

Involuntary Civil Commitment

Summary of the Present Statute and
Controlling Constitutional Precedent

Overview

- Involuntary Civil Commitment
 - 43-1-10 Emergency Commitment (72 Hours)
 - 43-1-11 Thirty Day Civil Commitment
 - 43-1-12 Extension of Thirty Day Civil Commitment
- Constitutional Precedent
 - Due Process
 - Burden of Proof
 - Limits on the Use of "Status"

43-1-10. Emergency mental health evaluation and care.

- A. A peace officer may detain and transport a person for emergency mental health evaluation and care in the absence of a legally valid order from the court *only if*:
 - (1) the person is otherwise subject to lawful arrest;
 - (2) the peace officer has reasonable grounds to believe the person has just attempted suicide;
 - (3) the peace officer, based upon the peace officer's own observation and investigation, has *reasonable grounds to believe* that the person, as a result of a mental disorder, presents a likelihood of serious harm to himself or herself or to others and that immediate detention is necessary to prevent such harm. Immediately upon arrival at the evaluation facility, the peace officer shall be interviewed by the admitting physician or the admitting physician's designee; or
 - (4) a physician, a psychologist or a qualified mental health professional licensed for independent practice who is affiliated with a community mental health center or core service agency has certified that the person, as a result of a mental disorder, presents a likelihood of serious harm to himself or herself or to others and that immediate detention is necessary to prevent such harm. Such certification shall constitute authority to transport the person.

43-1-10. Emergency mental health evaluation and care.

- B. An emergency evaluation under this section shall be accomplished upon the request of a peace officer or jail or detention facility administrator or that person's designee or upon the certification of a physician, a psychologist or a qualified mental health professional licensed for independent practice who is affiliated with a community mental health center or core service agency. A court order is not required under this section. If an application is made to a court, the court's power to act in furtherance of an emergency admission shall be limited to ordering that:
 - (1) the client be seen by a certified psychologist or psychiatrist prior to transport to an evaluation facility; and
 - (2) a peace officer transport the person to an evaluation facility.

43-1-10. Emergency mental health evaluation and care.

- C. An evaluation facility may accept for an emergency-based admission any person when a physician or certified psychologist certifies that such person, as a result of a mental disorder, presents a likelihood of serious harm to himself or herself or to others and that immediate detention is necessary to prevent such harm. Such certification shall constitute authority to transport the person.

43-1-10. Emergency mental health evaluation and care.

- D. A person detained under this section shall, whenever possible, be taken immediately to an evaluation facility. Detention facilities shall be used as temporary shelter for such persons only in cases of extreme emergency for protective custody, and no person taken into custody under the provisions of the code shall remain in a detention facility longer than necessary and in no case longer than twenty-four hours. If use of a detention facility is necessary, the proposed client:
 - (1) shall not be held in a cell with prisoners;
 - (2) shall not be identified on records used to record custody of prisoners;
 - (3) shall be provided adequate protection from possible suicide attempts; and
 - (4) shall be treated with the respect and dignity due every citizen who is neither accused nor convicted of a crime.

43-1-10. Emergency mental health evaluation and care.

- E. The admitting physician or certified psychologist shall evaluate whether reasonable grounds exist to detain the proposed client for evaluation and treatment, and, if reasonable grounds are found, the proposed client shall be detained. If the admitting physician or certified psychologist determines that reasonable grounds do not exist to detain the proposed client for evaluation and treatment, the proposed client shall not be detained.
- F. Upon arrival at an evaluation facility, the proposed client shall be informed orally and in writing by the evaluation facility of the purpose and possible consequences of the proceedings, the right to a hearing within seven days, the right to counsel and the right to communicate with an attorney and a mental health professional of the proposed client's own choosing and shall have the right to receive necessary and appropriate treatment.
- G. A peace officer who transports a proposed client to an evaluation facility under the provisions of this section shall not require a court order to be reimbursed by the referring county.

43-1-11. Commitment of adults for thirty-day period.

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

43-1-11. Commitment of adults for thirty-day period.

