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HOUSE BILL 499

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Dennis J. Kintigh

AN ACT

RELATING TO CIVIL COMMITMENT; AMENDING AND ENACTING SECTIONS OF THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE TO PROVIDE FOR CIVIL COMMITMENT OF INDIVIDUALS WHO ARE MENTALLY ILL AND DANGEROUS TO OTHERS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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

SECTION 1. Section 43-1-3 NMSA 1978 (being Laws 1977, Chapter 279, Section 2, as amended by Laws 2007, Chapter 46, Section 42 and by Laws 2007, Chapter 325, Section 9) is amended to read:

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

A. "aversive stimuli" means anything that, because it is believed to be unreasonably unpleasant, uncomfortable or

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1 distasteful to the client, is administered or done to the
2 client for the purpose of reducing the frequency of a behavior,
3 but does not include verbal therapies, physical restrictions to
4 prevent imminent harm to self or others or psychotropic
5 medications that are not used for purposes of punishment;

6 B. "client" means any patient who is requesting or
7 receiving mental health services or any person requesting or
8 receiving developmental disabilities services or who is present
9 in a mental health or developmental disabilities facility for
10 the purpose of receiving such services or who has been placed
11 in a mental health or developmental disabilities facility by
12 the person's parent or guardian or by any court order;

13 C. "code" means the Mental Health and Developmental
14 Disabilities Code;

15 D. "consistent with the least drastic means
16 principle" means that the habilitation or treatment and the
17 conditions of habilitation or treatment for the client,
18 separately and in combination:

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

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

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1 and

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

4 E. "convulsive treatment" means any form of mental
5 health treatment that depends upon creation of a convulsion by
6 any means, including but not limited to electroconvulsive
7 treatment and insulin coma treatment;

8 F. "court" means a district court of New Mexico;

9 G. "department" or "division" means the behavioral
10 health services division of the human services department;

11 H. "developmental disability" means a disability of
12 a person that is attributable to mental retardation, cerebral
13 palsy, autism or neurological dysfunction that requires
14 treatment or habilitation similar to that provided to persons
15 with mental retardation;

16 I. "evaluation facility" means a community mental
17 health or developmental disability program or a medical
18 facility that has psychiatric or developmental disability
19 services available, including the New Mexico behavioral health
20 institute at Las Vegas, the Los Lunas medical center or, if
21 none of the foregoing is reasonably available or appropriate,
22 the office of a licensed physician or a certified psychologist,
23 and that is capable of performing a mental status examination
24 adequate to determine the need for involuntary treatment;

25 J. "experimental treatment" means any mental health

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1 or developmental disabilities treatment that presents
2 significant risk of physical harm, but does not include
3 accepted treatment used in competent practice of medicine and
4 psychology and supported by scientifically acceptable studies;

5 K. "grave passive neglect" means failure to provide
6 for basic personal or medical needs or for one's own safety to
7 such an extent that it is more likely than not that serious
8 bodily harm will result in the near future;

9 L. "habilitation" means the process by which
10 professional persons and their staff assist a client with a
11 developmental disability in acquiring and maintaining those
12 skills and behaviors that enable the person to cope more
13 effectively with the demands of the person's self and
14 environment and to raise the level of the person's physical,
15 mental and social efficiency. "Habilitation" includes but is
16 not limited to programs of formal, structured education and
17 treatment;

18 M. "likelihood of serious harm to oneself" means
19 that it is more likely than not that in the near future the
20 person will attempt to commit suicide or will cause serious
21 bodily harm to the person's self by violent or other self-
22 destructive means, including but not limited to grave passive
23 neglect;

24 N. "likelihood of serious harm to others" means
25 that it is more likely than not that in the near future a

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

6 O. "mental disability" means substantial disorder
7 of a person's emotional processes, thought or cognition that
8 grossly impairs judgment, behavior or capacity to recognize
9 reality, but does not mean developmental disability;

10 P. "mental health or developmental disabilities
11 professional" means a physician or other professional who by
12 training or experience is qualified to work with persons with a
13 mental disability or a developmental disability;

14 Q. "physician" or "certified psychologist", when
15 used for the purpose of hospital admittance or discharge, means
16 a physician or certified psychologist who has been granted
17 admitting privileges at a hospital licensed by the department
18 of health, if such privileges are required;

