AN ACT

RELATING TO CHILDREN; CREATING A NEW CHILDREN'S MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ACT THAT PROGRESSES FROM LEAST TO MOST RESTRICTIVE SITUATIONS; REPEALING THE CHILDREN'S MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ACT.

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

Section 1. A new section of the Children's Code is enacted to read:

"SHORT TITLE.--This act may be cited as the "Children's Mental Health and Developmental Disabilities Act"."

Section 2. A new section of the Children's Code is enacted to read:

"PURPOSES.--The purposes of the Children's Mental Health and Developmental Disabilities Act are to:

A. provide children with access to appropriate assessments, services and treatment;

B. provide children access to a continuum of services to address their habilitation and treatment needs;

C. provide children with access to services for identification, prevention and intervention for developmental and mental health needs;

D. promote delivery of services in a culturally appropriate, responsive and respectful manner;

E. protect the substantive and procedural rights

of children regardless of service setting; and

F. encourage support for family as critical members of the treatment or habilitation team whenever clinically appropriate."

Section 3. A new section of the Children's Code is enacted to read:

"SCOPE.--The provisions of the Children's Mental Health and Developmental Disabilities Act shall apply to all children in New Mexico except as otherwise set forth in the Children's Code."

Section 4. A new section of the Children's Code is enacted to read:

"DEFINITIONS.--As used in the Children's Mental Health and Developmental Disabilities Act:

A. "aversive intervention" means any device or intervention, consequences or procedure intended to cause pain or unpleasant sensations, including interventions causing physical pain, tissue damage, physical illness or injury; electric shock; isolation; mechanical restraint; forced exercise; withholding of food, water or sleep; humiliation; water mist; noxious taste, smell or skin agents; and over-correction;

B. "behavioral health services" means a comprehensive array of professional and ancillary services for the treatment, habilitation, prevention and identification of

mental illnesses, behavioral symptoms associated with developmental disabilities, substance abuse disorders and trauma spectrum disorders;

C. "capacity" means a child's ability to:

(1) understand and appreciate the nature and consequences of proposed health care, including its significant benefits, risks and alternatives to proposed health care; and

(2) make and communicate an informed health care decision;

D. "chemical restraint" means a medication that is not standard treatment for the patient's medical or psychiatric condition that is used to control behavior or to restrict a patient's freedom of movement;

E. "child" means a person who is a minor;

F. "clinician" means a person whose licensure allows the person to make independent clinical decisions, including a physician, licensed psychologist, psychiatric nurse practitioner, licensed independent social worker, licensed marriage and family therapist and licensed professional clinical counselor;

G. "continuum of services" means a comprehensive array of emergency, outpatient, intermediate and inpatient services and care, including screening, early identification, diagnostic evaluation, medical, psychiatric, psychological and

social service care, habilitation, education, training, vocational rehabilitation and career counseling;

H. "developmental disability" means a severe chronic disability that:

(1) is attributable to a mental or physical impairment or a combination of mental or physical impairments;

(2) is manifested before a person reaches twenty-two years of age;

(3) is expected to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activities:

(a) self-care;

(b) receptive and expressive language;

(c) learning;

(d) mobility;

(e) self-direction;

(f) capacity for independent living; or

(g) economic self-sufficiency; and

(5) reflects a person's need for a combination and sequence of special, interdisciplinary or other supports and services that are of lifelong or extended duration that are individually planned or coordinated;

I. "evaluation facility" means a community mental health or developmental disability program, a medical facility

having psychiatric or developmental disability services available or, if none of the foregoing is reasonably available or appropriate, the office of a licensed physician or a licensed psychologist, any of which shall be capable of performing a mental status examination adequate to determine the need for appropriate treatment, including possible involuntary treatment;

J. "family" means persons with a kinship relationship to a child, including the relationship that exists between a child and a biological or adoptive parent, relative of the child, a step-parent, a godparent, a member of the child's tribe or clan or an adult with whom the child has a significant bond;

K. "habilitation" means services, including behavioral health services based on evaluation of the child, that are aimed at assisting the child to prevent, correct or ameliorate a developmental disability. The purpose of habilitation is to enable the child to attain, maintain or regain maximum functioning or independence. "Habilitation" includes programs of formal, structured education and treatment and rehabilitation services;

L. "individual instruction" means a child's direction concerning a mental health treatment decision for the child, made while the child has capacity and is fourteen years of age or older, which is to be implemented when the

child has been determined to lack capacity;

M. "least restrictive means principle" means the conditions of habilitation or treatment for the child, separately and in combination that:

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

(2) involve no restrictions on physical movement and no requirement for residential care, except as reasonably necessary for the administration of treatment or for the protection of the child or others from physical injury; and

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

N. "legal custodian" means a biological or adoptive parent of a child unless legal custody has been vested in a person, department or agency and also includes a person appointed by an unexpired power of attorney;

O. "licensed psychologist" means a person who holds a current license as a psychologist issued by the New Mexico state board of psychologist examiners;

P. "likelihood of serious harm to self" means that it is more likely than not that in the near future a child will attempt to commit suicide or will cause serious bodily harm to the child by violent or other self-destructive means,

as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from the child;

Q. "likelihood of serious harm to others" means that it is more likely than not that in the near future the child will inflict serious 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 the child;

R. "mechanical restraint" means any device or material attached or adjacent to the child's body that restricts freedom of movement or normal access to any portion of the child's body and that the child cannot easily remove but does not include a protective or stabilizing device;

S. "medically necessary services" means clinical and rehabilitative physical, mental or behavioral health services that are:

(1) essential to prevent, diagnose or treat medical conditions or are essential to enable the child to attain, maintain or regain functional capacity;

(2) delivered in the amount, duration, scope and setting that is clinically appropriate to the specific physical, mental and behavioral health care needs of the child;

(3) provided within professionally accepted

standards of practice and national guidelines; and

(4) required to meet the physical, mental and behavioral health needs of the child and are not primarily for the convenience of the child, provider or payer;

T. "mental disorder" means a substantial disorder of the child's emotional processes, thought or cognition, not including a developmental disability, that impairs the child's:

(1) functional ability to act in developmentally and age-appropriate ways in any life domain;

(2) judgment;

(3) behavior; and

(4) capacity to recognize reality;

U. "mental health or developmental disabilities professional" means a person who by training or experience is qualified to work with persons with mental disorders or developmental disabilities;

V. "out-of-home treatment or habilitation program" means an out-of-home residential program that provides twenty-four-hour care and supervision to children with the primary purpose of providing treatment or habilitation to children. "Out-of-home treatment or habilitation program" includes, but is not limited to, treatment foster care, group homes and residential treatment centers;

W. "parent" means a biological or adoptive parent

of a child whose parental rights have not been terminated;

X. "physical restraint" means the use of physical force without the use of any device or material that restricts the free movement of all or a portion of a child's body, but does not include:

(1) briefly holding a child in order to calm or comfort the child;

(2) holding a child's hand or arm to escort the child safely from one area to another; or

(3) intervening in a physical fight;

Y. "residential treatment or habilitation program" means diagnosis, evaluation, care, treatment or habilitation rendered inside or on the premises of a mental health or developmental disabilities facility, hospital, clinic, institution, supervisory residence or nursing home when the child resides on the premises and where one or more of the following measures is available for use:

(1) a mechanical device to restrain or restrict the child's movement;

(2) a secure seclusion area from which the child is unable to exit voluntarily;

(3) a facility or program designed for the purpose of restricting the child's ability to exit voluntarily; and

(4) the involuntary emergency administration

of psychotropic medication;

Z. "restraint" means the use of a physical, chemical or mechanical restraint;

AA. "seclusion" means the confinement of a child alone in a room from which the child is physically prevented from leaving;

BB. "treatment" means provision of behavioral health services based on evaluation of the child, aimed at assisting the child to prevent, correct or ameliorate a mental disorder. The purpose of treatment is to enable the child to attain, maintain or regain maximum functioning;

CC. "treatment team" means a team consisting of the child, the child's parents unless parental rights have specifically been limited pursuant to an order of a court, legal custodian, guardian ad litem, treatment guardian, clinician and any other professionals involved in treatment of the child, other members of the child's family, if requested by the child, and the child's attorney if requested by the child, unless in the professional judgment of the treating clinician for reasons of safety or therapy one or more members should be excluded from participation in the treatment team; and

DD. "treatment plan" means an individualized plan developed by a treatment team based on assessed strengths and needs of the child and family."

