

HOUSE BILL 637

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Rick Miera

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO CHILDREN; CREATING A NEW CHILDREN'S MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ACT THAT PROGRESSES FROM LEAST TO MOST RESTRICTIVE SITUATIONS; REPEALING THE CHILDREN'S MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ACT.

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

Section 1. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Children's Mental Health and Developmental Disabilities Act"."

Section 2. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] PURPOSES.--The purposes of the Children's Mental Health and Developmental Disabilities Act are to:

A. provide children with access to appropriate

.163926.1

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 assessments, services and treatment;

2 B. provide children access to a continuum of  
3 services to address their habilitation and treatment needs;

4 C. provide children with access to services for  
5 identification, prevention and intervention for developmental  
6 and mental health needs;

7 D. promote delivery of services in a culturally  
8 appropriate, responsive and respectful manner;

9 E. protect the substantive and procedural rights of  
10 children regardless of service setting; and

11 F. encourage support for family as critical members  
12 of the treatment or habilitation team whenever clinically  
13 appropriate."

14 Section 3. A new section of the Children's Code is  
15 enacted to read:

16 "[NEW MATERIAL] SCOPE.--The provisions of the Children's  
17 Mental Health and Developmental Disabilities Act shall apply to  
18 all children in New Mexico except as otherwise set forth in the  
19 Children's Code."

20 Section 4. A new section of the Children's Code is  
21 enacted to read:

22 "[NEW MATERIAL] DEFINITIONS.--As used in the Children's  
23 Mental Health and Developmental Disabilities Act:

24 A. "aversive intervention" means any device or  
25 intervention, consequences or procedure intended to cause pain

.163926.1

1 or unpleasant sensations, including interventions causing  
2 physical pain, tissue damage, physical illness or injury;  
3 electric shock; isolation; mechanical restraint; forced  
4 exercise; withholding of food, water or sleep; humiliation;  
5 water mist; noxious taste, smell or skin agents; and over-  
6 correction;

7 B. "behavioral health services" means a  
8 comprehensive array of professional and ancillary services for  
9 the treatment, habilitation, prevention and identification of  
10 mental illnesses, behavioral symptoms associated with  
11 developmental disabilities, substance abuse disorders and  
12 trauma spectrum disorders;

13 C. "capacity" means a child's ability to:

14 (1) understand and appreciate the nature and  
15 consequences of proposed health care, including its significant  
16 benefits, risks and alternatives to proposed health care; and

17 (2) make and communicate an informed health  
18 care decision;

19 D. "chemical restraint" means a medication that is  
20 not standard treatment for the patient's medical or psychiatric  
21 condition that is used to control behavior or to restrict a  
22 patient's freedom of movement;

23 E. "child" means a person who is a minor;

24 F. "clinician" means a person whose licensure  
25 allows the person to make independent clinical decisions,

1 including a physician, licensed psychologist, psychiatric nurse  
2 practitioner, licensed independent social worker, licensed  
3 marriage and family therapist and licensed professional  
4 clinical counselor;

5 G. "continuum of services" means a comprehensive  
6 array of emergency, outpatient, intermediate and inpatient  
7 services and care, including screening, early identification,  
8 diagnostic evaluation, medical, psychiatric, psychological and  
9 social service care, habilitation, education, training,  
10 vocational rehabilitation and career counseling;

11 H. "developmental disability" means a severe  
12 chronic disability that:

13 (1) is attributable to a mental or physical  
14 impairment or a combination of mental or physical impairments;

15 (2) is manifested before a person reaches  
16 twenty-two years of age;

17 (3) is expected to continue indefinitely;

18 (4) results in substantial functional  
19 limitations in three or more of the following areas of major  
20 life activities:

21 (a) self-care;

22 (b) receptive and expressive language;

23 (c) learning;

24 (d) mobility;

25 (e) self-direction;

underscoring material = new  
[bracketed material] = delete

- 1 (f) capacity for independent living; or  
2 (g) economic self-sufficiency; and  
3 (5) reflects a person's need for a combination  
4 and sequence of special, interdisciplinary or other supports  
5 and services that are of lifelong or extended duration that are  
6 individually planned or coordinated;

7 I. "evaluation facility" means a community mental  
8 health or developmental disability program, a medical facility  
9 having psychiatric or developmental disability services  
10 available or, if none of the foregoing is reasonably available  
11 or appropriate, the office of a licensed physician or a  
12 licensed psychologist, any of which shall be capable of  
13 performing a mental status examination adequate to determine  
14 the need for appropriate treatment, including possible  
15 involuntary treatment;

16 J. "family" means persons with a kinship  
17 relationship to a child, including the relationship that exists  
18 between a child and a biological or adoptive parent, relative  
19 of the child, a step-parent, a godparent, a member of the  
20 child's tribe or clan or an adult with whom the child has a  
21 significant bond;

22 K. "habilitation" means services, including  
23 behavioral health services based on evaluation of the child,  
24 that are aimed at assisting the child to prevent, correct or  
25 ameliorate a developmental disability. The purpose of

.163926.1

1 habilitation is to enable the child to attain, maintain or  
2 regain maximum functioning or independence. "Habilitation"  
3 includes programs of formal, structured education and treatment  
4 and rehabilitation services;

5 L. "individualized education plan" means an  
6 education plan tailored to a child's educational needs made in  
7 consultation with a child's teachers and other school  
8 administrators;

9 M. "individual instruction" means a child's  
10 direction concerning a mental health treatment decision for the  
11 child, made while the child has capacity and is fourteen years  
12 of age or older, which is to be implemented when the child has  
13 been determined to lack capacity;

14 N. "least restrictive means principle" means the  
15 conditions of habilitation or treatment for the child,  
16 separately and in combination that:

17 (1) are no more harsh, hazardous or intrusive  
18 than necessary to achieve acceptable treatment objectives for  
19 the child;

20 (2) involve no restrictions on physical  
21 movement and no requirement for residential care, except as  
22 reasonably necessary for the administration of treatment or for  
23 the protection of the child or others from physical injury; and

24 (3) are conducted at the suitable available  
25 facility closest to the child's place of residence;

1           O. "legal custodian" means a biological or adoptive  
2 parent of a child unless legal custody has been vested in a  
3 person, department or agency and also includes a person  
4 appointed by an unexpired power of attorney;

5           P. "licensed psychologist" means a person who holds  
6 a current license as a psychologist issued by the New Mexico  
7 state board of psychologist examiners;

8           Q. "likelihood of serious harm to self" means that  
9 it is more likely than not that in the near future a child will  
10 attempt to commit suicide or will cause serious bodily harm to  
11 the child by violent or other self-destructive means, as  
12 evidenced by behavior causing, attempting or threatening such  
13 harm, which behavior gives rise to a reasonable fear of such  
14 harm from the child;

15           R. "likelihood of serious harm to others" means  
16 that it is more likely than not that in the near future the  
17 child will inflict serious bodily harm on another person or  
18 commit a criminal sexual offense, as evidenced by behavior  
19 causing, attempting or threatening such harm, which behavior  
20 gives rise to a reasonable fear of such harm from the child;

21           S. "mechanical restraint" means any device or  
22 material attached or adjacent to the child's body that  
23 restricts freedom of movement or normal access to any portion  
24 of the child's body and that the child cannot easily remove but  
25 does not include a protective or stabilizing device;

1 T. "medically necessary services" means clinical  
2 and rehabilitative physical, mental or behavioral health  
3 services that are:

4 (1) essential to prevent, diagnose or treat  
5 medical conditions or are essential to enable the child to  
6 attain, maintain or regain functional capacity;

7 (2) delivered in the amount, duration, scope  
8 and setting that is clinically appropriate to the specific  
9 physical, mental and behavioral health care needs of the child;

10 (3) provided within professionally accepted  
11 standards of practice and national guidelines; and

12 (4) required to meet the physical, mental and  
13 behavioral health needs of the child and are not primarily for  
14 the convenience of the child, provider or payer;

15 U. "mental disorder" means a substantial disorder  
16 of the child's emotional processes, thought or cognition, not  
17 including a developmental disability, that impairs the child's:

18 (1) functional ability to act in  
19 developmentally and age-appropriate ways in any life domain;

20 (2) judgment;

21 (3) behavior; and

22 (4) capacity to recognize reality;

23 V. "mental health or developmental disabilities  
24 professional" means a person who by training or experience is  
25 qualified to work with persons with mental disorders or



1 developmental disabilities;

2 W. "out-of-home treatment or habilitation program"  
3 means an out-of-home residential program that provides twenty-  
4 four-hour care and supervision to children with the primary  
5 purpose of providing treatment or habilitation to children.

6 "Out-of-home treatment or habilitation program" includes, but  
7 is not limited to, treatment foster care, group homes and  
8 residential treatment centers;

9 X. "parent" means a biological or adoptive parent  
10 of a child whose parental rights have not been terminated;

11 Y. "peace officer" means a member of a police or  
12 sheriff's department that is part of or administered by the  
13 state or any political subdivision of the state and officers in  
14 the corrections department;

15 Z. "physical restraint" means the use of physical  
16 force without the use of any device or material that restricts  
17 the free movement of all or a portion of a child's body, but  
18 does not include:

19 (1) briefly holding a child in order to calm  
20 or comfort the child;

21 (2) holding a child's hand or arm to escort  
22 the child safely from one area to another; or

23 (3) intervening in a physical fight;

24 AA. "residential treatment or habilitation program"  
25 means diagnosis, evaluation, care, treatment or habilitation

1 rendered inside or on the premises of a mental health or  
2 developmental disabilities facility, hospital, clinic,  
3 institution, supervisory residence or nursing home when the  
4 child resides on the premises and where one or more of the  
5 following measures is available for use:

6 (1) a mechanical device to restrain or  
7 restrict the child's movement;

8 (2) a secure seclusion area from which the  
9 child is unable to exit voluntarily;

10 (3) a facility or program designed for the  
11 purpose of restricting the child's ability to exit voluntarily;  
12 and

13 (4) the involuntary emergency administration  
14 of psychotropic medication;

15 BB. "restraint" means the use of a physical,  
16 chemical or mechanical restraint;

17 CC. "seclusion" means the confinement of a child  
18 alone in a room from which the child is physically prevented  
19 from leaving;

20 DD. "treatment" means provision of behavioral  
21 health services based on evaluation of the child, aimed at  
22 assisting the child to prevent, correct or ameliorate a mental  
23 disorder. The purpose of treatment is to enable the child to  
24 attain, maintain or regain maximum functioning;

25 EE. "treatment team" means a team consisting of the

underscored material = new  
[bracketed material] = delete

1 child, the child's parents unless parental rights have  
2 specifically been limited pursuant to an order of a court,  
3 legal custodian, guardian ad litem, treatment guardian,  
4 clinician and any other professionals involved in treatment of  
5 the child, other members of the child's family, if requested by  
6 the child, and the child's attorney if requested by the child,  
7 unless in the professional judgment of the treating clinician  
8 for reasons of safety or therapy one or more members should be  
9 excluded from participation in the treatment team; and

10 FF. "treatment plan" means an individualized plan  
11 developed by a treatment team based on assessed strengths and  
12 needs of the child and family."