19 R. "psychosurgery":

20 (1) means those operations currently referred
21 to as lobotomy, psychiatric surgery and behavioral surgery and
22 all other forms of brain surgery if the surgery is performed
23 for the purpose of the following:

24 (a) modification or control of thoughts,
25 feelings, actions or behavior rather than the treatment of a

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1 known and diagnosed physical disease of the brain;

2 (b) treatment of abnormal brain function
3 or normal brain tissue in order to control thoughts, feelings,
4 actions or behavior; or

5 (c) treatment of abnormal brain function
6 or abnormal brain tissue in order to modify thoughts, feelings,
7 actions or behavior when the abnormality is not an established
8 cause for those thoughts, feelings, actions or behavior; and

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

11 S. "residential treatment or habilitation program"
12 means diagnosis, evaluation, care, treatment or habilitation
13 rendered inside or on the premises of a mental health or
14 developmental disabilities facility, hospital, clinic,
15 institution or supervisory residence or nursing home when the
16 client resides on the premises; ~~and~~

17 T. "secure treatment facility" means a facility,
18 institution or agency licensed, certified or otherwise
19 authorized or permitted by law to provide mental health
20 treatment in the ordinary course of business that is operated
21 or structured so as to ensure that all entrances and exits from
22 the facility are under the exclusive control of the staff of
23 the facility, whether or not the person being detained has
24 freedom of movement within the perimeters of the facility, or
25 that relies on locked rooms and buildings, fences or physical

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1 restraint in order to control behavior of its residents;
2 "secure treatment facility" does not include a jail, prison or
3 other place primarily used as a place where persons are
4 confined while on trial or for punishment in a criminal matter;
5 and

6 [F.] U. "treatment" means any effort to accomplish
7 a significant change in the mental or emotional condition or
8 behavior of the client."

9 SECTION 2. A new Section 43-1-26 NMSA 1978 is enacted to
10 read:

11 "43-1-26. [NEW MATERIAL] PROCEDURE FOR CIVIL COMMITMENT--
12 PERSONS FOUND TO BE MENTALLY ILL--PERSONS FOUND TO BE DANGEROUS
13 TO OTHERS--COMMITMENT TO SECURE TREATMENT FACILITY--TRANSFER--
14 PROVISIONAL DISCHARGE--DISCHARGE--REVOCATION OF STATUS--SPECIAL
15 REVIEW BOARD.--

16 A. Upon filing a petition alleging that a proposed
17 client is a person who is mentally ill and a danger to others,
18 the court shall hear the petition as provided in Section
19 43-1-11 NMSA 1978. After an evidentiary hearing on the matter
20 pursuant to Section 43-1-11 NMSA 1978, if the court finds by
21 clear and convincing evidence that the proposed client is a
22 person who is mentally ill and dangerous to others, it shall
23 commit the proposed client to a secure treatment facility
24 unless that client establishes by clear and convincing evidence
25 that a less restrictive treatment program is available that is

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1 consistent with the client's treatment needs and the
2 requirements of public safety. If the petition was filed
3 immediately following the acquittal of the proposed client for
4 a crime against the person pursuant to a verdict of not guilty
5 by reason of insanity, the verdict shall constitute evidence
6 that the proposed client is a person who is mentally ill and
7 dangerous within the meaning of this section. The proposed
8 client shall have the burden of presenting evidence in
9 accordance with a clear and convincing standard of proof. Upon
10 commitment, admission procedures shall be carried out pursuant
11 to the provisions of Section 43-1-22 NMSA 1978.

12 B. Once a client is admitted to a secure treatment
13 facility or an evaluation facility pursuant to a commitment
14 under this section, the client's treatment shall begin
15 regardless of whether a review hearing will be held under
16 Subsection C of this section.

