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HOUSE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO DATA SHARING; CREATING A CENTRAL REPOSITORY IN THE
NEW MEXICO SENTENCING COMMISSION FOR CRIMINAL JUSTICE AND
CERTAIN BEHAVIORAL HEALTH DATA; ADDING A MEMBER TO THE NEW
MEXICO SENTENCING COMMISSION; AMENDING SECTIONS OF CHAPTER 14,
ARTICLE 6 NMSA 1978, THE MENTAL HEALTH AND DEVELOPMENTAL
DISABILITIES CODE AND THE DETOXIFICATION REFORM ACT TO ALLOW
THE SHARING OF DATA; SPECIFYING THAT PHOTOGRAPHS, FINGERPRINTS
AND PALM PRINTS ARE BIOMETRIC IDENTIFYING INFORMATION OF AN
ARRESTED PERSON; PROVIDING REQUIREMENTS FOR THE CONTENT AND
DISPOSITION OF ARREST RECORDS; REQUIRING THE DEPARTMENT OF
PUBLIC SAFETY TO SHARE DATA WITH THE NEW MEXICO SENTENCING
COMMISSION; MAKING AN APPROPRIATION.

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

SECTION 1. Section 9-3-10 NMSA 1978 (being Laws 1977,

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1 Chapter 257, Section 11, as amended) is amended to read:

2 "9-3-10. NEW MEXICO SENTENCING COMMISSION--CREATION--
3 MEMBERSHIP--DUTIES.--

4 A. There is created the "New Mexico sentencing
5 commission".

6 B. The New Mexico sentencing commission shall be
7 composed of [~~twenty-four~~] twenty-five members. Appointed
8 members shall serve at the pleasure of the appointing
9 authority. The commission shall reflect reasonable
10 geographical and urban-rural balances and regard for the
11 incidence of crime and the distribution and concentration of
12 law enforcement services in the state. The commission shall
13 consist of the following individuals or their designees:

14 (1) the attorney general;

15 (2) a district attorney appointed by the New
16 Mexico district [~~attorneys~~] attorney's association [~~of New~~
17 ~~Mexico~~] or its successor agency;

18 (3) the chief public defender;

19 (4) two district court judges, one of whom
20 shall be a children's court judge, appointed by the district
21 [~~court judge's~~] and metropolitan judges association [~~of New~~
22 ~~Mexico~~] or its successor agency;

23 (5) a judge from the court of appeals
24 appointed by the chief judge of the court of appeals;

25 (6) the dean of the university of New Mexico

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1 school of law;

2 (7) the secretary of corrections;

3 (8) the secretary of public safety;

4 (9) the secretary of children, youth and
5 families;

6 (10) the secretary of public education;

7 (11) a representative from the behavioral
8 health services division of the human services department;

9 [~~(11)~~] (12) a county sheriff appointed by the
10 executive director of [~~the~~] New Mexico [~~association of~~]
11 counties;

12 [~~(12)~~] (13) two public members appointed by
13 the governor, one of whom shall be designated as chair of the
14 New Mexico sentencing commission by the governor;

15 [~~(13)~~] (14) three public members appointed by
16 the president pro tempore of the senate;

17 [~~(14)~~] (15) three public members appointed by
18 the speaker of the house of representatives;

19 [~~(15)~~] (16) two public members appointed by
20 the chief justice of the supreme court;

21 [~~(16)~~] (17) one public member who is Native
22 American and a practicing attorney, appointed by the president
23 of the state bar association; and

24 [~~(17)~~] (18) one public member appointed by the
25 governor who is a representative of a New Mexico victim

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1 organization.

2 C. A majority of the members of the New Mexico
3 sentencing commission constitutes a quorum for the transaction
4 of commission business.

