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HOUSE BILL 215

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

James R.J. Strickler 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 TRANSPORT OF CERTAIN PERSONS FOR EMERGENCY MENTAL HEALTH EVALUATION AND TREATMENT AND TO ALLOW ENTRY INTO STRUCTURES IN CERTAIN CIRCUMSTANCES TO PROVIDE TRANSPORT OF PERSONS FOR EVALUATION AND CARE; PROVIDING 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 psychologist who has been granted admitting privileges at a hospital licensed by the department of health, if such

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1 privileges are required, or at an evaluation facility;

2 B. "authorized professional" means a:

3 (1) physician;

4 (2) psychologist;

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

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

10 (5) peace officer;

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

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

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

22 (2) is requesting or receiving or who may be
23 in need of developmental disabilities services; ~~[or who]~~

24 (3) is present in a mental health ~~[or~~
25 ~~developmental disabilities]~~ facility for the purpose of

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1 receiving [~~such~~] mental health services; [~~or who~~]

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

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

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

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

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

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

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

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

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

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

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

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

12 (2) by a peace officer or a team of
13 individuals, which peace officer or team is trained in de-
14 escalation management techniques;

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

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

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

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1 provided to persons with mental retardation;

2 ~~[F.]~~ M. "evaluation facility" means a community
3 mental health or developmental disability program or a medical
4 facility that:

5 (1) has psychiatric or developmental
6 disability services available, including the New Mexico
7 behavioral health institute at Las Vegas, the Los Lunas medical
8 center or, if none of the foregoing is reasonably available or
9 appropriate, the office of a physician or a ~~[certified]~~
10 psychologist; and ~~[that]~~

11 (2) is capable of performing a mental status
12 examination adequate to determine the need for involuntary
13 treatment;

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

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

23 ~~[H.]~~ P. "habilitation" means the process by which
24 professional persons and their staff assist a client with a
25 developmental disability in acquiring and maintaining those

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1 skills and behaviors that enable the [person] client to cope
2 more effectively with the demands of the [person's] client's
3 self and environment and to raise the level of the [person's]
4 client's physical, mental and social efficiency.

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

7 ~~[M. "likelihood of serious harm to oneself" means~~
8 ~~that it is more likely than not that in the near future the~~
9 ~~person will attempt to commit suicide or will cause serious~~
10 ~~bodily harm to the person's self by violent or other self-~~
11 ~~destructive means, including grave passive neglect;~~

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

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

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1 R. "likelihood of serious harm to the client's
2 self" means that it is more likely than not that in the near
3 future a client will attempt to commit suicide or will cause
4 serious bodily harm to the client's self by violent or other
5 self-destructive means, including grave passive neglect;

6 ~~[P.]~~ S. "mental disorder" means substantial
7 disorder of a person's emotional processes, thought or
8 cognition that grossly impairs judgment, behavior or capacity
9 to recognize reality, but does not mean developmental
10 disability;

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

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

21 ~~R.]~~ U. "protected health information" means
22 individually identifiable health information transmitted by or
23 maintained in an electronic form or any other form or media
24 that relates to the:

25 (1) past, present or future physical or mental

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1 health or condition of [~~an individual~~] a person;

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

4 (3) payment for the provision of health care
5 to [~~an individual~~] a person;

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

7 (1) means those operations currently referred
8 to as lobotomy, psychiatric surgery and behavioral surgery and
9 all other forms of brain surgery if the surgery is performed
10 for the purpose of the following:

11 (a) modification or control of thoughts,
12 feelings, actions or behavior rather than the treatment of a
13 known and diagnosed physical disease of the brain;

14 (b) treatment of abnormal brain function
15 or normal brain tissue in order to control thoughts, feelings,
16 actions or behavior; or

17 (c) treatment of abnormal brain function
18 or abnormal brain tissue in order to modify thoughts, feelings,
19 actions or behavior when the abnormality is not an established
20 cause for those thoughts, feelings, actions or behavior; and

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

23 [~~F.~~] W. "qualified mental health professional"
24 [~~licensed for independent practice~~] means any of the following
25 professionals who are licensed for independent practice and who

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1 by training and experience are qualified to work with clients
2 with a mental disorder:

3 (1) an independent social worker;

4 (2) a licensed professional clinical mental
5 health counselor;

6 (3) a marriage and family therapist;

7 (4) a certified nurse practitioner; or

8 (5) a clinical nurse specialist with a
9 specialty in mental health; [~~all of whom by training and~~
10 ~~experience are qualified to work with persons with a mental~~
11 ~~disorder;~~

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

18 Y. "structure" means an interior or exterior
19 enclosed space, including a building, whether any part of it is
20 used for temporary or permanent human habitation, a vehicle, a
21 boat or other space where a client may reasonably be found; and

22 [~~V.]~~ Z. "treatment" means any effort to accomplish
23 a significant change in the mental or emotional condition or
24 behavior of [~~the~~] a client."