17 C. A secure treatment facility shall file a written
18 treatment report with the committing court within sixty days
19 after a client has been committed pursuant to Subsection A of
20 this section as a person who is mentally ill and dangerous to
21 others. If the client is in the custody of the secretary of
22 corrections when initial commitment is ordered pursuant to
23 Subsection A of this section, the secure treatment facility
24 shall file the written treatment report within sixty days after
25 the client is admitted to the secure treatment facility. The

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1 committing court shall hold a hearing to make a final
2 determination as to whether the client shall remain committed
3 as a person who is mentally ill and dangerous to others within
4 the earlier of fourteen days of the court's receipt of the
5 written treatment report or ninety days of the date of initial
6 commitment or admission, unless otherwise agreed by the
7 parties. With the agreement of the district attorney or
8 counsel for the department of health and the client's attorney,
9 the court may:

10 (1) waive the review hearing under this
11 subsection and immediately order an indeterminate commitment
12 pursuant to Subsection E of this section; or

13 (2) continue the review hearing for a maximum
14 of one year.

15 D. If a court finds that a client should be
16 committed as a person who is mentally ill, but not as a person
17 who is mentally ill and dangerous to others, the court may,
18 after a full and fair hearing on the matter, commit the client
19 as a person who is mentally ill to a treatment facility that is
20 not a secure treatment facility. The client shall be deemed
21 not to have been found to be dangerous to others for the
22 purposes of Subsections F through T of this section. If the
23 client is in the custody of the secretary of corrections when
24 initial commitment is ordered pursuant to Subsection A of this
25 section, the treatment facility shall file the written

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1 treatment report within sixty days after the client is admitted
2 to the treatment facility. The committing court shall hold a
3 hearing to make a final determination as to whether the client
4 shall remain committed as a person who is mentally ill within
5 the earlier of fourteen days of the court's receipt of the
6 written treatment report or ninety days of the date of initial
7 commitment or admission, unless otherwise agreed by the
8 parties. With the agreement of the district attorney or
9 counsel for the department of health and the client's attorney,
10 the court may:

11 (1) waive the review hearing under this
12 subsection and immediately order an indeterminate commitment
13 pursuant to Subsection E of this section; or

14 (2) continue the review hearing for a maximum
15 of one year.

16 E. If a court finds that during the final
17 determination hearing held pursuant to Subsection D of this
18 section a proposed client continues to be a person who is
19 mentally ill and dangerous to others, the court shall order the
20 proposed client to be committed for an indeterminate period of
21 time. After a final determination that a proposed client is a
22 person who is mentally ill and dangerous to others, the client
23 shall be transferred, provisionally discharged or discharged
24 only as provided pursuant to the provisions of this section.

25 F. A client who has been committed as a person who

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1 is mentally ill and dangerous to others and who is confined at
2 a secure treatment facility or who has been transferred from a
3 state-operated treatment facility according to Subsection N of
4 this section shall not be released on a pass unless that pass
5 is part of a pass plan that the medical director of the secure
6 treatment facility has approved. The pass plan shall have a
7 specific therapeutic purpose consistent with the client's
8 treatment plan, be established for a specific period of time
9 and have specific levels of liberty delineated. The client's
10 case manager shall be invited to participate in the development
11 of the pass plan. At least ten days prior to a determination
12 on the pass plan, the medical director shall notify the
13 division, the committing court, the district attorney or the
14 counsel for the department of health, any interested person,
15 the local law enforcement agency in the location where the pass
16 plan is to be carried out, the petitioner and the petitioner's
17 counsel regarding the plan, the nature of the passes proposed
18 and each of these person's right to present grounds for
19 opposing the pass plan. The pass plan shall not be implemented
20 until each of these persons has been allowed an opportunity to
21 object. Nothing in this subsection shall be construed to
22 provide a client with an affirmative right to a pass plan.

23 G. The following clients who have been committed to
24 a secure treatment facility as persons who are mentally ill and
25 dangerous to others shall not be eligible for a pass unless the

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1 medical director has approved that client's eligibility:

2 (1) a client whom a court has found to be
3 incompetent to proceed to trial for a felony or was found not
4 guilty by reason of mental illness of a felony after a full and
5 fair evidentiary hearing on the matter prior to the filing of
6 the client's commitment petition;

7 (2) a client who was convicted of a felony
8 immediately prior to or during commitment as a person who is
9 mentally ill and dangerous to others;

10 (3) a client who is subject to commitment by
11 the corrections department; or

12 (4) a client who has been committed as a
13 psychopathic personality, a sexually psychopathic personality
14 or a sexually dangerous person.