13 Section 5. A new section of the Children's Code is  
14 enacted to read:

15 "[NEW MATERIAL] COMPETENCE.--The fact that a child has  
16 received treatment or habilitation services or has been  
17 accepted at or admitted to a hospital or institutional facility  
18 shall not constitute a sufficient basis for a finding of  
19 incompetence or the denial of a right or benefit of any nature  
20 that the child would otherwise have."

21 Section 6. A new section of the Children's Code is  
22 enacted to read:

23 "[NEW MATERIAL] RIGHTS RELATED TO TREATMENT AND  
24 HABILITATION--SCOPE.--The rights set forth in the Children's  
25 Mental Health and Developmental Disabilities Act shall apply to

.163926.1

underscored material = new  
[bracketed material] = delete

1 a child who is physically present and receiving treatment or  
2 habilitation services in New Mexico. A child who receives  
3 treatment or habilitation services shall have rights with  
4 respect to such treatment or habilitation, regardless of where  
5 services are provided."

6 Section 7. A new section of the Children's Code is  
7 enacted to read:

8 "[NEW MATERIAL] RIGHT TO INDIVIDUALIZED TREATMENT OR  
9 HABILITATION SERVICES AND PLAN.--

10 A. A child receiving mental health or habilitation  
11 services shall have the right to prompt treatment and  
12 habilitation pursuant to an individualized treatment plan and  
13 consistent with the least restrictive means principle.

14 B. A preliminary treatment plan shall be prepared  
15 within seven days of initial provision of mental health or  
16 habilitation services.

17 C. An individualized treatment or habilitation plan  
18 shall be prepared within twenty-one days of the provision of  
19 mental health or habilitation services.

20 D. The individualized treatment or habilitation  
21 plan shall be developed by the child's treatment team. The  
22 child and the child's legal custodian and parent shall, to the  
23 maximum extent possible, be involved in the preparation of the  
24 child's individualized treatment or habilitation plan.

25 E. An individualized treatment or habilitation plan

.163926.1

1 shall include:

2 (1) a statement of the nature of the specific  
3 problem and the specific needs of the child;

4 (2) a statement of the least restrictive  
5 conditions necessary to achieve the purposes of treatment or  
6 habilitation;

7 (3) a description of intermediate and long-  
8 range goals, with the projected timetable for their attainment;

9 (4) a statement and rationale for the plan of  
10 treatment or habilitation for achieving these intermediate and  
11 long-range goals;

12 (5) specification of staff responsibility and  
13 a description of the proposed staff involvement with the child  
14 in order to attain these goals;

15 (6) criteria for release to less restrictive  
16 settings for treatment or habilitation, criteria for discharge  
17 and a projected date for discharge; and

18 (7) provision for access to cultural practices  
19 and traditional treatments in accordance with the child's  
20 assessed needs, and for an Indian child, culturally competent  
21 placement, treatment and practices and, after appropriate  
22 consent, tribal consultation.

23 F. A treatment or habilitation plan for a child in  
24 an out-of-home treatment or habilitation program shall be based  
25 on documented assessments that may include assessments of

.163926.1

underscored material = new  
[bracketed material] = delete

1 mental status; intellectual function; psychological status,  
2 including the use of psychological testing; psychiatric  
3 evaluation and medication; education, vocation, socialization,  
4 physical status and the child's cultural needs.

5 G. The child's progress in attaining the goals and  
6 objectives set forth in the individualized treatment or  
7 habilitation plan shall be monitored and noted in the child's  
8 records, and revisions in the plan may be made as circumstances  
9 require. The members of the child's treatment team shall be  
10 informed of major changes and shall have the opportunity to  
11 participate in decisions."

12 Section 8. A new section of the Children's Code is  
13 enacted to read:

14 "[NEW MATERIAL] SPECIAL RULES APPLICABLE TO AVERSIVE  
15 INTERVENTION.--

16 A. An intervention expressly listed in the  
17 "aversive intervention" definition in Section 4 of the  
18 Children's Mental Health and Developmental Disabilities Act is  
19 prohibited.

20 B. A treatment plan containing an aversive  
21 intervention not specifically listed in Section 4 of the  
22 Children's Mental Health and Developmental Disabilities Act  
23 shall be submitted to the human rights commission in advance of  
24 a meeting, except in emergency situations. The human rights  
25 commission shall review the plan along with the following

.163926.1

underscored material = new  
[bracketed material] = delete

1 additional information as available:

- 2 (1) baseline or base rate data;
- 3 (2) review of the child's current situation  
4 and environment;
- 5 (3) the child's history, including previous  
6 interventions and results;
- 7 (4) the possible adverse effects, if any, of  
8 the proposed treatment plan;
- 9 (5) success and failure criteria for  
10 discontinuing the proposed aversive intervention; and
- 11 (6) a written evaluation by the clinician  
12 proposing the treatment plan or the intervention.

13 C. The human rights commission shall not approve an  
14 intervention specifically listed in the definition of "aversive  
15 intervention" in Section 4 of the Children's Mental Health and  
16 Developmental Disabilities Act.

17 D. An invitation to participate in the review shall  
18 be extended to the child, the child's legal custodian, the  
19 clinician and any other mental health or developmental  
20 disability professional who has proposed the treatment. A  
21 written or oral presentation shall be made to the human rights  
22 commission by the mental health or developmental disability  
23 professional proposing the treatment.

24 E. The results of the human rights commission  
25 review shall be reported to the clinician, the child and the

.163926.1

underscored material = new  
[bracketed material] = delete

1 child's legal custodian within three working days."

2 Section 9. A new section of the Children's Code is  
3 enacted to read:

4 "[NEW MATERIAL] RESTRAINT, GENERALLY.--A child has the  
5 right to be free from the use of physical, chemical or  
6 mechanical restraint used for the convenience of a caregiver or  
7 as a substitute for a planned program for behavior support.  
8 However, nothing in this subsection shall prohibit the use of:

9 A. a protective apparatus needed to protect a child  
10 from imminent harm, consistent with the least restrictive means  
11 principle;

12 B. a medical restraint prescribed by a physician or  
13 dentist as a health-related protective measure during the  
14 conduct of a specific medical, surgical or dental procedure;  
15 and

16 C. appropriate mechanical supports used to achieve  
17 proper body position and balance."

18 Section 10. A new section of the Children's Code is  
19 enacted to read:

20 "[NEW MATERIAL] PHYSICAL RESTRAINT AND SECLUSION.--

21 A. In a mental health or developmental disability  
22 treatment or habilitation setting, physical restraint and  
23 seclusion shall not be used unless such use is necessary to  
24 protect a child or another from imminent, serious physical harm  
25 or unless another less intrusive, nonphysical intervention has

.163926.1



underscored material = new  
[bracketed material] = delete

1 failed or been determined inappropriate.

2 B. A treatment and habilitation program shall  
3 provide a child and the child's legal custodian with a copy of  
4 the policies and procedures governing the use of restraint and  
5 seclusion.

6 C. When a child is in a restraint or in seclusion,  
7 the mental health or developmental disabilities professional  
8 shall document:

9 (1) any less intrusive interventions that were  
10 attempted or determined to be inappropriate prior to the  
11 incident;

12 (2) the precipitating event immediately  
13 preceding the behavior that prompted the use of restraint or  
14 seclusion;

15 (3) the behavior that prompted the use of a  
16 restraint or seclusion;

17 (4) the names of the mental health or  
18 developmental disabilities professional who observed the  
19 behavior that prompted the use of restraint or seclusion;

20 (5) the names of the staff members  
21 implementing and monitoring the use of restraint or seclusion;  
22 and

23 (6) a description of the restraint or  
24 seclusion incident, including the type and length of the use of  
25 restraint or seclusion, the child's behavior during and

.163926.1

1 reaction to the restraint or seclusion and the name of the  
2 supervisor informed of the use of restraint or seclusion.

3 D. The documentation shall be maintained in the  
4 child's medical, mental health or educational record and  
5 available for inspection by the child's legal custodian.

6 E. The child's legal custodian shall be notified  
7 immediately after each time restraint or seclusion is used. If  
8 the legal custodian is not reasonably available, the mental  
9 health or developmental disability professional shall document  
10 all attempts to notify the legal custodian and shall send  
11 written notification within one business day.

12 F. After an incident of restraint or seclusion, the  
13 mental health or developmental disabilities professional  
14 involved in the incident shall conduct a debriefing with the  
15 child in which the precipitating event, unsafe behavior and  
16 preventive measures are reviewed with the intent of reducing or  
17 eliminating the need for future restraint or seclusion. The  
18 debriefing shall be documented in the child's record and  
19 incorporated into the next treatment plan review.

20 G. As promptly as possible, but under no  
21 circumstances later than five calendar days after a child has  
22 been subject to restraint or seclusion, the treatment team  
23 shall meet to review the incident and revise the treatment plan  
24 as appropriate. The treatment team shall identify any known  
25 triggers to the behavior that necessitated the use of restraint

.163926.1

1 or seclusion and recommend preventive measures that may be used  
2 to calm the child and eliminate the need for restraint or  
3 seclusion. In a subsequent review of the treatment plan, the  
4 treatment team shall review the success or failure of  
5 preventive measures and revise the plan, if necessary, based on  
6 such review.

7 H. Physical restraint shall be applied only by a  
8 mental health or developmental disabilities professional  
9 trained in the appropriate use of physical restraint.

10 I. In applying physical restraint, a mental health  
11 or developmental disabilities professional shall use only  
12 reasonable force as is necessary to protect the child or other  
13 person from imminent and serious physical harm.

14 J. Seclusion shall be applied only by mental health  
15 or developmental disabilities professionals who are trained in  
16 the appropriate use of seclusion.

17 K. At a minimum, a room used for seclusion shall:

18 (1) be free of objects and fixtures with which  
19 a child could self-inflict bodily harm;

20 (2) provide the mental health or developmental  
21 disabilities professional an adequate and continuous view of  
22 the child from an adjacent area; and

23 (3) provide adequate lighting and ventilation.

24 L. During the seclusion of a child, the mental  
25 health or developmental disabilities professional shall:

underscored material = new  
[bracketed material] = delete

1 (1) view the child placed in seclusion at all  
2 times; and

3 (2) provide the child placed in seclusion  
4 with:

5 (a) an explanation of the behavior that  
6 resulted in the seclusion; and

7 (b) instructions on the behavior  
8 required to return to the environment.

9 M. At a minimum, a mental health or developmental  
10 disabilities professional shall reassess a child in restraint  
11 or seclusion every thirty minutes.

