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HOUSE BILL 723

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Rick Miera

AN ACT

RELATING TO CHILDREN; AMENDING CERTAIN SECTIONS OF THE NMSA  
1978 TO ELIMINATE THE ROLE OF RESOURCE CONSULTANTS IN THE  
CHILDREN'S MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ACT;  
REPEALING A SECTION OF THE NMSA 1978.

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

Section 1. Section 32A-6-2 NMSA 1978 (being Laws 1995,  
Chapter 207, Section 2) is amended to read:

"32A-6-2. DEFINITIONS. -- As used in the Children's Mental  
Health and Developmental Disabilities Act:

A. "aversive stimuli" means anything that, because  
it is believed to be unreasonably unpleasant, uncomfortable or  
distasteful to the child, is administered or done to the child  
for the purpose of reducing the frequency of a behavior, but  
does not include verbal therapies, physical restrictions to

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1 prevent imminent harm to self or others or psychotropic  
2 medications that are not used for purposes of punishment;

3 B. "clinician" means a physician, licensed  
4 psychologist, licensed independent social worker or licensed  
5 professional clinical counselor;

6 C. "consistent with the least drastic means  
7 principle" means that the habilitation or treatment and the  
8 conditions of habilitation or treatment for the child,  
9 separately and in combination:

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

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

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

20 D. "convulsive treatment" means any form of mental  
21 health treatment that depends upon creation of a convulsion by  
22 any means, including electroconvulsive treatment and insulin  
23 coma treatment;

24 E. "developmental disability" means a severe  
25 chronic disability that:

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

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

5 (3) is expected to continue indefinitely;

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

9 (a) self-care;

10 (b) receptive and expressive language;

11 (c) learning;

12 (d) mobility;

13 (e) self-direction;

14 (f) capacity for independent living; or

15 (g) economic self-sufficiency; and

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

21 F. "evaluation facility" means a community mental  
22 health or developmental disability program, a medical facility  
23 having psychiatric or developmental disability services  
24 available or, if none of the foregoing is reasonably available  
25 or appropriate, the office of a licensed physician or a

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1 licensed psychologist, any of which shall be capable of  
2 performing a mental status examination adequate to determine  
3 the need for involuntary treatment;

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

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

14 I. "habilitation" means the process by which  
15 professional persons and their staff assist the  
16 developmentally disabled child in acquiring and maintaining  
17 those skills and behaviors that enable the child to cope more  
18 effectively with the demands of his own person and of his  
19 environment and to raise the level of his physical, mental and  
20 social efficiency. "Habilitation" includes programs of  
21 formal, structured education and treatment;

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

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1 means, including grave passive neglect;

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

9 L. "mental disorder" means a substantial disorder  
10 of the child's emotional processes, thought or cognition that  
11 grossly impairs judgment, behavior or capacity to recognize  
12 reality, but does not mean developmental disability;

13 M. "mental health or developmental disabilities  
14 professional" means a physician or other professional who, by  
15 training or experience, is qualified to work with individuals  
16 with mental disorders or developmental disabilities;

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

22 O. "psychosurgery" means those operations  
23 currently referred to as lobotomy, psychiatric surgery and  
24 behavioral surgery and all other forms of brain surgery if the  
25 surgery is performed for the following purposes:

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1 (1) modification or control of thoughts,  
2 feelings, actions or behavior rather than the treatment of a  
3 known and diagnosed physical disease of the brain;

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

7 (3) treatment of abnormal brain function or  
8 abnormal brain tissue in order to modify thoughts, feelings,  
9 actions or behavior when the abnormality is not an established  
10 cause for those thoughts, feelings, actions or behavior.

11 "Psychosurgery" does not include prefrontal sonic  
12 treatment in which there is no destruction of brain tissue;

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

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

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

24 (3) a facility or program designed for the  
25 purpose of restricting the child's ability to exit

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1 voluntarily; or

2 (4) the involuntary emergency administration  
3 of psychotropic medication; and

4 [~~Q. "resource consultant" means a person not~~  
5 ~~affiliated with any residential treatment or habilitation~~  
6 ~~program who, by training or experience, has knowledge of the~~  
7 ~~continuum of children's mental health treatment and~~  
8 ~~developmental disabilities services and who has contracted~~  
9 ~~with the department for the purpose of assisting families in~~  
10 ~~finding and accessing the least restrictive treatments and~~  
11 ~~services for children; and~~

12 ~~R.]~~ Q. "treatment" means any effort to accomplish  
13 a significant change in the mental or emotional condition or  
14 behavior of the child."

