

AN ACT

RELATING TO COMMITMENT PROCEDURES; ENACTING THE DETOXIFICATION REFORM ACT; PROVIDING FOR PROTECTIVE CUSTODY 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:

"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 the Detoxification Reform Act:

A. "alcohol-impaired person" means a person who uses alcoholic beverages to the extent that the person's health and well-being are substantially impaired or endangered;

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

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

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

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

D. "department" means the department of health;

E. "detention center" means a city, county or other jail, the administration of which agrees to accept intoxicated persons for protective custody; provided, however, that a detention center is authorized to hold a person in protective custody pursuant to Section 43-2-8 NMSA 1978 but is not otherwise subject to the provisions of the Detoxification Reform Act;

F. "drug-impaired person" means a person who uses drugs to the extent that the person's health and well-being are substantially impaired or endangered;

G. "incapacitated person" means a person who, as a result of the use of alcohol or drugs, is unconscious or has the person's judgment otherwise so impaired that the person is incapable of realizing and making rational decisions;

H. "intoxicated person" means a person whose mental or physical functioning is substantially impaired as a

result of the use of alcohol or drugs;

I. "likely to inflict serious physical harm on another" means that it is more likely than not that in the near future the person will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from that person;

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

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

L. "treatment" means the broad range of emergency, outpatient, intermediate and inpatient services and care, including protective custody, diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling, which may be extended to alcohol-impaired, drug-impaired and intoxicated persons; and

M. "treatment facility" means:

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

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

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

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

"43-2-3. POLICY OF STATE REGARDING SUBSTANCE ABUSE.--It is the policy of this state that intoxicated and incapacitated persons may not be subjected to criminal prosecution, but rather should be afforded protection. It is further the policy of this state that alcohol-impaired persons and drug-impaired persons should be afforded treatment in order that they may lead normal lives as productive members of society."

Section 4. Section 43-2-5 NMSA 1978 (being Laws 1949, Chapter 114, Section 3, as amended) is amended to read:

"43-2-5. DUTIES OF THE DEPARTMENT.--

A. The department shall study the problem of alcoholism and drug abuse, including methods and facilities available for the care, custody, detention, treatment, employment and rehabilitation of persons addicted to the intemperate use of spirituous or intoxicating liquors or drugs. The department shall promote meetings for the discussion of problems confronting treatment facilities, clinics and agencies engaged in protective custody, treatment and rehabilitation of alcohol-impaired persons and drug-impaired persons and shall disseminate information on the subject of alcoholism and drug abuse for the assistance and guidance of residents and courts of the state.

B. The department shall make such reasonable rules for treatment facilities concerning physical conditions for protective custody commitments pursuant to Section 43-2-8 NMSA 1978 as it deems necessary, including such rules it deems appropriate for minors."

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

"43-2-8. PROTECTIVE CUSTODY.--

A. An intoxicated or incapacitated person may be committed to a treatment facility at the request of an authorized person for protective custody, if the authorized person has probable cause to believe that the person to be committed:

- (1) is disorderly in a public place;
- (2) is unable to care for the person's own safety;
- (3) has threatened, attempted or inflicted physical harm on himself or another;
- (4) has threatened, attempted or inflicted damage to the property of another;
- (5) is likely to inflict serious physical harm on himself;
- (6) is likely to inflict serious physical harm on another; or
- (7) is incapacitated by alcohol or drugs.

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

B. An authorized person shall make a written application for commitment under this section, directed to the administration of the treatment facility. The application shall state facts in support of the need for protective custody.

C. Upon approval of the form of the application by the administration in charge of the treatment facility, the person shall be retained at the facility to which the person was admitted or transferred to another appropriate treatment facility until discharged under Subsection E of this section.

D. The administration in charge of a treatment facility may refuse an application if the treatment facility is at its relevant capacity or if the person to be committed is deemed too ill, injured, disruptive or dangerous to himself or another to be managed at the treatment facility.

E. An intoxicated person transported to a treatment facility pursuant to this subsection shall not be detained at the facility:

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

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

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

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

H. A copy of the written application for commitment and a written explanation of the person's right to contact counsel shall be given by the administration to the person as soon as practicable after commitment. The administration of the treatment facility shall arrange

translation of the application and explanation of rights for those who are unable to read the same. The administration shall also provide a reasonable opportunity for the person to contact counsel."

Section 6. Section 43-2-11 NMSA 1978 (being Laws 1949, Chapter 114, Section 9, as amended) is amended to read:

"43-2-11. VOLUNTARY CLIENTS.--

A. The administration of a treatment facility may receive any intoxicated person, alcohol-impaired person or drug-impaired person who applies to be received as a client into the facility. If the voluntary client is:

(1) intoxicated, the client shall be discharged pursuant to Subsection E of Section 43-2-8 NMSA 1978; or

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

B. If a voluntary client leaves a treatment facility with or against the advice of the administration in charge of the facility, the department shall make reasonable provisions for the client's transportation to another facility or to the client's home.

C. A client who voluntarily submits himself for treatment in accordance with the Detoxification Reform Act shall not forfeit or abridge thereby any of the client's

rights. The fact that the client has submitted himself for treatment or that the client has been given help or guidance shall not be used against the client in any proceeding in any court. The record of the voluntary commitment shall be confidential and shall not be divulged except on order of the court or upon receipt of a waiver and release duly executed by the client volunteering for commitment."

Section 7. Section 43-2-19 NMSA 1978 (being Laws 1973, Chapter 331, Section 4) is amended to read:

"43-2-19. PEACE OFFICER OR PUBLIC SERVICE OFFICER--NO LIABILITY.--

A. A peace officer or public service officer may, if the officer reasonably believes it necessary for the officer's own safety, make a protective search of an intoxicated person before transporting the person to a residence, treatment facility or detention center.

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

Section 8. Section 43-2-20 NMSA 1978 (being Laws 1973, Chapter 331, Section 5) is amended to read:

"43-2-20. NOTIFICATION OF FAMILY.--Whenever an

intoxicated person is committed to protective custody, the administration in charge of the treatment facility shall provide the person an opportunity to contact a member of the intoxicated person's family as soon as practicable."

Section 9. Section 43-2-21 NMSA 1978 (being Laws 1973, Chapter 331, Section 6) is amended to read:

"43-2-21. LIABILITY FOR COSTS.--Any intoxicated person having transportation, shelter or treatment furnished to the person as an intoxicated person under the Detoxification Reform Act shall be liable to the furnishing city, county or treatment facility for its reasonable costs in providing that transportation, shelter or treatment."

Section 10. A new section of Chapter 43, Article 2 NMSA 1978 is enacted to read:

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

Section 11. REPEAL.--Sections 43-2-9, 43-2-10, 43-2-16 through 43-2-18 and Section 43-2-22 NMSA 1978 (being Laws 1977, Chapter 374, Section 6, Laws 1949, Chapter 114, Section 8 and Laws 1973, Chapter 331, Sections 1 through 3 and 7, as amended) are repealed.

Section 12. EFFECTIVE DATE.--The effective date of the

provisions of this act is July 1, 2005. _____

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