15 H. At least ten days before a determination on a
16 client's eligibility for a pass plan, the medical director of a
17 secure treatment facility shall notify the committing court,
18 the district attorney or the counsel for the department of
19 health, the division, any interested person, the client and the
20 client's counsel of the proposed eligibility for a pass plan
21 and shall notify each of these person's right to request review
22 by the special review board. If, within ten days of receiving
23 notice, a notified person requests review by filing a notice of
24 objection with the secretary of health and the administrative
25 head of the secure treatment facility, a hearing shall be held

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1 before the special review board. The client shall not be
2 eligible for a pass plan unless the client's pass plan
3 eligibility receives a favorable recommendation by a majority
4 of the special review board and approval by the secretary of
5 health. The order of the secretary of health is appealable
6 pursuant to Section 43-1-27 NMSA 1978.

7 I. The secretary of health shall establish one or
8 more panels of a special review board. The board shall consist
9 of three members experienced in the field of behavioral health.
10 One member of each special review board panel shall be a
11 psychiatrist and one member shall be an attorney at law. No
12 member shall be affiliated with the department of health. The
13 special review board shall meet at least once every six months
14 and at the call of the secretary of health. It shall hear and
15 consider all petitions for a reduction in custody or to appeal
16 a revocation of provisional discharge. The department of
17 health may transfer a client between secure treatment
18 facilities without a special review board hearing. Members of
19 the special review board may receive compensation and
20 reimbursement for expenses as the secretary of health
21 determines.

22 J. A petition for a reduction in custody or
23 revocation of provisional discharge shall be filed with the
24 secretary of health. It may be filed by a client or by the
25 administrative head of the secure treatment facility. A client

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1 shall not petition the special review board for six months
2 following indeterminate commitment pursuant to Subsection E of
3 this section or following the final disposition of any previous
4 and subsequent appeal by the client. The medical director of a
5 secure treatment facility may file a petition for a reduction
6 in custody or revocation of provisional discharge at any time.
7 Fourteen days before the hearing on a petition filed pursuant
8 to this subsection, the committing court, the district attorney
9 or the counsel for the department of health, the division,
10 interested persons, the petitioner and the petitioner's counsel
11 shall be given written notice from the secretary of health of
12 the time and place of the hearing before the special review
13 board. Only those entitled to statutory notice of the hearing
14 or those administratively required to attend may be present at
15 the hearing. The client may designate interested persons to
16 receive notice by providing their names and addresses to the
17 secretary of health at least twenty-one days before the
18 hearing. Within twenty-one days after the hearing, the special
19 review board shall provide the secretary of health with written
20 findings of fact and recommendations. The secretary of health
21 shall issue an order on the matter no later than fourteen days
22 after the secretary receives the recommendations of the special
23 review board. A copy of the order shall be mailed to every
24 person entitled to statutory notice of the hearing within five
25 days after it is signed. No order by the secretary of health

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1 shall be effective sooner than thirty days after the order is
2 issued, unless the district attorney of the county of
3 commitment, the client and the secretary of health agree that
4 it may become effective sooner.

5 K. The special review board shall hold a hearing on
6 each petition prior to making its recommendation to the
7 secretary of health. Any person or agency receiving notice
8 that submits documentary evidence to the special review board
9 prior to the hearing shall also provide copies to the client,
10 the client's counsel, the district attorney of the county of
11 commitment, the client's case manager and the secretary of
12 health. Before the secretary of health renders a final
13 decision, the special review board may be reconvened to
14 consider events or circumstances that occurred after the
15 hearing. In making their recommendations and orders, the
16 special review board and the secretary of health shall consider
17 any statements received from victims pursuant to Subsection L
18 of this section.

19 L. A district attorney or the counsel for the
20 department of health who files a petition to commit a potential
21 client pursuant to this section shall make a reasonable effort
22 to provide prompt notice of the filing of the petition to any
23 victim of a crime for which the potential client was convicted.
24 In addition, the district attorney or the counsel for the
25 department of health shall make a reasonable effort to promptly

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1 notify the victim of the resolution of the matter that is the
2 subject of the petition.