15 Section 2. Section 32A-6-11.1 NMSA 1978 (being Laws  
16 1995, Chapter 207, Section 13) is amended to read:

17 "32A-6-11.1. CONSENT TO PLACEMENT IN A RESIDENTIAL  
18 TREATMENT OR HABILITATION PROGRAM - CHILDREN YOUNGER THAN  
19 FOURTEEN YEARS OF AGE. --

20 A. A child younger than fourteen years of age  
21 shall not receive residential treatment for mental disorders  
22 or habilitation for developmental disabilities, except as  
23 provided in this section or Section [ ~~15 of the Children's~~  
24 ~~Mental Health and Developmental Disabilities Act~~] 32A-6-13  
25 NMSA 1978.

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1           B. A child younger than fourteen years of age may  
2 be admitted to a residential treatment or habilitation program  
3 with the informed consent of the child's parent, guardian or  
4 legal custodian for a period not to exceed sixty days, subject  
5 to the requirements of this section.

6           C. In order to admit a child younger than fourteen  
7 years of age to a residential treatment or habilitation  
8 program, the child's parent, guardian or legal custodian shall  
9 knowingly and voluntarily execute a consent to admission  
10 document prior to the child's admission. The consent to  
11 admission document shall be in a form designated by the  
12 supreme court. The consent to admission document shall  
13 include a clear statement of the parent's, guardian's or legal  
14 custodian's right to voluntarily consent to or refuse the  
15 child's admission; the parent's, guardian's or legal  
16 custodian's right to request the child's immediate discharge  
17 from the residential treatment program at any time; and the  
18 parent's, guardian's or legal custodian's rights when the  
19 parent, guardian or legal custodian requests the child's  
20 discharge and the child's physician, licensed psychologist or  
21 the director of the residential treatment facility determines  
22 that the child needs continued treatment. The facility shall  
23 ensure that each statement is clearly explained in the child's  
24 and parent's, guardian's or legal custodian's primary  
25 language, if that is their language of preference, and in a



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1 manner appropriate to the child's and parent's, guardian's or  
2 legal custodian's developmental abilities. Each statement  
3 shall be initialed by the child's parent, guardian or legal  
4 custodian.

5 D. The parent's, guardian's or legal custodian's  
6 executed consent to admission document shall be filed with the  
7 child's hospital records within twenty-four hours of the time  
8 of admission.

9 ~~[E. Upon the filing of the parent's, guardian's or~~  
10 ~~legal custodian's consent to admission document in the child's~~  
11 ~~hospital records, the director of the residential treatment or~~  
12 ~~habilitation program or the director's designee shall, on the~~  
13 ~~next business day following the child's admission, notify the~~  
14 ~~resource consultant of the admission and provide the resource~~  
15 ~~consultant with the child's name, date of birth and the date~~  
16 ~~and place of admission. The resource consultant shall make~~  
17 ~~reasonable efforts to contact the child's parent, guardian or~~  
18 ~~legal custodian within three days of being notified of the~~  
19 ~~child's admission.]~~

20 ~~F.]~~ E. Upon the filing of the parent's, guardian's  
21 or legal custodian's consent to admission document in the  
22 child's hospital records, the director of the residential  
23 treatment or habilitation program or the director's designee  
24 shall, on the next business day following the child's  
25 admission, notify the district court or the special

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1 commissioner regarding the admission and provide the child's  
2 name, date of birth and the date and place of admission. The  
3 court or special commissioner shall, upon receipt of notice  
4 regarding a child's admission to a residential treatment or  
5 habilitation program, establish a sequestered court file.

6 ~~[G.]~~ F. The director of a residential treatment or  
7 habilitation program or the director's designee shall, on the  
8 next business day following the child's admission, petition  
9 the court to appoint a guardian ad litem for the child. When  
10 the court receives the petition, the court shall appoint a  
11 guardian ad litem. The court may order the parent to  
12 reimburse the state pursuant to the provisions of the  
13 Children's Code.