Section 5. A new section of the Children's Code is enacted to read:

"COMPETENCE.--The fact that a child has received treatment or habilitation services or has been accepted at or admitted to a hospital or institutional facility shall not constitute a sufficient basis for a finding of incompetence or the denial of a right or benefit of any nature that the child would otherwise have."

Section 6. A new section of the Children's Code is enacted to read:

"RIGHTS RELATED TO TREATMENT AND HABILITATION--SCOPE.--The rights set forth in the Children's Mental Health and Developmental Disabilities Act shall apply to a child who is physically present and receiving treatment or habilitation services in New Mexico. A child who receives treatment or habilitation services shall have rights with respect to such treatment or habilitation, regardless of where services are provided."

Section 7. A new section of the Children's Code is enacted to read:

"RIGHT TO INDIVIDUALIZED TREATMENT OR HABILITATION SERVICES AND PLAN.--

A. A child receiving mental health or habilitation services shall have the right to prompt treatment and habilitation pursuant to an individualized treatment plan and

consistent with the least restrictive means principle.

B. A preliminary treatment plan shall be prepared within seven days of initial provision of mental health or habilitation services.

C. An individualized treatment or habilitation plan shall be prepared within twenty-one days of the provision of mental health or habilitation services.

D. The individualized treatment or habilitation plan shall be developed by the child's treatment team. The child and the child's legal custodian and parent shall, to the maximum extent possible, be involved in the preparation of the child's individualized treatment or habilitation plan.

E. An individualized treatment or habilitation plan shall include:

(1) a statement of the nature of the specific problem and the specific needs of the child;

(2) a statement of the least restrictive conditions necessary to achieve the purposes of treatment or habilitation;

(3) a description of intermediate and long-range goals, with the projected timetable for their attainment;

(4) a statement and rationale for the plan of treatment or habilitation for achieving these intermediate and long-range goals;

(5) specification of staff responsibility and a description of the proposed staff involvement with the child in order to attain these goals;

(6) criteria for release to less restrictive settings for treatment or habilitation, criteria for discharge and a projected date for discharge; and

(7) provision for access to cultural practices and traditional treatments in accordance with the child's assessed needs, and for an Indian child, culturally competent placement, treatment and practices and, after appropriate consent, tribal consultation.

F. A treatment or habilitation plan for a child in an out-of-home treatment or habilitation program shall be based on documented assessments that may include assessments of mental status; intellectual function; psychological status, including the use of psychological testing; psychiatric evaluation and medication; education, vocation, psychosocial assessment, physical status and the child's cultural needs.

G. The child's progress in attaining the goals and objectives set forth in the individualized treatment or habilitation plan shall be monitored and noted in the child's records, and revisions in the plan may be made as circumstances require. The members of the child's treatment team shall be informed of major changes and shall have the opportunity to participate in decisions."

Section 8. A new section of the Children's Code is enacted to read:

"SPECIAL RULES APPLICABLE TO AVERSIVE INTERVENTION.--

A. An intervention expressly listed in the "aversive intervention" definition in Section 4 of the Children's Mental Health and Developmental Disabilities Act is prohibited.

B. A treatment plan containing an aversive intervention not specifically listed in Section 4 of the Children's Mental Health and Developmental Disabilities Act shall be submitted to the human rights committee of the department of health in advance of a meeting, except in emergency situations. The human rights committee shall review the plan along with the following additional information as available:

(1) baseline or base rate data;

(2) review of the child's current situation and environment;

(3) the child's history, including previous interventions and results;

(4) the possible adverse effects, if any, of the proposed treatment plan;

(5) success and failure criteria for discontinuing the proposed aversive intervention; and

(6) a written evaluation by the clinician

proposing the treatment plan or the intervention.

C. The human rights committee of the department of health shall not approve an intervention specifically listed in the definition of "aversive intervention" in Section 4 of the Children's Mental Health and Developmental Disabilities Act.

D. An invitation to participate in the review shall be extended to the child, the child's legal custodian, the clinician and any other mental health or developmental disability professional who has proposed the treatment. A written or oral presentation shall be made to the human rights commission by the mental health or developmental disability professional proposing the treatment.

E. The results of the human rights committee of the department of health review shall be reported to the clinician, the child and the child's legal custodian within three working days.

F. The department shall work in collaboration with the department of health to promulgate rules for implementing a human rights committee pursuant to this section."

Section 9. A new section of the Children's Code is enacted to read:

"RESTRAINT, GENERALLY.--A child has the right to be free from the use of physical, chemical or mechanical restraint used for the convenience of a caregiver or as a substitute for

a planned program for behavior support. However, nothing in this subsection shall prohibit the use of:

A. a protective apparatus needed to protect a child from imminent harm, consistent with the least restrictive means principle;

B. a medical restraint prescribed by a physician or dentist as a health-related protective measure during the conduct of a specific medical, surgical or dental procedure; and

C. appropriate mechanical supports used to achieve proper body position and balance."

Section 10. A new section of the Children's Code is enacted to read:

"PHYSICAL RESTRAINT AND SECLUSION.--

A. In a mental health or developmental disability treatment or habilitation setting, physical restraint and seclusion shall not be used unless such use is necessary to protect a child or another from imminent, serious physical harm or unless another less intrusive, nonphysical intervention has failed or been determined inappropriate.

B. A treatment and habilitation program shall provide a child and the child's legal custodian with a copy of the policies and procedures governing the use of restraint and seclusion.

C. When a child is in a restraint or in seclusion,

the mental health or developmental disabilities professional shall document:

(1) any less intrusive interventions that were attempted or determined to be inappropriate prior to the incident;

(2) the precipitating event immediately preceding the behavior that prompted the use of restraint or seclusion;

(3) the behavior that prompted the use of a restraint or seclusion;

(4) the names of the mental health or developmental disabilities professional who observed the behavior that prompted the use of restraint or seclusion;

(5) the names of the staff members implementing and monitoring the use of restraint or seclusion; and

(6) a description of the restraint or seclusion incident, including the type and length of the use of restraint or seclusion, the child's behavior during and reaction to the restraint or seclusion and the name of the supervisor informed of the use of restraint or seclusion.

D. The documentation shall be maintained in the child's medical, mental health or educational record and available for inspection by the child's legal custodian.

E. The child's legal custodian shall be notified

immediately after each time restraint or seclusion is used. If the legal custodian is not reasonably available, the mental health or developmental disability professional shall document all attempts to notify the legal custodian and shall send written notification within one business day.

F. After an incident of restraint or seclusion, the mental health or developmental disabilities professional involved in the incident shall conduct a debriefing with the child in which the precipitating event, unsafe behavior and preventive measures are reviewed with the intent of reducing or eliminating the need for future restraint or seclusion. The debriefing shall be documented in the child's record and incorporated into the next treatment plan review.

G. As promptly as possible, but under no circumstances later than five calendar days after a child has been subject to restraint or seclusion, the treatment team shall meet to review the incident and revise the treatment plan as appropriate. The treatment team shall identify any known triggers to the behavior that necessitated the use of restraint or seclusion and recommend preventive measures that may be used to calm the child and eliminate the need for restraint or seclusion. In a subsequent review of the treatment plan, the treatment team shall review the success or failure of preventive measures and revise the plan, if necessary, based on such review.

H. Physical restraint shall be applied only by a mental health or developmental disabilities professional trained in the appropriate use of physical restraint.

I. In applying physical restraint, a mental health or developmental disabilities professional shall use only reasonable force as is necessary to protect the child or other person from imminent and serious physical harm.

J. Seclusion shall be applied only by mental health or developmental disabilities professionals who are trained in the appropriate use of seclusion.

K. At a minimum, a room used for seclusion shall:

(1) be free of objects and fixtures with which a child could self-inflict bodily harm;

(2) provide the mental health or developmental disabilities professional an adequate and continuous view of the child from an adjacent area; and

(3) provide adequate lighting and ventilation.

L. During the seclusion of a child, the mental health or developmental disabilities professional shall:

(1) view the child placed in seclusion at all times; and

(2) provide the child placed in seclusion with:

(a) an explanation of the behavior that

resulted in the seclusion; and

(b) instructions on the behavior required to return to the environment.

M. At a minimum, a mental health or developmental disabilities professional shall reassess a child in restraint or seclusion every thirty minutes.

N. The use of a mechanical restraint is prohibited in a mental health and developmental disability treatment setting unless the treatment setting is certified by and meets the requirements of the joint commission for the accreditation of health care organizations.