25 SECTION 2. Section 43-1-10 NMSA 1978 (being Laws 1977,

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1 Chapter 279, Section 9, as amended) is amended to read:

2 "43-1-10. EMERGENCY DETENTION AND TRANSPORT FOR MENTAL
3 HEALTH EVALUATION AND [CARE] TREATMENT--EMERGENCY ORDER.--

4 A. A peace officer may detain and transport a
5 client for emergency mental health evaluation and treatment:

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

9 (2) in the absence of an emergency order, in
10 accordance with the provisions of Subsection P of this section.

11 B. To obtain an emergency order, an applicant with
12 knowledge of the facts that support the application for an
13 emergency order shall apply to a court through a peace officer
14 or, if a peace officer is the applicant, by the peace officer
15 after a peace officer's investigation, setting forth the
16 following in the application for an emergency order, if known:

17 (1) the name and date of birth of the client
18 to be evaluated; the client's phone number; a description of
19 the client's physical appearance; the address, location or
20 structure where the client may be located; and the approximate
21 length of time during which the client has been at that
22 address, location or structure;

23 (2) the specific underlying facts, including a
24 salient summary, if known, of the client's prior mental health
25 diagnosis and treatment and information relating to the place

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1 where the client was last treated, that constitute or support
2 reasonable grounds to believe that:

3 (a) the client is otherwise subject to
4 lawful arrest;

5 (b) the client has just attempted
6 suicide;

7 (c) the client, as a result of a mental
8 disorder, presents a likelihood of serious harm to the client's
9 self or a likelihood of serious harm to another and that
10 immediate detention and transport are necessary to prevent
11 serious harm;

12 (d) an emergency exists; and

13 (e) the client may be located in a
14 specified structure;

15 (3) a risk assessment, based on known facts,
16 that details:

17 (a) the client's access to weapons;

18 (b) statements or conduct that suggest
19 that the client will commit a violent or dangerous act;

20 (c) signs of the client's extreme
21 agitation, rambling or incoherent thoughts and speech;

22 (d) the client's inability to
23 communicate effectively; and

24 (e) the client's delusions, flashbacks,
25 hallucinations or other disability impairing the client's

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1 ability to understand;

2 (4) the following information:

3 (a) what attempts have been made to
4 convince the client to consent to detention, transport and an
5 emergency mental health evaluation and treatment;

6 (b) whether the client has experienced a
7 divorce or legal separation, a pending divorce or legal
8 separation or child custody dispute with an applicant who is
9 not an authorized professional or with a person who seeks an
10 application for an emergency order through an authorized
11 professional, a family member or an acquaintance of the
12 applicant;

13 (c) efforts to contact the client's
14 family members, treatment guardian or guardian; and

15 (d) the last time that the client was
16 known to have had contact with another person and any
17 observation of the client's behavior and demeanor during that
18 contact;

19 (5) a summary of facts and findings, including
20 the time and place, of the peace officer's investigation and
21 the peace officer's determination of whether:

22 (a) the client is otherwise subject to
23 lawful arrest;

24 (b) reasonable grounds exist to believe
25 that the client has just attempted suicide;

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1 (c) reasonable grounds exist to believe
2 that the client, as a result of a mental disorder, presents a
3 likelihood of serious harm to the client's self or a likelihood
4 of serious harm to another and that immediate detention and
5 transport are necessary to prevent serious harm;

6 (d) reasonable grounds exist to believe
7 that an emergency exists; and

8 (e) reasonable grounds exist to believe
9 that the client may be located in a specified structure; and

10 (6) the signature of the applicant and an
11 indication of the applicant's relationship to the client.

12 C. If the applicant is unaware of facts that are to
13 be submitted, the applicant shall indicate that the applicant
14 has no knowledge of those facts.