14 ~~[H.]~~ G. Within seven days of a child's admission  
15 to a residential treatment or habilitation program, a guardian  
16 ad litem, representing the child's best interests and in  
17 accordance with the provisions of the Children's Mental Health  
18 and Developmental Disabilities Act, shall meet with the child,  
19 the child's parent, guardian or legal custodian and the  
20 child's clinician. The guardian ad litem shall determine the  
21 following:

22 (1) whether the child's parent, guardian or  
23 legal custodian understands and consents to the child's  
24 admission to a residential treatment or habilitation program;

25 (2) whether the admission is in the child's

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1 best interests; and

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

5 ~~[F.]~~ H. If a guardian ad litem determines that the  
6 child's parent, guardian or legal custodian understands and  
7 consents to the child's admission and that the admission is in  
8 the child's best interests, is appropriate for the child and  
9 is consistent with the least drastic means principle, the  
10 guardian ad litem shall so certify on a form designated by the  
11 supreme court. The form, when completed by the guardian ad  
12 litem, shall be filed in the child's patient record kept by  
13 the residential treatment or habilitation program, and a copy  
14 shall be forwarded to the court or special commissioner within  
15 seven days of the child's admission. The guardian ad litem's  
16 statement shall not identify the child by name.

17 ~~[G.]~~ I. Upon reaching the age of majority, a child  
18 who was admitted to a residential treatment or habilitation  
19 program pursuant to this section may petition the district  
20 court for the records of the district court regarding all  
21 matters pertinent to the child's admission to a residential  
22 treatment or habilitation program. The district court, upon  
23 receipt of the petition and upon a determination that the  
24 petitioner is in fact a child who was admitted to a  
25 residential treatment or habilitation program, shall provide

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1 all court records regarding the admission to the petitioner,  
2 including all copies in the court's possession.

3 ~~[K-]~~ J. Any parent, guardian or legal custodian  
4 who consents to admission of his child to a residential  
5 treatment or habilitation program has the right to request the  
6 child's immediate discharge from the residential treatment or  
7 habilitation program, subject to the provisions of this  
8 section. If a child's parent, guardian or legal custodian  
9 informs the director, a physician or any other member of the  
10 residential treatment or habilitation program staff that the  
11 parent, guardian or legal custodian desires the child to be  
12 discharged from the program, the director, physician or other  
13 staff shall provide for the child's immediate discharge and  
14 remit the child to the parent's, guardian's or legal  
15 custodian's care. The residential treatment or habilitation  
16 program shall also notify the child's guardian ad litem. A  
17 child whose parent, guardian or legal custodian requests his  
18 immediate discharge shall be discharged, except when the  
19 director of the residential treatment program, a physician or  
20 a licensed psychologist determines that the child requires  
21 continued treatment and that the child meets the criteria for  
22 involuntary residential treatment. In that event, the  
23 director, physician or licensed psychologist shall, on the  
24 first business day following the child's parent's, guardian's  
25 or legal custodian's request for release of the child from the

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1 program, request that the children's court attorney initiate  
2 involuntary residential treatment proceedings. The children's  
3 court attorney may petition the court for such proceedings.  
4 The child has a right to a hearing regarding his continued  
5 treatment within seven days of the request for release.

6 ~~[L.]~~ K. A child who is admitted to a residential  
7 treatment or habilitation program pursuant to this section  
8 shall have his admission reviewed at the end of the sixty-day  
9 period following the date of the child's initial admission to  
10 the program. The child's physician or licensed psychologist  
11 shall review the child's residential treatment or habilitation  
12 program and determine whether it is in the best interests of  
13 the child to continue the admission. If the child's physician  
14 or licensed psychologist concludes that continuation of the  
15 residential treatment or habilitation program is in the  
16 child's best interests, the child's clinician shall so state  
17 in a form to be filed in the child's patient records. The  
18 residential treatment or habilitation program shall notify the  
19 guardian ad litem for the child at least seven days prior to  
20 the date that the sixty-day period is to end or, if necessary,  
21 request a guardian ad litem pursuant to the provisions of the  
22 Children's Mental Health and Developmental Disabilities Act.  
23 The guardian ad litem shall then personally meet with the  
24 child, the child's parent, guardian or legal custodian and the  
25 child's clinician and ensure that the child's parent, guardian

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1 or legal custodian understands and consents to the child's  
2 continued admission to the residential treatment or  
3 habilitation program. If the guardian ad litem determines  
4 that the child's parent, guardian or legal custodian  
5 understands and consents to the child's continued admission to  
6 the residential treatment or habilitation program, that the  
7 continued admission is in the child's best interest, that the  
8 placement continues to be appropriate for the child and  
9 consistent with the least drastic means principle and that the  
10 clinician has recommended the child's continued stay in the  
11 program, the guardian ad litem shall so certify on a form  
12 designated by the supreme court. The disposition of these  
13 forms shall be as set forth in this section, with one copy  
14 going in the child's patient record and the other being sent  
15 to the district court in a manner that preserves the child's  
16 anonymity. This procedure shall take place every sixty days  
17 following the child's last admission or a guardian ad litem's  
18 certification, whichever occurs first.

