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HOUSE BILL 348

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

James R.J. Strickler and Gregg Schmedes and Mary Kay Papen

AN ACT

RELATING TO BEHAVIORAL HEALTH; AMENDING SECTIONS OF THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE TO PROVIDE FOR THE DETENTION AND TRANSPORTATION OF CERTAIN PERSONS FOR EMERGENCY MENTAL HEALTH EVALUATION AND TREATMENT AND TO ALLOW ENTRY INTO STRUCTURES IN CERTAIN CIRCUMSTANCES TO PROVIDE FOR TRANSPORT OF PERSONS FOR EVALUATION AND CARE; PROVIDING FOR INCREASED CONFIDENTIALITY OF BEHAVIORAL HEALTH MATTERS; PROVIDING FOR PENALTIES.

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) is amended to read:

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

A. "admitting professional" means a physician or a

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1 psychologist who has been granted admitting privileges at a  
2 hospital licensed by the department of health;

3 B. "authorized professional" means a:

4 (1) physician;

5 (2) psychologist;

6 (3) nurse having the authority to prescribe  
7 psychotropic medication;

8 (4) qualified mental health professional who  
9 is affiliated with a community mental health center or core  
10 service agency; or

11 (5) peace officer;

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

20 [~~B.~~] D. "client" means [~~any patient~~] a person who:

21 (1) is requesting or receiving or who may be  
22 in need of mental health services; [~~or any person~~]

23 (2) is requesting or receiving developmental  
24 disabilities services; [~~or who~~]

25 (3) is present in a mental health [~~or~~

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1 ~~developmental disabilities~~] facility for the purpose of  
2 receiving [~~such~~] mental health services; [~~or who~~]

3 (4) has been placed in a mental health [~~or~~  
4 ~~developmental disabilities~~] facility by the person's parent or  
5 guardian or [~~by any~~] pursuant to a court order;

6 (5) is the subject of an application for an  
7 emergency order pursuant to Section 43-1-10 NMSA 1978; or

8 (6) is detained and transported, or sought to  
9 be detained and transported, for emergency mental health  
10 evaluation and treatment pursuant to Section 43-1-10 NMSA 1978;

11 [~~G-~~] E. "code" means the Mental Health and  
12 Developmental Disabilities Code;

13 [~~D-~~] F. "consistent with the least drastic means  
14 principle" means that the habilitation or treatment and the  
15 conditions of habilitation or treatment for [~~the~~] a client,  
16 separately and in combination:

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

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 client or others from physical injury;  
24 and

25 (3) are conducted at the suitable available

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1 facility closest to the client's place of residence;

2 ~~[E.]~~ G. "convulsive treatment" means any form of  
3 mental health treatment that depends upon creation of a  
4 convulsion by any means, including ~~[but not limited to]~~  
5 electroconvulsive treatment and insulin coma treatment;

6 ~~[F.]~~ H. "court" means a district court of New  
7 Mexico;

8 I. "crisis intervention" means the provision of  
9 assistance:

10 (1) using techniques to prevent harm in a  
11 situation involving a person who appears to have a mental  
12 disorder and who may be in distress; and

13 (2) by a peace officer or a team of  
14 individuals, which peace officer or team is trained in these  
15 techniques;

16 ~~[G.]~~ J. "department" or "division" means the  
17 behavioral health services division of the human services  
18 department;

19 K. "developmental disabilities professional" means  
20 a physician or other professional who by training or experience  
21 is qualified to work with persons with a developmental  
22 disability;

23 ~~[H.]~~ L. "developmental disability" means ~~[a~~  
24 ~~disability of a person that is attributable to mental~~  
25 ~~retardation, cerebral palsy, autism or neurological dysfunction~~

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1 ~~that requires treatment or habilitation similar to that~~  
2 ~~provided to persons with mental retardation]~~:

3 (1) in a person who is at least nine years of  
4 age, a severe, chronic disability of the person, which  
5 disability:

6 (a) is attributable to a mental or  
7 physical impairment or combination of mental and physical  
8 impairments;

9 (b) is manifested before the person has  
10 reached twenty-two years of age;