12 N. The use of a mechanical restraint is prohibited  
13 in a mental health and developmental disability treatment  
14 setting unless the treatment setting is certified by and meets  
15 the requirements of the joint commission for the accreditation  
16 of health care organizations.

17 O. This section does not prohibit a mental health  
18 or developmental disabilities professional from using a  
19 protective or stabilizing device:

20 (1) as prescribed by a health professional; or

21 (2) for a child with a disability, in  
22 accordance with a written treatment plan, including but not  
23 limited to a school individualized education plan or behavior  
24 intervention plan."

25 Section 11. A new section of the Children's Code is

.163926.1

underscored material = new  
[bracketed material] = delete

1 enacted to read:

2 "[NEW MATERIAL] TRAINING REQUIRED FOR A PROFESSIONAL WHO  
3 USES RESTRAINT OR SECLUSION.--A mental health or developmental  
4 disabilities professional who administers restraint or  
5 seclusion shall receive training in current professionally  
6 accepted practices and standards regarding:

7 A. positive behavior interventions strategies and  
8 supports;

9 B. functional behavior assessment and behavior  
10 intervention planning;

11 C. prevention of self-injurious behaviors;

12 D. methods for identifying and defusing potentially  
13 dangerous behavior; and

14 E. restraint and seclusion, to the extent that each  
15 may be used in the treatment setting."

16 Section 12. A new section of the Children's Code is  
17 enacted to read:

18 "[NEW MATERIAL] PERSONAL RIGHTS OF A CHILD IN AN OUT-OF-  
19 HOME TREATMENT OR HABILITATION PROGRAM--SCOPE.--

20 A. A child in an out-of-home treatment or  
21 habilitation program shall have, in addition to other rights  
22 set forth in the Children's Mental Health and Developmental  
23 Disabilities Act, the right to:

24 (1) be placed in a manner consistent with the  
25 least restrictive means principle;

.163926.1

underscoring material = new  
[bracketed material] = delete

1                   (2) have access to the state's designated  
2 protection and advocacy system and access to an attorney of the  
3 child's choice, provided that the child is not entitled to  
4 appointment of an attorney at public expense, except as  
5 otherwise provided in Subsection C of Section 13 of the  
6 Children's Mental Health and Developmental Disabilities Act;

7                   (3) receive visitors of the child's own  
8 choosing on a daily basis, subject to restrictions imposed in  
9 the best interests of the child by the child's clinician for  
10 good cause. Hours during which visitors may be received shall  
11 be limited only in the interest of effective treatment and the  
12 reasonable efficiency of the program and shall be sufficiently  
13 flexible to accommodate the individual needs of the child and  
14 the child's visitors. Notwithstanding the provisions of this  
15 subsection, each child has the right to receive visits from the  
16 child's attorney, physician, psychologist, clergy, guardian ad  
17 litem, representatives from the state's protection and advocacy  
18 system or children, youth and families department in private at  
19 any reasonable time, irrespective of visiting hours, provided  
20 the visitor shows reasonable cause for visiting at times other  
21 than normal visiting hours;

22                   (4) have writing materials and postage stamps  
23 reasonably available for the child's use in writing letters and  
24 other communications. Reasonable assistance shall be provided  
25 for writing, addressing and posting letters and other documents

.163926.1

underscoring material = new  
[bracketed material] = delete

1 upon request. The child has the right to send and receive  
2 sealed and uncensored mail. The child has the right to  
3 reasonable private access to telephones and, in cases of  
4 personal emergencies when other means of communication are not  
5 satisfactory, the child shall be afforded reasonable use of  
6 long distance calls; provided that for other than mail or  
7 telephone calls to a court, an attorney, a physician, a  
8 psychologist, a clergy, a guardian ad litem, a representative  
9 from the state's protection and advocacy system or a social  
10 worker, mailing or telephone privileges may be restricted by  
11 the child's clinician for good cause shown. A child who is  
12 indigent shall be furnished writing, postage and telephone  
13 facilities without charge;

14 (5) reasonable access to a legal custodian and  
15 a family member through visitation, videoconferencing,  
16 telephone access and opportunity to send and receive mail. In-  
17 person-visitation is preferred and reasonable efforts shall be  
18 made to facilitate such visitation unless the child and family  
19 choose otherwise. Access by legal custodians and family  
20 members to the child shall be limited only in the interest of  
21 effective treatment and the reasonable efficiency of the  
22 program and shall be sufficiently flexible to accommodate the  
23 individual needs of legal custodians and family members.  
24 Treatment needs that justify limitation on the access rights of  
25 a legal custodian or family member must be specifically

.163926.1

underscoring material = new  
[bracketed material] = delete

1 documented by the clinician in the child's record and any such  
2 limitation automatically expires in seven days;

3 (6) follow or abstain from the practice of  
4 religion. The program shall provide appropriate assistance in  
5 this connection, including reasonable accommodations for  
6 religious worship and transportation to nearby religious  
7 services. A child who does not wish to participate in  
8 religious practice shall be free from pressure to do so or to  
9 accept religious beliefs;

10 (7) a humane psychological and physical  
11 environment. The child shall be provided a comfortable bed and  
12 adequate changes of linen and reasonable secure storage space  
13 for personal possessions. Except when curtailed for reasons of  
14 safety or therapy as documented in the child's record by the  
15 child's physician, the child shall be afforded reasonable  
16 privacy in sleeping and personal hygiene practices;

17 (8) reasonable daily opportunities for  
18 physical exercise and outdoor exercise and reasonable access to  
19 recreational areas and equipment, including equipment adapted  
20 to the child's developmental and physical needs;

21 (9) a nourishing, well-balanced, varied and  
22 appetizing diet;

23 (10) prompt and adequate medical attention for  
24 a physical ailment. Each child shall receive a complete  
25 physical examination upon admission, except when documentation

.163926.1



underscoring material = new  
[bracketed material] = delete

1 is provided that the child has had such examination within the  
2 six months immediately prior to the current admission. Each  
3 child shall receive a complete physical examination every  
4 twelve months thereafter;

5 (11) a clean, safe and comfortable environment  
6 in a structure that complies with applicable fire and safety  
7 requirements;

8 (12) appropriate medication and freedom from  
9 unnecessary or excessive medication. Medication shall not be  
10 used as discipline, as a substitute for programs, for the  
11 convenience of staff or in quantities that interfere with the  
12 child's treatment or habilitation program. No medication shall  
13 be administered unless by written order of a clinician licensed  
14 to prescribe medication or by an oral order noted immediately  
15 in the patient's medical record and signed by that clinician  
16 within twenty-four hours. All prescriptions for psychotropic  
17 medications must be reviewed at least every thirty days.  
18 Notation of each child's medication shall be kept in the  
19 child's medical records and shall include a notation by the  
20 clinician licensed to prescribe medication of the behavioral or  
21 symptomatic baseline data upon which the medication order was  
22 made; and

23 (13) a free public education. The child shall  
24 be educated in regular classes with nondisabled children  
25 whenever appropriate. In no event shall a child be allowed to

.163926.1

underscored material = new  
[bracketed material] = delete

1 remain in an out-of-home treatment or habilitation program for  
2 more than ten days without receiving educational services. If  
3 the child's placement in an out-of-home treatment or  
4 habilitation program is required by an individualized education  
5 plan, the sending school is responsible for the provision of  
6 education to the child. In all other situations, the local  
7 school district in which the out-of-home treatment or  
8 habilitation program is located is responsible for the  
9 provision of educational services to the child. Nothing in  
10 this subsection shall limit a child's right to public education  
11 under state, tribal or federal law.

12 B. A child receiving services in an out-of-home  
13 treatment or habilitation program, including but not limited to  
14 residential treatment or habilitation programs, shall be  
15 provided notice of rights immediately upon admission to such  
16 program."

17 Section 13. A new section of the Children's Code is  
18 enacted to read:

19 "[NEW MATERIAL] LEGAL REPRESENTATION OF CHILDREN.--

20 A. A child shall be represented by an attorney at  
21 all commitment or treatment guardianship proceedings under the  
22 Children's Mental Health and Developmental Disabilities Act if  
23 the child is fourteen years of age or older or by a guardian ad  
24 litem if the child is under fourteen years of age.

25 B. When a child has not retained an attorney or a

.163926.1

underscored material = new  
[bracketed material] = delete

1 guardian ad litem in a commitment or treatment guardian  
2 proceeding and is unable to do so, the court shall appoint an  
3 attorney or a guardian ad litem to represent the child in the  
4 proceeding. Only an attorney with appropriate experience shall  
5 be appointed as an attorney or a guardian ad litem for the  
6 child. Whenever reasonable and appropriate, the court shall  
7 appoint a guardian ad litem or attorney who is knowledgeable  
8 about the child's cultural background.

9 C. A child of any age shall have access to the  
10 state's designated protection and advocacy system and access to  
11 an attorney of the child's choice, provided that the child is  
12 not entitled to appointment of an attorney at public expense,  
13 except as set forth in Subsections A and B of this section.

14 D. A child shall not be represented or counseled by  
15 an attorney or guardian ad litem who has a conflict of  
16 interest, including but not limited to any conflict of interest  
17 resulting from prior representation of the child's parent,  
18 guardian, legal custodian or residential treatment or  
19 habilitation program."

20 Section 14. A new section of the Children's Code is  
21 enacted to read:

22 "[NEW MATERIAL] CONSENT FOR SERVICES--CHILDREN UNDER  
23 FOURTEEN YEARS OF AGE.--

24 A. Except as provided in Subsection B of this  
25 section, the informed consent of a child's legal custodian

.163926.1

underscoring material = new  
[bracketed material] = delete

1 shall be required before treatment or habilitation, including  
2 psychotherapy or psychotropic medications, is administered to a  
3 child under fourteen years of age.

4 B. A child under fourteen years of age may initiate  
5 and consent to an initial assessment with a clinician and for  
6 medically necessary early intervention service limited to  
7 verbal therapy as set forth in this section. The purpose of  
8 the initial assessment is to allow a clinician to interview the  
9 child and determine what, if any, action needs to be taken to  
10 ensure appropriate mental health or habilitation services are  
11 provided to the child. The clinician may conduct an initial  
12 assessment and provide medically necessary early intervention  
13 service limited to verbal therapy with or without the consent  
14 of the legal custodian if such service will not extend beyond  
15 two calendar weeks. If, at any time, the clinician has a  
16 reasonable suspicion that the child is an abused or neglected  
17 child, the clinician shall immediately make a child abuse and  
18 neglect report."

19 Section 15. A new section of the Children's Code is  
20 enacted to read:

21 "[NEW MATERIAL] CONSENT FOR SERVICES--CHILDREN FOURTEEN  
22 YEARS OF AGE OR OLDER.--

23 A. A child fourteen years of age or older is  
24 presumed to have capacity to consent to treatment without  
25 consent of the child's legal custodian, including consent for

.163926.1

underscored material = new  
[bracketed material] = delete

1 individual psychotherapy, group psychotherapy, guidance  
2 counseling, case management, behavioral therapy, family  
3 therapy, counseling, substance abuse treatment or other forms  
4 of verbal treatment that do not include aversive interventions.