3 M. Before provisionally discharging, discharging,
4 granting pass-eligible status, approving a pass plan or
5 otherwise permanently or temporarily releasing a client
6 committed pursuant to this section from a secure treatment
7 facility, the administrative head of the secure treatment
8 facility shall make a reasonable effort to notify any victim of
9 a crime for which the client was convicted that the client may
10 be discharged or released and that the victim has a right to
11 submit a written statement regarding the decisions of the
12 medical director of the secure treatment facility, the special
13 review board or the secretary of health in that matter.

14 Whenever practicable, the notice shall be provided at least
15 fourteen days before any special review board hearing or before
16 a determination on a pass plan. The secretary of health shall
17 provide the judicial appeal panel with victim information in
18 order to comply with the provisions of this subsection. The
19 judicial appeal panel shall ensure that the data on victims
20 remain private if the victim has requested this by contacting
21 in writing the district attorney in the county where the
22 conviction for the crime occurred. A district attorney who
23 receives a request for notification pursuant to this subsection
24 shall promptly forward the request to the department of health
25 and, if known, to the client's secure treatment facility. A

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1 victim's rights pursuant to this subsection are in addition to
2 the victim's rights pursuant to Section 31-26-4 NMSA 1978.

3 N. A client who is mentally ill and dangerous to
4 others shall not be transferred out of a secure treatment
5 facility unless it appears to the satisfaction of the secretary
6 of health, after a hearing and favorable recommendation by a
7 majority of the special review board, that the transfer is
8 appropriate. Transfer may be made to a secure treatment center
9 under the secretary of health's control. If a client also has
10 a commitment to the corrections department, the client may be
11 transferred to a facility that the secretary of corrections
12 designates. The following factors shall be considered in
13 determining whether a transfer is appropriate:

14 (1) the client's clinical progress and present
15 treatment needs;

16 (2) the need for security to accomplish
17 continuing treatment;

18 (3) the need for continued
19 institutionalization;

20 (4) the facilities from which a selection may
21 be made to best meet the client's and the state's needs; and

22 (5) whether the transfer can be accomplished
23 while reasonably accomplishing the public's safety needs.

24 O. The division shall develop, implement and
25 monitor a provisional discharge plan with the client, the

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1 secure treatment facility and other appropriate persons. At
2 least once per calendar quarter, the division shall review the
3 plan with the client, and the agency shall submit a written
4 report of the plan to the secretary of health and the secure
5 treatment facility regarding the client's status and compliance
6 with each term of the plan.

7 P. A provisional discharge shall not automatically
8 terminate. A full discharge shall occur only as provided in
9 Subsection V of this section. The secretary of health shall
10 notify the client that the terms of a provisional discharge
11 shall continue unless the client requests and is granted a
12 change in the conditions of provisional discharge, or unless
13 the client petitions the special review board for a full
14 discharge and the discharge is granted.

15 Q. The administrative head of a secure treatment
16 facility may revoke a provisional discharge if any of the
17 following grounds exists:

18 (1) the client has departed from the
19 conditions of the provisional discharge plan;

20 (2) the client exhibits signs of a mental
21 illness that may require in-hospital evaluation or treatment;
22 or

23 (3) the client exhibits behavior that may be
24 dangerous to the client or to others.

25 R. The revocation of a provisional discharge shall

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1 be commenced by a notice of intent to revoke provisional
2 discharge, which shall be served upon the client, the client's
3 counsel and the division. The notice shall set forth the
4 grounds upon which the intention to revoke is based and shall
5 inform the client of the client's rights pursuant to the
6 provisions of the Mental Health and Developmental Disabilities
7 Code. Prior to revoking a provisional discharge in a
8 nonemergency situation, the administrative head of a secure
9 treatment facility shall obtain a report from the division
10 outlining the specific reasons for recommending the revocation,
11 including the specific facts upon which the revocation
12 recommendation is based. In an emergency situation, the
13 administrative head of the treatment facility may revoke the
14 provisional discharge and, either orally or in writing, order
15 that the client be immediately returned to the secure treatment
16 facility. In cases of an emergency revocation of a provisional
17 discharge, the division shall submit a report documenting
18 reasons for revocation to the administrative head of the secure
19 treatment facility within seven days after the client's return
20 to the secure treatment facility. In any case of revocation of
21 a provisional discharge, a client shall be provided with a copy
22 of the revocation report and informed both orally and in
23 writing of the client's rights pursuant to the Mental Health
24 and Developmental Disabilities Code.

