

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 271

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

AN ACT

RELATING TO MENTAL HEALTH; AMENDING SECTIONS OF THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE TO ALLOW MENTAL HEALTH PROFESSIONALS LICENSED FOR INDEPENDENT PRACTICE TO CERTIFY THAT A PERSON PRESENTS A DANGER TO THAT PERSON OR OTHERS AND THAT IMMEDIATE DETENTION IS NECESSARY TO PREVENT SUCH HARM AND TO AUTHORIZE TRANSPORT OF THAT PERSON TO AN EVALUATION FACILITY; 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:

"43-1-3. DEFINITIONS.--As used in the Mental Health and .192648.2

underscored material = new
[bracketed material] = delete

1 Developmental Disabilities Code:

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

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

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

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

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

25 (2) involve no restrictions on physical

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

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

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

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

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

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

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

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1 psychologist, and that is capable of performing a mental status
2 examination adequate to determine the need for involuntary
3 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. "likelihood of serious harm to oneself" means
23 that it is more likely than not that in the near future the
24 person will attempt to commit suicide or will cause serious
25 bodily harm to the person's self by violent or other self-

1 destructive means, including but not limited to grave passive
2 neglect;

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

10 O. "mental [~~disability~~] disorder" means substantial
11 disorder of a person's emotional processes, thought or
12 cognition that grossly impairs judgment, behavior or capacity
13 to recognize reality, but does not mean developmental
14 disability;

15 P. "mental health or developmental disabilities
16 professional" means a physician or other professional who by
17 training or experience is qualified to work with persons with a
18 mental [~~disability~~] disorder or a developmental disability;

19 Q. "mental health professional licensed for
20 independent practice" means a psychologist, independent social
21 worker, licensed professional clinical mental health counselor,
22 certified nurse practitioner or clinical nurse specialist with
23 a specialty in mental health, who by training and experience is
24 qualified to work with persons with a mental disorder;

25 [Q+] R. "physician" or "certified psychologist",

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

5 [R-] S. "psychosurgery":

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

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

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

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

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

22 [S-] T. "residential treatment or habilitation
23 program" means diagnosis, evaluation, care, treatment or
24 habilitation rendered inside or on the premises of a mental
25 health or developmental disabilities facility, hospital,

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1 clinic, institution or supervisory residence or nursing home
2 when the client resides on the premises; and

3 ~~[F.]~~ U. "treatment" means any effort to accomplish
4 a significant change in the mental or emotional condition or
5 behavior of the client."

6 **SECTION 2.** Section 43-1-10 NMSA 1978 (being Laws 1977,
7 Chapter 279, Section 9, as amended) is amended to read:

8 "43-1-10. EMERGENCY MENTAL HEALTH EVALUATION AND CARE.--

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

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

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

16 (3) the peace officer, based upon ~~[his]~~ the
17 peace officer's own observation and investigation, has
18 reasonable grounds to believe that the person, as a result of a
19 mental disorder, presents a likelihood of serious harm to
20 himself or herself or to others and that immediate detention is
21 necessary to prevent such harm. Immediately upon arrival at
22 the evaluation facility, the peace officer shall be interviewed
23 by the admitting physician or ~~[his]~~ the admitting physician's
24 designee; or

25 (4) a ~~[licensed]~~ physician or a ~~[certified]~~

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

7 B. An emergency evaluation under this section shall
8 be accomplished upon the request of a peace officer or jail or
9 detention facility administrator or ~~[his]~~ that person's
10 designee or upon the certification of a ~~[licensed]~~ physician or
11 ~~[certified psychologist as described in Subsection C of this~~
12 ~~section]~~ mental health professional licensed for independent
13 practice. A court order is not required under this section.

14 If an application is made to a court, the court's power to act
15 in furtherance of an emergency admission shall be limited to
16 ordering that:

17 (1) the client be seen by a certified
18 psychologist or psychiatrist prior to transport to an
19 evaluation facility; and

20 (2) a peace officer transport the person to an
21 evaluation facility.

22 C. An evaluation facility may accept for an
23 emergency-based admission any person when a ~~[licensed]~~
24 physician or certified psychologist certifies that such person,
25 as a result of a mental disorder, presents a likelihood of

1 serious harm to himself or herself or to others and that
2 immediate detention is necessary to prevent such harm. Such
3 certification shall constitute authority to transport the
4 person.

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

14 (1) shall not be held in a cell with
15 prisoners;

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

18 (3) shall be provided adequate protection from
19 possible suicide attempts; and

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

23 E. The admitting physician or certified
24 psychologist shall evaluate whether reasonable grounds exist to
25 detain the proposed client for evaluation and treatment, and,

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

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

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