

1 SENATE BILL 166

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

4 Antonio Maestas

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9  
10 AN ACT

11 RELATING TO COMMITMENT PROCEDURES; PROVIDING A DEFINITION FOR  
12 "HARM TO SELF" AND "HARM TO OTHERS" IN THE MENTAL HEALTH AND  
13 DEVELOPMENTAL DISABILITIES CODE AND THE ASSISTED OUTPATIENT  
14 TREATMENT ACT.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "43-1-3. DEFINITIONS.--As used in the Mental Health and  
20 Developmental Disabilities Code:

21 A. "aversive stimuli" means anything that, because  
22 it is believed to be unreasonably unpleasant, uncomfortable or  
23 distasteful to the client, is administered or done to the  
24 client for the purpose of reducing the frequency of a behavior,  
25 but does not include verbal therapies, physical restrictions to

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1 prevent imminent harm to self or others or psychotropic  
2 medications that are not used for purposes of punishment;

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

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

12 D. "consistent with the least drastic means  
13 principle" means that the habilitation or treatment and the  
14 conditions of habilitation or treatment for the 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 close to the client's place of residence;

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1           E. "convulsive treatment" means any form of mental  
2 health treatment that depends upon creation of a convulsion by  
3 any means, including electroconvulsive treatment and insulin  
4 coma treatment;

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

6           G. "crisis triage center" means a health facility  
7 that:

8                   (1) is licensed by the health care authority;

9 and

10                   (2) provides stabilization of behavioral  
11 health crises and may include residential and nonresidential  
12 stabilization;

13           H. "department" or "division" means the behavioral  
14 health services division of the health care authority;

15           I. "developmental or intellectual disability" means  
16 a severe chronic disability attributable to significantly  
17 subaverage general intellectual functioning existing  
18 concurrently with deficits in adaptive behavior, cerebral  
19 palsy, autism or neurological dysfunction that requires similar  
20 treatment or habilitation;

21           J. "evaluation facility" means a community mental  
22 health or developmental disability program, a crisis triage  
23 center or a medical facility that has psychiatric or  
24 developmental or intellectual disability services available,  
25 including the New Mexico behavioral health institute at Las

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1 Vegas, or, if none of those is reasonably available or  
2 appropriate, the office of a physician or a certified  
3 psychologist that is capable of performing a mental status  
4 examination adequate to determine the need for involuntary  
5 treatment;

6 K. "experimental treatment" means any mental health  
7 or developmental disabilities treatment that presents  
8 significant risk of physical harm, but does not include  
9 accepted treatment used in competent practice of medicine and  
10 psychology and supported by scientifically acceptable studies;

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

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

24 ~~[N. "likelihood of serious harm to oneself" means~~  
25 ~~that it is more likely than not that in the near future the~~

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1 ~~person will attempt to commit suicide or will cause serious~~  
2 ~~bodily harm to the person's self by violent or other self-~~  
3 ~~destructive means, including grave passive neglect;~~

4 ~~O. "likelihood of serious harm to others" means~~  
5 ~~that it is more likely than not that in the near future a~~  
6 ~~person will inflict serious, unjustified bodily harm on another~~  
7 ~~person or commit a criminal sexual offense, as evidenced by~~  
8 ~~behavior causing, attempting or threatening such harm, which~~  
9 ~~behavior gives rise to a reasonable fear of such harm from the~~  
10 ~~person;]~~

11 ~~N. "harm to others" means that within the relevant~~  
12 ~~past, the person has inflicted, attempted to inflict or~~  
13 ~~threatened to inflict serious bodily harm on another, has acted~~  
14 ~~in such a way as to create a substantial risk of serious bodily~~  
15 ~~harm to another or has engaged in extreme destruction of~~  
16 ~~property and that there is a reasonable probability that the~~  
17 ~~conduct will be repeated;~~

18 ~~O. "harm to self" means that:~~

19 ~~(1) a person is unable, without care,~~  
20 ~~supervision and the continued assistance of others not~~  
21 ~~otherwise available, to exercise self-control, judgment and~~  
22 ~~discretion in the conduct of the person's daily~~  
23 ~~responsibilities and social relations or to satisfy the~~  
24 ~~person's need for nourishment, personal or medical care,~~  
25 ~~shelter or self-protection and safety; and~~

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1                   (2) there is a reasonable probability of the  
2 person suffering serious physical debilitation in the near  
3 future unless adequate treatment is provided pursuant to the  
4 Mental Health and Developmental Disabilities Code. A showing  
5 of behavior that is grossly irrational, actions that the person  
6 is unable to control, behavior that is grossly inappropriate to  
7 a situation or other evidence of severely impaired insight and  
8 judgment creates a prima facie inference that a person is  
9 unable to care for the person's self;