11 (c) is likely to continue indefinitely;

12 (d) results in substantial functional  
13 limitations in three or more of the following areas of major  
14 life activity: 1) self-care; 2) receptive and expressive  
15 language; 3) learning; 4) mobility; 5) self-direction; 6)  
16 capacity for independent living; or 7) economic self-  
17 sufficiency; and

18 (e) reflects the person's need for a  
19 combination and sequence of special, interdisciplinary or  
20 generic services; individualized supports; or other forms of  
21 assistance that are of lifelong or extended duration and are  
22 individually planned and coordinated; or

23 (2) in a person under nine years of age, a  
24 condition that:

25 (a) is a substantial developmental delay

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1 or specific congenital or acquired condition;

2 (b) meets three or more of the criteria  
3 described in Items 1) through 7) of Subparagraph (d) of  
4 Paragraph (1) of this subsection; and

5 (c) without services and supports, has a  
6 high probability of meeting three or more of the criteria  
7 described in Items 1) through 7) of Subparagraph (d) of  
8 Paragraph (1) of this subsection later in life;

9 ~~[F.]~~ M. "evaluation facility" means a community  
10 mental health or developmental disability program or a medical  
11 facility that:

12 (1) has psychiatric or developmental  
13 disability services available, including the New Mexico  
14 behavioral health institute at Las Vegas, the Los Lunas medical  
15 center or, if none of the foregoing is reasonably available or  
16 appropriate, the office of a physician or a ~~[certified]~~  
17 psychologist; and ~~[that]~~

18 (2) is capable of performing a mental status  
19 examination adequate to determine the need for involuntary  
20 treatment;

21 ~~[J.]~~ N. "experimental treatment" means any mental  
22 health or developmental disabilities treatment that presents  
23 significant risk of physical harm, but does not include  
24 accepted treatment used in competent practice of medicine and  
25 psychology and supported by scientifically acceptable studies;

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

5           [~~H-~~] P. "habilitation" means the process by which  
6 professional persons and their staff assist a client with a  
7 developmental disability in acquiring and maintaining those  
8 skills and behaviors that enable the [~~person~~] client to cope  
9 more effectively with the demands of the [~~person's~~] client's  
10 self and environment and to raise the level of the [~~person's~~]  
11 client's physical, mental and social efficiency.

12 "Habilitation" includes [~~but is not limited to~~] programs of  
13 formal, structured education and treatment;

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

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

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1 harm from the ~~[person]~~ client;

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

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

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

17 ~~R.]~~ U. "protected health information" means  
18 individually identifiable health information transmitted by or  
19 maintained in an electronic form or any other form or media  
20 that relates to the:

21 (1) past, present or future physical or mental  
22 health or condition of ~~[an individual]~~ a person;

23 (2) provision of health care to ~~[an~~  
24 ~~individual]~~ a person; or

25 (3) payment for the provision of health care

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1 to ~~[an individual]~~ a person;

2 ~~[S.]~~ V. "psychosurgery":

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

7 (a) modification or control of thoughts,  
8 feelings, actions or behavior rather than the treatment of a  
9 known and diagnosed physical disease of the brain;

10 (b) treatment of abnormal brain function  
11 or normal brain tissue in order to control thoughts, feelings,  
12 actions or behavior; or

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

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

19 ~~[F.]~~ W. "qualified mental health professional"  
20 ~~[licensed for independent practice]~~ means any of the following  
21 professionals who are licensed for independent practice, who by  
22 training and experience are qualified to work with clients with  
23 a mental disorder:

24 (1) an independent social worker;

25 (2) a licensed professional clinical mental

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1 health counselor;

2 (3) a marriage and family therapist;

3 (4) a certified nurse practitioner; or

4 (5) a clinical nurse specialist with a

5 specialty in mental health; ~~[all of whom by training and~~  
6 ~~experience are qualified to work with persons with a mental~~  
7 ~~disorder;~~

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

14 [V.] Y. "treatment" means any effort to accomplish  
15 a significant change in the mental or emotional condition or  
16 behavior of ~~[the]~~ a client."