5 D. The New Mexico sentencing commission shall:

6 (1) hold meetings at times and for periods as
7 the commission deems necessary;

8 (2) hire staff as needed to assist the
9 commission in the performance of its duties;

10 (3) prepare an annual budget;

11 (4) establish policies for the operation of
12 the commission and supervision of the activities of commission
13 staff;

14 (5) advise the executive, judicial and
15 legislative branches of government on policy matters relating
16 to criminal and juvenile justice;

17 (6) make recommendations to the legislature
18 concerning proposed changes to laws relating to the criminal
19 and juvenile justice systems that the commission determines
20 would improve those systems;

21 (7) annually assess, monitor and report to the
22 legislature on the impact of any enacted sentencing standards
23 and guidelines on state and local correctional resources and
24 programs and the need for further sentencing reform;

25 (8) when developing proposed sentencing

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1 reform:

2 (a) study sentencing models in other
3 jurisdictions;

4 (b) study the Criminal Sentencing Act,
5 the Criminal Code and all other New Mexico statutes relating to
6 criminal law, criminal sentencing, criminal procedure and
7 probation and parole;

8 (c) review past studies or reports
9 regarding proposed changes to the Children's Code, the Criminal
10 Code, the Criminal Sentencing Act or other New Mexico statutes
11 relating to criminal law, criminal sentencing, criminal
12 procedure or probation and parole;

13 (d) study past and current criminal
14 sentencing and release practices and create a statistical
15 database for simulating the impact of various sentencing
16 policies;

17 (e) study the full range of prison,
18 nonprison and intermediate sanctions;

19 (f) determine the principal purpose for
20 criminal sanctions;

21 (g) rank criminal offenses by degree of
22 seriousness;

23 (h) determine the role of criminal
24 history in making criminal sentencing decisions;

25 (i) define dispositional policy that

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1 determines when adult felony offenders are confined in state
2 prisons and county jails or sentenced to nonprison and
3 intermediate sanctions;

4 (j) establish the length of criminal
5 sentences;

6 (k) establish the appropriate use of
7 community service and fines;

8 (l) structure proposed sentencing
9 guidelines to ensure consistency in all aspects of criminal
10 sentencing policy;

11 (m) assess the impact of commission
12 recommendations to modify criminal sentencing policy on the
13 availability of and need for correctional resources and
14 programs;

15 (n) use the expertise of a national or
16 state organization with experience in sentencing reform; and

17 (o) present proposed legislation or
18 recommendations regarding sentencing reform to the appropriate
19 legislative interim committee;

20 (9) monitor any enacted sentencing guidelines
21 with respect to uniformity and proportionality;

22 (10) conduct research relating to the use and
23 effectiveness of any enacted guidelines, prosecution standards,
24 offense charging, plea bargaining, sentencing practices,
25 probation and parole practices and any other matters relating

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1 to the criminal justice system;

2 (11) serve as a clearinghouse for the
3 systematic collection, analysis and dissemination of
4 information relating to felony offense charges, plea
5 agreements, convictions, sentences imposed, incarceration time
6 actually served and actual and projected inmate population in
7 the state correctional system;

8 (12) review all proposed legislation that
9 creates a new criminal offense, changes the classification of
10 an offense or changes the range of punishments for an offense
11 and make recommendations to the legislature as to whether
12 proposed changes would improve the criminal and juvenile
13 justice system; [~~and~~]

14 (13) create and serve as a central criminal
15 justice data repository to receive, store, maintain, analyze
16 and disseminate criminal justice and behavioral health data for
17 the purpose of supporting, encouraging and accomplishing
18 information sharing among criminal justice and behavioral
19 health agencies; and

20 [~~(13)~~] (14) contingent upon the availability
21 of funding, provide impact estimates, incorporating prison
22 population projections, on all proposed legislation that has
23 the potential to affect correctional resources.

24 E. The members of the New Mexico sentencing
25 commission shall be paid pursuant to the Per Diem and Mileage

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1 Act and shall receive no other perquisite, compensation or
2 allowance.

3 F. The representative from the behavioral health
4 services division of the human services department shall
5 contribute expertise and information regarding behavioral
6 health issues of persons in the criminal justice system.

7 [~~F.~~] G. The New Mexico sentencing commission is
8 administratively attached to the office of the governor."

9 SECTION 2. Section 14-6-1 NMSA 1978 (being Laws 1971,
10 Chapter 137, Section 1, as amended) is amended to read:

11 "14-6-1. HEALTH INFORMATION--CONFIDENTIALITY--IMMUNITY
12 FROM LIABILITY FOR FURNISHING.--

13 A. All health information that relates to and
14 identifies specific individuals as patients is strictly
15 confidential and shall not be a matter of public record or
16 accessible to the public even though the information is in the
17 custody of or contained in the records of a governmental agency
18 or its agent, a state educational institution, a duly organized
19 state or county association of licensed physicians or dentists,
20 a licensed health facility or staff committees of such
21 facilities.