O. This section does not prohibit a mental health or developmental disabilities professional from using a protective or stabilizing device:

(1) as prescribed by a health professional; or

(2) for a child with a disability, in accordance with a written treatment plan, including but not limited to a school individualized education plan or behavior intervention plan."

Section 11. A new section of the Children's Code is enacted to read:

"TRAINING REQUIRED FOR A PROFESSIONAL WHO USES RESTRAINT OR SECLUSION.--A mental health or developmental disabilities professional who administers restraint or seclusion shall

receive training in current professionally accepted practices and standards regarding:

A. positive behavior interventions strategies and supports;

B. functional behavior assessment and behavior intervention planning;

C. prevention of self-injurious behaviors;

D. methods for identifying and defusing potentially dangerous behavior; and

E. restraint and seclusion, to the extent that each may be used in the treatment setting."

Section 12. A new section of the Children's Code is enacted to read:

"PERSONAL RIGHTS OF A CHILD IN AN OUT-OF-HOME TREATMENT OR HABILITATION PROGRAM--SCOPE.--

A. A child in an out-of-home treatment or habilitation program shall have, in addition to other rights set forth in the Children's Mental Health and Developmental Disabilities Act, the right to:

(1) be placed in a manner consistent with the least restrictive means principle;

(2) have access to the state's designated protection and advocacy system and access to an attorney of the child's choice, provided that the child is not entitled to appointment of an attorney at public expense, except as

otherwise provided in Subsection C of Section 13 of the Children's Mental Health and Developmental Disabilities Act;

(3) receive visitors of the child's own choosing on a daily basis, subject to restrictions imposed in the best interests of the child by the child's clinician for good cause. Hours during which visitors may be received shall be limited only in the interest of effective treatment and the reasonable efficiency of the program and shall be sufficiently flexible to accommodate the individual needs of the child and the child's visitors. Notwithstanding the provisions of this subsection, each child has the right to receive visits from the child's attorney, physician, psychologist, clergy, guardian ad litem, representatives from the state's protection and advocacy system or children, youth and families department in private at any reasonable time, irrespective of visiting hours, provided the visitor shows reasonable cause for visiting at times other than normal visiting hours;

(4) have writing materials and postage stamps reasonably available for the child's use in writing letters and other communications. Reasonable assistance shall be provided for writing, addressing and posting letters and other documents upon request. The child has the right to send and receive sealed and uncensored mail. The child has the right to reasonable private access to telephones and, in cases of personal emergencies when other means of communication are

not satisfactory, the child shall be afforded reasonable use of long distance calls; provided that for other than mail or telephone calls to a court, an attorney, a physician, a psychologist, a clergy, a guardian ad litem, a representative from the state's protection and advocacy system or a social worker, mailing or telephone privileges may be restricted by the child's clinician for good cause shown. A child who is indigent shall be furnished writing, postage and telephone facilities without charge;

(5) reasonable access to a legal custodian and a family member through visitation, videoconferencing, telephone access and opportunity to send and receive mail. In-person-visitation is preferred and reasonable efforts shall be made to facilitate such visitation unless the child and family choose otherwise. Access by legal custodians and family members to the child shall be limited only in the interest of effective treatment and the reasonable efficiency of the program and shall be sufficiently flexible to accommodate the individual needs of legal custodians and family members. Treatment needs that justify limitation on the access rights of a legal custodian or family member must be specifically documented by the clinician in the child's record and any such limitation automatically expires in seven days;

(6) follow or abstain from the practice of

religion. The program shall provide appropriate assistance in this connection, including reasonable accommodations for religious worship and transportation to nearby religious services. A child who does not wish to participate in religious practice shall be free from pressure to do so or to accept religious beliefs;

(7) a humane psychological and physical environment. The child shall be provided a comfortable bed and adequate changes of linen and reasonable secure storage space for personal possessions. Except when curtailed for reasons of safety or therapy as documented in the child's record by the child's physician, the child shall be afforded reasonable privacy in sleeping and personal hygiene practices;

(8) reasonable daily opportunities for physical exercise and outdoor exercise and reasonable access to recreational areas and equipment, including equipment adapted to the child's developmental and physical needs;

(9) a nourishing, well-balanced, varied and appetizing diet;

(10) prompt and adequate medical attention for a physical ailment. Each child shall receive a complete physical examination upon admission, except when documentation is provided that the child has had such examination within the six months immediately prior to the current admission. Each child shall receive a complete physical examination every

twelve months thereafter;

(11) a clean, safe and comfortable environment in a structure that complies with applicable fire and safety requirements;

(12) appropriate medication and freedom from unnecessary or excessive medication. Medication shall not be used as discipline, as a substitute for programs, for the convenience of staff or in quantities that interfere with the child's treatment or habilitation program. No medication shall be administered unless by written order of a clinician licensed to prescribe medication or by an oral order noted immediately in the patient's medical record and signed by that clinician within twenty-four hours. All prescriptions for psychotropic medications must be reviewed at least every thirty days. Notation of each child's medication shall be kept in the child's medical records and shall include a notation by the clinician licensed to prescribe medication of the behavioral or symptomatic baseline data upon which the medication order was made; and

(13) a free public education. The child shall be educated in regular classes with nondisabled children whenever appropriate. In no event shall a child be allowed to remain in an out-of-home treatment or habilitation program for more than ten days without receiving educational services. If the child's placement in an out-of-home treatment or

habilitation program is required by an individualized education plan that conforms to the requirements of state and federal law, the sending school is responsible for the provision of education to the child. In all other situations, the local school district in which the out-of-home treatment or habilitation program is located is responsible for the provision of educational services to the child. Nothing in this subsection shall limit a child's right to public education under state, tribal or federal law.

B. A child receiving services in an out-of-home treatment or habilitation program, including but not limited to residential treatment or habilitation programs, shall be provided notice of rights immediately upon admission to such program."

Section 13. A new section of the Children's Code is enacted to read:

"LEGAL REPRESENTATION OF CHILDREN.--

A. A child shall be represented by an attorney at all commitment or treatment guardianship proceedings under the Children's Mental Health and Developmental Disabilities Act if the child is fourteen years of age or older or by a guardian ad litem if the child is under fourteen years of age.

B. When a child has not retained an attorney or a guardian ad litem in a commitment or treatment guardian proceeding and is unable to do so, the court shall appoint an

attorney or a guardian ad litem to represent the child in the proceeding. Only an attorney with appropriate experience shall be appointed as an attorney or a guardian ad litem for the child. Whenever reasonable and appropriate, the court shall appoint a guardian ad litem or attorney who is knowledgeable about the child's cultural background.

C. A child of any age shall have access to the state's designated protection and advocacy system and access to an attorney of the child's choice, provided that the child is not entitled to appointment of an attorney at public expense, except as set forth in Subsections A and B of this section.

D. A child shall not be represented or counseled by an attorney or guardian ad litem who has a conflict of interest, including but not limited to any conflict of interest resulting from prior representation of the child's parent, guardian, legal custodian or residential treatment or habilitation program."

Section 14. A new section of the Children's Code is enacted to read:

"CONSENT FOR SERVICES--CHILDREN UNDER FOURTEEN YEARS OF AGE.--

A. Except as provided in Subsection B of this section, the informed consent of a child's legal custodian shall be required before treatment or habilitation, including

psychotherapy or psychotropic medications, is administered to a child under fourteen years of age.

B. A child under fourteen years of age may initiate and consent to an initial assessment with a clinician and for medically necessary early intervention service limited to verbal therapy as set forth in this section. The purpose of the initial assessment is to allow a clinician to interview the child and determine what, if any, action needs to be taken to ensure appropriate mental health or habilitation services are provided to the child. The clinician may conduct an initial assessment and provide medically necessary early intervention service limited to verbal therapy with or without the consent of the legal custodian if such service will not extend beyond two calendar weeks. If, at any time, the clinician has a reasonable suspicion that the child is an abused or neglected child, the clinician shall immediately make a child abuse and neglect report."

Section 15. A new section of the Children's Code is enacted to read:

"CONSENT FOR SERVICES--CHILDREN FOURTEEN YEARS OF AGE OR OLDER.--

A. A child fourteen years of age or older is presumed to have capacity to consent to treatment without consent of the child's legal custodian, including consent for individual psychotherapy, group psychotherapy, guidance

counseling, case management, behavioral therapy, family therapy, counseling, substance abuse treatment or other forms of verbal treatment that do not include aversive interventions. Nothing in this section shall be interpreted to provide a child fourteen years of age or older with independent consent rights for the purposes of the provision of special education and related services as set forth in federal law.