5 B. A child fourteen years of age or older is  
6 presumed to have capacity to consent to psychotropic  
7 medications. When psychotropic medications are administered to  
8 a child fourteen years of age or older, the clinician shall  
9 provide immediate oral notification followed by written  
10 documentation to the child's legal custodian.

11 C. A clinician or other mental health and  
12 developmental disabilities professional shall promote the  
13 healthy involvement of a child's legal custodians and family  
14 members in developing and implementing the child's treatment  
15 plan, including appropriate participation in treatment for  
16 children fourteen years of age or older. However, nothing in  
17 this section shall limit the rights of a child fourteen years  
18 of age or older to consent to services and to consent to  
19 disclosure of mental health records."

20 Section 16. A new section of the Children's Code is  
21 enacted to read:

22 "[NEW MATERIAL] CONSENT FOR SERVICES--DETERMINATION OF  
23 CAPACITY FOR CHILDREN FOURTEEN YEARS OF AGE OR OLDER.--

24 A. When a child fourteen years of age or older has  
25 been determined according to the provisions of this section to

.163926.1

1 lack capacity, the child's legal custodian may make a mental  
2 health or habilitation decision for the child unless the child  
3 objects to such decision. Nothing in this subsection:

4 (1) permits a legal custodian to consent to  
5 placement of a child in a residential treatment or habilitation  
6 program without the proper consent of the child if the child is  
7 fourteen years of age or older; or

8 (2) in any way, limits a child's right to  
9 involuntary commitment procedures as set forth in the  
10 Children's Mental Health and Developmental Disabilities Act.

11 B. The determination that a child fourteen years of  
12 age or older lacks or has recovered capacity shall be made by  
13 two clinicians, one of whom shall be a person who works with  
14 children in the ordinary course of that clinician's practice.

15 C. A child fourteen years of age or older shall not  
16 be determined to lack capacity solely on the basis that the  
17 child chooses not to accept the treatment recommended by the  
18 mental health or developmental disabilities professional.

19 D. A child fourteen years of age or older may at  
20 any time contest a determination that the child lacks capacity  
21 by a signed writing or by personally informing a clinician that  
22 the determination is contested. A clinician who is informed by  
23 a child that such determination is contested shall promptly  
24 communicate that the determination is contested to any  
25 supervising provider or institution at which the child is

underscoring material = new  
~~[bracketed material]~~ = delete

1 receiving care. Such a challenge shall prevail unless  
2 otherwise ordered by the court in a proceeding brought pursuant  
3 to the treatment guardianship provisions of the Children's  
4 Mental Health and Developmental Disabilities Act.

5 E. A determination of lack of capacity under the  
6 Children's Mental Health and Developmental Disabilities Act  
7 shall not be evidence of incapacity for any other purpose.

8 F. The legal custodian shall communicate an  
9 assumption of authority as promptly as practicable to the child  
10 fourteen years of age or older and to the clinician and to the  
11 supervising mental health or developmental disability treatment  
12 and habilitation provider.

13 G. If more than one legal custodian assumes  
14 authority to act as an agent, the consent of both shall be  
15 required for nonemergency treatment. In an emergency, the  
16 consent of one legal custodian is sufficient, but the treating  
17 mental health professional shall provide the other legal  
18 custodian with oral notice followed by written documentation.

19 H. If more than one legal custodian assumes  
20 authority to act as an agent and the legal custodians do not  
21 agree on a nonemergency mental health treatment decision and  
22 the clinician is so informed, the clinician shall not treat the  
23 child unless a treatment guardian is appointed pursuant to the  
24 provisions of the Children's Mental Health and Developmental  
25 Disabilities Act.

.163926.1

underscored material = new  
[bracketed material] = delete

1 I. A legal custodian shall make treatment decisions  
2 in accordance with a child's individual instructions, if any,  
3 and other wishes to the extent known to the legal custodian.  
4 Otherwise, the legal custodian shall make decisions in  
5 accordance with the legal custodian's determination of the  
6 child's best interests. In determining the child's best  
7 interests, the legal custodian shall consider the child's  
8 personal values to the extent known to the legal custodian.

9 J. A mental health treatment decision made by a  
10 legal custodian for a child fourteen years of age or older who  
11 has been determined to lack capacity shall not be made solely  
12 on the basis of the child's pre-existing physical or medical  
13 condition or pre-existing or projected disability.

14 K. A mental health treatment decision made by a  
15 legal custodian for a child fourteen years of age or older who  
16 has been determined to lack capacity is effective without  
17 judicial approval unless contested by the child.

18 L. If no legal custodian or agent is reasonably  
19 available to make mental health or habilitation decisions for  
20 the child, any interested party may petition for the  
21 appointment of a treatment guardian."

22 Section 17. A new section of the Children's Code is  
23 enacted to read:

24 "[NEW MATERIAL] TREATMENT GUARDIANSHIP PROCEEDINGS.--

25 A. If no legal custodian is reasonably available to  
.163926.1



1 make mental health decisions for a child fourteen years of age  
2 or older who has been determined to lack capacity or if a  
3 clinician who proposes a course of treatment objects to a  
4 challenge made by the child to a determination of incapacity,  
5 the clinician shall request that the children's court attorney  
6 petition the court for appointment of a treatment guardian to  
7 make a substitute decision for the child.

8 B. In a treatment guardian proceeding, the court  
9 shall appoint an attorney for the child unless the child  
10 already has an attorney available.

11 C. A petition shall be served on the child and the  
12 child's attorney. A hearing on the petition shall be held  
13 within three business days. At the hearing, the child shall be  
14 represented by counsel and shall have the right to be present,  
15 to present witnesses and to cross-examine opposing witnesses.

16 D. If, after the hearing, the court finds that the  
17 child is not capable of making treatment decisions and  
18 treatment is needed, the court shall order the appointment of a  
19 treatment guardian. When appointing a treatment guardian, the  
20 court shall appoint the child's legal custodian unless the  
21 legal custodian is not readily available or the court finds  
22 that such an appointment is not in the child's best interests.

23 E. The treatment guardian shall make a decision on  
24 behalf of the child based on the treatment guardian's best  
25 judgment of whether the treatment appears to be in the child's

underscoring material = new  
[bracketed material] = delete

1 best interests and is consistent with the least restrictive  
2 means principle for accomplishing the treatment objective. In  
3 making this decision, the treatment guardian shall consult with  
4 the child and consider the child's expressed opinions. The  
5 treatment guardian shall give consideration to previous  
6 decisions made by the child in similar circumstances when the  
7 child was able to make treatment decisions and shall make the  
8 decision in accordance with the values of the child if known,  
9 or in the best interests of the child if the values are not  
10 known; provided that, if the child has given an individual  
11 instruction that is available to the treatment guardian, the  
12 instruction shall be followed.

13 F. If a child who is not a resident of a  
14 residential treatment and habilitation program has a treatment  
15 guardian and refuses to comply with the decision of the  
16 treatment guardian, the treatment guardian may obtain an  
17 enforcement order. The enforcement order may authorize a peace  
18 officer to take the child into custody or to transport the  
19 child to an evaluation facility and may authorize the facility  
20 to forcibly administer treatment. The treatment guardian shall  
21 consult with the clinician who is proposing treatment, the  
22 child's attorney or guardian ad litem and, as deemed  
23 appropriate, interested friends or relatives of the child. The  
24 evaluation facility shall comply with the treatment guardian's  
25 decision unless the clinician finds it to be against the best

.163926.1

1 interests of the child.

2 G. A child, physician or other professional wishing  
3 to contest the decision of the treatment guardian may do so by  
4 filing a petition with the court within three calendar days or  
5 the next business day, whichever is later, of receiving notice  
6 of the treatment guardian's decision. The child shall be  
7 represented by counsel in all proceedings before the court.  
8 The court may overrule the treatment guardian's decision if it  
9 finds that decision to be against the best interests of the  
10 child. The court shall rule within seven days of the filing of  
11 the petition.

12 H. If both a petition for an enforcement order and  
13 a petition to contest the treatment guardian's decision are  
14 filed, they shall be heard in the same proceeding at the same  
15 time.

16 I. When the court appoints a treatment guardian, it  
17 shall specify the length of time during which the treatment  
18 guardian may exercise treatment guardian powers, up to a  
19 maximum period of one year. If, at the end of the guardianship  
20 period, the treatment guardian believes that the child still  
21 lacks capacity, the treatment guardian shall petition the court  
22 for reappointment or for appointment of a new treatment  
23 guardian. The guardianship shall be extended or a new guardian  
24 shall be appointed only if the court finds the child does not  
25 have capacity to make treatment or habilitation decisions at

.163926.1

underscoring material = new  
~~[bracketed material] = delete~~

1 the time of the hearing. The court shall appoint an attorney  
2 for the child, and the child shall have the right to be present  
3 and to present evidence at all such hearings.

4 J. If, during the period of a treatment guardian's  
5 power, the treatment guardian, the child, the treatment  
6 provider or a member of the child's family believes that the  
7 child has regained capacity, that person may petition the court  
8 for a termination of the treatment guardianship. If the court  
9 finds the child has regained capacity, it shall terminate the  
10 power of the treatment guardian and restore to the child the  
11 power to make treatment decisions.

12 K. A treatment guardian shall have only those  
13 powers enumerated in the Children's Mental Health and  
14 Developmental Disabilities Act.

15 L. If a clinician licensed to prescribe medication  
16 believes that the administration of psychotropic medication is  
17 necessary to protect the child from serious harm that could  
18 occur while the provisions of this section are being satisfied,  
19 the licensed clinician may order or administer the medication  
20 on an emergency basis. When medication is administered to a  
21 child on an emergency basis, the clinician shall prepare and  
22 place in the child's medical records a report explaining the  
23 nature of the emergency and the reason that no treatment less  
24 restrictive than administration of psychotropic medication  
25 without proper consent would have protected the child from

.163926.1

underscoring material = new  
[bracketed material] = delete

1 serious harm. When medication is administered to a child on an  
2 emergency basis, the child's legal custodian and the child's  
3 attorney or guardian ad litem shall be notified by the  
4 residential treatment or habilitation program. If the child is  
5 not in a residential setting, the clinician shall petition for  
6 a pickup order pursuant to Section 19 of the Children's Mental  
7 Health and Developmental Disabilities Act and have the child  
8 transported to a residential facility where the medication will  
9 be administered."

10 Section 18. A new section of the Children's Code is  
11 enacted to read:

12 "[NEW MATERIAL] INDIVIDUAL INSTRUCTIONS.--

13 A. A child fourteen years of age or older who has  
14 capacity also has the right to direct the child's own treatment  
15 in the event of later incapacity. To do so, the child may give  
16 an individual instruction regarding the child's own treatment  
17 or habilitation. The individual instruction may be limited to  
18 take effect only if a specified condition arises.

