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HOUSE BILL 220

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

INTRODUCED BY

Jane E. Powdrell-Culbert

AN ACT

RELATING TO MENTAL HEALTH; AMENDING SECTIONS OF THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE TO EXPAND THE CLASS OF HEALTH PRACTITIONERS PERMITTED TO CERTIFY THAT A PERSON PRESENTS A LIKELIHOOD OF SERIOUS HARM TO THE PERSON OR OTHERS; 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 Developmental Disabilities Code:

A. "aversive stimuli" means anything that, because

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

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

14 C. "code" means the Mental Health and Developmental  
15 Disabilities Code;

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

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

23 (2) involve no restrictions on physical  
24 movement and no requirement for residential care except as  
25 reasonably necessary for the administration of treatment or for

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1 the protection of the client or others from physical injury;  
2 and

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

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

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

10 G. "department" or "division" means the behavioral  
11 health services division of the human services department;

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

17 I. "evaluation facility" means a community mental  
18 health or developmental disability program or a medical  
19 facility that has psychiatric or developmental disability  
20 services available, including the New Mexico behavioral health  
21 institute at Las Vegas, the Los Lunas medical center or, if  
22 none of the foregoing is reasonably available or appropriate,  
23 the office of a licensed physician or a certified psychologist,  
24 and that is capable of performing a mental status examination  
25 adequate to determine the need for involuntary treatment;

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1           J. "experimental treatment" means any mental health  
2 or developmental disabilities treatment that presents  
3 significant risk of physical harm, but does not include  
4 accepted treatment used in competent practice of medicine and  
5 psychology and supported by scientifically acceptable studies;

6           K. "grave passive neglect" means failure to provide  
7 for basic personal or medical needs or for one's own safety to  
8 such an extent that it is more likely than not that serious  
9 bodily harm will result in the near future;

10           L. "habilitation" means the process by which  
11 professional persons and their staff assist a client with a  
12 developmental disability in acquiring and maintaining those  
13 skills and behaviors that enable the person to cope more  
14 effectively with the demands of the person's self and  
15 environment and to raise the level of the person's physical,  
16 mental and social efficiency. "Habilitation" includes but is  
17 not limited to programs of formal, structured education and  
18 treatment;

19           M. "licensed practitioner" means one of the  
20 following individuals:

21                   (1) a physician licensed pursuant to the  
22 Medical Practice Act;

23                   (2) an osteopathic physician licensed pursuant  
24 to Chapter 61, Article 10 NMSA 1978;

25                   (3) a psychologist licensed pursuant to the

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1 Professional Psychologist Act;

2 (4) a certified psychiatric nurse practitioner  
3 licensed pursuant to the Nursing Practice Act;

4 (5) a psychiatric physician assistant licensed  
5 as a physician assistant pursuant to the Medical Practice Act  
6 or as an osteopathic physician assistant pursuant to the  
7 Osteopathic Physicians' Assistants Act;

8 (6) an independent social worker licensed  
9 pursuant to the Social Work Practice Act; or

10 (7) a professional clinical mental health  
11 counselor licensed pursuant to the Counseling and Therapy  
12 Practice Act;

13 ~~[M.]~~ N. "likelihood of serious harm to oneself"  
14 means that it is more likely than not that in the near future  
15 the person will attempt to commit suicide or will cause serious  
16 bodily harm to the person's self by violent or other self-  
17 destructive means, including but not limited to grave passive  
18 neglect;

19 ~~[N.]~~ O. "likelihood of serious harm to others"  
20 means that it is more likely than not that in the near future a  
21 person will inflict serious, unjustified bodily harm on another  
22 person or commit a criminal sexual offense, as evidenced by  
23 behavior causing, attempting or threatening such harm, which  
24 behavior gives rise to a reasonable fear of such harm from the  
25 person;

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1           ~~[P.]~~ P. "mental disability" means substantial  
2 disorder of a person's emotional processes, thought or  
3 cognition that grossly impairs judgment, behavior or capacity  
4 to recognize reality, but does not mean developmental  
5 disability;

6           ~~[P.]~~ Q. "mental health or developmental  
7 disabilities professional" means a physician or other  
8 professional who by training or experience is qualified to work  
9 with persons with a mental disability or a developmental  
10 disability;

11           ~~[Q. "physician" or "certified psychologist", when~~  
12 ~~used for the purpose of hospital admittance or discharge, means~~  
13 ~~a physician or certified psychologist who has been granted~~  
14 ~~admitting privileges at a hospital licensed by the department~~  
15 ~~of health, if such privileges are required;]~~

16           R. "psychosurgery":

17                 (1) means those operations currently referred  
18 to as lobotomy, psychiatric surgery and behavioral surgery and  
19 all other forms of brain surgery if the surgery is performed  
20 for the purpose of the following:

