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HOUSE BILL 497

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

INTRODUCED BY

Dennis J. Kintigh

AN ACT

RELATING TO INVOLUNTARY CIVIL COMMITMENT OF ADULTS; AMENDING A SECTION OF THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE TO ALLOW THE DISTRICT ATTORNEY TO FILE A PETITION IN CRIMINAL PROSECUTION PROCEEDINGS INVOLVING A DEFENDANT WHOSE CASE HAS BEEN DISMISSED UPON A FINDING OF INCOMPETENCY OR COGNITIVE DISABILITY; PROVIDING THE DEPARTMENT OF HEALTH AND THE AGING AND LONG-TERM SERVICES DEPARTMENT, IN LIEU OF THE DISTRICT ATTORNEY, WITH INVESTIGATIVE POWERS AND THE POWER TO PETITION FOR A CIVIL COMMITMENT HEARING IN MATTERS INVOLVING AN ADULT'S INVOLUNTARY COMMITMENT FOR EVALUATION AND TREATMENT.

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

SECTION 1. Section 43-1-11 NMSA 1978 (being Laws 1977, Chapter 279, Section 10, as amended) is amended to read:

"43-1-11. COMMITMENT OF ADULTS FOR THIRTY-DAY PERIOD.--

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1 A. Every adult client involuntarily admitted to an
2 evaluation facility pursuant to Section 43-1-10 NMSA 1978 has
3 the right to a hearing within seven days of admission unless
4 waived after consultation with counsel. If a physician or
5 evaluation facility decides to seek commitment of the client
6 for evaluation and treatment, a petition shall be filed with
7 the court within five days of admission requesting the
8 commitment. The petition shall include a description of the
9 specific behavior or symptoms of the client that evidence a
10 likelihood of serious harm to the client or others and shall
11 include an initial screening report by the evaluating physician
12 individually or with the assistance of a mental health
13 professional or, if a physician is not available, by a mental
14 health professional acceptable to the court. The petition
15 shall list the prospective witnesses for commitment and a
16 summary of the matters to which they will testify. Copies of
17 the petition shall be served on the client, the client's
18 guardian, and treatment guardian if one has been appointed, and
19 the client's attorney.

20 B. At the hearing, the client shall be represented
21 by counsel and shall have the right to present evidence on the
22 client's behalf, including testimony by an independent mental
23 health professional of the client's own choosing, to cross-
24 examine witnesses and to be present at the hearing. The
25 presence of the client may be waived upon a showing to the

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1 court that the client knowingly and voluntarily waives the
2 right to be present. A complete record of all proceedings
3 shall be made.

4 C. A court-appointed guardian for an adult involved
5 in an involuntary commitment proceeding shall have automatic
6 standing to appear at all stages of the proceeding and shall be
7 allowed to testify by telephone or through affidavit if
8 circumstances make live testimony too burdensome.

9 D. The court shall include in its findings the
10 guardian's opinion regarding the need for involuntary treatment
11 or a statement detailing the efforts made to ascertain the
12 guardian's opinion.

13 E. Upon completion of the hearing, the court may
14 order a commitment for evaluation and treatment not to exceed
15 thirty days if the court finds by clear and convincing evidence
16 that:

17 (1) as a result of a mental disorder, the client
18 presents a likelihood of serious harm to the client's own self
19 or others;

20 (2) the client needs and is likely to benefit
21 from the proposed treatment; and

22 (3) the proposed commitment is consistent with
23 the treatment needs of the client and with the least drastic
24 means principle.

25 F. Once the court has made the findings set forth in

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1 Subsection E of this section, the court shall hear further
2 evidence as to whether the client is capable of informed
3 consent. If the court determines that the client is incapable
4 of informed consent, the court shall appoint for the client a
5 treatment guardian who shall have only those powers enumerated
6 in Section 43-1-15 NMSA 1978.

7 G. An interested person who reasonably believes that
8 an adult is suffering from a mental disorder and presents a
9 likelihood of serious harm to the adult's own self or others,
10 but does not require emergency care, may request [~~the district~~
11 ~~attorney~~] an investigating department to investigate and
12 determine whether reasonable grounds exist to commit the adult
13 for a thirty-day period of evaluation and treatment. The
14 applicant may present to the [~~district attorney~~] investigating
15 department any medical reports or other evidence immediately
16 available to the applicant, but shall not be required to obtain
17 a medical report or other particular evidence in order to make
18 a petition. The [~~district attorney~~] investigating department
19 shall act on the petition within seventy-two hours. If the
20 [~~district attorney~~] investigating department determines that
21 reasonable grounds exist to commit the adult, the [~~district~~
22 ~~attorney~~] investigating department may petition the court for a
23 hearing. If the adult was a defendant in a criminal
24 prosecution, the district attorney may file a petition for
25 commitment pursuant to this subsection and appear on behalf of

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1 the state in connection with those proceedings. The court may
2 issue a summons to the proposed client to appear at the time
3 designated for a hearing, which shall be not less than five
4 days from the date the petition is served. If the proposed
5 client is summoned and fails to appear at the proposed time and
6 upon a finding of the court that the proposed client has failed
7 to appear, or appears without having been evaluated, the court
8 may order the proposed client to be detained for evaluation as
9 provided for in Subsection C of Section 43-1-10 NMSA 1978.

10 H. Any hearing provided for pursuant to Subsection G
11 of this section shall be conducted in conformance with the
12 requirements of Subsection B of this section.

13 I. As used in this section, "investigating
14 department" means either the department of health or the aging
15 and long-term services department."