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

19 "43-1-10. EMERGENCY DETENTION AND TRANSPORT FOR MENTAL  
20 HEALTH EVALUATION AND [CARE] TREATMENT.--

21 A. When reasonable grounds exist for believing that  
22 a person has a mental disorder and there is a likelihood of  
23 serious harm to the person's self or to another, a peace  
24 officer may detain and transport that person for emergency  
25 evaluation and treatment:

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1                   (1) pursuant to an emergency order issued in  
2 accordance with the provisions of Subsection B of this section;  
3 or

4                   (2) in the absence of an emergency order,  
5 pursuant to the provisions of Subsection G of this section.

6                   B. To obtain an emergency order, an applicant with  
7 knowledge of facts supporting the application shall make an  
8 application to a court setting forth the following, if known:

9                   (1) the name of the client to be evaluated and  
10 the client's date of birth and phone number; a description of  
11 the client's appearance; the address or location where the  
12 client may be located; and the approximate length of time  
13 during which the client has been at that location;

14                   (2) the specific, underlying facts that give  
15 rise for believing that reasonable grounds exist that the  
16 client, as a result of a mental disorder, presents a likelihood  
17 of serious harm to the client or to others and that immediate  
18 detention is necessary to prevent this harm;

19                   (3) a risk assessment, based on known facts,  
20 that details:

21                           (a) the client's access to weapons;  
22                           (b) statements or conduct that suggest  
23 that the client will commit a violent or dangerous act;

24                           (c) the client's history of harm to self  
25 or to others and negative response to law enforcement;

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1                    (d) signs of extreme agitation, rambling  
2 or incoherent thoughts and speech;

3                    (e) an inability to communicate  
4 effectively;

5                    (f) delusions, flashbacks,  
6 hallucinations or other disability impairing the client's  
7 ability to understand;

8                    (g) the signature of the applicant and  
9 an indication of the qualified applicant's relationship to the  
10 client;

11                    (h) efforts to contact the client's  
12 family members, treatment guardian or guardian;

13                    (i) whether the client has a history of  
14 misuse of pharmaceuticals or illegal use of a controlled  
15 substance; and

16                    (j) the client's prior mental health  
17 diagnosis and treatment, including information relating to the  
18 place where the client was last treated; and

19                    (4) what attempts have been made to convince  
20 the client to consent to detention, transport and an emergency  
21 mental health evaluation and treatment.

22                    C. An applicant who is not an authorized  
23 professional shall sign the application for an emergency order  
24 in the presence of a peace officer or the court clerk. The  
25 peace officer or the court clerk shall sign the application as

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1 a witness. An authorized professional may sign the application  
2 without a witness. When an authorized professional signs the  
3 application, the authorized professional shall designate the  
4 evaluation facility where the client is to be transported.

5 D. An application for an emergency order shall be  
6 delivered as follows:

7 (1) if a court is open at the time the  
8 application is signed, the application shall be filed with the  
9 clerk of the court. The clerk of the court shall immediately  
10 deliver the original and two copies of the application with  
11 three order forms to the court; and

12 (2) if a court is closed when an application  
13 is signed, a peace officer shall bring the application before a  
14 judge or a district court commissioner.

15 E. A judge or a district court commissioner shall  
16 issue an emergency order to an evaluation facility whenever the  
17 facts in a signed application for an emergency order support a  
18 finding that reasonable grounds exist for believing that the  
19 client, as a result of a mental disorder, presents a likelihood  
20 of serious harm to the client or to others and that immediate  
21 detention is necessary to prevent serious harm. Upon making  
22 this finding, the judge or district court commissioner may  
23 order that a peace officer enter a structure whenever  
24 reasonable grounds exist to believe that the client is present  
25 in the structure. If the client is known to have resided in a

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1 structure at any time during the fourteen days preceding the  
2 date on which the application is signed, reasonable grounds are  
3 presumed to exist for believing that the client is in the  
4 structure. Before mandating that a peace officer enter a  
5 structure, the judge or district court commissioner shall  
6 review what attempts have been made to convince the client to  
7 be taken into custody without force and the imminent risk based  
8 upon known facts and past history of the client.