15 D. The following individuals shall sign an
16 application for an emergency order in the following manner:

17 (1) an applicant who is not an authorized
18 professional shall sign in the presence of a peace officer, and
19 the peace officer shall sign as a witness to the signing of the
20 application for an emergency order;

21 (2) an applicant who is an authorized
22 professional who is not a peace officer shall sign the
23 application for an emergency order without a witness and
24 deliver the application for an emergency order to the peace
25 officer; and

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1 (3) an applicant who is a peace officer shall
2 sign the application for an emergency order without a witness
3 and deliver the application for an emergency order to the
4 court.

5 E. When an authorized professional signs an
6 application for an emergency order, the authorized professional
7 shall designate the evaluation facility where the client shall
8 be transported if the emergency order is granted. If acting in
9 good faith, the authorized professional shall not be subject to
10 civil liability for actions arising from issuing or failing to
11 issue a certificate for evaluation or application for an
12 emergency order. If, forty-eight hours prior to the
13 presentment to a peace officer of the application for an
14 emergency order, a peace officer conducted an investigation and
15 did not detain and transport the client in accordance with
16 Subsection P of this section, a peace officer need not conduct
17 a second investigation before delivering the application for an
18 emergency order to the court. If a certificate for evaluation
19 has been issued, the certificate shall be presented to the
20 court. A new investigation shall be conducted by a peace
21 officer if one was not conducted within forty-eight hours prior
22 to the presentment to a peace officer. The peace officer shall
23 notify the court in writing when presenting the application for
24 an emergency order whether:

25 (1) the client is otherwise subject to lawful

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1 arrest;

2 (2) reasonable grounds exist to believe that
3 the client has just attempted suicide;

4 (3) reasonable grounds exist to believe that
5 the client, as a result of a mental disorder, presents a
6 likelihood of serious harm to the client's self or a likelihood
7 of serious harm to another and immediate detention and
8 transport are necessary to prevent serious harm;

9 (4) reasonable grounds exist to believe that
10 an emergency exists; or

11 (5) reasonable grounds exist to believe that
12 the client may be located in a specific structure.

13 F. Prior to delivering an application for an
14 emergency order from an authorized professional to the court, a
15 peace officer shall conduct an investigation without
16 unnecessary delay for the purpose of detaining and transporting
17 a client to an evaluation facility in accordance with
18 Subsection P of this section. Prior to delivering an
19 application for an emergency order to the court from an
20 individual who is not an authorized professional, a peace
21 officer shall conduct without unnecessary delay an
22 investigation and may detain and transport a client in
23 accordance with Subsection P of this section to determine
24 whether:

25 (1) the client is otherwise subject to lawful

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1 arrest;

2 (2) reasonable grounds exist to believe that
3 the client has just attempted suicide;

4 (3) reasonable grounds exist to believe that
5 the client, as a result of a mental disorder, presents a
6 likelihood of serious harm to the client's self or a likelihood
7 of serious harm to another and immediate detention and
8 transport are necessary to prevent serious harm;

9 (4) reasonable grounds exist to believe that
10 an emergency exists; or

11 (5) reasonable grounds exist to believe that
12 the client may be located in a specified structure.

13 G. If acting in good faith, a peace officer shall
14 not be subject to civil liability for the failure of the peace
15 officer to begin or complete an investigation without
16 unnecessary delay or to deliver an application for an emergency
17 order to the court without unnecessary delay.

18 H. If a peace officer fails to take action in
19 accordance with Subsection P of this section, the peace officer
20 shall advise without unnecessary delay the person requesting
21 police involvement of the right to apply to the court for an
22 emergency order. The peace officer shall immediately provide
23 an application for an emergency order form to the person who
24 sought the peace officer investigation. If a peace officer
25 fails to take action in accordance with Subsection P of this

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1 section, and the person who sought the peace officer
2 investigation has completed an application for an emergency
3 order, the peace officer shall without unnecessary delay
4 deliver the signed application for an emergency order to a
5 district court judge even if the court is closed. Failure to
6 begin or complete an investigation without unnecessary delay is
7 not a jurisdictional defect. Failure to deliver an application
8 for an emergency order to the district court judge without
9 unnecessary delay is not a jurisdictional defect.

10 I. Upon receipt of a completed application for an
11 emergency order, a district court judge may immediately issue
12 an emergency order to detain and transport a client to an
13 evaluation facility when the facts in an application for an
14 emergency order support a finding that:

15 (1) the client is otherwise subject to lawful
16 arrest;

17 (2) reasonable grounds exist to believe that
18 the client has just attempted suicide; or

19 (3) reasonable grounds exist to believe that
20 the client, as a result of a mental disorder, presents a
21 likelihood of serious harm to the client's self or a likelihood
22 of serious harm to another and immediate detention and
23 transport are necessary to prevent serious harm.