- B. At the hearing,
 - the client shall be represented by counsel and
 - shall have the right to present evidence on the client's behalf, including
 - testimony by an independent mental health professional of the client's own choosing,
 - to cross-examine witnesses and to be present at the hearing.
 - The presence of the client may be waived upon a showing to the court that the client knowingly and voluntarily waives the right to be present.
 - A complete record of all proceedings shall be made.

43-1-11. Commitment of adults for thirty-day period.

- C. A court-appointed guardian for an adult involved in an involuntary commitment proceeding shall have automatic standing to appear at all stages of the proceeding and shall be allowed to testify by telephone or through affidavit if circumstances make live testimony too burdensome.
- D. The court shall include in its findings the guardian's opinion regarding the need for involuntary treatment or a statement detailing the efforts made to ascertain the guardian's opinion.

43-1-11. Commitment of adults for thirty-day period.

- E. Upon completion of the hearing, the court may order a commitment for evaluation and treatment not to exceed thirty days if the court finds by clear and convincing evidence that:
 - (1) as a result of a mental disorder, the client presents a likelihood of serious harm to the client's own self or others;
 - (2) the client needs and is likely to benefit from the proposed treatment; and
 - (3) the proposed commitment is consistent with the treatment needs of the client and with the least drastic means principle.

43-1-11. Commitment of adults for thirty-day period.

- F. Once the court has made the findings set forth in Subsection E of this section, the court shall hear further evidence as to whether the client is capable of informed consent.
 - If the court determines that the client is incapable of informed consent, the court shall appoint for the client a treatment guardian who shall have only those powers enumerated in Section 43-1-15 NMSA 1978.

43-1-11. Commitment of adults for thirty-day period.

- G. An interested person who *reasonably* believes that an adult is suffering from a mental disorder and presents a likelihood of serious harm to the adult's own self or others, *but does not require emergency care*, may request the district attorney to investigate and determine whether reasonable grounds exist to commit the adult for a thirty-day period of evaluation and treatment.
- The applicant may present to the district attorney any medical reports or other evidence immediately available to the applicant, but shall not be required to obtain a medical report or other particular evidence in order to make a petition.
- The district attorney *shall* act on the petition within seventy-two hours.
- *If* the district attorney determines that reasonable grounds exist to commit the adult, the district attorney may petition the court for a hearing.
- The court *may* issue a summons to the proposed client to appear at the time designated for a hearing, which shall be not less than five days from the date the petition is served.
- *If* the proposed client is summoned and fails to appear at the proposed time and upon a finding of the court that the proposed client has failed to appear, or appears without having been evaluated, the court may order the proposed client to be detained for evaluation as provided for in Subsection C of Section 43-1-10 NMSA 1978.

43-1-11. Commitment of adults for thirty-day period.

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

43-1-12. Extended commitment of adults.

- A. A physician or evaluation facility may file a petition for extended commitment within twenty-one days after the beginning of the thirty-day commitment.
- The petition shall explain the necessity for extended commitment, specify the treatment that has been provided during the evaluation and include an individual treatment plan for the proposed commitment period.
- The petition shall list the prospective witnesses for commitment and a summary of the matters to which they will testify. Copies of the petition shall be served on the client, the client's guardian, and treatment guardian if one has been appointed, and the client's attorney.

43-1-12. Extended commitment of adults.

- B. A hearing shall be held upon the petition prior to the expiration of the thirty-day commitment period, at which the client shall have all rights granted to the client under Section 43-1-11 NMSA 1978 and in addition shall have a right to a trial by a six-person jury, if requested, and to an expeditious appeal, unless waived.
- C. A court-appointed guardian for an adult involved in an involuntary commitment proceeding shall have automatic standing to appear at all stages of the proceeding and shall be allowed to testify by telephone or through affidavit if circumstances make live testimony too burdensome.
- D. The court shall include in its findings the guardian's opinion regarding the need for involuntary treatment or a statement detailing the efforts made to ascertain the guardian's opinion.

43-1-12. Extended commitment of adults.