9 F. A peace officer shall, whenever feasible,  
10 provide crisis intervention to an individual who appears to  
11 have a mental disorder and who may be in need of detention and  
12 transport for evaluation and treatment.

13 G. Before issuing a ruling pursuant to an  
14 application for an emergency order, a court may seek an opinion  
15 from an authorized professional. The opinion shall be obtained  
16 within twelve hours of the court's receipt of the application  
17 for an emergency order. A court shall rule upon the  
18 application within twenty-four hours of receiving the  
19 application. An authorized professional who renders an opinion  
20 for the court pursuant to this subsection shall not be held  
21 civilly liable for any acts committed by a person whom the  
22 authorized professional did not advise to be taken into custody  
23 if the authorized professional has acted in good faith.

24 ~~[A.]~~ H. A peace officer may detain and transport a  
25 ~~[person]~~ client for emergency mental health evaluation and

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1 [care] treatment in the absence of [~~a legally valid~~] an order  
2 from the court only if:

3 (1) the [~~person~~] client is otherwise subject  
4 to lawful arrest;

5 (2) the peace officer has reasonable grounds  
6 to believe that the [~~person~~] client has [~~just~~] recently  
7 attempted suicide;

8 (3) the peace officer, based upon the peace  
9 officer's own observation and investigation, has reasonable  
10 grounds to believe that the [~~person~~] client, as a result of a  
11 mental disorder, presents a likelihood of serious harm to  
12 [~~himself or herself~~] the client or to others and that immediate  
13 detention is necessary to prevent [~~such~~] serious harm.

14 Immediately upon arrival at the evaluation facility, the peace  
15 officer shall:

16 (a) provide a written statement to the  
17 admitting professional or the admitting professional's  
18 designee, which statement contains detailed facts supporting  
19 reasonable grounds for believing that the client, as a result  
20 of a mental disorder, presents a likelihood of serious harm to  
21 the client or to others and that immediate detention is  
22 necessary; and

23 (b) be interviewed by the admitting  
24 [~~physician~~] professional or the admitting [~~physician's~~]  
25 professional's designee; or

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1                   (4) ~~[a physician, a psychologist or a~~  
2 ~~qualified mental health professional licensed for independent~~  
3 ~~practice who is affiliated with a community mental health~~  
4 ~~center or core service agency]~~ an authorized professional has  
5 ~~[certified]~~ issued a certificate for evaluation that attests  
6 that the ~~[person]~~ client, as a result of a mental disorder,  
7 presents a likelihood of serious harm to ~~[himself or herself]~~  
8 the client or to others and that immediate detention is  
9 necessary to prevent ~~[such]~~ serious harm. ~~[Such]~~ The  
10 certification for evaluation shall constitute authority to  
11 transport the ~~[person]~~ client to an evaluation facility.

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

22                               ~~(1) the client be seen by a certified~~  
23 ~~psychologist or psychiatrist prior to transport to an~~  
24 ~~evaluation facility; and~~

25                               ~~(2) a peace officer transport the person to an~~



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1 ~~evaluation facility]~~ shall be performed upon a client's arrival  
2 at an evaluation facility.

3 J. Before entering a structure to detain and  
4 transport a client for evaluation and treatment, a peace  
5 officer shall encourage the client to exit the structure  
6 voluntarily, unless this encouragement is reasonably believed  
7 to threaten the safety of the client, a peace officer or  
8 another person. A peace officer has emergency doctrine  
9 authority to enter a structure whenever reasonable grounds  
10 exist to believe that there is an emergency at hand and that  
11 there is an immediate need for assistance to protect or aid a  
12 person or protect property.

13 [~~G.~~] K. An evaluation facility may accept for an  
14 emergency-based admission [any person] a client when [a  
15 physician or certified psychologist certifies] the admitting  
16 professional determines that [such person] reasonable grounds  
17 exist to believe that the client, as a result of a mental  
18 disorder, presents a likelihood of serious harm to [himself or  
19 herself] the client or to others and that immediate detention  
20 is necessary to prevent [such] serious harm. [Such  
21 certification] The admitting professional's determination shall  
22 constitute authority to transport the [person] client for  
23 evaluation and treatment at a residential treatment or  
24 habilitation program.