22 B. A custodian of information classified as
23 confidential in Subsection A of this section may furnish the
24 information upon request to any of the following recipients,
25 and the custodian furnishing the information shall not be

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1 liable for damages to any person for having furnished the
2 information:

- 3 (1) a governmental agency or its agent;
4 (2) a state educational institution;
5 (3) a duly organized state or county
6 association of licensed physicians or dentists;
7 (4) a licensed health facility or staff
8 committees of such facilities [~~and the custodian furnishing the~~
9 ~~information shall not be liable for damages to any person for~~
10 ~~having furnished the information]; or
11 (5) the New Mexico sentencing commission.~~

12 C. Statistical studies and research reports based
13 upon confidential information may be published or furnished to
14 the public, but these studies and reports shall not in any way
15 identify individual patients directly or indirectly [~~nor~~] or in
16 any way violate the privileged or confidential nature of the
17 relationship and communications between practitioner and
18 patient.

19 D. This section does not affect the status of
20 original medical records of individual patients, and the rules
21 of confidentiality and accessibility applicable to these
22 records continue in force. This section does not affect the
23 status of vital statistical records of the department of health
24 [~~and environment department~~]."

25 SECTION 3. Section 29-3-8 NMSA 1978 (being Laws 1978,

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1 Chapter 87, Section 1, as amended) is amended to read:

2 "29-3-8. [~~FINGERPRINT AND PALM PRINT IMPRESSIONS~~]
3 BIOMETRIC IDENTIFYING INFORMATION OF PERSONS ARRESTED--STATE
4 ARREST RECORDS--DISPOSITION.--

5 A. A person arrested for the following shall be
6 required at the site of booking to provide biometric
7 identifying information, including photographs, fingerprint
8 impressions and palm print impressions, prior to the person's
9 release:

10 (1) the commission of a criminal offense
11 amounting to a felony [~~under the laws of this state or any~~
12 ~~other jurisdiction shall be required by the arresting peace~~
13 ~~officer or the jail to make fingerprint and palm print~~
14 ~~impressions prior to the person's release. The arresting peace~~
15 ~~officer or the jail shall obtain fingerprint and palm print~~
16 ~~impressions and a photograph];~~

17 (2) the commission of a criminal offense not
18 amounting to a felony but punishable by imprisonment for more
19 than six months under the laws of the state or a political
20 subdivision of the state; or

21 (3) the violation of a provision of Section
22 66-8-102 NMSA 1978 or the violation of a municipal or county
23 ordinance prescribing criminal penalties for driving while
24 under the influence of intoxicating liquor or drugs.

25 B. Biometric identifying information shall be

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1 obtained each time a person is arrested.

2 C. At the time [~~of fingerprinting and palm~~
3 ~~printing~~] biometric identifying information is collected, the
4 booking facility shall create an arrest record and assign a
5 state arrest tracking number [~~shall be assigned~~] provided by
6 the department to the [~~fingerprint and palm print~~] biometric
7 identification records and the booking sheet.

8 [~~B. A person arrested for the commission of a~~
9 ~~criminal offense not amounting to a felony but punishable by~~
10 ~~imprisonment for more than six months under the laws of this~~
11 ~~state or any political subdivision shall be required by the~~
12 ~~arresting peace officer or the jail to make fingerprint and~~
13 ~~palm print impressions prior to the person's release. The~~
14 ~~arresting peace officer or the jail shall obtain fingerprint~~
15 ~~and palm print impressions and a photograph each time a person~~
16 ~~is arrested. At the time of fingerprinting and palm printing,~~
17 ~~a state tracking number shall be assigned to the fingerprint~~
18 ~~and palm print records and the booking sheet.~~