- E. If, at the conclusion of the hearing, the fact-finder determines by clear and convincing evidence that
 - the client presents a likelihood of harm to the client's self or to others,
 - that extended treatment is likely to improve the client's condition and
 - that the proposed extended commitment is consistent with the least drastic means principle,
- ...the court shall order commitment of the client for a period not to exceed six months, except that when the client has been committed for two consecutive periods of commitment, any commitment commencing thereafter shall not exceed one year.
- At the expiration of the commitment order, the client may be detained only after a new commitment hearing, unless waived after consultation with the client's attorney, and entry of a new order for commitment not to exceed six months.

43-1-12. Extended commitment of adults.

- F. A client involuntarily referred for treatment pursuant to this section shall be entitled to a reexamination of the order for the client's involuntary referral for treatment on the client's own petition, or that of the client's legal guardian, parent, spouse, relative or friend, to the district court of the county in which the client resides *or* is detained. Upon receipt of the petition, the court shall conduct a proceeding in accordance with this section, except that a proceeding shall not be required to be conducted if the petition is filed sooner than sixty days after the issuance of the order for involuntary referral for treatment or sooner than sixty days after the filing of a previous petition under this subsection.
 - G. Nothing in this section shall limit the right of a client to petition the court for a writ of habeas corpus.
 - H. Nothing in this code shall prohibit a client from seeking voluntary admission under Section 43-1-14 NMSA 1978.
 - I. No mental health treatment facility is required to detain, treat or provide services to a client when the client does not require such detention, treatment or services.

Constitutional Limitations - Involuntary Civil Commitment: Detention is Lawful, but Dangerousness is Required.

- "It is well established that the government may 'detain mentally unstable individuals who present a danger to the public[...]' " In the absence of a criminal prosecution, a dangerously mentally ill person who is in need of in-patient psychiatric hospitalization may be detained by involuntary civil commitment.
- Both the U.S. and New Mexico Supreme Courts have been clear that the restriction of a person's liberty—criminal or civil—requires due process.
- What that means is less clear: "due process is a rather malleable principle which must be molded to the particular situation, considering both the rights of the parties and governmental interests involved." - "The amount of process due depends on the particular circumstances of each case."

Const. Limits: Dangerousness

- The U.S. Supreme Court articulated in *O'Connor v. Donaldson* that the purpose of involuntary hospitalization is treatment and not mere custodial care or punishment if the patient is not a danger to himself or others.
- The Court declared that a state cannot constitutionally confine a non-dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends.

Const. Limits: Dangerousness

- The Court in *O'Connor v. Donaldson* specifically held:
 - A finding of mental illness alone cannot justify a [state's decision to] lock[] a person up against his will and keeping him indefinitely in simple custodial confinement. Assuming that that term can be given a reasonably precise content and that the mentally ill can be identified with reasonable accuracy, there is still no constitutional basis for confining such persons involuntarily if they are dangerous to no one and can live safely in freedom.
- According to the Court, the confinement of a non-dangerous person based upon mental illness alone is not constitutionally permitted.

Const. Limits: Burden of Proof

- In *Addington v. Texas*, the U.S. Supreme Court recognized that civil commitment "constitutes a significant deprivation of liberty."
- The Court held that an individual's interest in the outcome of a civil commitment proceeding is sufficiently serious that due process requires the state to justify confinement by proof *more substantial than a mere preponderance of the evidence*.
- The Court held that the proper burden of proof at the civil commitment hearing was a clear and convincing evidence standard of proof.

Const. Limits: "Status" is Not a Lawful Basis for Detention

- In *Robinson v. California*, Lawrence Robinson was arrested on a street in Los Angeles for being "addicted to the use of narcotics" when an officer noticed marks and scabs on his arm consistent with regular needle injection. The Supreme Court overruled the California statute, forbidding states to punish the status of an individual.
- The Court held that "addiction is an illness," and the statute amounted to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.
- The Court expressed concern that the statute made "the status of narcotic addiction a criminal offense, for which the offender may be prosecuted at any time before he reforms."
- Similarly, the "status" that a person is addicted to narcotics is not likely to be sufficient to prove "dangerousness."