25 [~~D.~~] L. A [person] client detained [under] pursuant

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1 to an emergency order or in accordance with the provisions of  
2 Subsection G of this section shall, whenever possible, be taken  
3 immediately to an evaluation facility. Detention facilities  
4 shall be used as temporary shelter for ~~[such persons]~~ detained  
5 clients only in cases of extreme emergency for protective  
6 custody, and ~~[no person]~~ a client taken into custody under the  
7 provisions of the code shall remain in a detention facility no  
8 longer than necessary and in no case longer than twenty-four  
9 hours. If use of a detention facility is necessary, the  
10 ~~[proposed]~~ client:

11 (1) shall not be held in a cell with  
12 prisoners;

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

15 (3) shall be provided adequate protection from  
16 possible suicide attempts; and

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

20 ~~[E.—The]~~ M. An admitting ~~[physician or certified~~  
21 ~~psychologist]~~ professional shall evaluate whether reasonable  
22 grounds exist to detain the ~~[proposed]~~ client for emergency  
23 mental health evaluation and treatment, and, if reasonable  
24 grounds are found, the ~~[proposed]~~ client shall be detained  
25 further. If the admitting ~~[physician or certified~~

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1 ~~psychologist]~~ professional determines that reasonable grounds  
2 do not exist to further detain the [~~proposed~~] client for  
3 evaluation and treatment, the [~~proposed~~] client shall [~~not~~] be  
4 [~~detained~~] released from detention.

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

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

17 O. Upon detaining a client, a peace officer or a  
18 detaining peace officer's law enforcement agency shall:

19 (1) deliver a copy of the application and  
20 emergency order or the certificate for evaluation to the  
21 client; and

22 (2) deliver a copy of the application and  
23 emergency order or the certificate for evaluation to an  
24 admitting professional at the evaluation facility.

25 P. A county in which a client is initially detained

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1 for transport for an emergency mental health evaluation and  
2 treatment pursuant to this section shall reimburse a law  
3 enforcement agency for transport. A county that fails to  
4 reimburse in a timely manner a law enforcement agency for  
5 transport in accordance with this subsection shall be liable  
6 for and shall pay to the law enforcement agency a penalty in an  
7 amount that equals three times the law enforcement agency's  
8 cost of transport.

9 Q. A person who makes an intentional  
10 misrepresentation of fact in any of the following circumstances  
11 is guilty of a petty misdemeanor and shall be sentenced  
12 pursuant to the provisions of Section 31-19-1 NMSA 1978:

13 (1) when alerting a peace officer that the  
14 person believes a client may have a mental disorder and  
15 presents a likelihood of serious harm to the client or to  
16 another person;

17 (2) in an application for an emergency order;  
18 or

19 (3) in a certificate for evaluation.

20 R. As used in this section:

21 (1) "certificate for evaluation" means a form  
22 on which an authorized professional has:

23 (a) certified that a client, as a result  
24 of a mental disorder, presents a likelihood of serious harm to  
25 the client or to others and that immediate detention is

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1 necessary to prevent serious harm; and

2 (b) provided specific underlying facts  
3 that give rise to reasonable grounds for believing that the  
4 client, as a result of a mental disorder, presents a likelihood  
5 of serious harm to the client or to others and that immediate  
6 detention is necessary to prevent serious harm;

7 (2) "court" means a district court, except in  
8 circumstances relating to an emergency order pursuant to this  
9 section, in which circumstances "court" means a metropolitan or  
10 district court;

11 (3) "emergency order" means a court order to  
12 detain and transport a client for emergency mental health  
13 evaluation and treatment issued in accordance with the  
14 provisions of this section;

15 (4) "good faith" means that a reasonable basis  
16 exists in fact as evidenced by the facts available to a health  
17 professional; and

18 (5) "judge" means a metropolitan court or  
19 district court judge."