B. Psychotropic medications may be administered to a child fourteen years of age or older with the informed consent of the child. When psychotropic medications are administered to a child fourteen years of age or older, the child's legal custodian shall be notified by the clinician.

C. A clinician or other mental health and developmental disabilities professional shall promote the healthy involvement of a child's legal custodians and family members in developing and implementing the child's treatment plan, including appropriate participation in treatment for children fourteen years of age or older. However, nothing in this section shall limit the rights of a child fourteen years of age or older to consent to services and to consent to disclosure of mental health records."

Section 16. A new section of the Children's Code is enacted to read:

"CONSENT FOR SERVICES--DETERMINATION OF CAPACITY FOR

CHILDREN FOURTEEN YEARS OF AGE OR OLDER.--

A. When a child fourteen years of age or older has been determined according to the provisions of this section to lack capacity, the child's legal custodian may make a mental health or habilitation decision for the child unless the child objects to such decision or the legal custodian's assumption of authority to make mental health or developmental disability treatment decisions or determination of lack of capacity. Nothing in this subsection:

(1) permits a legal custodian to consent to placement of a child in a residential treatment or habilitation program without the proper consent of the child if the child is fourteen years of age or older; or

(2) in any way, limits a child's right to involuntary commitment procedures as set forth in the Children's Mental Health and Developmental Disabilities Act.

B. The determination that a child fourteen years of age or older lacks or has recovered capacity shall be made by two clinicians, one of whom shall be a person who works with children in the ordinary course of that clinician's practice.

C. A child fourteen years of age or older shall not be determined to lack capacity solely on the basis that the child chooses not to accept the treatment recommended by the mental health or developmental disabilities professional.

D. A child fourteen years of age or older may at any time contest a determination that the child lacks capacity by a signed writing or by personally informing a clinician that the determination is contested. A clinician who is informed by a child that such determination is contested shall promptly communicate that the determination is contested to any supervising provider or institution at which the child is receiving care. Such a challenge shall prevail unless otherwise ordered by the court in a proceeding brought pursuant to the treatment guardianship provisions of the Children's Mental Health and Developmental Disabilities Act.

E. A determination of lack of capacity under the Children's Mental Health and Developmental Disabilities Act shall not be evidence of incapacity for any other purpose.

F. The legal custodian shall communicate an assumption of authority as promptly as practicable to the child fourteen years of age or older and to the clinician and to the supervising mental health or developmental disability treatment and habilitation provider.

G. If more than one legal custodian assumes authority to act as an agent, the consent of both shall be required for nonemergency treatment. In an emergency, the consent of one legal custodian is sufficient, but the treating mental health professional shall provide the other legal custodian with oral notice followed by written documentation.

H. If more than one legal custodian assumes authority to act as an agent and the legal custodians do not agree on a nonemergency mental health treatment decision and the clinician is so informed, the clinician shall not treat the child unless a treatment guardian is appointed pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

I. A legal custodian shall make treatment decisions in accordance with a child's individual instructions, if any, and other wishes to the extent known to the legal custodian. Otherwise, the legal custodian shall make decisions in accordance with the legal custodian's determination of the child's best interests. In determining the child's best interests, the legal custodian shall consider the child's personal values to the extent known to the legal custodian.

J. A mental health treatment decision made by a legal custodian for a child fourteen years of age or older who has been determined to lack capacity shall not be made solely on the basis of the child's pre-existing physical or medical condition or pre-existing or projected disability.

K. A mental health treatment decision made by a legal custodian for a child fourteen years of age or older who has been determined to lack capacity is effective without judicial approval unless contested by the child.

L. If no legal custodian or agent is reasonably available to make mental health or habilitation decisions for the child, any interested party may petition for the appointment of a treatment guardian."

Section 17. A new section of the Children's Code is enacted to read:

"TREATMENT GUARDIANSHIP PROCEEDINGS.--

A. If no legal custodian is reasonably available to make mental health decisions for a child fourteen years of age or older who has been determined to lack capacity or if a clinician who proposes a course of treatment objects to a challenge made by the child to a determination of incapacity, the clinician shall request that the children's court attorney petition the court for appointment of a treatment guardian to make a substitute decision for the child.

B. In a treatment guardian proceeding, the court shall appoint an attorney for the child unless the child already has an attorney available.

C. A petition shall be served on the child and the child's attorney. A hearing on the petition shall be held within three business days. At the hearing, the child shall be represented by counsel and shall have the right to be present, to present witnesses and to cross-examine opposing witnesses.

D. If, after the hearing, the court finds that the

child is not capable of making treatment decisions and treatment is needed, the court shall order the appointment of a treatment guardian. When appointing a treatment guardian, the court shall appoint the child's legal custodian unless the legal custodian is not readily available or the court finds that such an appointment is not in the child's best interests.

E. The treatment guardian shall make a decision on behalf of the child based on the treatment guardian's best judgment of whether the treatment appears to be in the child's best interests and is consistent with the least restrictive means principle for accomplishing the treatment objective. In making this decision, the treatment guardian shall consult with the child and consider the child's expressed opinions. The treatment guardian shall give consideration to previous decisions made by the child in similar circumstances when the child was able to make treatment decisions and shall make the decision in accordance with the values of the child if known, or in the best interests of the child if the values are not known; provided that, if the child has given an individual instruction that is available to the treatment guardian, the instruction shall be followed.

F. If a child who is not a resident of a residential treatment and habilitation program has a treatment guardian and refuses to comply with the decision of the treatment guardian, the treatment guardian may obtain an

enforcement order. The enforcement order may authorize a peace officer to take the child into custody or to transport the child to an evaluation facility and may authorize the facility to forcibly administer treatment. The treatment guardian shall consult with the clinician who is proposing treatment, the child's attorney or guardian ad litem and, as deemed appropriate, interested friends or relatives of the child. The evaluation facility shall comply with the treatment guardian's decision unless the clinician finds it to be against the best interests of the child.

G. A child, physician or other professional wishing to contest the decision of the treatment guardian may do so by filing a petition with the court within three calendar days or the next business day, whichever is later, of receiving notice of the treatment guardian's decision. The child shall be represented by counsel in all proceedings before the court. The court may overrule the treatment guardian's decision if it finds that decision to be against the best interests of the child. The court shall rule within seven days of the filing of the petition.

H. If both a petition for an enforcement order and a petition to contest the treatment guardian's decision are filed, they shall be heard in the same proceeding at the same time.

I. When the court appoints a treatment guardian,

it shall specify the length of time during which the treatment guardian may exercise treatment guardian powers, up to a maximum period of one year. If, at the end of the guardianship period, the treatment guardian believes that the child still lacks capacity, the treatment guardian shall petition the court for reappointment or for appointment of a new treatment guardian. The guardianship shall be extended or a new guardian shall be appointed only if the court finds the child does not have capacity to make treatment or habilitation decisions at the time of the hearing. The court shall appoint an attorney for the child, and the child shall have the right to be present and to present evidence at all such hearings.

J. If, during the period of a treatment guardian's power, the treatment guardian, the child, the treatment provider or a member of the child's family believes that the child has regained capacity, that person may petition the court for a termination of the treatment guardianship. If the court finds the child has regained capacity, it shall terminate the power of the treatment guardian and restore to the child the power to make treatment decisions.

K. A treatment guardian shall have only those powers enumerated in the Children's Mental Health and Developmental Disabilities Act.

L. If a clinician licensed to prescribe medication believes that the administration of psychotropic medication is

necessary to protect the child from serious harm that could occur while the provisions of this section are being satisfied, the licensed clinician may order or administer the medication on an emergency basis. When medication is administered to a child on an emergency basis, the clinician shall prepare and place in the child's medical records a report explaining the nature of the emergency and the reason that no treatment less restrictive than administration of psychotropic medication without proper consent would have protected the child from serious harm. When medication is administered to a child on an emergency basis, the child's legal custodian and the child's attorney or guardian ad litem shall be notified by the residential treatment or habilitation program. If the child is not in a residential setting, the clinician shall petition for a pickup order pursuant to Section 19 of the Children's Mental Health and Developmental Disabilities Act and have the child transported to a residential facility where the medication will be administered."