25 S. After the revocation of a provisional discharge,

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1 or when a client is absent without authorization, the
2 administrative head of a secure treatment facility may request
3 that the client return voluntarily to the secure treatment
4 facility. The administrative head of the secure treatment
5 facility may request that a health officer, a welfare officer
6 or a peace officer return the client to the facility. If a
7 voluntary return is not arranged, the administrative head of
8 the secure treatment facility shall inform the committing court
9 of the revocation or absence. The committing court shall
10 direct a health or peace officer in the county where the
11 client's secure treatment facility is located to return the
12 client to the client's secure treatment facility or to another
13 secure treatment facility. The expense of returning the client
14 to a state-owned secure treatment facility shall be paid by the
15 secretary of health unless the client or another person pays on
16 the client's behalf.

17 T. A client aggrieved by a revocation decision or
18 any interested person may petition the special review board
19 within seven days, exclusive of Saturdays, Sundays and legal
20 holidays, after receipt of the revocation report for a review
21 of the revocation. The matter shall be scheduled within thirty
22 days. The special review board shall review the circumstances
23 leading to the revocation and shall recommend to the secretary
24 of health whether or not the revocation shall be upheld. The
25 special review board may also recommend a new provisional

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1 discharge at the time of a hearing on revocation.

2 U. With the consent of the administrative head of
3 the secure treatment facility, a client may voluntarily return
4 from a provisional discharge for a period not to exceed thirty
5 days, or, with the division's consent, a period not to exceed
6 sixty days. Within fifteen days after having received notice
7 of the change in status, the client may request a review of the
8 matter before the special review board. The board may
9 recommend a return to a provisional discharge status. A secure
10 treatment facility is not required to petition for a further
11 review by the special review board unless the client's return
12 to the community results in a substantive change to the
13 existing provisional discharge plan. All of the terms and
14 conditions of the provisional discharge order shall remain
15 unchanged if the client is released again.

16 V. A client who is mentally ill and dangerous to
17 others shall not be discharged unless it appears to the
18 satisfaction of the secretary of health, after a hearing and a
19 favorable recommendation by a majority of the members of the
20 special review board, that the client is capable of making an
21 acceptable adjustment to open society, is no longer dangerous
22 to others and is no longer in need of inpatient treatment and
23 supervision. In determining whether a discharge shall be
24 recommended, the special review board and the secretary of
25 health shall consider whether specific conditions exist to

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1 provide a reasonable degree of protection to the public and to
2 assist the client in adjusting to the community. If the
3 desired conditions do not exist, the discharge shall not be
4 granted."

5 SECTION 3. A new Section 43-1-27 NMSA 1978 is enacted to
6 read:

7 "43-1-27. [NEW MATERIAL] JUDICIAL APPEALS--JUDICIAL
8 APPEAL PANEL--PATIENTS WHO ARE MENTALLY ILL AND DANGEROUS TO
9 OTHERS.--

10 A. The supreme court shall establish a judicial
11 appeal panel composed of three judges and four alternate judges
12 appointed from among the acting state judges. Judicial appeal
13 panel members shall serve for terms of one year each. Only
14 three judges shall hear a case. The supreme court shall
15 designate one of the regular three appointed judges as chief
16 judge of the judicial appeal panel. The chief judge shall be
17 vested with power to fix the time and place of all hearings
18 before the judicial appeal panel, issue all notices, subpoena
19 witnesses, appoint counsel for the patient, if necessary, and
20 supervise and direct the operation of the judicial appeal
21 panel. The chief judge shall designate one of the other judges
22 or an alternate judge to act as chief judge in any case where
23 the chief judge is unable to act. A member of the judicial
24 appeal panel shall not take part in the consideration of any
25 case in which that judge has previously ordered the client's

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1 commitment.