24 J. The court may order that a peace officer enter a
25 structure if the court makes the finding provided in Subsection

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1 I of this section and also finds that:

2 (1) reasonable grounds exist to believe that:

3 (a) the client is present in that
4 structure;

5 (b) an emergency exists and there is an
6 immediate need for assistance to protect or aid a person or to
7 protect property; and

8 (c) there is a reasonable basis to
9 associate the emergency with the identified structure; and

10 (2) the application for an emergency order is
11 primarily motivated by a strong sense of emergency and not by
12 another motive.

13 K. Before making an order provided for in
14 Subsection J of this section, the court shall weigh the purpose
15 and nature of the peace officer's entry into the structure, the
16 exigency of the situation based upon known facts and the
17 availability, feasibility and effectiveness of alternatives to
18 the officer's entry into the structure, including any attempts
19 made to convince the client to be taken into custody
20 voluntarily and the imminent risk involved, based upon known
21 facts.

22 L. When a peace officer enters a structure under an
23 order provided for in Subsection J of this section or in
24 accordance with Subsection T of this section, or when a peace
25 officer is otherwise legally permitted entry into a structure,

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1 the peace officer shall take those actions that are reasonably
2 necessary to execute the court's order, ascertain whether a
3 person is in need of assistance and conduct a reasonable sweep
4 of the structure to ensure the safety of the client who is the
5 subject of the order and all other persons or detain the
6 client. A police officer shall not use excessive force against
7 a person.

8 M. If a court denies an emergency order for
9 evaluation or for entry into a structure, the court shall
10 inform the applicant in writing of the right to an immediate
11 appeal and the reasons for denial. The applicant shall be
12 provided, without cost, copies of filed documents.

13 N. A peace officer shall, whenever feasible,
14 provide crisis intervention to an individual who appears to
15 have a mental disorder and who may be in need of detention or
16 transport for evaluation or treatment.

17 O. A filing fee shall not be assessed when an
18 application for an emergency order or petition for commitment
19 is filed pursuant to this section.

20 ~~[A.]~~ P. A peace officer may detain and transport a
21 ~~[person]~~ client for emergency mental health evaluation and
22 ~~[care]~~ treatment in the absence of ~~[a legally valid]~~ an
23 emergency order ~~[from the court]~~ only if:

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

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1 (2) an authorized professional has issued a
2 certificate for evaluation;

3 [~~(2)~~] (3) the peace officer has reasonable
4 grounds to believe that the [~~person~~] client has just attempted
5 suicide; or

6 [~~(3)~~] (4) the peace officer, based upon the
7 peace officer's own observation and investigation, has
8 reasonable grounds to believe that the [~~person~~] client, as a
9 result of a mental disorder, presents a likelihood of serious
10 harm to [~~himself or herself or~~] the client's self or a
11 likelihood of serious harm to [~~others~~] another and that
12 immediate detention [~~is~~] and transport are necessary to prevent
13 [~~such~~] serious harm. Immediately upon arrival at the
14 evaluation facility, the peace officer shall:

15 (a) provide a certificate for
16 evaluation, copies of the application for an emergency order or
17 emergency order and a report to the admitting professional or
18 the admitting professional's designee; and

19 (b) be interviewed by the admitting
20 [~~physician~~] professional or the admitting [~~physician's~~]
21 professional's designee. [~~or~~

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

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1 ~~mental disorder, presents a likelihood of serious harm to~~
2 ~~himself or herself or to others and that immediate detention is~~
3 ~~necessary to prevent such harm. Such certification shall]~~

4 Q. The certificate for evaluation shall constitute
5 authority to transport the [person] client to an evaluation
6 facility.

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

23 S. Before entering a structure to detain and
24 transport a client for emergency mental health evaluation and
25 treatment, a peace officer shall encourage the client to exit

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1 the structure voluntarily, unless this encouragement is
2 reasonably believed to threaten the safety of the client or any
3 other person.