19 ~~[M-]~~ L. When a guardian ad litem determines that  
20 the child's parent, guardian or legal custodian does not  
21 understand or consent to the child's admission to a  
22 residential treatment or habilitation program, that the  
23 admission is not in the child's best interests, that the  
24 placement is inappropriate for the child or is inconsistent  
25 with the least drastic means principle or that the child's

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1 clinician has not recommended a continued stay by the child in  
2 the residential treatment or habilitation program, the child  
3 shall be released or involuntary placement procedures shall be  
4 initiated.

5 [N-] M If the child's parent, guardian or legal  
6 custodian is unavailable to take custody of the child and  
7 immediate discharge of the child would endanger the child, the  
8 residential treatment or habilitation program may detain the  
9 child until a safe and orderly discharge is possible. If the  
10 child's family refuses to take physical custody of the child,  
11 the residential treatment or habilitation program shall refer  
12 the case to the department for an abuse and neglect or family  
13 in need of court-ordered services investigation. The  
14 department may take the child into protective custody pursuant  
15 to the provisions of the Abuse and Neglect Act or the Family  
16 in Need of Services Act. "

17 Section 3. Section 32A-6-12 NMSA 1978 (being Laws 1995,  
18 Chapter 207, Section 14) is amended to read:

19 "32A-6-12. VOLUNTARY RESIDENTIAL TREATMENT OR  
20 HABILITATION. --

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

25 B. Any child fourteen years of age or older may

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1 voluntarily admit himself to a residential treatment or  
2 habilitation program, with the informed consent of his parent,  
3 guardian or legal custodian, for a period not to exceed sixty  
4 days, subject to the requirements of this section.

5 C. To have a child voluntarily admitted to a  
6 residential treatment or habilitation program, the child and  
7 the child's parent, guardian or legal custodian shall  
8 knowingly and voluntarily execute, prior to admission, a  
9 child's voluntary consent to admission document. The document  
10 shall include a clear statement of the child's right to  
11 voluntarily consent or refuse to consent to his admission;  
12 the child's right to request an immediate discharge from the  
13 residential treatment program at any time; and the child's  
14 rights when he requests a discharge and his physician,  
15 licensed psychologist or the director of the residential  
16 treatment facility determines the child needs continued  
17 treatment. The facility shall ensure that each statement is  
18 clearly explained in the child's and parent's, guardian's or  
19 legal custodian's primary language, if that is their language  
20 of preference, and in a manner appropriate to the child's and  
21 parent's, guardian's or legal custodian's developmental  
22 abilities, and each statement shall be initialed by the child  
23 and his parent, guardian or legal custodian.

24 D. The child's parent, guardian or legal custodian  
25 shall obtain an independent attorney for the child and shall



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1 notify the residential treatment facility of that attorney's  
2 name within seventy-two hours of the child's voluntary  
3 admission. Prior to admission, the residential treatment  
4 facility shall inform the child's parent, guardian or legal  
5 custodian of the duty to obtain an independent attorney for  
6 the child within seventy-two hours. If the child's parent,  
7 guardian or legal custodian is indigent, the parent, guardian  
8 or legal custodian may petition the court to appoint an  
9 attorney for the child.

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

13 ~~[F. Upon the filing of the child's consent to~~  
14 ~~admission document in the child's hospital record, the~~  
15 ~~director of the residential treatment or habilitation program~~  
16 ~~or the director's designee shall, on the next business day~~  
17 ~~following the child's admission, notify the resource~~  
18 ~~consultant of the admission and provide the child's name, date~~  
19 ~~of birth, the date and place of admission. The resource~~  
20 ~~consultant shall meet with the child and make reasonable~~  
21 ~~efforts to contact the child's parent, guardian or legal~~  
22 ~~custodian within three days of being notified of the child's~~  
23 ~~admission.~~

24 ~~G.]~~ F. Upon the filing of the child's voluntary  
25 consent to admission document in the patient's hospital

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1 record, the director of the residential treatment or  
2 habilitation program or the director's designee shall, on the  
3 next business day following the child's admission, notify the  
4 district court or the special commissioner of the admission,  
5 giving the child's name, date of birth and the date and place  
6 of admission. The court or special commissioner shall, upon  
7 receipt of notice of a child's voluntary admission to a  
8 residential treatment program, establish a sequestered court  
9 file.