Section 18. A new section of the Children's Code is enacted to read:

"INDIVIDUAL INSTRUCTIONS.--

A. A child fourteen years of age or older who has capacity also has the right to direct the child's own treatment in the event of later incapacity. To do so, the

child may give an individual instruction regarding the child's own treatment or habilitation. The individual instruction may be limited to take effect only if a specified condition arises.

B. An individual instruction shall be effective without judicial approval and shall be written and signed by the child and the child's legal custodian and signed by a witness who is at least eighteen years of age and who attests that the child and the child's legal custodian are known to the witness, that they signed the individual instruction for mental health treatment in the witness' presence and that they appear to have capacity and are not acting under duress, fraud or undue influence.

C. A witness to an individual instruction shall not be related to the child or the child's legal custodian by blood or marriage, the child's attending qualified health care professional or an owner, operator or employee of a mental health facility at which the child is receiving care or of any parent organization, subsidiary or contractor of the mental health facility.

D. If the child's legal custodian refuses to consent to the individual instruction, the child may petition the court for determination of whether the individual instruction is in the child's best interest.

E. A child's legal custodian or treatment guardian

shall make treatment decisions in accordance with the child's individual instruction unless the treatment requested is infeasible or unavailable or would not offer the child any significant benefit as determined by the child's clinician.

F. The individual instruction shall be implemented by the child's legal custodian under this section only upon certification that the child lacks capacity. The instruction shall cease to be effective upon a determination that the child has recovered capacity.

G. Written certification that a child lacks or has recovered capacity or that another condition exists that affects an individual instruction shall be made according to the provisions of the Children's Mental Health and Developmental Disabilities Act. A child while having capacity may revoke all or part of an individual instruction for mental health treatment at any time and in any manner that communicates an intent to revoke.

H. The fact that a child has executed a written individual instruction for treatment shall not constitute an indication of mental illness.

I. A clinician who knows the existence of an individual instruction for mental health treatment, a revocation or a challenge to a determination or certification of lack of capacity shall obtain a copy and shall place it in the child's health care record.

J. A clinician shall disclose an individual instruction for mental health treatment to other clinicians only when it is determined that the disclosure is necessary to provide treatment in accordance with an individual instruction."

Section 19. A new section of the Children's Code is enacted to read:

"EMERGENCY MENTAL HEALTH EVALUATION AND CARE.--

A. A peace officer may detain and transport a child for emergency mental health evaluation and care in the absence of a legally valid order from the court only if the peace officer:

(1) has reasonable grounds to believe the child has just attempted suicide;

(2) based upon personal observation and investigation, has reasonable grounds to believe that the child, as a result of a mental disorder, presents a likelihood of serious harm to self or others and that immediate detention is necessary to prevent such harm. The peace officer shall convey the peace officer's beliefs to the admitting physician or licensed psychologist immediately upon the officer's arrival at the evaluation facility;

(3) has certification from a clinician that the child, as a result of a mental disorder, presents a likelihood of serious harm to self or others and that

immediate intervention is necessary to prevent the harm; or

(4) has an involuntary placement order issued by a tribal court that orders the child to be admitted to an evaluation facility.

B. A peace officer shall immediately transport a child detained under this section to an evaluation facility. In the case of an extreme emergency, the child may be held for a period of up to twenty-four hours in temporary emergency placement in:

(1) a foster home licensed to provide specialized or therapeutic care;

(2) a facility operated by a licensed child services agency that meets standards promulgated by the department for the care of children who present the likelihood of serious harm to themselves or others; and

(3) residential care on an emergency basis.

C. A child shall not be held for the purposes of emergency mental health evaluation or care in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged or adjudicated to be delinquent children.

D. The director of an evaluation facility shall accomplish an emergency evaluation upon the request of a child's legal custodian, a peace officer, a detention facility administrator or the administrator's designee or upon the

certification of a clinician. A court order is not required under this section. If an application is made to a court, the court's power to act in furtherance of an emergency admission shall be limited to ordering that:

(1) the child be seen by a clinician prior to transport to an evaluation facility; and

(2) a peace officer transport the child to an evaluation facility.

E. The admitting physician or licensed psychologist shall evaluate whether reasonable grounds exist to detain the child for evaluation and treatment, and, if reasonable grounds are found, the child shall be detained. If the admitting physician or licensed psychologist determines that reasonable grounds do not exist to detain the child for evaluation and treatment, the child shall not be detained but shall be released to the custody of the child's legal custodian.

F. Upon arrival at an evaluation facility, the child shall be informed orally and in writing by the evaluation facility of the purpose and possible consequences of the proceedings, the allegations in the petition, the child's right to a hearing within seven days, the child's right to counsel and the child's right to communicate with an attorney or a guardian ad litem and an independent mental health professional of the child's own choosing. A child

shall have the right to receive necessary and appropriate treatment.

G. A peace officer who transports a child to an evaluation facility pursuant to the provisions of this section shall not require a court order to be reimbursed by the referring county.

H. If a child is transported to or detained at an evaluation facility and is not released to the child's legal custodian, the peace officer transporting the child shall give written notice thereof as soon as possible within twenty-four hours to the child's legal custodian, together with a statement of the reason for taking the child into custody."

Section 20. A new section of the Children's Code is enacted to read:

"CONSENT TO PLACEMENT IN A RESIDENTIAL TREATMENT OR HABILITATION PROGRAM--CHILDREN YOUNGER THAN FOURTEEN YEARS OF AGE.--

A. A child younger than fourteen years of age shall not receive residential treatment for a mental disorder or habilitation for a developmental disability, except as provided in this section.

B. A child younger than fourteen years of age may be admitted to a residential treatment or habilitation program for a period not to exceed sixty days with the informed consent of the child's legal custodian, subject to the

requirements of this section.

C. In order to admit a child younger than fourteen years of age to a residential treatment or habilitation program, the child's legal custodian shall knowingly and voluntarily execute a consent to admission document prior to the child's admission. The consent to admission document shall be in a form designated by the supreme court. The consent to admission document shall include a clear statement of the legal custodian's right to voluntarily consent to or refuse the child's admission, the legal custodian's right to request the child's immediate discharge from the residential treatment program at any time and the legal custodian's rights when the legal custodian requests the child's discharge and the child's physician, licensed psychologist or the director of the residential treatment or habilitation program determines that the child needs continued treatment. The residential treatment or habilitation program shall ensure that each statement is clearly explained in the child's and legal custodian's primary language, if that is their language of preference, and in a manner appropriate to the child's and legal custodian's developmental abilities. Each statement shall be initialed by the child's legal custodian.

D. The legal custodian's executed consent to admission document shall be filed with the child's treatment records within twenty-four hours of the time of admission.

E. Upon the filing of the legal custodian's consent to admission document in the child's hospital records, the director of the residential treatment or habilitation program or the director's designee shall, on the next business day following the child's admission, notify the district court or the special commissioner appointed pursuant to Section 25 of the Children's Mental Health and Developmental Disabilities Act regarding the admission and provide the child's name, date of birth and the date and place of admission. The court or special commissioner shall, upon receipt of notice regarding a child's admission to a residential treatment or habilitation program, establish a sequestered court file.

F. The director of a residential treatment or habilitation program or the director's designee shall, on the next business day following the child's admission, petition the court to appoint a guardian ad litem for the child. When the court receives the petition, the court shall appoint a guardian ad litem.

G. Within seven days of a child's admission to a residential treatment or habilitation program, a guardian ad litem, representing the child's best interests and in accordance with the provisions of the Children's Mental Health and Developmental Disabilities Act, shall meet with the child, the child's legal custodian and the child's clinician. The guardian ad litem shall determine the following:

(1) whether the child's legal custodian understands and consents to the child's admission to a residential treatment or habilitation program;

(2) whether the admission is in the child's best interests; and

(3) whether the admission is appropriate for the child and is consistent with the least drastic means principle.

H. If a guardian ad litem determines that the child's legal custodian understands and consents to the child's admission and that the admission is in the child's best interests, is appropriate for the child and is consistent with the least drastic means principle, the guardian ad litem shall so certify on a form designated by the supreme court. The form, when completed by the guardian ad litem, shall be filed in the child's patient record kept by the residential treatment or habilitation program, and a copy shall be forwarded to the court or special commissioner within seven days of the child's admission. The guardian ad litem's statement shall not identify the child by name.