4 T. A peace officer has authority to enter a
5 structure in accordance with an order provided for in
6 Subsection J of this section, when legally permitted or
7 whenever reasonable grounds exist to believe that an emergency
8 exists, that there is an immediate need for assistance to
9 protect or aid a person or protect property and that there is a
10 reasonable basis for associating the emergency with the
11 identified structure. The entry shall be primarily motivated
12 by a strong sense of emergency and not by another motive. When
13 a peace officer enters the home under the emergency exception,
14 the peace officer shall weigh the exigency of the situation,
15 based upon known facts, and the availability, feasibility and
16 effectiveness of alternatives to the officer's entry into the
17 structure, including any attempts made to convince the client
18 to be taken voluntarily into custody, and the imminent risk
19 involved, based upon known facts.

20 ~~[G.]~~ U. An evaluation facility may accept for an
21 emergency-based admission [any person] a client when [a
22 ~~physician or certified psychologist certifies]~~ the admitting
23 professional determines that [such person] reasonable grounds
24 exist to believe that the client, as a result of a mental
25 disorder, presents a likelihood of serious harm to [himself or

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1 ~~herself~~] the client's self or a likelihood of serious harm to
2 ~~[others]~~ another and that immediate detention ~~[is]~~ and
3 transport are necessary to prevent ~~[such]~~ serious harm. ~~[Such~~
4 ~~certification]~~ The admitting professional's determination shall
5 constitute authority to transport the ~~[person]~~ client for
6 emergency mental health evaluation and treatment at a
7 residential treatment or habilitation program.

8 ~~[D-]~~ V. A ~~[person]~~ client detained ~~[under]~~ pursuant
9 to an emergency order or in accordance with the provisions of
10 Subsection P of this section shall, whenever possible, be taken
11 immediately to an evaluation facility. Detention facilities
12 shall be used as temporary shelter for ~~[such persons]~~ detained
13 clients only in cases of extreme emergency for protective
14 custody, and ~~[no person]~~ a client taken into custody under the
15 provisions of the code shall remain in a detention facility no
16 longer than necessary and in no case longer than twenty-four
17 hours. If use of a detention facility is necessary, the
18 ~~[proposed]~~ client:

- 19 (1) shall not be held in a cell with
20 prisoners;
- 21 (2) shall not be identified on records used to
22 record custody of prisoners;
- 23 (3) shall be provided adequate protection from
24 possible suicide attempts; and
- 25 (4) shall be treated with the respect and

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1 dignity due every [~~citizen~~] person who is neither accused nor
2 convicted of a crime.

3 [~~E.—The~~] W. An admitting [~~physician or certified~~
4 ~~psychologist~~] professional shall evaluate whether reasonable
5 grounds exist to detain the [~~proposed~~] client for emergency
6 mental health evaluation and treatment, and, if reasonable
7 grounds are found, the [~~proposed~~] client shall be detained
8 further. If the admitting [~~physician or certified~~
9 ~~psychologist~~] professional determines that reasonable grounds
10 do not exist to further detain the [~~proposed~~] client for
11 emergency mental health evaluation and treatment, the
12 [~~proposed~~] client shall [~~not~~] be [~~detained~~] released from
13 detention.

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

22 [~~G.— A peace officer who transports a proposed~~
23 ~~client to an evaluation facility under the provisions of this~~
24 ~~section shall not require a court order to be reimbursed by the~~
25 ~~referring county.~~]

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1 Y. An admitting professional or an admitting
2 professional's designee at an evaluation facility or
3 residential treatment or habilitation program shall provide a
4 copy of the application for an emergency order, emergency
5 order, certificate for evaluation and peace officer's report to
6 the client. If it is determined that it is not in the best
7 interest of the client to receive copies of the documents upon
8 admission or emergency mental health evaluation, the reason for
9 not providing the documents shall be noted in the medical
10 record. The client's attorney shall be provided a copy of the
11 documents upon request.

12 Z. A county in which a client is initially detained
13 for transport for emergency mental health evaluation and
14 treatment pursuant to this section shall reimburse a law
15 enforcement agency for the client's transport. A county that
16 fails to make reimbursement in a timely manner in accordance
17 with this subsection shall be liable for and shall pay to the
18 law enforcement agency a penalty in an amount that equals three
19 times the law enforcement agency's cost of transport.