21                         (a) modification or control of thoughts,  
22 feelings, actions or behavior rather than the treatment of a  
23 known and diagnosed physical disease of the brain;

24                         (b) treatment of abnormal brain function  
25 or normal brain tissue in order to control thoughts, feelings,

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1 actions or behavior; or

2 (c) treatment of abnormal brain function  
3 or abnormal brain tissue in order to modify thoughts, feelings,  
4 actions or behavior when the abnormality is not an established  
5 cause for those thoughts, feelings, actions or behavior; and

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

8 S. "residential treatment or habilitation program"  
9 means diagnosis, evaluation, care, treatment or habilitation  
10 rendered inside or on the premises of a mental health or  
11 developmental disabilities facility, hospital, clinic,  
12 institution or supervisory residence or nursing home when the  
13 client resides on the premises; and

14 T. "treatment" means any effort to accomplish a  
15 significant change in the mental or emotional condition or  
16 behavior of the client."

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

19 "43-1-10. EMERGENCY MENTAL HEALTH EVALUATION AND CARE.--

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

23 (1) the person is otherwise subject to lawful  
24 arrest;

25 (2) the peace officer has reasonable grounds

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1 to believe the person has just attempted suicide;

2 (3) the peace officer, based upon ~~[his]~~ the  
3 peace officer's own observation and investigation, has  
4 reasonable grounds to believe that the person, as a result of a  
5 mental ~~[disorder]~~ disability, presents a likelihood of serious  
6 harm to himself or herself or to others and that immediate  
7 detention is necessary to prevent such harm. Immediately upon  
8 arrival at the evaluation facility, the peace officer shall be  
9 interviewed by the admitting physician or ~~[his]~~ the admitting  
10 physician's designee; or

11 (4) a licensed ~~[physician or a certified~~  
12 ~~psychologist]~~ practitioner has certified that the person, as a  
13 result of a mental ~~[disorder]~~ disability, presents a likelihood  
14 of serious harm to himself or herself or to others and that  
15 immediate detention is necessary to prevent such harm. ~~[Such]~~  
16 The certification shall constitute authority to transport the  
17 person.

18 B. An emergency evaluation under this section shall  
19 be accomplished upon the request of a peace officer or jail or  
20 detention facility administrator or ~~[his]~~ that person's  
21 designee or upon the certification of a licensed ~~[physician or~~  
22 ~~certified psychologist]~~ practitioner as described in Subsection  
23 C of this section. A court order is not required under this  
24 section. If an application is made to a court, the court's  
25 power to act in furtherance of an emergency admission shall be

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1 limited to ordering that:

2 (1) the client be seen by a [~~certified~~]  
3 licensed psychologist or psychiatrist prior to transport to an  
4 evaluation facility; and

5 (2) a peace officer transport the person to an  
6 evaluation facility.

7 C. An evaluation facility may accept a person for  
8 an emergency-based admission [~~any person~~] when a licensed  
9 [~~physician or certified psychologist~~] practitioner certifies  
10 that [~~such~~] the person, as a result of a mental [~~disorder~~]  
11 disability, presents a likelihood of serious harm to himself or  
12 herself or to others and that immediate detention is necessary  
13 to prevent such harm. [~~Such~~] A licensed practitioner's  
14 certification shall constitute authority to transport the  
15 person.

16 D. [~~Any~~] A person detained under this section  
17 shall, whenever possible, be taken immediately to an evaluation  
18 facility. Detention facilities shall be used as temporary  
19 shelter for such persons only in cases of extreme emergency for  
20 protective custody, and no person taken into custody under the  
21 provisions of the code shall remain in a detention facility  
22 longer than necessary and in no case longer than twenty-four  
23 hours. If use of a detention facility is necessary, the  
24 proposed client shall:

25 (1) [~~shall~~] not be held in a cell with

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1 prisoners;

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

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

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

9 E. The admitting physician or ~~[certified]~~ licensed  
10 psychologist shall evaluate whether reasonable grounds exist to  
11 detain the proposed client for evaluation and treatment, and,  
12 if ~~[such]~~ reasonable grounds are found, the proposed client  
13 shall be detained. If the admitting physician or ~~[certified]~~  
14 licensed psychologist determines that reasonable grounds do not  
15 exist to detain the proposed client for evaluation and  
16 treatment, the proposed client shall not be detained.

17 F. Upon arrival at an evaluation facility, the  
18 proposed client shall be informed orally and in writing by the  
19 evaluation facility of the purpose and possible consequences of  
20 the proceedings, the allegations in the petition, ~~[his]~~ the  
21 right to a hearing within seven days, ~~[his]~~ the right to  
22 counsel and ~~[his]~~ the right to communicate with an attorney and  
23 an independent mental health professional of ~~[his]~~ the proposed  
24 client's own choosing and shall have the right to receive  
25 necessary and appropriate treatment.

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G. A peace officer who transports ~~any~~ 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."