

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 271

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

AN ACT

RELATING TO MENTAL HEALTH; AMENDING SECTIONS OF THE MENTAL  
HEALTH AND DEVELOPMENTAL DISABILITIES CODE TO ALLOW QUALIFIED  
MENTAL HEALTH PROFESSIONALS LICENSED FOR INDEPENDENT PRACTICE  
TO CERTIFY THAT A PERSON PRESENTS A DANGER TO THAT PERSON OR  
OTHERS AND THAT IMMEDIATE DETENTION IS NECESSARY TO PREVENT  
SUCH HARM AND TO AUTHORIZE TRANSPORT OF THAT PERSON TO AN  
EVALUATION FACILITY; 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  
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underscoring material = new  
[bracketed material] = delete

1 Developmental Disabilities Code:

2 A. "aversive stimuli" means anything that, because  
3 it is believed to be unreasonably unpleasant, uncomfortable or  
4 distasteful to the client, is administered or done to the  
5 client for the purpose of reducing the frequency of a behavior,  
6 but does not include verbal therapies, physical restrictions to  
7 prevent imminent harm to self or others or psychotropic  
8 medications that are not used for purposes of punishment;

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

16 C. "code" means the Mental Health and Developmental  
17 Disabilities Code;

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

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

25 (2) involve no restrictions on physical

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1 movement and no requirement for residential care except as  
2 reasonably necessary for the administration of treatment or for  
3 the protection of the client or others from physical injury;  
4 and

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

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

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

12 G. "department" or "division" means the behavioral  
13 health services division of the human services department;

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

19 I. "evaluation facility" means a community mental  
20 health or developmental disability program or a medical  
21 facility that has psychiatric or developmental disability  
22 services available, including the New Mexico behavioral health  
23 institute at Las Vegas, the Los Lunas medical center or, if  
24 none of the foregoing is reasonably available or appropriate,  
25 the office of a [~~licensed~~] physician or a certified

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1 psychologist, and that is capable of performing a mental status  
2 examination adequate to determine the need for involuntary  
3 treatment;

4 J. "experimental treatment" means any mental health  
5 or developmental disabilities treatment that presents  
6 significant risk of physical harm, but does not include  
7 accepted treatment used in competent practice of medicine and  
8 psychology and supported by scientifically acceptable studies;

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

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

22 M. "likelihood of serious harm to oneself" means  
23 that it is more likely than not that in the near future the  
24 person will attempt to commit suicide or will cause serious  
25 bodily harm to the person's self by violent or other self-

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1 destructive means, including but not limited to grave passive  
2 neglect;

3 N. "likelihood of serious harm to others" means  
4 that it is more likely than not that in the near future a  
5 person will inflict serious, unjustified bodily harm on another  
6 person or commit a criminal sexual offense, as evidenced by  
7 behavior causing, attempting or threatening such harm, which  
8 behavior gives rise to a reasonable fear of such harm from the  
9 person;

10 O. "mental [~~disability~~] disorder" means substantial  
11 disorder of a person's emotional processes, thought or  
12 cognition that grossly impairs judgment, behavior or capacity  
13 to recognize reality, but does not mean developmental  
14 disability;

15 P. "mental health or developmental disabilities  
16 professional" means a physician or other professional who by  
17 training or experience is qualified to work with persons with a  
18 mental [~~disability~~] disorder or a developmental disability;

19 Q. "physician" or "certified psychologist", when  
20 used for the purpose of hospital admittance or discharge, means  
21 a physician or certified psychologist who has been granted  
22 admitting privileges at a hospital licensed by the department  
23 of health, if such privileges are required;

24 R. "psychosurgery":

25 (1) means those operations currently referred

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1 to as lobotomy, psychiatric surgery and behavioral surgery and  
2 all other forms of brain surgery if the surgery is performed  
3 for the purpose of the following:

4 (a) modification or control of thoughts,  
5 feelings, actions or behavior rather than the treatment of a  
6 known and diagnosed physical disease of the brain;

7 (b) treatment of abnormal brain function  
8 or normal brain tissue in order to control thoughts, feelings,  
9 actions or behavior; or

10 (c) treatment of abnormal brain function  
11 or abnormal brain tissue in order to modify thoughts, feelings,  
12 actions or behavior when the abnormality is not an established  
13 cause for those thoughts, feelings, actions or behavior; and

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

16 S. "qualified mental health professional licensed  
17 for independent practice" means a psychologist, an independent  
18 social worker, a licensed professional clinical mental health  
19 counselor, a marriage and family therapist, a certified nurse  
20 practitioner or a clinical nurse specialist with a specialty in  
21 mental health, all of whom by training and experience are  
22 qualified to work with persons with a mental disorder;