20 AA. A person who makes an intentional
21 misrepresentation or omission of fact in any of the following
22 circumstances is guilty of a petty misdemeanor and shall be
23 sentenced pursuant to the provisions of Section 31-19-1 NMSA
24 1978:

25 (1) in providing underlying facts to a peace

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1 officer or a peace officer's agent or an authorized
2 professional or an authorized professional's agent to establish
3 reasonable grounds to believe that:

4 (a) the client just attempted suicide;

5 (b) as a result of a mental disorder,
6 the client presents a likelihood of serious harm to the
7 client's self or a likelihood of serious harm to another and
8 immediate detention and transport are necessary to prevent
9 serious harm;

10 (c) the client is subject to lawful
11 arrest;

12 (d) an emergency exists; or

13 (e) the client may be located in a
14 specified structure;

15 (2) in obtaining entry into a structure using
16 the process provided for in this section;

17 (3) in an application for an emergency order;

18 (4) in a certificate for evaluation; or

19 (5) in obtaining a certificate for evaluation.

20 BB. As used in this section:

21 (1) "applicant" means a person, including a
22 peace officer, who files an application for an emergency order;

23 (2) "certificate for evaluation" means a form
24 on which an authorized professional has certified that
25 reasonable grounds exist to believe that a client:

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1 (a) just attempted suicide; or
2 (b) as a result of a mental disorder,
3 presents a likelihood of serious harm to the client's self or a
4 likelihood of serious harm to another and immediate detention
5 and transport are necessary to prevent serious harm; and

6 (3) "emergency order" means a court order to
7 detain and transport a client for emergency mental health
8 evaluation and treatment issued in accordance with the
9 provisions of this section."

10 SECTION 3. Section 43-1-11 NMSA 1978 (being Laws 1977,
11 Chapter 279, Section 10, as amended) is amended to read:

12 "43-1-11. COMMITMENT OF ~~[ADULTS]~~ CLIENTS FOR THIRTY-DAY
13 PERIOD.--

14 A. Every ~~[adult]~~ client involuntarily admitted to
15 an evaluation facility pursuant to Section 43-1-10 NMSA 1978
16 has the right to a hearing within seven days of admission
17 unless waived after consultation with counsel. If a physician
18 or evaluation facility decides to seek commitment of the client
19 for evaluation and treatment, a petition shall be filed with
20 the court within five days of admission requesting the
21 commitment. The petition shall include a description of the
22 specific behavior or symptoms of the client that evidence a
23 likelihood of serious harm to the ~~[client or others]~~ client's
24 self or likelihood of serious harm to another and shall include
25 an initial screening report by the evaluating physician

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1 individually or with the assistance of a mental health
2 professional or, if a physician is not available, by a mental
3 health professional acceptable to the court. The petition
4 shall list the prospective witnesses for commitment and a
5 summary of the matters to which they will testify. Copies of
6 the petition shall be served on the client, the client's
7 guardian, and treatment guardian if one has been appointed, and
8 the client's attorney.

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

18 C. A court-appointed guardian for ~~[an adult]~~ a
19 client involved in an involuntary commitment proceeding shall
20 have automatic standing to appear at all stages of the
21 proceeding and shall be allowed to testify by telephone or
22 through affidavit if circumstances make live testimony too
23 burdensome.

24 D. The court shall include in its findings the
25 guardian's opinion regarding the need for involuntary treatment

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1 or a statement detailing the efforts made to ascertain the
2 guardian's opinion.

3 E. Upon completion of the hearing, the court may
4 order a commitment for evaluation and treatment not to exceed
5 thirty days if the court finds by clear and convincing evidence
6 that:

7 (1) as a result of a mental disorder, the
8 client presents a likelihood of serious harm to the client's
9 ~~[own self or others]~~ self or a likelihood of serious harm to
10 another;

11 (2) the client needs and is likely to benefit
12 from the proposed treatment; and

13 (3) the proposed commitment is consistent with
14 the treatment needs of the client and with the least drastic
15 means principle.

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

23 G. An interested person who reasonably believes
24 that ~~[an adult]~~ a client is suffering from a mental disorder
25 and presents a likelihood of serious harm to the ~~[adult's own~~

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1 ~~self or others]~~ client's self or a likelihood of serious harm
2 to another, but does not require emergency care, may request
3 the district attorney to investigate and determine whether
4 reasonable grounds exist to commit the [~~adult~~] client for a
5 thirty-day period of evaluation and treatment. The applicant
6 may present to the district attorney any medical reports or
7 other evidence immediately available to the applicant, but
8 shall not be required to obtain a medical report or other
9 particular evidence in order to make a petition. The district
10 attorney shall act on the petition within seventy-two hours.
11 If the district attorney determines that reasonable grounds
12 exist to commit the [~~adult~~] client, the district attorney may
13 petition the court for a hearing. The court may issue a
14 summons to the [~~proposed~~] client to appear at the time
15 designated for a hearing, which shall be not less than five
16 days from the date the petition is served. If the [~~proposed~~]
17 client is summoned and fails to appear at the proposed time and
18 upon a finding of the court that the [~~proposed~~] client has
19 failed to appear, or appears without having been evaluated, the
20 court may order the [~~proposed~~] client to be detained for
21 evaluation as provided for in [~~Subsection G~~] Subsections R and
22 U of Section 43-1-10 NMSA 1978.

