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SENATE BILL 271

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

INTRODUCED BY

Mary Kay Papen

AN ACT

RELATING TO MENTAL HEALTH; AMENDING SECTIONS OF THE MENTAL
HEALTH AND DEVELOPMENTAL DISABILITIES CODE TO ALLOW
INDEPENDENTLY LICENSED MENTAL HEALTH PROFESSIONALS TO PROVIDE
EMERGENCY EVALUATION FOR THE PURPOSE OF TRANSPORT TO AN
EVALUATION FACILITY; ELIMINATING THE LIMITATION THAT CERTAIN
EMERGENCY MENTAL HEALTH EVALUATION AND CARE SERVICES BE
PROVIDED BY A CERTIFIED PSYCHOLOGIST OR PSYCHIATRIST;
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:

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1 "43-1-3. DEFINITIONS.--As used in the Mental Health and
2 Developmental Disabilities Code:

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

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

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

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

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

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

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

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

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

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

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

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

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1 the office of a licensed physician or a certified psychologist,
2 and that is capable of performing a mental status examination
3 adequate to determine the need for involuntary 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. "independently licensed mental health
23 professional" means a practitioner independently licensed by
24 the practitioner's respective state licensing board or
25 commission, including but not limited to the board of social

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1 work examiners, the board of nursing and the counseling and
2 therapy practice board;

3 [M-] N. "likelihood of serious harm to oneself"
4 means that it is more likely than not that in the near future
5 the person will attempt to commit suicide or will cause serious
6 bodily harm to the person's self by violent or other self-
7 destructive means, including but not limited to grave passive
8 neglect;

9 [N-] O. "likelihood of serious harm to others"
10 means that it is more likely than not that in the near future a
11 person will inflict serious, unjustified bodily harm on another
12 person or commit a criminal sexual offense, as evidenced by
13 behavior causing, attempting or threatening such harm, which
14 behavior gives rise to a reasonable fear of such harm from the
15 person;

16 [O-] P. "mental disability" means substantial
17 disorder of a person's emotional processes, thought or
18 cognition that grossly impairs judgment, behavior or capacity
19 to recognize reality, but does not mean developmental
20 disability;

21 [P-] Q. "mental health or developmental
22 disabilities professional" means a physician or other
23 professional who by training or experience is qualified to work
24 with persons with a mental disability or a developmental
25 disability;

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1 [Q-] R. "physician" or "certified psychologist",
2 when used for the purpose of hospital admittance or discharge,
3 means a physician or certified psychologist who has been
4 granted admitting privileges at a hospital licensed by the
5 department of health, if such privileges are required;

6 [R-] S. "psychosurgery":

7 (1) means those operations currently referred
8 to as lobotomy, psychiatric surgery and behavioral surgery and
9 all other forms of brain surgery if the surgery is performed
10 for the purpose of the following:

11 (a) modification or control of thoughts,
12 feelings, actions or behavior rather than the treatment of a
13 known and diagnosed physical disease of the brain;

14 (b) treatment of abnormal brain function
15 or normal brain tissue in order to control thoughts, feelings,
16 actions or behavior; or

17 (c) treatment of abnormal brain function
18 or abnormal brain tissue in order to modify thoughts, feelings,
19 actions or behavior when the abnormality is not an established
20 cause for those thoughts, feelings, actions or behavior; and

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

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~~] an independently licensed mental health
3 professional has certified that the person, as a result of a
4 mental disorder, presents a likelihood of serious harm to
5 himself or herself or to others and that immediate detention is
6 necessary to prevent such harm. Such certification shall
7 constitute authority to transport the person.

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

18 (1) the client be seen by a [~~certified~~
19 ~~psychologist or psychiatrist~~] licensed physician or an
20 independently licensed mental health professional prior to
21 transport to an evaluation facility; and

22 (2) a peace officer transport the person to an
23 evaluation facility.

24 C. An evaluation facility may accept a person for
25 an emergency-based admission [~~any person~~] when a licensed

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1 physician or certified psychologist certifies that [~~such~~] the
2 person, as a result of a mental disorder, presents a likelihood
3 of serious harm to himself or herself or to others and that
4 immediate detention is necessary to prevent such harm. Such
5 certification shall constitute authority to transport the
6 person.

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

16 (1) [~~shall~~] not be held in a cell with
17 prisoners;

18 (2) [~~shall~~] not be identified on records used
19 to record custody of prisoners;

20 (3) [~~shall~~] be provided adequate protection
21 from possible suicide attempts; and

22 (4) [~~shall~~] be treated with the respect and
23 dignity due every citizen who is neither accused nor convicted
24 of a crime.

25 E. The admitting physician or certified

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

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

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