19 B. An individual instruction shall be effective  
20 without judicial approval and shall be written and signed by  
21 the child and the child's legal custodian and signed by a  
22 witness who is at least eighteen years of age and who attests  
23 that the child and the child's legal custodian are known to the  
24 witness, that they signed the individual instruction for mental  
25 health treatment in the witness' presence and that they appear

.163926.1

1 to have capacity and are not acting under duress, fraud or  
2 undue influence.

3 C. A witness to an individual instruction shall not  
4 be related to the child or the child's legal custodian by blood  
5 or marriage, the child's attending qualified health care  
6 professional or an owner, operator or employee of a mental  
7 health facility at which the child is receiving care or of any  
8 parent organization, subsidiary or contractor of the mental  
9 health facility.

10 D. If the child's legal custodian refuses to  
11 consent to the individual instruction, the child may petition  
12 the court for determination of whether the individual  
13 instruction is in the child's best interest.

14 E. A child's legal custodian or treatment guardian  
15 shall make treatment decisions in accordance with the child's  
16 individual instruction unless the treatment requested is  
17 infeasible or unavailable or would not offer the child any  
18 significant benefit as determined by the child's clinician.

19 F. The individual instruction shall be implemented  
20 by the child's legal custodian under this section only upon  
21 certification that the child lacks capacity. The instruction  
22 shall cease to be effective upon a determination that the child  
23 has recovered capacity.

24 G. Written certification that a child lacks or has  
25 recovered capacity or that another condition exists that

underscored material = new  
[bracketed material] = delete

1 affects an individual instruction shall be made according to  
2 the provisions of the Children's Mental Health and  
3 Developmental Disabilities Act. A child while having capacity  
4 may revoke all or part of an individual instruction for mental  
5 health treatment at any time and in any manner that  
6 communicates an intent to revoke.

7 H. The fact that a child has executed a written  
8 individual instruction for treatment shall not constitute an  
9 indication of mental illness.

10 I. A clinician who knows the existence of an  
11 individual instruction for mental health treatment, a  
12 revocation or a challenge to a determination or certification  
13 of lack of capacity shall obtain a copy and shall place it in  
14 the child's health care record.

15 J. A clinician shall disclose an individual  
16 instruction for mental health treatment to other clinicians  
17 only when it is determined that the disclosure is necessary to  
18 provide treatment in accordance with an individual  
19 instruction."

20 Section 19. A new section of the Children's Code is  
21 enacted to read:

22 "[NEW MATERIAL] EMERGENCY MENTAL HEALTH EVALUATION AND  
23 CARE.--

24 A. A peace officer may detain and transport a child  
25 for emergency mental health evaluation and care in the absence

.163926.1

underscored material = new  
[bracketed material] = delete

1 of a legally valid order from the court only if the peace  
2 officer:

3 (1) has reasonable grounds to believe the  
4 child has just attempted suicide;

5 (2) based upon personal observation and  
6 investigation, has reasonable grounds to believe that the  
7 child, as a result of a mental disorder, presents a likelihood  
8 of serious harm to self or others and that immediate detention  
9 is necessary to prevent such harm. The peace officer shall  
10 convey the peace officer's beliefs to the admitting physician  
11 or licensed psychologist immediately upon the officer's arrival  
12 at the evaluation facility;

13 (3) has certification from a clinician that  
14 the child, as a result of a mental disorder, presents a  
15 likelihood of serious harm to self or others and that immediate  
16 intervention is necessary to prevent the harm; or

17 (4) has an involuntary placement order issued  
18 by a tribal court that orders the child to be admitted to an  
19 evaluation facility.

20 B. A peace officer shall immediately transport a  
21 child detained under this section to an evaluation facility. In  
22 the case of an extreme emergency, the child may be held for a  
23 period of up to twenty-four hours in temporary emergency  
24 placement in:

25 (1) a foster home licensed to provide

.163926.1



underscored material = new  
[bracketed material] = delete

1 specialized or therapeutic care;

2 (2) a facility operated by a licensed child  
3 services agency that meets standards promulgated by the  
4 department for the care of children who present the likelihood  
5 of serious harm to themselves or others; and

6 (3) residential care on an emergency basis.

7 C. A child shall not be held for the purposes of  
8 emergency mental health evaluation or care in a jail or other  
9 facility intended or used for the incarceration of adults  
10 charged with criminal offenses or for the detention of children  
11 alleged or adjudicated to be delinquent children.

12 D. The director of an evaluation facility shall  
13 accomplish an emergency evaluation upon the request of a  
14 child's legal custodian, a peace officer, a detention facility  
15 administrator or the administrator's designee or upon the  
16 certification of a clinician. A court order is not required  
17 under this section. If an application is made to a court, the  
18 court's power to act in furtherance of an emergency admission  
19 shall be limited to ordering that:

20 (1) the child be seen by a clinician prior to  
21 transport to an evaluation facility; and

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

24 E. The admitting physician or licensed psychologist  
25 shall evaluate whether reasonable grounds exist to detain the

.163926.1

underscoring material = new  
[bracketed material] = delete

1 child for evaluation and treatment, and, if reasonable grounds  
2 are found, the child shall be detained. If the admitting  
3 physician or licensed psychologist determines that reasonable  
4 grounds do not exist to detain the child for evaluation and  
5 treatment, the child shall not be detained but shall be  
6 released to the custody of the child's legal custodian.

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

16 G. A peace officer who transports a child to an  
17 evaluation facility pursuant to the provisions of this section  
18 shall not require a court order to be reimbursed by the  
19 referring county.

20 H. If a child is transported to or detained at an  
21 evaluation facility and is not released to the child's legal  
22 custodian, the peace officer transporting the child shall give  
23 written notice thereof as soon as possible within twenty-four  
24 hours to the child's legal custodian, together with a statement  
25 of the reason for taking the child into custody."

.163926.1

underscored material = new  
[bracketed material] = delete

1           Section 20. A new section of the Children's Code is  
2 enacted to read:

3           "[NEW MATERIAL] CONSENT TO PLACEMENT IN A RESIDENTIAL  
4 TREATMENT OR HABILITATION PROGRAM--CHILDREN YOUNGER THAN  
5 FOURTEEN YEARS OF AGE.--

6           A. A child younger than fourteen years of age shall  
7 not receive residential treatment for a mental disorder or  
8 habilitation for a developmental disability, except as provided  
9 in this section.

10          B. A child younger than fourteen years of age may  
11 be admitted to a residential treatment or habilitation program  
12 for a period not to exceed sixty days with the informed consent  
13 of the child's legal custodian, subject to the requirements of  
14 this section.

15          C. In order to admit a child younger than fourteen  
16 years of age to a residential treatment or habilitation  
17 program, the child's legal custodian shall knowingly and  
18 voluntarily execute a consent to admission document prior to  
19 the child's admission. The consent to admission document shall  
20 be in a form designated by the supreme court. The consent to  
21 admission document shall include a clear statement of the legal  
22 custodian's right to voluntarily consent to or refuse the  
23 child's admission, the legal custodian's right to request the  
24 child's immediate discharge from the residential treatment  
25 program at any time and the legal custodian's rights when the

.163926.1

underscoring material = new  
~~[bracketed material] = delete~~

1 legal custodian requests the child's discharge and the child's  
2 physician, licensed psychologist or the director of the  
3 residential treatment or habilitation program determines that  
4 the child needs continued treatment. The residential treatment  
5 or habilitation program shall ensure that each statement is  
6 clearly explained in the child's and legal custodian's primary  
7 language, if that is their language of preference, and in a  
8 manner appropriate to the child's and legal custodian's  
9 developmental abilities. Each statement shall be initialed by  
10 the child's legal custodian.

11 D. The legal custodian's executed consent to  
12 admission document shall be filed with the child's treatment  
13 records within twenty-four hours of the time of admission.

14 E. Upon the filing of the legal custodian's consent  
15 to admission document in the child's hospital records, the  
16 director of the residential treatment or habilitation program  
17 or the director's designee shall, on the next business day  
18 following the child's admission, notify the district court or  
19 the special commissioner appointed pursuant to Section 25 of  
20 the Children's Mental Health and Developmental Disabilities Act  
21 regarding the admission and provide the child's name, date of  
22 birth and the date and place of admission. The court or  
23 special commissioner shall, upon receipt of notice regarding a  
24 child's admission to a residential treatment or habilitation  
25 program, establish a sequestered court file.

.163926.1

underscoring material = new  
[bracketed material] = delete

1           F. The director of a residential treatment or  
2 habilitation program or the director's designee shall, on the  
3 next business day following the child's admission, petition the  
4 court to appoint a guardian ad litem for the child. When the  
5 court receives the petition, the court shall appoint a guardian  
6 ad litem.

7           G. Within seven days of a child's admission to a  
8 residential treatment or habilitation program, a guardian ad  
9 litem, representing the child's best interests and in  
10 accordance with the provisions of the Children's Mental Health  
11 and Developmental Disabilities Act, shall meet with the child,  
12 the child's legal custodian and the child's clinician. The  
13 guardian ad litem shall determine the following:

14                   (1) whether the child's legal custodian  
15 understands and consents to the child's admission to a  
16 residential treatment or habilitation program;

17                   (2) whether the admission is in the child's  
18 best interests; and

19                   (3) whether the admission is appropriate for  
20 the child and is consistent with the least drastic means  
21 principle.

22           H. If a guardian ad litem determines that the  
23 child's legal custodian understands and consents to the child's  
24 admission and that the admission is in the child's best  
25 interests, is appropriate for the child and is consistent with

underscoring material = new  
~~[bracketed material]~~ = delete

1 the least drastic means principle, the guardian ad litem shall  
2 so certify on a form designated by the supreme court. The  
3 form, when completed by the guardian ad litem, shall be filed  
4 in the child's patient record kept by the residential treatment  
5 or habilitation program, and a copy shall be forwarded to the  
6 court or special commissioner within seven days of the child's  
7 admission. The guardian ad litem's statement shall not  
8 identify the child by name.

9 I. Upon reaching the age of fourteen, a child who  
10 was admitted to a residential treatment or habilitation program  
11 pursuant to this section may petition the district court for  
12 the records of the district court regarding all matters  
13 pertinent to the child's admission to a residential treatment  
14 or habilitation program. The district court, upon receipt of  
15 the petition and upon a determination that the petitioner is in  
16 fact a child who was admitted to a residential treatment or  
17 habilitation program, shall provide all court records regarding  
18 the admission to the petitioner, including all copies in the  
19 court's possession, unless there is a showing that release of  
20 records would cause substantial harm to the child. Upon  
21 reaching the age of eighteen, a person who was admitted to a  
22 residential or treatment or habilitation program as a child may  
23 petition the district court for such records, and the district  
24 court shall provide all court records regarding the admission  
25 to the petitioner, including all copies in the court's

.163926.1

underscoring material = new  
[bracketed material] = delete

1 possession.