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

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1 SECTION 4. Section 43-1-12 NMSA 1978 (being Laws 1977,
2 Chapter 279, Section 11, as amended) is amended to read:

3 "43-1-12. EXTENDED COMMITMENT OF ~~[ADULTS]~~ CLIENTS.--

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

15 B. A hearing shall be held upon the petition prior to
16 the expiration of the thirty-day commitment period, at which
17 the client shall have all rights granted to the client under
18 Section 43-1-11 NMSA 1978 and in addition shall have a right to
19 a trial by a six-person jury, if requested, and to an
20 expeditious appeal, unless waived.

21 C. A court-appointed guardian for ~~[an adult]~~ a client
22 involved in an involuntary commitment proceeding shall have
23 automatic standing to appear at all stages of the proceeding
24 and shall be allowed to testify by telephone or through
25 affidavit if circumstances make live testimony too burdensome.

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1 D. The court shall include in its findings the
2 guardian's opinion regarding the need for involuntary treatment
3 or a statement detailing the efforts made to ascertain the
4 guardian's opinion.

5 E. If, at the conclusion of the hearing, the fact-
6 finder determines by clear and convincing evidence that the
7 client presents a likelihood of serious harm to the client's
8 self or [~~to others~~] a likelihood of serious harm to another,
9 that extended treatment is likely to improve the client's
10 condition and that the proposed extended commitment is
11 consistent with the least drastic means principle, the court
12 shall order commitment of the client for a period not to exceed
13 six months, except that when the client has been committed for
14 two consecutive periods of commitment, any commitment
15 commencing thereafter shall not exceed one year. At the
16 expiration of the commitment order, the client may be detained
17 only after a new commitment hearing, unless waived after
18 consultation with the client's attorney, and entry of a new
19 order for commitment not to exceed six months.

20 F. A client involuntarily referred for treatment
21 pursuant to this section shall be entitled to a reexamination
22 of the order for the client's involuntary referral for
23 treatment on the client's own petition, or that of the client's
24 legal guardian, parent, spouse, relative or friend, to the
25 district court of the county in which the client resides or is

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1 detained. Upon receipt of the petition, the court shall
2 conduct a proceeding in accordance with this section, except
3 that a proceeding shall not be required to be conducted if the
4 petition is filed sooner than sixty days after the issuance of
5 the order for involuntary referral for treatment or sooner than
6 sixty days after the filing of a previous petition under this
7 subsection.

8 G. Nothing in this section shall limit the right of a
9 client to petition the court for a writ of habeas corpus.

10 H. Nothing in this code shall prohibit a client from
11 seeking voluntary admission under Section 43-1-14 NMSA 1978.

12 I. No mental health treatment facility is required to
13 detain, treat or provide services to a client when the client
14 does not require such detention, treatment or services."

15 SECTION 5. Section 43-1-13 NMSA 1978 (being Laws 1977,
16 Chapter 279, Section 12, as amended) is amended to read:

17 "43-1-13. INVOLUNTARY COMMITMENT OF DEVELOPMENTALLY
18 DISABLED ~~[ADULTS]~~ CLIENTS TO RESIDENTIAL CARE.--

19 A. A guardian appointed pursuant to the Uniform
20 Probate Code may file an application with an evaluation
21 facility seeking residential habilitation services for the
22 protected person. The application shall set forth the basis
23 for the guardian's belief that residential habilitation is
24 necessary and shall include a copy of pertinent medical and
25 psychological evaluations that have been completed.

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1 B. Upon receipt of an application filed according to
2 Subsection A of this section, an evaluation facility may accept
3 the [proposed] client for a period of evaluation and treatment
4 not to exceed fourteen days. An evaluation facility shall
5 prepare an individualized habilitation plan that shall be
6 consistent with the least drastic means principle.