20 SECTION 3. Section 43-1-19 NMSA 1978 (being Laws 1977,  
21 Chapter 279, Section 18, as amended) is amended to read:

22 "43-1-19. DISCLOSURE OF INFORMATION.--

23 A. Except as otherwise provided in the code, no  
24 person shall, without the authorization of the client, disclose  
25 or transmit any confidential information from which a person

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1 well acquainted with the client might recognize the client as  
2 the described person, or any code, number or other means that  
3 can be used to match the client with confidential information  
4 regarding the client.

5 B. Authorization from the client shall not be  
6 required for the disclosure or transmission of confidential  
7 information in the following circumstances:

8 (1) when the request is from a mental health  
9 professional or a developmental ~~[disability]~~ disabilities  
10 professional or from an employee or trainee working with a  
11 person with a mental ~~[disability]~~ disorder or developmental  
12 disability, to the extent that the practice, employment or  
13 training on behalf of the client requires access to such  
14 information is necessary;

15 (2) when such disclosure is necessary to  
16 protect against a clear and substantial risk of imminent  
17 serious physical injury or death inflicted by the client on the  
18 client's self or another;

19 (3) when the disclosure is made pursuant to  
20 the provisions of the Assisted Outpatient Treatment Act, using  
21 reasonable efforts to limit protected health information to  
22 that which is minimally necessary to accomplish the intended  
23 purpose of the use, disclosure or request;

24 (4) when the disclosure of such information is  
25 to the primary caregiver of the client and the disclosure is

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1 only of information necessary for the continuity of the  
2 client's treatment in the judgment of the treating physician or  
3 certified psychologist who discloses the information; or

4 (5) when such disclosure is to an insurer  
5 contractually obligated to pay part or all of the expenses  
6 relating to the treatment of the client at the residential  
7 facility. The information disclosed shall be limited to data  
8 identifying the client, facility and treating or supervising  
9 physician and the dates and duration of the residential  
10 treatment. It shall not be a defense to an insurer's  
11 obligation to pay that the information relating to the  
12 residential treatment of the client, apart from information  
13 disclosed pursuant to this section, has not been disclosed to  
14 the insurer.

15 C. No authorization given for the transmission or  
16 disclosure of confidential information shall be effective  
17 unless it:

18 (1) is in writing and signed; and  
19 (2) contains a statement of the client's right  
20 to examine and copy the information to be disclosed, the name  
21 or title of the proposed recipient of the information and a  
22 description of the use that may be made of the information.

23 D. The client has a right of access to confidential  
24 information and has the right to make copies of any information  
25 and to submit clarifying or correcting statements and other

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1 documentation of reasonable length for inclusion with the  
2 confidential information. The statements and other  
3 documentation shall be kept with the relevant confidential  
4 information, shall accompany it in the event of disclosure and  
5 shall be governed by the provisions of this section to the  
6 extent they contain confidential information. Nothing in this  
7 subsection shall prohibit the denial of access to such records  
8 when a physician or other mental health professional or  
9 developmental disabilities professional believes and notes in  
10 the client's medical records that such disclosure would not be  
11 in the best interests of the client. In any such case, the  
12 client has the right to petition the court for an order  
13 granting such access.

14 E. Where there exists evidence that the client  
15 whose consent to disclosure of confidential information is  
16 sought is incapable of giving or withholding valid consent and  
17 the client does not have a guardian or treatment guardian  
18 appointed by a court, the person seeking such authorization  
19 shall petition the court for the appointment of a treatment  
20 guardian to make a substitute decision for the client, except  
21 that if the client is less than fourteen years of age, the  
22 client's parent or guardian is authorized to consent to  
23 disclosure on behalf of the client.

24 F. Information concerning a client disclosed under  
25 this section shall not be released to any other person, agency

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1 or governmental entity or placed in files or computerized data  
2 banks accessible to any persons not otherwise authorized to  
3 obtain information under this section.

4 G. Nothing in the code shall limit the  
5 confidentiality rights afforded by federal statute or  
6 regulation.

7 H. A person appointed as a treatment guardian in  
8 accordance with the Mental Health and Developmental  
9 Disabilities Code may act as the client's personal  
10 representative pursuant to the federal Health Insurance  
11 Portability and Accountability Act of 1996, Sections  
12 1171-1179 of the Social Security Act, 42 U.S.C. Section 1320d  
13 et seq., as amended, and applicable federal regulations to  
14 obtain access to the client's protected health information,  
15 including mental health information and relevant physical  
16 health information, and may communicate with the client's  
17 health care providers in furtherance of such treatment.