I. Upon reaching the age of fourteen, a child who was admitted to a residential treatment or habilitation program pursuant to this section may petition the district court for the records of the district court regarding all matters pertinent to the child's admission to a residential

treatment or habilitation program. The district court, upon receipt of the petition and upon a determination that the petitioner is in fact a child who was admitted to a residential treatment or habilitation program, shall provide all court records regarding the admission to the petitioner, including all copies in the court's possession, unless there is a showing that release of records would cause substantial harm to the child. Upon reaching the age of eighteen, a person who was admitted to a residential or treatment or habilitation program as a child may petition the district court for such records, and the district court shall provide all court records regarding the admission to the petitioner, including all copies in the court's possession.

J. A legal custodian who consents to admission of a child to a residential treatment or habilitation program has the right to request the child's immediate discharge from the residential treatment or habilitation program, subject to the provisions of this section. If a child's legal custodian informs the director, a physician or other member of the residential treatment or habilitation program staff that the legal custodian desires the child to be discharged from the program, the director, physician or other staff shall provide for the child's immediate discharge and remit the child to the legal custodian's care. The residential treatment or habilitation program shall also notify the child's guardian ad

litem. A child whose legal custodian requests the child's immediate discharge shall be discharged, except when the director of the residential treatment or habilitation program, a physician or a licensed psychologist determines that the child requires continued treatment and that the child meets the criteria for involuntary residential treatment. In that event, the director, physician or licensed psychologist shall, on the first business day following the child's legal custodian's request for release of the child from the program, request that the children's court attorney initiate involuntary residential treatment proceedings. The children's court attorney may petition the court for such proceedings. The child has a right to a hearing regarding the child's continued treatment within seven days of the request for release.

K. A residential treatment or habilitation program shall review the admission of a child at the end of a sixty-day period after the date of initial admission, and the child's physician or licensed psychologist shall review the admission to determine whether it is in the best interests of the child to continue the admission. If the child's physician or licensed psychologist concludes that continuation of the residential treatment or habilitation program is in the child's best interests, the child's clinician shall so state in a form to be filed in the child's patient records. The

residential treatment or habilitation program shall notify the guardian ad litem for the child at least seven days prior to the date that the sixty-day period is to end or, if necessary, request a guardian ad litem pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act. The guardian ad litem shall then personally meet with the child, the child's legal custodian and the child's clinician and ensure that the child's legal custodian understands and consents to the child's continued admission to the residential treatment or habilitation program. If the guardian ad litem determines that the child's legal custodian understands and consents to the child's continued admission to the residential treatment or habilitation program, that the continued admission is in the child's best interest, that the placement continues to be appropriate for the child and consistent with the least restrictive means principle and that the clinician has recommended the child's continued stay in the program, the guardian ad litem shall so certify on a form designated by the supreme court. The disposition of these forms shall be as set forth in this section, with one copy going in the child's patient record and the other being sent to the district court in a manner that preserves the child's anonymity. This procedure shall take place every sixty days following the child's last admission or a guardian ad litem's certification, whichever occurs first.

L. When a guardian ad litem determines that the child's legal custodian does not understand or consent to the child's admission to a residential treatment or habilitation program, that the admission is not in the child's best interests, that the placement is inappropriate for the child or is inconsistent with the least restrictive means principle or that the child's clinician has not recommended a continued stay by the child in the residential treatment or habilitation program, the child shall be released or involuntary placement procedures shall be initiated.

M. If the child's legal custodian is unavailable to take custody of the child and immediate discharge of the child would endanger the child, the residential treatment or habilitation program may detain the child until a safe and orderly discharge is possible. If the child's legal custodian refuses to take physical custody of the child, the residential treatment or habilitation program shall refer the case to the department for an abuse and neglect or family in need of court-ordered services investigation. The department may take the child into protective custody pursuant to the provisions of the Abuse and Neglect Act or the Family in Need of Court-Ordered Services Act."

Section 21. A new section of the Children's Code is enacted to read:

"VOLUNTARY RESIDENTIAL TREATMENT OR HABILITATION FOR

CHILDREN FOURTEEN YEARS OF AGE OR OLDER.--

A. A child fourteen years of age or older shall not receive treatment for mental disorders or habilitation for developmental disabilities on a voluntary residential basis, except as provided in this section.

B. An admission of a child fourteen years of age or older to a residential treatment or habilitation program is voluntary when it is medically necessary and consented to by the child and the child's legal custodian as set forth in this section, provided that the admission does not exceed sixty days, subject to the requirements of this section.

C. To have a child voluntarily admitted to a residential treatment or habilitation program, the child and the child's legal custodian shall knowingly and voluntarily execute, prior to admission, a child's voluntary consent to admission document. The document shall include a clear statement of the child's right to voluntarily consent or to request an immediate discharge from the residential treatment or habilitation program at any time; and the child's rights when the child requests a discharge and the child's physician, licensed psychologist or the director of the residential treatment or habilitation program determines the child needs continued treatment. The residential treatment or habilitation program shall ensure that each statement is clearly explained in the child's and legal custodian's primary

language, if that is their language of preference, and in a manner appropriate to the child's and legal custodian's developmental abilities, and each statement shall be initialed by the child and the child's legal custodian.

D. A child who is admitted on a voluntary basis has a right to an attorney. Prior to admission, the residential treatment or habilitation program shall inform the child's legal custodian of the child's right to an independent attorney within seventy-two hours. If the child's legal custodian is unable to obtain an independent attorney, the legal custodian may petition the court to appoint an attorney for the child. If the child's legal custodian obtains an independent attorney for the child, the legal custodian shall notify the residential treatment or habilitation program of that attorney's name within seventy-two hours of the child's voluntary admission.

E. The child's executed voluntary consent to admission document shall be filed in the child's treatment record within twenty-four hours of the time of admission.

F. Upon the filing of the child's voluntary consent to admission document in the child's treatment record, the director of the residential treatment or habilitation program or the director's designee shall, on the next business day following the child's admission, notify the district court or the special commissioner of the admission, giving the

child's name, date of birth and the date and place of admission. Upon receipt of notice of a child's voluntary admission to a residential treatment or habilitation program, the court or special commissioner shall establish a sequestered court file.

G. If within seventy-two hours of the child's voluntary admission the child has not met with an independent attorney and the child's legal custodian has not notified the residential treatment or habilitation program of the name of the child's independent attorney, the residential treatment or habilitation program shall during the next business day petition the court to appoint an attorney. When the court receives the petition, the court shall appoint an attorney.

H. If within seventy-two hours of the child's voluntary admission the child has met with an independent attorney or the child's legal custodian has notified the residential treatment or habilitation program of the name of the child's independent attorney, the residential treatment or habilitation program shall during the next business day notify the court or the special commissioner of the name of the child's independent attorney.

I. Within seven days of the admission, an attorney representing the child pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act shall meet with the child. At the meeting with the child, the

attorney shall explain to the child the following:

(1) the child's right to an attorney;

(2) the child's right to terminate the child's voluntary admission and the procedures to effect termination;

(3) the effect of terminating the child's voluntary admission and options of the clinician and other interested parties to petition for an involuntary admission; and

(4) the child's rights under the provisions of the Children's Mental Health and Developmental Disabilities Act, including the right to:

(a) legal representation;

(b) a presumption of competence;

(c) receive daily visitors of the child's choice;

(d) receive and send uncensored mail;

(e) have access to telephones;

(f) follow or abstain from the practice of religion;

(g) a humane and safe environment;

(h) physical exercise and outdoor exercise;

(i) a nourishing, well-balanced, varied and appetizing diet;

(j) medical treatment;

(k) educational services;

(l) freedom from unnecessary or excessive medication;

(m) individualized treatment and habilitation; and

(n) participation in the development of the individualized treatment plan and access to that plan on request.

J. If the attorney determines that the child understands the child's rights and that the child voluntarily and knowingly desires to remain as a patient in a residential treatment or habilitation program, the attorney shall so certify on a form designated by the supreme court. The form, when completed by the attorney, shall be filed in the child's patient record at the residential treatment or habilitation program, and a copy shall be forwarded to the court or special commissioner within seven days of the child's admission. The attorney's statement shall not identify the child by name.

K. Upon reaching the age of fourteen, a child who was a voluntary admittee to a residential treatment or habilitation program may petition the district court for the records of the court regarding all matters pertinent to the child's voluntary admission to a residential treatment or habilitation program. The court, upon receipt of the petition

and upon a determination that the petitioner was in fact the child who was a voluntary admittee to a residential treatment or habilitation program, shall give all court records regarding the admission to the petitioner, including all copies in the court's possession unless there is a showing that provision of records would cause substantial harm to the child. A person who was admitted to a residential or treatment or habilitation program as a child, upon reaching the age of eighteen, may petition the district court for such records and the district court shall provide all court records regarding the admission to the petitioner, including all copies in the court's possession.

