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HOUSE BILL 221

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

James R.J. Strickler and Mary Kay Papen

AN ACT

RELATING TO LAW ENFORCEMENT; AMENDING SECTIONS OF THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE TO REQUIRE THAT PEACE OFFICERS DETAIN AND TRANSPORT CERTAIN PERSONS FOR EVALUATION AND CARE AND TO ALLOW ENTRY INTO STRUCTURES IN CERTAIN CIRCUMSTANCES TO PROVIDE FOR TRANSPORT OF PERSONS FOR EVALUATION AND CARE.

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

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

"43-1-10. EMERGENCY MENTAL HEALTH EVALUATION AND CARE--ENTRY INTO STRUCTURES---

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

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

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

5 (3) the peace officer, based upon the peace
6 officer's own observation and investigation, has reasonable
7 grounds to believe that the person, as a result of a mental
8 disorder, presents a likelihood of serious harm to himself or
9 herself or to others and that immediate detention is necessary
10 to prevent [~~such~~] serious harm. Immediately upon arrival at
11 the evaluation facility, the peace officer shall be interviewed
12 by the admitting physician or the admitting physician's
13 designee; or

14 (4) a physician who is not a psychiatrist, a
15 psychologist or a qualified mental health professional licensed
16 for independent practice who is affiliated with a community
17 mental health center or core service agency has certified that
18 the person, as a result of a mental disorder, presents a
19 likelihood of serious harm to [~~himself or herself~~] the person
20 or to others and that immediate detention is necessary to
21 prevent [~~such~~] serious harm. [~~Such~~] The certification shall
22 constitute authority to:

23 (a) detain and transport the person; or
24 (b) after a good faith effort to gain
25 permission from an occupant or owner of the structure to enter,

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1 enter a structure in accordance with the provisions of
2 Subsection I of this section when reasonable grounds exist to
3 believe that the person is present in the structure.

4 B. A peace officer shall detain and transport for
5 emergency mental health evaluation and care in the absence of a
6 legally valid court order when a psychiatrist has certified
7 that, as a result of a mental disorder, the person presents a
8 likelihood of serious harm to the person or to others and that
9 immediate detention is necessary to prevent serious harm. The
10 certification shall constitute authority to:

11 (1) detain and transport the person; or

12 (2) after a good faith effort to gain
13 permission from an occupant or owner of the structure to enter,
14 enter a structure in accordance with the provisions of
15 Subsection I of this section when reasonable grounds exist to
16 believe that the person is present in the structure.

17 ~~[B-]~~ C. An emergency evaluation under this section
18 shall be accomplished upon the request of a peace officer or
19 jail or detention facility administrator or that person's
20 designee or upon the certification of a physician, a
21 psychologist or a qualified mental health professional licensed
22 for independent practice who is affiliated with a community
23 mental health center or core service agency. A court order is
24 not required under this section. If an application is made to
25 a court, the court's power to act in furtherance of an

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1 emergency admission shall be limited to ordering that:

2 ~~[(1) the client be seen by a certified~~
3 ~~psychologist or psychiatrist prior to transport to an~~
4 ~~evaluation facility; and~~

5 ~~(2)]~~ (1) a peace officer detain and transport
6 the person to an evaluation facility pursuant to the provisions
7 of Subsection E of this section; or

8 (2) after a good faith effort to gain
9 permission from an occupant or owner of the structure to enter,
10 a peace officer enter a structure in accordance with the
11 provisions of Subsection I of this section when reasonable
12 grounds exist to believe that the person is present in the
13 structure.

14 ~~[G-]~~ D. An evaluation facility may accept for an
15 emergency-based admission any person when a physician or
16 certified psychologist certifies that ~~[such]~~ the person, as a
17 result of a mental disorder, presents a likelihood of serious
18 harm to himself or herself or to others and that immediate
19 detention is necessary to prevent ~~[such]~~ serious harm. ~~[Such]~~
20 The certification shall constitute authority to transport the
21 person.

22 ~~[D-]~~ E. A person detained under this section shall,
23 whenever possible, be taken immediately to an evaluation
24 facility. Detention facilities shall be used as temporary
25 shelter for such persons only in cases of extreme emergency for

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1 protective custody, and no person taken into custody under the
2 provisions of the code shall remain in a detention facility
3 longer than necessary and in no case longer than twenty-four
4 hours. If use of a detention facility is necessary, the
5 proposed client:

6 (1) shall not be held in a cell with
7 prisoners;

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

10 (3) shall be provided adequate protection from
11 possible suicide attempts; and

12 (4) shall be treated with the respect and
13 dignity due every citizen who is neither accused nor convicted
14 of a crime.

15 [~~E-~~] F. The admitting physician or certified
16 psychologist shall evaluate whether reasonable grounds exist to
17 detain the proposed client for evaluation and treatment, and,
18 if reasonable grounds are found, the proposed client shall be
19 detained. If the admitting physician or certified psychologist
20 determines that reasonable grounds do not exist to detain the
21 proposed client for evaluation and treatment, the proposed
22 client shall not be detained.

23 [~~F-~~] G. Upon arrival at an evaluation facility, the
24 proposed client shall be informed orally and in writing by the
25 evaluation facility of the purpose and possible consequences of

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1 the proceedings, the right to a hearing within seven days, the
2 right to counsel and the right to communicate with an attorney
3 and a mental health professional of the proposed client's own
4 choosing and shall have the right to receive necessary and
5 appropriate treatment.

6 ~~[G-]~~ H. A peace officer who detains and transports
7 a proposed client to an evaluation facility under the
8 provisions of this section shall not require a court order to
9 be reimbursed by the referring county.

10 I. When feasible, a law enforcement crisis
11 intervention team shall be involved in the detention and
12 transportation of a person in need of evaluation and care
13 whenever it is necessary for a peace officer to enter a
14 structure without the consent of the occupant.

15 J. As used in this section, "good faith effort"
16 means effort that a reasonable person would determine to be a
17 diligent and honest effort under the same set of facts or
18 circumstances."

19 **SECTION 2.** Section 43-1-22 NMSA 1978 (being Laws 1977,
20 Chapter 279, Section 22) is amended to read:

21 "43-1-22. TRANSPORTATION.--

22 A. Whenever a proposed patient is to be detained
23 and provided emergency mental health evaluation and care;
24 committed to a residential mental health or developmental
25 disability facility; or ~~[to be]~~ returned to ~~[such]~~ a

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1 residential mental health or developmental disability facility
2 during commitment, the court ordering the detention and
3 provided emergency evaluation and care or the commitment, or
4 authorizing the return of the patient, may direct the sheriff,
5 the New Mexico state police or other appropriate persons to
6 furnish suitable transportation in order to effect [~~such~~] the
7 detention and emergency evaluation and care, commitment or
8 return [~~contacting the department for directions as to the~~
9 ~~destination of the patient~~].

10 B. Whenever a proposed patient is to be detained
11 for emergency mental health and evaluation and care in
12 accordance with the provisions of Section 43-1-10 NMSA 1978, a
13 peace officer shall transport the patient to an evaluation and
14 treatment facility nearest to the jurisdiction where the
15 patient is detained whenever it appears that evaluation and
16 treatment at that location is feasible and in the best interest
17 of the patient.

18 C. The court shall designate an evaluation and
19 treatment facility nearest to where the court is located
20 whenever it appears that the designation is feasible and in the
21 best interest of the patient."