10 ~~[H.]~~ G. If within seventy-two hours of the child's  
11 voluntary admission the child has not met with an independent  
12 attorney and the child's parent, guardian or legal custodian  
13 has not notified the residential treatment or habilitation  
14 program of the name of the child's independent attorney, the  
15 residential treatment or habilitation program shall, during  
16 the next business day, petition the court to appoint an  
17 attorney. When the court receives the petition, the court  
18 shall appoint an attorney. The court may order the parent to  
19 reimburse the state pursuant to the provisions of the  
20 Children's Code.

21 ~~[I.]~~ H. If within seventy-two hours of the child's  
22 voluntary admission the child has met with an independent  
23 attorney or the child's parent, guardian or legal custodian  
24 has notified the residential treatment or habilitation program  
25 of the name of the child's independent attorney, the

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1 residential treatment or habilitation program shall, during  
2 the next business day, notify the court or the special  
3 commissioner of the name of the child's independent attorney.

4 ~~[J-]~~ I. Within seven days of the admission, an  
5 attorney representing the child pursuant to the provisions of  
6 the Children's Mental Health and Developmental Disabilities  
7 Act shall meet with the child. At the meeting with the child,  
8 the attorney shall explain to the child the following:

- 9 (1) the child's right to an attorney;
- 10 (2) the child's right to terminate his  
11 voluntary admission and the procedures to effect termination;
- 12 (3) the effect of terminating the child's  
13 voluntary admission and options of the physician and other  
14 interested parties to the petition for an involuntary  
15 admission; and
- 16 (4) the child's rights under the provisions  
17 of the Children's Mental Health and Developmental Disabilities  
18 Act, including the right to:
  - 19 (a) legal representation;
  - 20 (b) a presumption of competence;
  - 21 (c) receive daily visitors of the  
22 child's choice;
  - 23 (d) receive and send uncensored mail;
  - 24 (e) have access to telephones;
  - 25 (f) follow or abstain from the practice

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1 of religion;

2 (g) a humane and safe environment;

3 (h) physical exercise and outdoor  
4 exercise;

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

7 (j) medical treatment;

8 (k) educational services;

9 (l) freedom from unnecessary or  
10 excessive medication;

11 (m) individualized treatment and  
12 habilitation; and

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

16 [~~K.~~] J. If the attorney determines that the child  
17 understands his rights and that the child voluntarily and  
18 knowingly desires to remain as a patient in a residential  
19 treatment or habilitation program, the attorney shall so  
20 certify on a form designated by the supreme court. The form,  
21 when completed by the attorney, shall be filed in the child's  
22 patient record at the residential treatment or habilitation  
23 program facility, and a copy shall be forwarded to the court  
24 or special commissioner within seven days of the child's  
25 admission. The attorney's statement shall not identify the

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1 child by name.

2           ~~[L-]~~ K. Upon reaching the age of majority, a child  
3 who was a voluntary admittee to a residential treatment or  
4 habilitation program may petition the district court for the  
5 records of the court regarding all matters pertinent to his  
6 voluntary admission to a residential treatment or habilitation  
7 program. The court, upon receipt of the petition and upon a  
8 determination that the petitioner was in fact the child who  
9 was a voluntary ~~[admitted]~~ admittee to a residential treatment  
10 or habilitation program, shall give all court records  
11 regarding the admission to the petitioner, including all  
12 copies in the court's possession.

13           ~~[M-]~~ L. Any child voluntarily admitted to a  
14 residential treatment or habilitation program has the right to  
15 an immediate discharge from the residential treatment or  
16 habilitation program upon his request, except as provided in  
17 this section. If a child informs the director, physician or  
18 any other member of the residential treatment or habilitation  
19 program staff that he desires to be discharged from the  
20 voluntary program, the director, physician or other staff  
21 member shall provide for the child's immediate discharge. The  
22 residential treatment or habilitation program shall not  
23 require that the child's request be in writing. Upon the  
24 request, the residential treatment or habilitation program  
25 shall notify the child's parent, guardian or legal custodian