18 I. The department of public safety shall create a  
19 police report form to be completed by law enforcement whenever  
20 a report is made of an individual who may have a mental  
21 disorder, who has recently attempted suicide, who is believed  
22 to have committed suicide or who has attempted or perpetrated  
23 serious harm against another person or the individual. All  
24 information pertaining to the individual's mental disorder,  
25 suicide attempt, suicide or attempted or perpetrated harm shall

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1 be recorded on this form. No police report, other than the  
2 form, shall reference a mental disorder, suicide attempt,  
3 suicide or attempted or perpetrated harm. The completed form  
4 shall be confidential and only released in accordance with the  
5 provisions of this section and the federal Health Insurance  
6 Portability and Accountability Act of 1996, Sections 1171-1179  
7 of the Social Security Act, 42 U.S.C. Section 1320d et seq., as  
8 amended, and applicable federal regulations.

9 J. In making or distributing records pursuant to  
10 the procedures set forth in the code or to arrest, a law  
11 enforcement agency shall seal all information pertaining to an  
12 individual's perceived mental disorder. Information concerning  
13 an individual's perceived mental disorder and relevant mental  
14 health behavior may be released within the arresting agency, to  
15 another law enforcement agency, to a court or to an  
16 individual's physician or mental health professional, including  
17 an assisted outpatient treatment team, an evaluation facility  
18 or the individual's attorney, guardian or treatment guardian,  
19 without a court order. If a crime is alleged, the underlying  
20 facts concerning the crime shall be reported in a criminal  
21 report with no reference to a perceived mental disorder or  
22 relevant mental health behavior. A person may file for a court  
23 order for the release of information of perceived mental  
24 disorder and relevant mental health behavior. In reviewing the  
25 application for a release of information of a client who may

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1 need mental health treatment, the court shall weigh the public  
2 interest, the client's right to privacy and the client's best  
3 interest. Any visual or audio recording made in circumstances  
4 where law enforcement is responding either to a concern that a  
5 client may need mental health treatment or to a court order in  
6 accordance with the provisions of the Mental Health and  
7 Developmental Disabilities Code shall be confidential and shall  
8 not be released to the public without the written consent of  
9 the client or the client's representative or by a court order.  
10 In reviewing the application for a release of information that  
11 includes a visual or audio recording involving a law  
12 enforcement response to a client, the court shall weigh the  
13 public interest, the client's right to privacy and the client's  
14 best interest."

15 SECTION 4. Section 43-1-22 NMSA 1978 (being Laws 1977,  
16 Chapter 279, Section 22) is amended to read:

17 "43-1-22. TRANSPORTATION.--Whenever a [~~proposed patient~~]  
18 client is to be detained and provided emergency mental health  
19 evaluation and treatment, committed to a residential mental  
20 health [~~or developmental disability~~] facility or [~~to be~~]  
21 returned to [~~such~~] a [~~facility~~] residential treatment or  
22 habilitation residential program during commitment, the court  
23 ordering the commitment or authorizing the return of the  
24 [~~patient~~] client may direct the sheriff, the New Mexico state  
25 police or other appropriate persons to furnish suitable

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1 transportation in order to effect [~~such~~] the detention and  
2 emergency mental health evaluation and treatment, commitment or  
3 return [~~contacting the department for directions as to the~~  
4 ~~destination~~] of the [~~patient~~] client. The evaluating facility  
5 may direct the sheriff, the state police or other appropriate  
6 person to furnish suitable transportation for returning the  
7 client to the county where the client was originally detained,  
8 and law enforcement shall comply with that evaluating  
9 facility's direction. The county where the person was  
10 originally detained shall reimburse law enforcement in a timely  
11 manner in accordance with the provisions of Subsection P of  
12 Section 43-1-10 NMSA 1978."