2 J. A legal custodian who consents to admission of a  
3 child to a residential treatment or habilitation program has  
4 the right to request the child's immediate discharge from the  
5 residential treatment or habilitation program, subject to the  
6 provisions of this section. If a child's legal custodian  
7 informs the director, a physician or other member of the  
8 residential treatment or habilitation program staff that the  
9 legal custodian desires the child to be discharged from the  
10 program, the director, physician or other staff shall provide  
11 for the child's immediate discharge and remit the child to the  
12 legal custodian's care. The residential treatment or  
13 habilitation program shall also notify the child's guardian ad  
14 litem. A child whose legal custodian requests the child's  
15 immediate discharge shall be discharged, except when the  
16 director of the residential treatment or habilitation program,  
17 a physician or a licensed psychologist determines that the  
18 child requires continued treatment and that the child meets the  
19 criteria for involuntary residential treatment. In that event,  
20 the director, physician or licensed psychologist shall, on the  
21 first business day following the child's legal custodian's  
22 request for release of the child from the program, request that  
23 the children's court attorney initiate involuntary residential  
24 treatment proceedings. The children's court attorney may  
25 petition the court for such proceedings. The child has a right

.163926.1

underscoring material = new  
~~[bracketed material] = delete~~

1 to a hearing regarding the child's continued treatment within  
2 seven days of the request for release.

3 K. A residential treatment or habilitation program  
4 shall review the admission of a child at the end of a sixty-day  
5 period after the date of initial admission, and the child's  
6 physician or licensed psychologist shall review the admission  
7 to determine whether it is in the best interests of the child  
8 to continue the admission. If the child's physician or  
9 licensed psychologist concludes that continuation of the  
10 residential treatment or habilitation program is in the child's  
11 best interests, the child's clinician shall so state in a form  
12 to be filed in the child's patient records. The residential  
13 treatment or habilitation program shall notify the guardian ad  
14 litem for the child at least seven days prior to the date that  
15 the sixty-day period is to end or, if necessary, request a  
16 guardian ad litem pursuant to the provisions of the Children's  
17 Mental Health and Developmental Disabilities Act. The guardian  
18 ad litem shall then personally meet with the child, the child's  
19 legal custodian and the child's clinician and ensure that the  
20 child's legal custodian understands and consents to the child's  
21 continued admission to the residential treatment or  
22 habilitation program. If the guardian ad litem determines that  
23 the child's legal custodian understands and consents to the  
24 child's continued admission to the residential treatment or  
25 habilitation program, that the continued admission is in the

.163926.1



underscored material = new  
[bracketed material] = delete

1 child's best interest, that the placement continues to be  
2 appropriate for the child and consistent with the least  
3 restrictive means principle and that the clinician has  
4 recommended the child's continued stay in the program, the  
5 guardian ad litem shall so certify on a form designated by the  
6 supreme court. The disposition of these forms shall be as set  
7 forth in this section, with one copy going in the child's  
8 patient record and the other being sent to the district court  
9 in a manner that preserves the child's anonymity. This  
10 procedure shall take place every sixty days following the  
11 child's last admission or a guardian ad litem's certification,  
12 whichever occurs first.

13 L. When a guardian ad litem determines that the  
14 child's legal custodian does not understand or consent to the  
15 child's admission to a residential treatment or habilitation  
16 program, that the admission is not in the child's best  
17 interests, that the placement is inappropriate for the child or  
18 is inconsistent with the least restrictive means principle or  
19 that the child's clinician has not recommended a continued stay  
20 by the child in the residential treatment or habilitation  
21 program, the child shall be released or involuntary placement  
22 procedures shall be initiated.

23 M. If the child's legal custodian is unavailable to  
24 take custody of the child and immediate discharge of the child  
25 would endanger the child, the residential treatment or

.163926.1

underscored material = new  
[bracketed material] = delete

1 habilitation program may detain the child until a safe and  
2 orderly discharge is possible. If the child's legal custodian  
3 refuses to take physical custody of the child, the residential  
4 treatment or habilitation program shall refer the case to the  
5 department for an abuse and neglect or family in need of court-  
6 ordered services investigation. The department may take the  
7 child into protective custody pursuant to the provisions of the  
8 Abuse and Neglect Act or the Family in Need of Court-Ordered  
9 Services Act."

10 Section 21. A new section of the Children's Code is  
11 enacted to read:

12 "[NEW MATERIAL] VOLUNTARY RESIDENTIAL TREATMENT OR  
13 HABILITATION FOR CHILDREN FOURTEEN YEARS OF AGE OR OLDER.--

14 A. A child fourteen years of age or older shall not  
15 receive treatment for mental disorders or habilitation for  
16 developmental disabilities on a voluntary residential basis,  
17 except as provided in this section.

18 B. An admission of a child fourteen years of age or  
19 older to a residential treatment or habilitation program is  
20 voluntary when it is medically necessary and consented to by  
21 the child and the child's legal custodian as set forth in this  
22 section, provided that the admission does not exceed sixty  
23 days, subject to the requirements of this section.

24 C. To have a child voluntarily admitted to a  
25 residential treatment or habilitation program, the child and

.163926.1

underscoring material = new  
~~[bracketed material]~~ = delete

1 the child's legal custodian shall knowingly and voluntarily  
2 execute, prior to admission, a child's voluntary consent to  
3 admission document. The document shall include a clear  
4 statement of the child's right to voluntarily consent or to  
5 request an immediate discharge from the residential treatment  
6 or habilitation program at any time; and the child's rights  
7 when the child requests a discharge and the child's physician,  
8 licensed psychologist or the director of the residential  
9 treatment or habilitation program determines the child needs  
10 continued treatment. The residential treatment or habilitation  
11 program shall ensure that each statement is clearly explained  
12 in the child's and legal custodian's primary language, if that  
13 is their language of preference, and in a manner appropriate to  
14 the child's and legal custodian's developmental abilities, and  
15 each statement shall be initialed by the child and the child's  
16 legal custodian.

17 D. A child who is admitted on a voluntary basis has  
18 a right to an attorney. Prior to admission, the residential  
19 treatment or habilitation program shall inform the child's  
20 legal custodian of the child's right to an independent attorney  
21 within seventy-two hours. If the child's legal custodian is  
22 unable to obtain an independent attorney, the legal custodian  
23 may petition the court to appoint an attorney for the child.  
24 If the child's legal custodian obtains an independent attorney  
25 for the child, the legal custodian shall notify the residential

.163926.1

underscoring material = new  
~~[bracketed material] = delete~~

1 treatment or habilitation program of that attorney's name  
2 within seventy-two hours of the child's voluntary admission.

3 E. The child's executed voluntary consent to  
4 admission document shall be filed in the child's treatment  
5 record within twenty-four hours of the time of admission.

6 F. Upon the filing of the child's voluntary consent  
7 to admission document in the child's treatment record, the  
8 director of the residential treatment or habilitation program  
9 or the director's designee shall, on the next business day  
10 following the child's admission, notify the district court or  
11 the special commissioner of the admission, giving the child's  
12 name, date of birth and the date and place of admission. Upon  
13 receipt of notice of a child's voluntary admission to a  
14 residential treatment or habilitation program, the court or  
15 special commissioner shall establish a sequestered court file.

16 G. If within seventy-two hours of the child's  
17 voluntary admission the child has not met with an independent  
18 attorney and the child's legal custodian has not notified the  
19 residential treatment or habilitation program of the name of  
20 the child's independent attorney, the residential treatment or  
21 habilitation program shall during the next business day  
22 petition the court to appoint an attorney. When the court  
23 receives the petition, the court shall appoint an attorney.

24 H. If within seventy-two hours of the child's  
25 voluntary admission the child has met with an independent

.163926.1

1 attorney or the child's legal custodian has notified the  
2 residential treatment or habilitation program of the name of  
3 the child's independent attorney, the residential treatment or  
4 habilitation program shall during the next business day notify  
5 the court or the special commissioner of the name of the  
6 child's independent attorney.

7 I. Within seven days of the admission, an attorney  
8 representing the child pursuant to the provisions of the  
9 Children's Mental Health and Developmental Disabilities Act  
10 shall meet with the child. At the meeting with the child, the  
11 attorney shall explain to the child the following:

12 (1) the child's right to an attorney;  
13 (2) the child's right to terminate the child's  
14 voluntary admission and the procedures to effect termination;

15 (3) the effect of terminating the child's  
16 voluntary admission and options of the clinician and other  
17 interested parties to petition for an involuntary admission;  
18 and

19 (4) the child's rights under the provisions of  
20 the Children's Mental Health and Developmental Disabilities  
21 Act, including the right to:

22 (a) legal representation;  
23 (b) a presumption of competence;  
24 (c) receive daily visitors of the  
25 child's choice;

- 1 (d) receive and send uncensored mail;  
2 (e) have access to telephones;  
3 (f) follow or abstain from the practice  
4 of religion;  
5 (g) a humane and safe environment;  
6 (h) physical exercise and outdoor  
7 exercise;  
8 (i) a nourishing, well-balanced, varied  
9 and appetizing diet;  
10 (j) medical treatment;  
11 (k) educational services;  
12 (l) freedom from unnecessary or  
13 excessive medication;  
14 (m) individualized treatment and  
15 habilitation; and  
16 (n) participation in the development of  
17 the individualized treatment plan and access to that plan on  
18 request.

19 J. If the attorney determines that the child  
20 understands the child's rights and that the child voluntarily  
21 and knowingly desires to remain as a patient in a residential  
22 treatment or habilitation program, the attorney shall so  
23 certify on a form designated by the supreme court. The form,  
24 when completed by the attorney, shall be filed in the child's  
25 patient record at the residential treatment or habilitation

underscoring material = new  
[bracketed material] = delete

1 program, and a copy shall be forwarded to the court or special  
2 commissioner within seven days of the child's admission. The  
3 attorney's statement shall not identify the child by name.

4 K. Upon reaching the age of fourteen, a child who  
5 was a voluntary admittee to a residential treatment or  
6 habilitation program may petition the district court for the  
7 records of the court regarding all matters pertinent to the  
8 child's voluntary admission to a residential treatment or  
9 habilitation program. The court, upon receipt of the petition  
10 and upon a determination that the petitioner was in fact the  
11 child who was a voluntary admittee to a residential treatment  
12 or habilitation program, shall give all court records regarding  
13 the admission to the petitioner, including all copies in the  
14 court's possession unless there is a showing that provision of  
15 records would cause substantial harm to the child. A person  
16 who was admitted to a residential or treatment or habilitation  
17 program as a child, upon reaching the age of eighteen, may  
18 petition the district court for such records and the district  
19 court shall provide all court records regarding the admission  
20 to the petitioner, including all copies in the court's  
21 possession.