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1 to take custody of the child and remit the child to the  
2 parent's, guardian's or legal custodian's care. The  
3 residential treatment or habilitation program shall also  
4 notify the child's attorney. If the child's parent, guardian  
5 or legal custodian is unavailable to take custody of the child  
6 and immediate discharge of the child would endanger the child,  
7 the residential treatment or habilitation program may detain  
8 the child until a safe and orderly discharge is possible. If  
9 the child's family refuses to take physical custody of the  
10 child, the residential treatment or habilitation program shall  
11 refer the case to the department for an abuse and neglect or  
12 family in need of court-ordered services investigation. The  
13 department may take the child into protective custody pursuant  
14 to the provisions of the Abuse and Neglect Act or the Family  
15 in Need of Services Act. A child requesting immediate  
16 discharge shall be discharged, except in those situations when  
17 the director of the residential treatment or habilitation  
18 program, a physician or a licensed psychologist determines  
19 that the child requires continued treatment and that the child  
20 meets the criteria for involuntary residential treatment as  
21 otherwise provided under the Children's Mental Health and  
22 Developmental Disabilities Act. In that event, the director,  
23 physician or licensed psychologist, after making the  
24 determination, shall, on the first business day following the  
25 child's request for release from the voluntary program,

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1 request that the children's court attorney initiate  
2 involuntary placement proceedings. The children's court  
3 attorney may petition for such a placement. The child has a  
4 right to a hearing on his continued treatment within seven  
5 days of his request for release.

6 [N-] M A child who is a voluntary admittee to a  
7 residential treatment or habilitation program shall have his  
8 voluntary admission reviewed at the end of a sixty-day period  
9 from the date of his initial admission to the program. The  
10 review shall be accomplished by having the child's physician  
11 or licensed psychologist review the child's treatment and  
12 determine whether it would be in the best interests of the  
13 child to continue the voluntary admission. If the child's  
14 physician or licensed psychologist concludes that continuation  
15 of treatment is in the child's best interests, the child's  
16 clinician shall so state in a form to be filed in the child's  
17 patient record. The residential treatment or habilitation  
18 program shall notify the attorney for the child at least seven  
19 days prior to the date that the sixty-day period is to end or,  
20 if necessary, request an attorney pursuant to the provisions  
21 of the Children's Mental Health and Developmental Disabilities  
22 Act. The attorney shall then personally meet with the child  
23 and ensure that the child understands his rights as set forth  
24 in this section, that the child understands the method for  
25 voluntary termination of his admission and that the child

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

14 ~~[0-]~~ N. If the attorney determines that the child  
15 does not voluntarily desire to remain in the program or if the  
16 clinician of the child has not recommended continued stay by  
17 the child in the residential treatment or habilitation  
18 program, the child shall be released or the involuntary  
19 placement procedures set forth in this section and the  
20 Children's Mental Health and Developmental Disabilities Act  
21 shall be followed. "

22 Section 4. Section 32A-18-1 NMSA 1978 (being Laws 1993,  
23 Chapter 77, Section 224, as amended) is amended to read:

24 "32A-18-1. CULTURAL RECOGNITION. --

25 A. A person who serves as a judge, prosecutor,



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1 guardian ad litem, [~~resource consultant~~] treatment guardian,  
2 court appointed attorney, court appointed special advocate,  
3 foster parent, mental health commissioner or mental health  
4 treatment service provider for a child subject to an abuse or  
5 neglect petition, a family in need of services petition or a  
6 mental health placement shall receive periodic training, to  
7 the extent of available resources, to develop his knowledge  
8 about children, the physical and psychological formation of  
9 children and the impact of ethnicity on a child's needs.  
10 Institutions that serve children and their families shall,  
11 considering available resources, provide similar training to  
12 institutional staff.

13 B. The training shall include study of:

- 14 (1) cross-cultural dynamics and sensitivity;
- 15 (2) child development;
- 16 (3) family composition and dynamics;
- 17 (4) parenting skills and practices;
- 18 (5) culturally appropriate treatment plans;

19 and

- 20 (6) alternative health practices. "

21 Section 5. REPEAL. --Section 32A-6-10.1 NMSA (being Laws  
22 1995, Chapter 207, Section 11) is repealed.

23 Section 6. EFFECTIVE DATE. --The effective date of the  
24 provisions of this act is July 1, 1999.

1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
3  
4  
5

6 February 25, 1999  
7

8 Mr. Speaker:  
9

10 Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to  
11 whom has been referred  
12

13 HOUSE BILL 723  
14

15 has had it under consideration and reports same with  
16 recommendation that it DO PASS.

17 Respectfully submitted,  
18

19  
20  
21 \_\_\_\_\_  
22 Patsy Trujillo Knauer,  
23 Chairwoman  
24  
25

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

HCPAC/HB 723

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 4 For 0 Against

Yes: 4

Excused: Hawkins, Vaughn, Beam

Absent: None

J: \99BillSWP\H0723

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