19 G. ~~A person arrested for violating a provision of~~
20 ~~Section 66-8-102 NMSA 1978 or committing a violation of a~~
21 ~~municipal or county ordinance prescribing criminal penalties~~
22 ~~for driving while under the influence of intoxicating liquor or~~
23 ~~drugs shall be required by the arresting peace officer or the~~
24 ~~jail to make fingerprint and palm print impressions prior to~~
25 ~~the person's release. The arresting peace officer or the jail~~

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1 ~~shall obtain fingerprint and palm print impressions and a~~
2 ~~photograph each time a person is arrested. At the time of~~
3 ~~fingerprinting and palm printing, a state tracking number shall~~
4 ~~be assigned to the fingerprint and palm printing records and~~
5 ~~the booking sheet.~~

6 D. ~~Fingerprint and palm print impressions shall be~~
7 ~~made pursuant to rules adopted by the department. Fingerprint~~
8 ~~and palm print record submission policies and a state tracking~~
9 ~~number system for fingerprint and palm print records shall be~~
10 ~~implemented pursuant to rules adopted by the department. All~~
11 ~~felony, misdemeanor and DWI arrest fingerprints and palm prints~~
12 ~~shall be made in duplicate. Both copies and a photograph of~~
13 ~~the person arrested shall be forwarded to the department within~~
14 ~~five days following the date of arrest.] The arrest record~~
15 ~~shall include:~~

- 16 (1) the date of arrest;
- 17 (2) the state personal identification number
18 assigned to the arrest record;
- 19 (3) the state arrest tracking number assigned
20 to the arrestee;
- 21 (4) a completed description with charge code
22 of each offense charged; and
- 23 (5) the arrestee's biometric identifying
24 information.

25 D. The department shall promulgate rules:

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1 (1) addressing collection of biometric
2 identifying information;

3 (2) addressing submission of biometric
4 identifying information;

5 (3) creating a state personal identification
6 number system to identify a person arrested and charged with a
7 crime and ensure that the same state personal identification
8 number is assigned to the person regardless of the number of
9 times the person is arrested or the location of the arrest
10 within the state; and

11 (4) creating a state arrest tracking number
12 system for each arrest record.

13 E. At booking, the booking site shall immediately
14 forward the arrest record and any other information required by
15 department rule to the department.

16 F. The department shall [~~forward one copy~~]
17 immediately provide the:

18 (1) biometric identifying information to the
19 federal bureau of investigation in Washington, D.C.;

20 (2) arrest record to agencies at all levels of
21 government that are engaged in the apprehension, prosecution or
22 defense, adjudication, incarceration or rehabilitation of
23 criminal offenders; and

24 (3) arrest record to those government agencies
25 that collect, store, disseminate or use criminal offender

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1 record information for research purposes.

2 ~~[E.]~~ G. An inmate who is charged with a felony or
3 misdemeanor offense while incarcerated shall ~~[be fingerprinted,~~
4 ~~palm printed and photographed]~~ provide biometric identifying
5 information, and the jail or corrections facility shall forward
6 the offender's ~~[fingerprint and palm print records and~~
7 ~~photograph]~~ biometric identifying information to the
8 department.

9 ~~[F.]~~ H. The administrative office of the courts
10 shall provide to the department the disposition of all criminal
11 cases assigned a state arrest tracking number. The disposition
12 shall be provided in electronic format, promptly upon the
13 conclusion of the case.

14 ~~[G.]~~ I. The administrative office of the district
15 attorneys shall provide to the department the disposition of
16 all criminal cases assigned a state arrest tracking number when
17 the district attorney decides not to file charges in the case.
18 The disposition shall be provided in electronic format promptly
19 upon a district attorney's decision not to file charges in the
20 case.

21 J. The department shall forward the disposition of
22 all criminal cases to the federal bureau of investigation and
23 the national crime information center within five business days
24 of receipt.

25 ~~[H.]~~ K. Law enforcement agencies, the

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1 administrative office of the courts and the administrative
2 office of the district attorneys [~~may~~] shall allow the
3 department and the New Mexico sentencing commission access to
4 their records for the purpose of auditing those records to
5 ensure compliance with the provisions of this section.