L. Any child voluntarily admitted to a residential treatment or habilitation program has the right to an immediate discharge from the residential treatment or habilitation program upon the child's request, except as provided in this section. If a child informs the director, clinician or other member of the residential treatment or habilitation program staff that the child desires to be discharged from the voluntary program, the director, clinician or other staff member shall provide for the child's immediate discharge. The residential treatment or habilitation program shall not require that the child's request be in writing. Upon the request, the residential treatment or habilitation program shall notify the child's legal custodian to take

custody of the child and remit the child to the legal custodian's care. The residential treatment or habilitation program shall also notify the child's attorney. If the child's legal custodian is unavailable to take custody of the child and immediate discharge of the child would endanger the child, the residential treatment or habilitation program may detain the child until a safe and orderly discharge is possible. If the child's legal custodian refuses to take physical custody of the child, the residential treatment or habilitation program shall refer the case to the department for an abuse and neglect or family in need of court-ordered services investigation. The department may take the child into protective custody pursuant to the provisions of the Abuse and Neglect Act or the Family in Need of Court-Ordered Services Act. A child requesting immediate discharge shall be discharged, except in those situations when the director of the residential treatment or habilitation program, a physician or a licensed psychologist determines that the child requires continued treatment and that the child meets the criteria for involuntary residential treatment or habilitation services as otherwise provided under the Children's Mental Health and Developmental Disabilities Act. In that event, the director, physician or licensed psychologist, after making the determination, shall, on the first business day following the child's request for release from the voluntary program,

request that the child's court attorney initiate involuntary placement proceedings. The child's court attorney may petition for such a placement. The child has a right to a hearing on the child's continued treatment within five days of the child's request for release.

M. A child who is voluntarily admitted to a residential treatment or habilitation program shall have the child's voluntary admission reviewed at the end of a sixty-day period from the date of the child's initial admission to the program. The review shall be accomplished by having the child's physician or licensed psychologist review the child's treatment and determine whether it would be in the best interests of the child to continue the voluntary admission. If the child's physician or licensed psychologist concludes that continuation of treatment is in the child's best interests, the child's clinician shall so state in a form to be filed in the child's patient record. The residential treatment or habilitation program shall notify the child's attorney at least seven days prior to the date that the sixty-day period is to end or, if necessary, request an attorney pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act. The attorney shall then personally meet with the child and ensure that the child understands the child's rights as set forth in this section, that the child understands the method for voluntary

termination of the child's admission and that the child knowingly and voluntarily consents to the child's continued treatment. If the attorney determines that the child understands these rights and that the child voluntarily and knowingly desires to remain in the residential treatment or habilitation program and that the clinician has recommended the continued stay in the program, the attorney shall so certify on a form designated by the supreme court. The disposition of these forms shall be as set forth in this section, with one copy going in the child's patient record and the other being sent to the district court in a manner that preserves the child's anonymity. This procedure shall take place every sixty days from the last admission or attorney's certification, whichever comes first.

N. If the attorney determines that the child does not voluntarily desire to remain in the program or if the child's clinician has not recommended continued stay by the child in the residential treatment or habilitation program, the child shall be released pursuant to the involuntary placement procedures set forth in this section and the Children's Mental Health and Developmental Disabilities Act shall be followed."

Section 22. A new section of the Children's Code is enacted to read:

"INVOLUNTARY RESIDENTIAL TREATMENT.--

A. A child may not receive treatment for mental disorders or habilitation for developmental disabilities on an involuntary residential basis except as provided in this section.

B. A child afforded rights under the Children's Mental Health and Developmental Disabilities Act shall be advised of those rights at that child's first appearance before the court on a petition under that act.

C. A child has the right to be placed in a residential treatment or habilitation program only when the placement is medically necessary.

D. A person who believes that a child, as a result of a mental disorder or developmental disability, is in need of residential mental health or developmental disabilities services may request that a children's court attorney file a petition with the court for the child's involuntary placement. The petition shall include a detailed description of the symptoms or behaviors of the child that support the allegations in the petition, a list of prospective witnesses for involuntary placement and a summary of matters to which they will testify. The petition should also contain a discussion of the alternatives to residential care that have been considered and the reasons for rejecting the alternatives. A copy of the petition shall be served upon the child, the child's legal custodian and the child's attorney or

guardian ad litem.

E. The court shall, upon receiving the petition, appoint counsel for the child unless the child has retained an attorney or an attorney or guardian ad litem has been appointed pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act. The attorney or guardian ad litem shall represent the child at all stages of the proceedings.

F. If, after interviewing the child, the child's attorney or guardian ad litem determines that the child understands the child's rights and desires to waive the child's presence at the hearing on the issue of involuntary placement, the attorney or guardian ad litem shall submit a verified written statement to the court explaining the attorney's or guardian ad litem's understanding of the child's intent. If the court is satisfied that the child has voluntarily and knowingly waived the child's right to be present at the hearing, the child may be involuntarily placed in a residential treatment or habilitation program at a hearing at which the child is not present. By waiving the right to be present at the involuntary placement hearing, the child waives no other rights.

G. An involuntary placement hearing shall be held within seven days of the emergency admission of the child to a residential treatment or habilitation program under this

section. An involuntary placement hearing shall be held within five days from a child's declaration that the child desires to terminate the child's voluntary admission to a residential treatment or habilitation program if the child's clinician has assessed and documented that involuntary placement is necessary.

H. At the involuntary placement hearing, the child shall:

(1) at all times be represented by counsel;

(2) have the right to present evidence, including the testimony of a mental health and developmental disabilities professional of the child's own choosing;

(3) have the right to cross-examine witnesses;

(4) have the right to a complete record of the proceedings; and

(5) have the right to an expeditious appeal of an adverse ruling.

I. The legal custodian of a child involved in an involuntary placement hearing shall have automatic standing as witnesses and shall be allowed to testify by telephone or through a written affidavit if circumstances make personal testimony too burdensome.

J. The court shall include in its findings either a statement of the child's legal custodian's opinion about

whether the child should be involuntarily placed in a residential treatment or habilitation program, a statement detailing the efforts made to ascertain the legal custodian's opinion or a statement of why it was not in the child's best interests to have the legal guardian involved.

K. The court shall make an order involuntarily placing the child in a residential treatment or habilitation program upon a showing by clear and convincing evidence that:

(1) as a result of mental disorder or developmental disability the child needs the treatment or habilitation services proposed;

(2) as a result of mental disorder or developmental disability the child is likely to benefit from the treatment or habilitation services proposed;

(3) the proposed involuntary placement is consistent with the treatment or habilitation needs of the child; and

(4) the proposed involuntary placement is consistent with the least restrictive means principle.

L. If the court determines that the child does not meet the criteria for involuntary placement set forth in this section, it may order the child to undergo nonresidential treatment or habilitation as may be appropriate and necessary or it may order no treatment. If the court determines that the child should not be involuntarily placed in a residential

treatment or habilitation program and if the child's legal custodian refuses to take custody of the child, the court shall refer the case to the department for an abuse and neglect investigation. The department may take the child into custody pursuant to the provisions of the Abuse and Neglect Act or the Family in Need of Court-Ordered Services Act.

M. A child receiving involuntary residential treatment or habilitation services for a mental disorder or developmental disability under this section shall have a right to periodic review of the child's involuntary placement at the end of every involuntary placement period. An involuntary placement period shall not exceed sixty days. At the expiration of an involuntary placement period, the child may continue in residential care only after a new involuntary placement hearing and entry of a new order of involuntary placement for one involuntary placement period. Nothing set forth in the Children's Mental Health and Developmental Disabilities Act prohibits a child, who has been involuntarily placed and thereafter discharged and released, from subsequently voluntarily consenting to admission under the provisions of that act.

N. If the person seeking the involuntary placement of a child to a residential treatment or habilitation program believes that the child is likely to cause serious bodily harm to self or to others during the period that would be required

to hold an involuntary placement hearing as provided in this section, the child may be admitted to residential care on an emergency basis. If the child is admitted on an emergency basis, appointment of counsel and other procedures shall then take place as provided elsewhere in this section."

