

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT

RELATING TO MENTAL HEALTH; AMENDING SECTIONS OF THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE TO ALLOW QUALIFIED MENTAL HEALTH PROFESSIONALS LICENSED FOR INDEPENDENT PRACTICE TO CERTIFY THAT A PERSON PRESENTS A DANGER TO THAT PERSON OR OTHERS AND THAT IMMEDIATE DETENTION IS NECESSARY TO PREVENT SUCH HARM AND TO AUTHORIZE TRANSPORT OF THAT PERSON TO AN EVALUATION FACILITY; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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

SECTION 1. Section 43-1-3 NMSA 1978 (being Laws 1977, Chapter 279, Section 2, as amended by Laws 2007, Chapter 46, Section 42 and by Laws 2007, Chapter 325, Section 9) is amended to read:

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

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

1 B. "client" means any patient who is requesting or
2 receiving mental health services or any person requesting or
3 receiving developmental disabilities services or who is
4 present in a mental health or developmental disabilities
5 facility for the purpose of receiving such services or who
6 has been placed in a mental health or developmental
7 disabilities facility by the person's parent or guardian or
8 by any court order;

9 C. "code" means the Mental Health and
10 Developmental Disabilities Code;

11 D. "consistent with the least drastic means
12 principle" means that the habilitation or treatment and the
13 conditions of habilitation or treatment for the client,
14 separately and in combination:

15 (1) are no more harsh, hazardous or
16 intrusive than necessary to achieve acceptable treatment
17 objectives for the client;

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

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

25 E. "convulsive treatment" means any form of mental

1 health treatment that depends upon creation of a convulsion
2 by any means, including but not limited to electroconvulsive
3 treatment and insulin coma treatment;

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

5 G. "department" or "division" means the behavioral
6 health services division of the human services department;

7 H. "developmental disability" means a disability
8 of a person that is attributable to mental retardation,
9 cerebral palsy, autism or neurological dysfunction that
10 requires treatment or habilitation similar to that provided
11 to persons with mental retardation;

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

22 J. "experimental treatment" means any mental
23 health or developmental disabilities treatment that presents
24 significant risk of physical harm, but does not include
25 accepted treatment used in competent practice of medicine and

1 psychology and supported by scientifically acceptable
2 studies;

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

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

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

22 N. "likelihood of serious harm to others" means
23 that it is more likely than not that in the near future a
24 person will inflict serious, unjustified bodily harm on
25 another person or commit a criminal sexual offense, as

1 evidenced by behavior causing, attempting or threatening such
2 harm, which behavior gives rise to a reasonable fear of such
3 harm from the person;

4 O. "mental disorder" means substantial disorder of
5 a person's emotional processes, thought or cognition that
6 grossly impairs judgment, behavior or capacity to recognize
7 reality, but does not mean developmental disability;

8 P. "mental health or developmental disabilities
9 professional" means a physician or other professional who by
10 training or experience is qualified to work with persons with
11 a mental disorder or a developmental disability;

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

17 R. "psychosurgery":

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

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

1 (b) treatment of abnormal brain
2 function or normal brain tissue in order to control thoughts,
3 feelings, actions or behavior; or

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

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

11 S. "qualified mental health professional licensed
12 for independent practice" means an independent social worker,
13 a licensed professional clinical mental health counselor, a
14 marriage and family therapist, a certified nurse practitioner
15 or a clinical nurse specialist with a specialty in mental
16 health, all of whom by training and experience are qualified
17 to work with persons with a mental disorder;

18 T. "residential treatment or habilitation program"
19 means diagnosis, evaluation, care, treatment or habilitation
20 rendered inside or on the premises of a mental health or
21 developmental disabilities facility, hospital, clinic,
22 institution or supervisory residence or nursing home when the
23 client resides on the premises; and

24 U. "treatment" means any effort to accomplish a
25 significant change in the mental or emotional condition or

1 behavior of the client."

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

4 "43-1-10. EMERGENCY MENTAL HEALTH EVALUATION AND
5 CARE.--

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

9 (1) the person is otherwise subject to
10 lawful arrest;

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

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

22 (4) a physician, a psychologist or a
23 qualified mental health professional licensed for independent
24 practice who is affiliated with a community mental health
25 center or core service agency has certified that the person,

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

6 B. An emergency evaluation under this section
7 shall be accomplished upon the request of a peace officer or
8 jail or detention facility administrator or that person's
9 designee or upon the certification of a physician, a
10 psychologist or a qualified mental health professional
11 licensed for independent practice who is affiliated with a
12 community mental health center or core service agency. A
13 court order is not required under this section. If an
14 application is made to a court, the court's power to act in
15 furtherance of an emergency admission shall be limited to
16 ordering that:

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

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

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

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

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

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

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

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

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

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

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

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

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