6 L. As used in this section:

7 (1) "charge code" means the unique code
8 assigned to the crime from the master charge code table
9 distributed by the New Mexico justice information sharing
10 council;

11 (2) "state arrest tracking number" means an
12 incident-based unique number assigned to the arrest; and

13 (3) "state personal identification number"
14 means a fingerprint-based unique number assigned to the
15 arrestee based on the arrestee's biometric identifying
16 information."

17 SECTION 4. Section 29-3-11 NMSA 1978 (being Laws 2007,
18 Chapter 37, Section 1) is amended to read:

19 "29-3-11. UNIFORM CRIME REPORTING SYSTEM ESTABLISHED--
20 DUTIES OF DEPARTMENT.--

21 A. The department of public safety shall develop,
22 operate and maintain a uniform crime reporting system and
23 shall be the central repository for the collection, storage,
24 retrieval and analysis of crime incident and arrest reports
25 generated by all law enforcement agencies in this state. The

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1 system shall be operational as of January 1, 2008.

2 B. The department shall:

3 (1) compile statistical data and forward
4 such data as required to the federal bureau of investigation
5 or the appropriate department of justice agency in accordance
6 with standards and procedures of the national system;

7 (2) provide forms, standards and procedures
8 and related training to state and local law enforcement
9 agencies as necessary for the agencies to report incident and
10 arrest activity for inclusion in the statewide system;

11 (3) in conjunction with the New Mexico
12 sentencing commission, annually publish a report on the
13 nature and extent of crime in New Mexico and submit the
14 report to the governor and to the legislature;

15 (4) maintain the privacy and security of
16 information in accordance with applicable state and federal
17 laws; ~~and~~

18 (5) provide the New Mexico sentencing
19 commission access to the data collected and maintained by the
20 department; and

21 ~~(5)~~ (6) establish rules as necessary to
22 implement the provisions of this section.

23 C. Every law enforcement agency in the state
24 shall:

25 (1) submit crime incident reports to the

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1 department of public safety on forms or in the format
2 prescribed by the department;

3 (2) submit any other crime incident
4 information as may be required by the department of public
5 safety; and

6 (3) use the [~~state uniform statutory charge~~
7 ~~codes~~] unique code assigned to the crime from the master
8 charge code table distributed by the New Mexico justice
9 information sharing council for the automated fingerprint
10 identification system and use uniform crime incident
11 reporting as provided by the department for all incidents and
12 arrests.

13 D. The annual report and other statistical data
14 reports generated by the department shall be made available
15 to state and local law enforcement agencies and the general
16 public."

17 SECTION 5. Section 43-1-19 NMSA 1978 (being Laws 1977,
18 Chapter 279, Section 18, as amended) is amended to read:

19 "43-1-19. DISCLOSURE OF INFORMATION.--

20 A. Except as otherwise provided in the code, no
21 person shall, without the authorization of the client,
22 disclose or transmit any confidential information from which
23 a person well acquainted with the client might recognize the
24 client as the described person, or any code, number or other
25 means that can be used to match the client with confidential

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1 information regarding the client.

2 B. Authorization from the client shall not be
3 required for the disclosure or transmission of confidential
4 information in the following circumstances:

5 (1) when the request is from a mental health
6 or developmental ~~[disability]~~ disabilities professional or
7 from an employee or trainee working with a person with a
8 mental disability or developmental disability, to the extent
9 that the practice, employment or training on behalf of the
10 client requires access to such information is necessary;

11 (2) when such disclosure is necessary to
12 protect against a clear and substantial risk of imminent
13 serious physical injury or death inflicted by the client on
14 the client's self or another;

15 (3) when the disclosure is made pursuant to
16 the provisions of the Assisted Outpatient Treatment Act,
17 using reasonable efforts to limit protected health
18 information to that which is minimally necessary to
19 accomplish the intended purpose of the use, disclosure or
20 request;

21 (4) when the disclosure of such information
22 is to the primary caregiver of the client and the disclosure
23 is only of information necessary for the continuity of the
24 client's treatment in the judgment of the treating physician
25 or certified psychologist who discloses the information; ~~[or]~~

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1 (5) when such disclosure is to an insurer
2 contractually obligated to pay part or all of the expenses
3 relating to the treatment of the client at the residential
4 facility. The information disclosed shall be limited to data
5 identifying the client, facility and treating or supervising
6 physician and the dates and duration of the residential
7 treatment. It shall not be a defense to an insurer's
8 obligation to pay that the information relating to the
9 residential treatment of the client, apart from information
10 disclosed pursuant to this section, has not been disclosed to
11 the insurer; or

12 (6) when the disclosure is made to the New
13 Mexico sentencing commission.