Section 23. A new section of the Children's Code is enacted to read:

"LIABILITY OF PERSONS PROVIDING TREATMENT OR HABILITATION SERVICES.--

A. A person providing mental health and developmental disability services to a child and a treatment facility providing mental health and developmental disability services to a child shall not be liable if:

(1) the child does not require detention, treatment or services;

(2) the admission or treatment was made solely on the basis of misrepresentations by a child seeking treatment or habilitation services or by a child's legal custodian, provided the professional or the facility's staff acted in good faith; or

(3) the admission was made solely on the basis of reliance upon a tribal court order, provided the mental health or developmental professional or the facility's staff acted in good faith.

B. Nothing in the Children's Mental Health and

Developmental Disabilities Act shall be construed to relieve any professional or facility from liability for negligence or intentional misconduct in the diagnosis, treatment or services provided to any child.

C. Nothing in the Children's Mental Health and Developmental Disabilities Act shall be construed to relieve any professional or facility from a duty pursuant to reporting laws relating to the detection of child abuse."

Section 24. A new section of the Children's Code is enacted to read:

"DISCLOSURE OF INFORMATION.--

A. Except as otherwise provided in the Children's Mental Health and Developmental Disabilities Act, a person shall not, without the authorization of the child, disclose or transmit any confidential information from which a person well-acquainted with the child might recognize the child as the described person or any code, number or other means that could be used to match the child with confidential information regarding the child.

B. When the child is under fourteen years of age, the child's legal custodian is authorized to consent to disclosure on behalf of the child. Information shall also be disclosed to a court-appointed guardian ad litem without consent of the child or the child's legal custodian.

C. A child fourteen years of age or older with

capacity to consent to disclosure of confidential information shall have the right to consent to disclosure of mental health and habilitation records. A legal custodian who is authorized to make health care decisions for a child has the same rights as the child to request, receive, examine, copy and consent to the disclosure of medical or other health care information when evidence exists that such a child whose consent to disclosure of confidential information is sought does not have capacity to give or withhold valid consent and does not have a treatment guardian appointed by a court. If the legal custodian is not authorized to make decisions for a child under the Children's Mental Health and Developmental Disabilities Act, the person seeking authorization shall petition the court for the appointment of a treatment guardian to make a decision for such a child.

D. Authorization from the child shall not be required for the disclosure or transmission of confidential information when the disclosure or transmission:

(1) is necessary for treatment of the child and is made in response to a request from a clinician;

(2) is necessary to protect against a clear and substantial risk of imminent serious physical injury or death inflicted by the child on self or another;

(3) is determined by a clinician not to cause substantial harm to the child and a summary of the

child's assessment, treatment plan, progress, discharge plan and other information essential to the child's treatment is made to a child's legal custodian or guardian ad litem;

(4) is to the primary caregiver of the child and the information disclosed was necessary for the continuity of the child's treatment in the judgment of the treating clinician who discloses the information;

(5) is to an insurer contractually obligated to pay part or all of the expenses relating to the treatment of the child at the residential facility. The information disclosed shall be limited to data identifying the child, facility and treating or supervising physician and the dates and duration of the residential treatment. It shall not be a defense to an insurer's obligation to pay that the information relating to the residential treatment of the child, apart from information disclosed pursuant to this section, has not been disclosed to the insurer;

(6) is to a protection and advocacy representative pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991; and

(7) is pursuant to a court order issued for good cause shown after notice to the child and the child's legal custodian and opportunity to be heard is given. Before

issuing an order requiring disclosure, the court shall find that:

(a) other ways of obtaining the information are not available or would not be effective; and

(b) the need for the disclosure outweighs the potential injury to the child, the clinician-child relationship and treatment services.

E. A disclosure ordered by the court shall be limited to the information that is essential to carry out the purpose of the disclosure. Disclosure shall be limited to those persons whose need for the information forms the basis for the order. An order by the court shall include such other measures as are necessary to limit disclosure for the protection of the child, including sealing from public scrutiny the record of a proceeding for which disclosure of a child's record has been ordered.

F. An authorization given for the transmission or disclosure of confidential information shall not be effective unless it:

(1) is in writing and signed; and

(2) contains a statement of the child's right to examine and copy the information to be disclosed, the name or title of the proposed recipient of the information and a description of the use that may be made of the information.

G. The child has a right of access to confidential

information about the child and has the right to make copies of information about the child and submit clarifying or correcting statements and other documentation of reasonable length for inclusion with the confidential information. The statements and other documentation shall be kept with the relevant confidential information, shall accompany it in the event of disclosure and shall be governed by the provisions of this section to the extent the statements or other documentation contain confidential information. Nothing in this subsection shall prohibit the denial of access to the records when a physician or other mental health or developmental disabilities professional believes and notes in the child's medical records that the disclosure would not be in the best interests of the child. In all cases, the child has the right to petition the court for an order granting access.

H. Information concerning a child disclosed under this section shall not be released to any other person, agency or governmental entity or placed in files or computerized data banks accessible to any persons not otherwise authorized to obtain information under this section. Notwithstanding the confidentiality provisions of the Delinquency Act and the Abuse and Neglect Act, information disclosed under this section shall not be re-released without the express consent of the child or legal custodian authorized under the

Children's Mental Health and Developmental Disabilities Act to give consent and any other consent necessary for redisclosure in conformance with state and federal law, including consent that may be required from the professional or the facility that created the document.

I. Nothing in the Children's Mental Health and Developmental Disabilities Act shall limit the confidentiality rights afforded by federal statute or regulation.

J. The department shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and federal law and the Children's Court Rules."

Section 25. A new section of the Children's Code is enacted to read:

"SPECIAL COMMISSIONER.--A court may conduct the proceedings required by the Children's Mental Health and Developmental Disabilities Act or may, by general or special order, appoint a special commissioner to do so. The special commissioner shall be a licensed attorney. Upon conclusion of the hearing, the special commissioner shall file findings and recommendations with the court promptly."

Section 26. A new section of the Children's Code is enacted to read:

"TRANSPORTATION.--When a child is to be placed in a residential treatment or habilitation program or to be

returned to the program during placement, the court ordering the placement or authorizing the return of the child may direct the sheriff, the New Mexico state police or other appropriate persons to furnish suitable transportation in order to effect the placement or return by contacting the department for directions as to the destination of the child."

Section 27. A new section of the Children's Code is enacted to read:

"VIOLATION OF A CHILD'S RIGHTS.--A child who believes that rights established by the Children's Mental Health and Developmental Disabilities Act or by the constitution of the United States or the constitution of New Mexico have been violated shall have a right to petition the court for redress. The child shall be represented by counsel. The court shall grant relief as is appropriate, subject to the provisions of the Tort Claims Act."

Section 28. A new section of the Children's Code is enacted to read:

"COST OF CARE.--An indigent child may receive care and treatment at a state-operated facility without charge. The governing authorities of the facility may require payment for the cost of care and treatment from others pursuant to established fee schedules based on ability to pay."

Section 29. A new section of the Children's Code is enacted to read:

"RECOGNITION OF TRIBAL COURT INVOLUNTARY PLACEMENT ORDERS.--

A. Notwithstanding the provisions of any other law to the contrary, an involuntary placement order for a child issued by a tribal court shall be recognized and enforced by the district court for the judicial district in which the tribal court is located. The involuntary placement order shall be filed with the clerk of the district court. The tribal court, as the court of original jurisdiction, shall retain jurisdiction and authority over the child.

B. A child placed in an evaluation facility pursuant to the provisions of this section shall be subject to the continuing jurisdiction of the tribal court; provided that any decisions regarding discharge or release of the child from the evaluation facility shall be made by the administrator of that facility. Prior to discharging or releasing the child, the facility shall:

(1) make custody arrangements with the child's legal custodian; and

(2) establish a plan for the child's aftercare.

C. When an Indian child is placed in an evaluation facility pursuant to the provisions of this section, any outpatient treatment of the Indian child shall be provided in the same manner as treatment would be provided for any other

child.

D. When an Indian child requires emergency treatment or habilitation, that treatment or habilitation shall be provided pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

E. An Indian child residing on or off a reservation, as a citizen of this state, shall have the same right to services available to other children of the state."

Section 30. TEMPORARY PROVISION.--In keeping with Section 8 of the Children's Mental Health and Developmental Disabilities Act, the department of health shall promulgate rules for the operation of a human rights committee charged with review and evaluation of a treatment plan that includes aversive intervention.

Section 31. REPEAL.--Sections 32A-6-1 through 32A-6-22 NMSA 1978 (being Laws 1995, Chapter 207, Sections 1 through 10 and 12 through 24, as amended) are repealed.