22 L. Any child voluntarily admitted to a residential  
23 treatment or habilitation program has the right to an immediate  
24 discharge from the residential treatment or habilitation  
25 program upon the child's request, except as provided in this

.163926.1

underscoring material = new  
[bracketed material] = delete

1 section. If a child informs the director, clinician or other  
2 member of the residential treatment or habilitation program  
3 staff that the child desires to be discharged from the  
4 voluntary program, the director, clinician or other staff  
5 member shall provide for the child's immediate discharge. The  
6 residential treatment or habilitation program shall not require  
7 that the child's request be in writing. Upon the request, the  
8 residential treatment or habilitation program shall notify the  
9 child's legal custodian to take custody of the child and remit  
10 the child to the legal custodian's care. The residential  
11 treatment or habilitation program shall also notify the child's  
12 attorney. If the child's legal custodian is unavailable to  
13 take custody of the child and immediate discharge of the child  
14 would endanger the child, the residential treatment or  
15 habilitation program may detain the child until a safe and  
16 orderly discharge is possible. If the child's legal custodian  
17 refuses to take physical custody of the child, the residential  
18 treatment or habilitation program shall refer the case to the  
19 department for an abuse and neglect or family in need of court-  
20 ordered services investigation. The department may take the  
21 child into protective custody pursuant to the provisions of the  
22 Abuse and Neglect Act or the Family in Need of Court-Ordered  
23 Services Act. A child requesting immediate discharge shall be  
24 discharged, except in those situations when the director of the  
25 residential treatment or habilitation program, a physician or a

.163926.1



underscoring material = new  
[bracketed material] = delete

1 licensed psychologist determines that the child requires  
2 continued treatment and that the child meets the criteria for  
3 involuntary residential treatment or habilitation services as  
4 otherwise provided under the Children's Mental Health and  
5 Developmental Disabilities Act. In that event, the director,  
6 physician or licensed psychologist, after making the  
7 determination, shall, on the first business day following the  
8 child's request for release from the voluntary program, request  
9 that the child's court attorney initiate involuntary placement  
10 proceedings. The child's court attorney may petition for such  
11 a placement. The child has a right to a hearing on the child's  
12 continued treatment within seven days of the child's request  
13 for release.

14 M. A child who is voluntarily admitted to a  
15 residential treatment or habilitation program shall have the  
16 child's voluntary admission reviewed at the end of a sixty-day  
17 period from the date of the child's initial admission to the  
18 program. The review shall be accomplished by having the  
19 child's physician or licensed psychologist review the child's  
20 treatment and determine whether it would be in the best  
21 interests of the child to continue the voluntary admission. If  
22 the child's physician or licensed psychologist concludes that  
23 continuation of treatment is in the child's best interests, the  
24 child's clinician shall so state in a form to be filed in the  
25 child's patient record. The residential treatment or

.163926.1

underscoring material = new  
[bracketed material] = delete

1 habilitation program shall notify the child's attorney at least  
2 seven days prior to the date that the sixty-day period is to  
3 end or, if necessary, request an attorney pursuant to the  
4 provisions of the Children's Mental Health and Developmental  
5 Disabilities Act. The attorney shall then personally meet with  
6 the child and ensure that the child understands the child's  
7 rights as set forth in this section, that the child understands  
8 the method for voluntary termination of the child's admission  
9 and that the child knowingly and voluntarily consents to the  
10 child's continued treatment. If the attorney determines that  
11 the child understands these rights and that the child  
12 voluntarily and knowingly desires to remain in the residential  
13 treatment or habilitation program and that the clinician has  
14 recommended the continued stay in the program, the attorney  
15 shall so certify on a form designated by the supreme court.  
16 The disposition of these forms shall be as set forth in this  
17 section, with one copy going in the child's patient record and  
18 the other being sent to the district court in a manner that  
19 preserves the child's anonymity. This procedure shall take  
20 place every sixty days from the last admission or attorney's  
21 certification, whichever comes first.

22 N. If the attorney determines that the child does  
23 not voluntarily desire to remain in the program or if the  
24 child's clinician has not recommended continued stay by the  
25 child in the residential treatment or habilitation program, the

.163926.1

underscored material = new  
[bracketed material] = delete

1 child shall be released pursuant to the involuntary placement  
2 procedures set forth in this section and the Children's Mental  
3 Health and Developmental Disabilities Act shall be followed."

4 Section 22. A new section of the Children's Code is  
5 enacted to read:

6 "[NEW MATERIAL] INVOLUNTARY RESIDENTIAL TREATMENT.--

7 A. A child may not receive treatment for mental  
8 disorders or habilitation for developmental disabilities on an  
9 involuntary residential basis except as provided in this  
10 section.

11 B. A child afforded rights under the Children's  
12 Mental Health and Developmental Disabilities Act shall be  
13 advised of those rights at that child's first appearance before  
14 the court on a petition under that act.

15 C. A child has the right to be placed in a  
16 residential treatment or habilitation program only when the  
17 placement is medically necessary.

18 D. A person who believes that a child, as a result  
19 of a mental disorder or developmental disability, is in need of  
20 residential mental health or developmental disabilities  
21 services may request that a children's court attorney file a  
22 petition with the court for the child's involuntary placement.  
23 The petition shall include a detailed description of the  
24 symptoms or behaviors of the child that support the allegations  
25 in the petition, a list of prospective witnesses for

.163926.1

1 involuntary placement and a summary of matters to which they  
2 will testify. The petition should also contain a discussion of  
3 the alternatives to residential care that have been considered  
4 and the reasons for rejecting the alternatives. A copy of the  
5 petition shall be served upon the child, the child's legal  
6 custodian and the child's attorney or guardian ad litem.

7 E. The court shall, upon receiving the petition,  
8 appoint counsel for the child unless the child has retained an  
9 attorney or an attorney or guardian ad litem has been appointed  
10 pursuant to the provisions of the Children's Mental Health and  
11 Developmental Disabilities Act. The attorney or guardian ad  
12 litem shall represent the child at all stages of the  
13 proceedings.

14 F. If, after interviewing the child, the child's  
15 attorney or guardian ad litem determines that the child  
16 understands the child's rights and desires to waive the child's  
17 presence at the hearing on the issue of involuntary placement,  
18 the attorney or guardian ad litem shall submit a verified  
19 written statement to the court explaining the attorney's or  
20 guardian ad litem's understanding of the child's intent. If  
21 the court is satisfied that the child has voluntarily and  
22 knowingly waived the child's right to be present at the  
23 hearing, the child may be involuntarily placed in a residential  
24 treatment or habilitation program at a hearing at which the  
25 child is not present. By waiving the right to be present at

1 the involuntary placement hearing, the child waives no other  
2 rights.

3 G. An involuntary placement hearing shall be held  
4 within seven days of the emergency admission of the child to a  
5 residential treatment or habilitation program under this  
6 section. An involuntary placement hearing shall be held within  
7 five days from a child's declaration that the child desires to  
8 terminate the child's voluntary admission to a residential  
9 treatment or habilitation program if the child's clinician has  
10 assessed and documented that involuntary placement is  
11 necessary.

12 H. At the involuntary placement hearing, the child  
13 shall:

- 14 (1) at all times be represented by counsel;  
15 (2) have the right to present evidence,  
16 including the testimony of a mental health and developmental  
17 disabilities professional of the child's own choosing;  
18 (3) have the right to cross-examine witnesses;  
19 (4) have the right to a complete record of the  
20 proceedings; and  
21 (5) have the right to an expeditious appeal of  
22 an adverse ruling.

23 I. The legal custodian of a child involved in an  
24 involuntary placement hearing shall have automatic standing as  
25 witnesses and shall be allowed to testify by telephone or

.163926.1

1 through a written affidavit if circumstances make personal  
2 testimony too burdensome.

3 J. The court shall include in its findings either a  
4 statement of the child's legal custodian's opinion about  
5 whether the child should be involuntarily placed in a  
6 residential treatment or habilitation program, a statement  
7 detailing the efforts made to ascertain the legal custodian's  
8 opinion or a statement of why it was not in the child's best  
9 interests to have the legal guardian involved.

10 K. The court shall make an order involuntarily  
11 placing the child in a residential treatment or habilitation  
12 program upon a showing by clear and convincing evidence that:

13 (1) as a result of mental disorder or  
14 developmental disability the child needs the treatment or  
15 habilitation services proposed;

16 (2) as a result of mental disorder or  
17 developmental disability the child is likely to benefit from  
18 the treatment or habilitation services proposed;

19 (3) the proposed involuntary placement is  
20 consistent with the treatment or habilitation needs of the  
21 child; and

22 (4) the proposed involuntary placement is  
23 consistent with the least restrictive means principle.

24 L. If the court determines that the child does not  
25 meet the criteria for involuntary placement set forth in this

.163926.1

underscored material = new  
[bracketed material] = delete

1 section, it may order the child to undergo nonresidential  
2 treatment or habilitation as may be appropriate and necessary  
3 or it may order no treatment. If the court determines that the  
4 child should not be involuntarily placed in a residential  
5 treatment or habilitation program and if the child's legal  
6 custodian refuses to take custody of the child, the court shall  
7 refer the case to the department for an abuse and neglect  
8 investigation. The department may take the child into custody  
9 pursuant to the provisions of the Abuse and Neglect Act or the  
10 Family in Need of Court-Ordered Services Act.

11 M. A child receiving involuntary residential  
12 treatment or habilitation services for a mental disorder or  
13 developmental disability under this section shall have a right  
14 to periodic review of the child's involuntary placement at the  
15 end of every involuntary placement period. An involuntary  
16 placement period shall not exceed sixty days. At the  
17 expiration of an involuntary placement period, the child may  
18 continue in residential care only after a new involuntary  
19 placement hearing and entry of a new order of involuntary  
20 placement for one involuntary placement period. Nothing set  
21 forth in the Children's Mental Health and Developmental  
22 Disabilities Act prohibits a child, who has been involuntarily  
23 placed and thereafter discharged and released, from  
24 subsequently voluntarily consenting to admission under the  
25 provisions of that act.

.163926.1

underscored material = new  
[bracketed material] = delete

1           N. If the person seeking the involuntary placement  
2 of a child to a residential treatment or habilitation program  
3 believes that the child is likely to cause serious bodily harm  
4 to self or to others during the period that would be required  
5 to hold an involuntary placement hearing as provided in this  
6 section, the child may be admitted to residential care on an  
7 emergency basis. If the child is admitted on an emergency  
8 basis, appointment of counsel and other procedures shall then  
9 take place as provided elsewhere in this section."