23 [~~S.~~] T. "residential treatment or habilitation  
24 program" means diagnosis, evaluation, care, treatment or  
25 habilitation rendered inside or on the premises of a mental

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1 health or developmental disabilities facility, hospital,  
 2 clinic, institution or supervisory residence or nursing home  
 3 when the client resides on the premises; and

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

7 **SECTION 2.** Section 43-1-10 NMSA 1978 (being Laws 1977,  
 8 Chapter 279, Section 9, as amended) is amended to read:

9 "43-1-10. EMERGENCY MENTAL HEALTH EVALUATION AND CARE.--

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

13 (1) the person is otherwise subject to lawful  
 14 arrest;

15 (2) the peace officer has reasonable grounds  
 16 to believe the person has just attempted suicide;

17 (3) the peace officer, based upon ~~[his]~~ the  
 18 peace officer's own observation and investigation, has  
 19 reasonable grounds to believe that the person, as a result of a  
 20 mental disorder, presents a likelihood of serious harm to  
 21 himself or herself or to others and that immediate detention is  
 22 necessary to prevent such harm. Immediately upon arrival at  
 23 the evaluation facility, the peace officer shall be interviewed  
 24 by the admitting physician or ~~[his]~~ the admitting physician's  
 25 designee; or

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1 (4) a [~~licensed~~] physician, [~~or~~] a [~~certified~~]  
2 psychologist or a qualified mental health professional licensed  
3 for independent practice who is affiliated with a community  
4 mental health center or core service agency has certified that  
5 the person, as a result of a mental disorder, presents a  
6 likelihood of serious harm to himself or herself or to others  
7 and that immediate detention is necessary to prevent such harm.  
8 Such certification shall constitute authority to transport the  
9 person.

10 B. An emergency evaluation under this section shall  
11 be accomplished upon the request of a peace officer or jail or  
12 detention facility administrator or [~~his~~] that person's  
13 designee or upon the certification of a [~~licensed~~] physician,  
14 [~~or certified~~] a psychologist [as described in Subsection C of  
15 this section] or a qualified mental health professional  
16 licensed for independent practice who is affiliated with a  
17 community mental health center or core service agency. A court  
18 order is not required under this section. If an application is  
19 made to a court, the court's power to act in furtherance of an  
20 emergency admission shall be limited to ordering that:

21 (1) the client be seen by a certified  
22 psychologist or psychiatrist prior to transport to an  
23 evaluation facility; and

24 (2) a peace officer transport the person to an  
25 evaluation facility.



1           C. An evaluation facility may accept for an  
2 emergency-based admission any person when a [~~licensed~~]  
3 physician or certified psychologist certifies that such person,  
4 as a result of a mental disorder, presents a likelihood of  
5 serious harm to himself or herself or to others and that  
6 immediate detention is necessary to prevent such harm. Such  
7 certification shall constitute authority to transport the  
8 person.

9           D. [~~Any~~] A person detained under this section  
10 shall, whenever possible, be taken immediately to an evaluation  
11 facility. Detention facilities shall be used as temporary  
12 shelter for such persons only in cases of extreme emergency for  
13 protective custody, and no person taken into custody under the  
14 provisions of the code shall remain in a detention facility  
15 longer than necessary and in no case longer than twenty-four  
16 hours. If use of a detention facility is necessary, the  
17 proposed client:

18                   (1) shall not be held in a cell with  
19 prisoners;

20                   (2) shall not be identified on records used to  
21 record custody of prisoners;

22                   (3) shall be provided adequate protection from  
23 possible suicide attempts; and

24                   (4) shall be treated with the respect and  
25 dignity due every citizen who is neither accused nor convicted

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1 of a crime.

2 E. The admitting physician or certified  
3 psychologist shall evaluate whether reasonable grounds exist to  
4 detain the proposed client for evaluation and treatment, and,  
5 if [~~such~~] reasonable grounds are found, the proposed client  
6 shall be detained. If the admitting physician or certified  
7 psychologist determines that reasonable grounds do not exist to  
8 detain the proposed client for evaluation and treatment, the  
9 proposed client shall not be detained.

10 F. Upon arrival at an evaluation facility, the  
11 proposed client shall be informed orally and in writing by the  
12 evaluation facility of the purpose and possible consequences of  
13 the proceedings, [~~the allegations in the petition, his~~] the  
14 right to a hearing within seven days, [~~his~~] the right to  
15 counsel and [~~his~~] the right to communicate with an attorney and  
16 [~~an independent~~] a mental health professional of [~~his~~] the  
17 proposed client's own choosing and shall have the right to  
18 receive necessary and appropriate treatment.

19 G. A peace officer who transports [~~any~~] a proposed  
20 client to an evaluation facility under the provisions of this  
21 section shall not require a court order to be reimbursed by the  
22 referring county."