2 B. A client committed as mentally ill and dangerous
3 to others pursuant to Section 43-1-26 NMSA 1978, or the
4 district attorney from which county the person was committed or
5 the county having financial responsibility for the commitment,
6 may petition the judicial appeal panel for rehearing and
7 reconsideration of a decision by the secretary of health
8 pursuant to Subsection J of Section 43-1-26 NMSA 1978. The
9 judicial appeal panel shall not consider petitions for relief
10 other than those appealed from a decision that the secretary of
11 health has made. The petition for review by the judicial
12 appeal panel shall be filed with the supreme court within
13 thirty days after the date the secretary of health signs an
14 order pursuant to Subsection J of Section 43-1-26 NMSA 1978.
15 The hearing shall be held within one hundred eighty days of the
16 filing of the petition unless an extension is granted for good
17 cause.

18 C. The supreme court shall refer an appeal pursuant
19 to Subsection A or B of this section to the chief judge of the
20 judicial appeal panel. The chief judge shall notify the
21 client, the client's counsel, the district attorney of the
22 county of commitment, the division, the secretary of health,
23 the administrative head of the secure treatment facility,
24 interested persons and other persons that the chief judge
25 designates of the time and place of the hearing on the

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1 petition. The chief judge shall provide the notice at least
2 fourteen days before the hearing date.

3 D. Any person may oppose a petition filed pursuant
4 to Subsection B of this section. Unless the client is
5 committed solely as mentally ill and dangerous to others, the
6 client, the client's counsel, the district attorney of the
7 county in which commitment is occurring or of the county having
8 financial responsibility for the commitment and the secretary
9 of health shall participate as parties to the proceeding
10 pending before the judicial appeal panel. No later than twenty
11 days before the hearing on the petition, the client, the
12 client's counsel, the district attorney of the county in which
13 commitment is occurring or of the county having financial
14 responsibility for the commitment and the secretary of health
15 shall inform the judicial appeal panel and the opposing party
16 in writing whether they support or oppose the petition and
17 provide a summary of facts in support of their positions. The
18 judicial appeal panel may appoint examiners and may adjourn the
19 hearing from time to time. The judicial appeal panel shall
20 hear and receive all relevant testimony and evidence and make a
21 record of all proceedings. The client, the client's counsel
22 and the district attorney of the county in which commitment is
23 occurring or of the county having financial responsibility for
24 the commitment have the right to be present and may present and
25 cross-examine all witnesses and offer a factual and legal basis

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1 in support of their positions. The party petitioning for
2 discharge or provisional discharge shall bear the burden of
3 going forward with the evidence, presenting a prima facie case
4 with competent evidence to show that the person is entitled to
5 the requested relief. If the petitioning party has met this
6 burden, the party opposing discharge or provisional discharge
7 bears the burden of proof by clear and convincing evidence that
8 the discharge or provisional discharge should be denied. A
9 party seeking transfer pursuant to Subsection N or R of Section
10 43-1-26 NMSA 1978 shall establish by a preponderance of the
11 evidence that the transfer is appropriate.

12 E. A majority of the members of the judicial appeal
13 panel shall rule upon a petition on appeal pursuant to this
14 section. The judicial appeal panel shall consider the petition
15 de novo. The order of the judicial appeal panel shall
16 supersede an order of the secretary of health pursuant to a
17 decision the secretary has rendered pursuant to Section 43-1-26
18 NMSA 1978. An order of the judicial appeal panel granting a
19 transfer, discharge or provisional discharge shall be made
20 effective no sooner than fifteen days after its issuance. The
21 judicial appeal panel shall not consider petitions for relief
22 other than those considered by the secretary of health or the
23 special review board from which the appeal is made. The
24 judicial appeal panel shall not grant a transfer or provisional
25 discharge on terms or conditions that were not presented to the

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1 secretary of health or the special review board.

2 F. The filing of a petition shall immediately
3 suspend the operation of an order for transfer, discharge or
4 provisional discharge of the client. The client shall not be
5 discharged in any manner except upon order of a majority of the
6 judicial appeal panel.

7 G. A party aggrieved by an order of the judicial
8 appeal panel may appeal from the decision of the judicial
9 appeal panel to the court of appeals. A party may seek review
10 of a decision by the judicial appeal panel within sixty days
11 after a copy is sent to the parties by the clerk of appellate
12 courts. The filing of an appeal shall immediately suspend the
13 operation of any order granting transfer, discharge or
14 provisional discharge, pending the determination of the
15 appeal."