10           Section 23. A new section of the Children's Code is  
11 enacted to read:

12           "[NEW MATERIAL] LIABILITY OF PERSONS PROVIDING TREATMENT  
13 OR HABILITATION SERVICES.--

14           A. A person providing mental health and  
15 developmental disability services to a child and a treatment  
16 facility providing mental health and developmental disability  
17 services to a child shall not be liable if:

18                   (1) the child does not require detention,  
19 treatment or services;

20                   (2) the admission or treatment was made solely  
21 on the basis of misrepresentations by a child seeking treatment  
22 or habilitation services or by a child's legal custodian,  
23 provided the professional or the facility's staff acted in good  
24 faith; or

25                   (3) the admission was made solely on the basis

.163926.1



underscored material = new  
[bracketed material] = delete

1 of reliance upon a tribal court order, provided the mental  
2 health or developmental professional or the facility's staff  
3 acted in good faith.

4 B. Nothing in the Children's Mental Health and  
5 Developmental Disabilities Act shall be construed to relieve  
6 any professional or facility from liability for negligence or  
7 intentional misconduct in the diagnosis, treatment or services  
8 provided to any child.

9 C. Nothing in the Children's Mental Health and  
10 Developmental Disabilities Act shall be construed to relieve  
11 any professional or facility from a duty pursuant to reporting  
12 laws relating to the detection of child abuse."

13 Section 24. A new section of the Children's Code is  
14 enacted to read:

15 "[NEW MATERIAL] DISCLOSURE OF INFORMATION.--

16 A. Except as otherwise provided in the Children's  
17 Mental Health and Developmental Disabilities Act, a person  
18 shall not, without the authorization of the child, disclose or  
19 transmit any confidential information from which a person well-  
20 acquainted with the child might recognize the child as the  
21 described person or any code, number or other means that could  
22 be used to match the child with confidential information  
23 regarding the child.

24 B. When the child is under fourteen years of age,  
25 the child's legal custodian is authorized to consent to

.163926.1

underscoring material = new  
[bracketed material] = delete

1 disclosure on behalf of the child. Information shall also be  
2 disclosed to a court-appointed guardian ad litem without  
3 consent of the child or the child's legal custodian.

4 C. A child fourteen years of age or older with  
5 capacity to consent to disclosure of confidential information  
6 shall have the right to consent to disclosure of mental health  
7 and habilitation records. A legal custodian who is authorized  
8 to make health care decisions for a child has the same rights  
9 as the child to request, receive, examine, copy and consent to  
10 the disclosure of medical or other health care information when  
11 evidence exists that such a child whose consent to disclosure  
12 of confidential information is sought does not have capacity to  
13 give or withhold valid consent and does not have a treatment  
14 guardian appointed by a court. If the legal custodian is not  
15 authorized to make decisions for a child under the Children's  
16 Mental Health and Developmental Disabilities Act, the person  
17 seeking authorization shall petition the court for the  
18 appointment of a treatment guardian to make a decision for a  
19 such a child.

20 D. Authorization from the child shall not be  
21 required for the disclosure or transmission of confidential  
22 information when the disclosure or transmission:

23 (1) is necessary for treatment of the child  
24 and is made in response to a request from a clinician;

25 (2) is necessary to protect against a clear

.163926.1

underscoring material = new  
[bracketed material] = delete

1 and substantial risk of imminent serious physical injury or  
2 death inflicted by the child on self or another;

3 (3) is determined by a clinician not to cause  
4 substantial harm to the child and a summary of the child's  
5 assessment, treatment plan, progress, discharge plan and other  
6 information essential to the child's treatment is made to a  
7 child's legal custodian or guardian ad litem;

8 (4) is to the primary caregiver of the child  
9 and the information disclosed was necessary for the continuity  
10 of the child's treatment in the judgment of the treating  
11 clinician who discloses the information;

12 (5) is to an insurer contractually obligated  
13 to pay part or all of the expenses relating to the treatment of  
14 the child at the residential facility. The information  
15 disclosed shall be limited to data identifying the child,  
16 facility and treating or supervising physician and the dates  
17 and duration of the residential treatment. It shall not be a  
18 defense to an insurer's obligation to pay that the information  
19 relating to the residential treatment of the child, apart from  
20 information disclosed pursuant to this section, has not been  
21 disclosed to the insurer;

22 (6) is to a protection and advocacy  
23 representative pursuant to the federal Developmental  
24 Disabilities Assistance and Bill of Rights Act and the federal  
25 Protection and Advocacy for Mentally Ill Individuals Amendments

.163926.1

1 Act of 1991; and

2 (7) is pursuant to a court order issued for  
3 good cause shown after notice to the child and the child's  
4 legal custodian and opportunity to be heard is given. Before  
5 issuing an order requiring disclosure, the court shall find  
6 that:

7 (a) other ways of obtaining the  
8 information are not available or would not be effective; and

9 (b) the need for the disclosure  
10 outweighs the potential injury to the child, the clinician-  
11 child relationship and treatment services.

12 E. A disclosure ordered by the court shall be  
13 limited to the information that is essential to carry out the  
14 purpose of the disclosure. Disclosure shall be limited to  
15 those persons whose need for the information forms the basis  
16 for the order. An order by the court shall include such other  
17 measures as are necessary to limit disclosure for the  
18 protection of the child, including sealing from public scrutiny  
19 the record of a proceeding for which disclosure of a child's  
20 record has been ordered.

21 F. An authorization given for the transmission or  
22 disclosure of confidential information shall not be effective  
23 unless it:

24 (1) is in writing and signed; and

25 (2) contains a statement of the child's right

underscoring material = new  
[bracketed material] = delete

1 to examine and copy the information to be disclosed, the name  
2 or title of the proposed recipient of the information and a  
3 description of the use that may be made of the information.

4 G. The child has a right of access to confidential  
5 information about the child and has the right to make copies of  
6 information about the child and submit clarifying or correcting  
7 statements and other documentation of reasonable length for  
8 inclusion with the confidential information. The statements  
9 and other documentation shall be kept with the relevant  
10 confidential information, shall accompany it in the event of  
11 disclosure and shall be governed by the provisions of this  
12 section to the extent the statements or other documentation  
13 contain confidential information. Nothing in this subsection  
14 shall prohibit the denial of access to the records when a  
15 physician or other mental health or developmental disabilities  
16 professional believes and notes in the child's medical records  
17 that the disclosure would not be in the best interests of the  
18 child. In all cases, the child has the right to petition the  
19 court for an order granting access.

20 H. Information concerning a child disclosed under  
21 this section shall not be released to any other person, agency  
22 or governmental entity or placed in files or computerized data  
23 banks accessible to any persons not otherwise authorized to  
24 obtain information under this section. Notwithstanding the  
25 confidentiality provisions of the Delinquency Act and the Abuse

.163926.1

underscored material = new  
[bracketed material] = delete

1 and Neglect Act, information disclosed under this section shall  
2 not be re-released without the express consent of the  
3 appropriate party.

4 I. Nothing in the Children's Mental Health and  
5 Developmental Disabilities Act shall limit the confidentiality  
6 rights afforded by federal statute or regulation.

7 J. The department shall promulgate rules for  
8 implementing disclosure of records pursuant to this section and  
9 in compliance with state and federal law and the Children's  
10 Court Rules."

11 Section 25. A new section of the Children's Code is  
12 enacted to read:

13 "[NEW MATERIAL] SPECIAL COMMISSIONER.--A court may conduct  
14 the proceedings required by the Children's Mental Health and  
15 Developmental Disabilities Act or may, by general or special  
16 order, appoint a special commissioner to do so. The special  
17 commissioner shall be a licensed attorney. Upon conclusion of  
18 the hearing, the special commissioner shall file findings and  
19 recommendations with the court promptly."

20 Section 26. A new section of the Children's Code is  
21 enacted to read:

22 "[NEW MATERIAL] TRANSPORTATION.--When a child is to be  
23 placed in a residential treatment or habilitation program or to  
24 be returned to the program during placement, the court ordering  
25 the placement or authorizing the return of the child may direct

.163926.1

underscored material = new  
[bracketed material] = delete

1 the sheriff, the New Mexico state police or other appropriate  
2 persons to furnish suitable transportation in order to effect  
3 the placement or return by contacting the department for  
4 directions as to the destination of the child."

5 Section 27. A new section of the Children's Code is  
6 enacted to read:

7 "[NEW MATERIAL] VIOLATION OF A CHILD'S RIGHTS.--A child  
8 who believes that rights established by the Children's Mental  
9 Health and Developmental Disabilities Act or by the  
10 constitution of the United States or the constitution of New  
11 Mexico have been violated shall have a right to petition the  
12 court for redress. The child shall be represented by counsel.  
13 The court shall grant relief as is appropriate, subject to the  
14 provisions of the Tort Claims Act."

15 Section 28. A new section of the Children's Code is  
16 enacted to read:

17 "[NEW MATERIAL] COST OF CARE.--An indigent child may  
18 receive care and treatment at a state-operated facility without  
19 charge. The governing authorities of the facility may require  
20 payment for the cost of care and treatment from others pursuant  
21 to established fee schedules based on ability to pay."

22 Section 29. A new section of the Children's Code is  
23 enacted to read:

24 "[NEW MATERIAL] RECOGNITION OF TRIBAL COURT INVOLUNTARY  
25 PLACEMENT ORDERS.--

.163926.1

underscored material = new  
[bracketed material] = delete

1           A. Notwithstanding the provisions of any other law  
2 to the contrary, an involuntary placement order for a child  
3 issued by a tribal court shall be recognized and enforced by  
4 the district court for the judicial district in which the  
5 tribal court is located. The involuntary placement order shall  
6 be filed with the clerk of the district court. The tribal  
7 court, as the court of original jurisdiction, shall retain  
8 jurisdiction and authority over the child.

9           B. A child placed in an evaluation facility  
10 pursuant to the provisions of this section shall be subject to  
11 the continuing jurisdiction of the tribal court; provided that  
12 any decisions regarding discharge or release of the child from  
13 the evaluation facility shall be made by the administrator of  
14 that facility. Prior to discharging or releasing the child,  
15 the facility shall:

16                         (1) make custody arrangements with the child's  
17 legal custodian; and

18                         (2) establish a plan for the child's  
19 aftercare.

20           C. When an Indian child is placed in an evaluation  
21 facility pursuant to the provisions of this section, any  
22 outpatient treatment of the Indian child shall be provided in  
23 the same manner as treatment would be provided for any other  
24 child.

25           D. When an Indian child requires emergency



underscored material = new  
~~[bracketed material]~~ = delete

1 treatment or habilitation, that treatment or habilitation shall  
2 be provided pursuant to the provisions of the Children's Mental  
3 Health and Developmental Disabilities Act.

4 E. An Indian child residing on or off a  
5 reservation, as a citizen of this state, shall have the same  
6 right to services available to other children of the state."

7 Section 30. REPEAL.--Sections 32A-6-1 through 32A-6-22  
8 NMSA 1978 (being Laws 1995, Chapter 207, Sections 1 through 10  
9 and 12 through 24, as amended) are repealed.