section may at
16 any time seek to be discharged from commitment by writ of
17 habeas corpus.

18 [~~L.~~] K. The venue for proceedings under this
19 section is the district court for the county in which the
20 person to be committed resides or is present."

21 Section 7. Section 43-2-10 NMSA 1978 (being Laws 1949,
22 Chapter 114, Section 8, as amended) is amended to read:

23 "43-2-10. PROBATION--DISCHARGE.--Any person committed to
24 the custody of [~~the substance abuse bureau or an approved~~
25 ~~licensed private~~] a treatment facility of the [~~division under~~]

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1 department pursuant to Section 43-2-9 NMSA 1978 [~~may,~~
2 ~~notwithstanding the terms of any order of commitment~~] shall be
3 permitted to go at large on probation and without custody or
4 restraint for such time and under such conditions as [~~the chief~~
5 ~~of the substance abuse bureau or an approved licensed private~~
6 ~~treatment facility judges best. Persons placed in custody~~
7 ~~under any provision of Sections 43-2-2 through 43-2-15 NMSA~~
8 ~~1978 may be discharged by the chief of the substance abuse~~
9 ~~bureau or an approved licensed private treatment facility~~
10 ~~pursuant to division regulations~~] may be established by court
11 order. "

12 Section 8. Section 43-2-11 NMSA 1978 (being Laws 1949,
13 Chapter 114, Section 9, as amended) is amended to read:

14 "43-2-11. VOLUNTARY [~~PATIENTS~~] CLIENTS. --

15 A. [~~Upon the recommendation of the chief of the~~
16 ~~substance abuse bureau of the division~~] The [~~administrator~~]
17 administration of [~~any approved public~~] a treatment facility
18 [~~shall~~] may receive any [~~alcoholic~~] intoxicated person,
19 alcohol-impaired person or drug-impaired person who applies to
20 be received as a client into the facility [~~treat him in the~~
21 ~~same manner as if committed by the district court and release~~
22 ~~him pursuant to the rules and regulations of the division~~]. If
23 the voluntary client is:

24 (1) intoxicated, the client shall be
25 discharged pursuant to Subsection E of Section 43-2-8 NMSA

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[bracketed material] = delete

1 1978; or

2 (2) not intoxicated, the client shall be
3 discharged at the request of the client or, in the absence of
4 such a request, at the discretion of the administration.

5 B. If a voluntary [~~patient~~] client leaves [~~an~~
6 ~~approved public~~] a treatment facility with or against the
7 advice of the [~~administrator in charge of the facility~~]
8 administration in charge of the facility, the [~~division~~]
9 department shall make reasonable provisions for [~~his~~] the
10 client's transportation to another facility or to [~~his~~] the
11 client's home. [~~If he has no home, he shall be assisted in~~
12 ~~obtaining shelter.~~]

13 C. [~~Any~~] A resident of the state who voluntarily
14 submits himself for treatment in accordance with [~~Sections~~
15 ~~43-2-2 through 43-2-15 NMSA 1978~~] the Detoxification Reform Act
16 shall not forfeit or abridge thereby any of [~~his~~] the
17 resident's rights as a citizen of the state. The fact that
18 [~~he~~] the resident has submitted himself for treatment or that
19 [~~he~~] the resident has been given help or guidance shall not be
20 used against [~~him~~] the resident in any proceeding in any court.
21 The record of [~~any such~~] the voluntary [~~patient~~] client shall
22 be confidential and shall not be divulged except on order of
23 the court or upon receipt of a waiver and release duly executed
24 by the client. "

25 Section 9. Section 43-2-19 NMSA 1978 (being Laws 1973,

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1 Chapter 331, Section 4) is amended to read:

2 "43-2-19. [~~SEARCH BY~~] PEACE OFFICER OR PUBLIC SERVICE
3 OFFICER--NO LIABILITY.--

4 A. A peace officer or public service officer may,
5 if [~~he~~] the officer reasonably believes it necessary for [~~his~~]
6 the officer's own safety, make a protective search of an
7 intoxicated person before transporting [~~him~~] the person to a
8 residence, [~~health care~~] treatment facility or jail. [~~No peace~~
9 ~~officer or public service officer~~]

10 B. A peace officer or public service officer shall
11 not be held [~~criminally or~~] civilly liable for assault, false
12 imprisonment or other alleged torts or crimes on account of
13 reasonable measures taken under the authority of the
14 Detoxification Reform Act, if such measures were, in fact,
15 reasonable and did not involve use of excessive or unnecessary
16 force. "

17 Section 10. Section 43-2-20 NMSA 1978 (being Laws 1973,
18 Chapter 331, Section 5) is amended to read:

19 "43-2-20. NOTIFICATION OF FAMILY.--Whenever an
20 intoxicated person is [~~transported by a peace officer or public~~
21 ~~service officer to a health care facility or jail~~] committed to
22 protective custody, the [~~person~~] administration in charge of
23 [~~that~~] the treatment facility [~~or jail at the time~~] shall [~~see~~
24 ~~that a responsible~~] provide the person an opportunity to
25 contact a member of the intoxicated person's family [~~is~~

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[bracketed material] = delete

1 ~~notified of his presence there~~] as soon as practicable. "

2 Section 11. Section 43-2-21 NMSA 1978 (being Laws 1973,
3 Chapter 331, Section 6) is amended to read:

4 "43-2-21. LIABILITY FOR COSTS. -- Any intoxicated person
5 having transportation, shelter or treatment furnished to ~~[him]~~
6 the person as an intoxicated person under the Detoxification
7 Reform Act shall be liable to the furnishing city, county or
8 ~~[health care or other]~~ treatment facility for its reasonable
9 costs in providing that transportation, shelter ~~[and]~~ or
10 treatment. "

11 Section 12. A new section of Chapter 43, Article 2 NMSA
12 1978 is enacted to read:

13 "[NEW MATERIAL] CIVIL LIABILITY. -- Physicians and treatment
14 facilities and their officers, directors and employees shall
15 not be liable to any person held on account of reasonable
16 measures taken under the authority of the Detoxification Reform
17 Act, absent proof of negligence or intentional misconduct. "

18 Section 13. REPEAL. -- Sections 43-2-16 through 43-2-18 and
19 Section 43-2-22 NMSA 1978 (being Laws 1973, Chapter 331,
20 Sections 1 through 3 and 7, as amended) are repealed.

21 Section 14. EFFECTIVE DATE. -- The effective date of the
22 provisions of this act is July 1, 2005.