7 C. If the habilitation plan recommends residential
8 services, the evaluation facility shall file with the court a
9 petition for extended residential placement. Upon receipt of
10 the petition, the court shall appoint an attorney to represent
11 the [proposed] client. Notice of the hearing scheduled on the
12 petition and a copy of the habilitation plan shall be given to
13 the [proposed] client, the client's attorney and the client's
14 guardian. The petition shall contain a list of the names and
15 addresses of proposed witnesses.

16 D. At the hearing on the petition, the [proposed]
17 client shall be represented by counsel and shall have the right
18 to present evidence on the [proposed] client's behalf,
19 including testimony of a developmental disability professional
20 of the [proposed] client's choosing; to cross-examine
21 witnesses; to be present at the hearing; and to trial by a six-
22 person jury, if requested. A complete record of the hearing
23 shall be made. There shall be a right to an expeditious
24 appeal.

25 E. The guardian of [~~an adult~~] a client involved in a

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1 commitment proceeding for extended residential habilitation
2 services shall have automatic standing to appear at all stages
3 of the proceeding and shall be allowed to testify by telephone
4 or through affidavit if circumstances make live testimony too
5 burdensome.

6 F. The court shall include in its findings the
7 guardian's opinion regarding the need for residential
8 habilitation services or a statement detailing the efforts made
9 to ascertain the guardian's opinion.

10 G. The court shall order residential placement of the
11 [~~proposed~~] client if it is established by clear and convincing
12 evidence that the [~~proposed~~] client has a developmental
13 disability that creates an imminent likelihood of serious harm
14 to the [~~proposed~~] client's self or [~~to others~~] a likelihood of
15 serious harm to another, or the [~~person~~] client is so greatly
16 disabled that residential services would be in the [~~person's~~]
17 client's best interest and that such residential placement is,
18 in the [~~person's~~] client's case, the least drastic means. The
19 court's order of residential placement shall be for a period
20 not to exceed six months. At the expiration of the commitment
21 order, the client may be detained only after a new commitment
22 hearing, unless waived after consultation with the client's
23 attorney, and entry of a new order for commitment not to exceed
24 six months.

25 H. The court shall order placement that is least

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1 restrictive to the client and may order attendance and
2 participation as a nonresident in habilitation programs
3 conducted at residential or nonresidential facilities.

4 I. Any client involuntarily referred for habilitation
5 treatment shall be entitled to a reexamination of the order for
6 the client's involuntary referral for habilitation and
7 treatment on the client's own petition, or that of the client's
8 legal guardian, parent, spouse, relative or friend, to the
9 district court of the county in which the client resides or is
10 detained. Upon receipt of the petition, the court shall
11 conduct or cause to be conducted by a special commissioner a
12 proceeding in accordance with this section, except that a
13 proceeding shall not be required to be conducted if the
14 petition is filed sooner than sixty days after the issuance of
15 the order for involuntary referral for habilitation and
16 treatment or sooner than sixty days after the filing of a
17 previous petition under this subsection.

18 J. Nothing in this section shall limit the right of a
19 client to petition the court for a writ of habeas corpus.

20 K. No developmental disabilities treatment or
21 habilitation facility is required to detain, treat or provide
22 services to a client when the client does not appear to require
23 detention, treatment or habilitation."

24 SECTION 6. Section 43-1-22 NMSA 1978 (being Laws 1977,
25 Chapter 279, Section 22) is amended to read:

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1 "43-1-22. TRANSPORTATION.--Whenever a [~~proposed patient~~]
2 client is to be detained and provided emergency mental health
3 evaluation and treatment, committed to a residential mental
4 health [~~or developmental disability~~] facility or [~~to be~~]
5 returned to [~~such~~] a [~~facility~~] residential treatment or
6 habilitation program during commitment, the court ordering the
7 commitment or authorizing the return of the [~~patient~~] client
8 may direct the sheriff, the New Mexico state police or other
9 appropriate persons to furnish suitable transportation in order
10 to effect [~~such~~] the detention and emergency mental health
11 evaluation and treatment, commitment or return [~~contacting the~~
12 ~~department for directions as to the destination~~] of the
13 [~~patient~~] client. The evaluation facility may direct the
14 sheriff, the state police or other appropriate person to
15 furnish suitable transportation for returning the client to the
16 county where the client was originally detained, and law
17 enforcement shall comply with that evaluation facility's
18 direction. The county where the person was originally detained
19 shall reimburse law enforcement in a timely manner in
20 accordance with the provisions of Subsection Z of Section
21 43-1-10 NMSA 1978."

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