14 C. No authorization given for the transmission or
15 disclosure of confidential information shall be effective
16 unless it:

17 (1) is in writing and signed; and
18 (2) contains a statement of the client's
19 right to examine and copy the information to be disclosed,
20 the name or title of the proposed recipient of the
21 information and a description of the use that may be made of
22 the information.

23 D. The client has a right of access to
24 confidential information and has the right to make copies of
25 any information and to submit clarifying or correcting

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1 statements and other documentation of reasonable length for
2 inclusion with the confidential information. The statements
3 and other documentation shall be kept with the relevant
4 confidential information, shall accompany it in the event of
5 disclosure and shall be governed by the provisions of this
6 section to the extent they contain confidential information.
7 Nothing in this subsection shall prohibit the denial of
8 access to such records when a physician or other mental
9 health or developmental disabilities professional believes
10 and notes in the client's medical records that such
11 disclosure would not be in the best interests of the client.
12 In any such case, the client has the right to petition the
13 court for an order granting such access.

14 E. Where there exists evidence that the client
15 whose consent to disclosure of confidential information is
16 sought is incapable of giving or withholding valid consent
17 and the client does not have a guardian or treatment guardian
18 appointed by a court, the person seeking such authorization
19 shall petition the court for the appointment of a treatment
20 guardian to make a substitute decision for the client, except
21 that if the client is less than fourteen years of age, the
22 client's parent or guardian is authorized to consent to
23 disclosure on behalf of the client.

24 F. Information concerning a client disclosed
25 under this section shall not be released to any other person,

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1 agency or governmental entity or placed in files or
2 computerized data banks accessible to any persons not
3 otherwise authorized to obtain information under this
4 section.

5 G. Nothing in the code shall limit the
6 confidentiality rights afforded by federal statute or
7 regulation.

8 H. A person appointed as a treatment guardian in
9 accordance with the Mental Health and Developmental
10 Disabilities Code may act as the client's personal
11 representative pursuant to the federal Health Insurance
12 Portability and Accountability Act of 1996, Sections
13 1171-1179 of the Social Security Act, 42 U.S.C. Section
14 1320d, as amended, and applicable federal regulations to
15 obtain access to the client's protected health information,
16 including mental health information and relevant physical
17 health information, and may communicate with the client's
18 health care providers in furtherance of such treatment."

19 SECTION 6. Section 43-2-11 NMSA 1978 (being Laws 1949,
20 Chapter 114, Section 9, as amended) is amended to read:

21 "43-2-11. VOLUNTARY CLIENTS.--

22 A. The administration of a treatment facility may
23 receive any intoxicated person, alcohol-impaired person or
24 drug-impaired person who applies to be received as a client
25 into the facility. If the voluntary client is:

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1 (1) intoxicated, the client shall be
2 discharged pursuant to Subsection E of Section 43-2-8 NMSA
3 1978; or

4 (2) not intoxicated, the client shall be
5 discharged at the request of the client or, in the absence of
6 such a request, at the discretion of the administration.

7 B. If a voluntary client leaves a treatment
8 facility with or against the advice of the administration in
9 charge of the facility, the department shall make reasonable
10 provisions for the client's transportation to another
11 facility or to the client's home.

12 C. A client who voluntarily submits [~~himself for~~]
13 to treatment in accordance with the Detoxification Reform Act
14 shall not forfeit or abridge thereby any of the client's
15 rights. The fact that the client has submitted [~~himself for~~]
16 to treatment or that the client has been given help or
17 guidance shall not be used against the client in any
18 proceeding in any court. The record of the voluntary
19 commitment shall be confidential and shall not be divulged
20 except in the following circumstances:

21 (1) on order of the court; [~~or~~]

22 (2) when the disclosure is made to the New
23 Mexico sentencing commission; or

24 (3) upon receipt of a waiver and release
25 duly executed by the client volunteering for commitment."

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