10                   P. "mental disorder" means substantial disorder of  
11 a person's emotional processes, thought or cognition that  
12 grossly impairs judgment, behavior or capacity to recognize  
13 reality, but does not mean developmental or intellectual  
14 disability;

15                   Q. "mental health or developmental or intellectual  
16 disabilities professional" means a physician or other  
17 professional who by training or experience is qualified to work  
18 with persons with a mental disorder or a developmental or  
19 intellectual disability;

20                   R. "physician" or "certified psychologist", when  
21 used for the purpose of hospital admittance or discharge, means  
22 a physician or certified psychologist who has been granted  
23 admitting privileges at a hospital licensed by the health care  
24 authority, if such privileges are required;

25                   S. "protected health information" means

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1 individually identifiable health information transmitted by or  
2 maintained in an electronic form or any other form or media  
3 that relates to the:

4 (1) past, present or future physical or mental  
5 health or condition of a person;

6 (2) provision of health care to a person; or

7 (3) payment for the provision of health care  
8 to a person;

9 T. "psychosurgery":

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

14 (a) modification or control of thoughts,  
15 feelings, actions or behavior rather than the treatment of a  
16 known and diagnosed physical disease of the brain;

17 (b) treatment of abnormal brain  
18 function or normal brain tissue in order to control thoughts,  
19 feelings, actions or behavior; or

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

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

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1 U. "qualified mental health professional licensed  
2 for independent practice" means an independent social worker, a  
3 licensed professional clinical mental health counselor, a  
4 marriage and family therapist, a certified nurse practitioner,  
5 a clinical nurse specialist with a specialty in mental health  
6 or a licensed art therapist, all of whom by training and  
7 experience are qualified to work with persons with a mental  
8 disorder;

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

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

18 SECTION 2. Section 43-1B-2 NMSA 1978 (being Laws 2016,  
19 Chapter 84, Section 2, as amended) is amended to read:

20 "43-1B-2. DEFINITIONS.--As used in the Assisted  
21 Outpatient Treatment Act:

22 A. "advance directive for mental health treatment"  
23 means an individual instruction or power of attorney for mental  
24 health treatment made pursuant to the Mental Health Care  
25 Treatment Decisions Act;

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1           B. "agent" means an individual designated in a  
2 power of attorney for health care to make a mental health care  
3 decision for the individual granting the power;

4           C. "assertive community treatment" means a team  
5 treatment approach designed to provide comprehensive community-  
6 based psychiatric treatment, rehabilitation and support to  
7 persons with serious and persistent mental disorders;

8           D. "assisted outpatient treatment" means categories  
9 of outpatient services ordered by a district court, including  
10 case management services, comprehensive community support  
11 services, intensive outpatient services, care coordination or  
12 assertive community treatment team services, prescribed to  
13 treat a patient's mental disorder and to assist a patient in  
14 living and functioning in the community or to attempt to  
15 prevent a relapse or deterioration that may reasonably be  
16 predicted to result in harm to the patient or another or the  
17 need for hospitalization. Assisted outpatient treatment may  
18 include:

- 19                   (1) medication;
- 20                   (2) periodic blood tests or urinalysis to  
21 determine compliance with prescribed medications;
- 22                   (3) individual or group therapy;
- 23                   (4) day or partial-day programming activities;
- 24                   (5) educational and vocational training or  
25 activities;

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1 (6) alcohol and substance abuse treatment and  
2 counseling;

3 (7) periodic blood tests or urinalysis for the  
4 presence of alcohol or illegal drugs for a patient with a  
5 history of alcohol or substance abuse;

6 (8) supervision of living arrangements; and

7 (9) any other services prescribed to treat the  
8 patient's mental disorder and to assist the patient in living  
9 and functioning in the community, or to attempt to prevent a  
10 deterioration of the patient's mental or physical condition;

11 E. "covered entity" means a health plan, a health  
12 care clearinghouse or a health care provider that transmits any  
13 health information in electronic form;

14 F. "guardian" means a judicially appointed guardian  
15 having authority to make mental health care decisions for an  
16 individual;

17 G. "least restrictive appropriate alternative"  
18 means treatment and conditions that:

19 (1) are no more harsh, hazardous or intrusive  
20 than necessary to achieve acceptable treatment objectives; and

21 (2) do not restrict physical movement or  
22 require residential care, except as reasonably necessary for  
23 the administration of treatment or the protection of the  
24 patient;

25 ~~[H. "likely to result in serious harm to others"~~

1 ~~means that it is more likely than not that in the near future a~~  
2 ~~person will inflict serious, unjustified bodily harm on another~~  
3 ~~person or commit a criminal sexual offense, as evidenced by~~  
4 ~~behavior causing, attempting or threatening such harm, which~~  
5 ~~behavior gives rise to a reasonable fear of such harm from the~~  
6 ~~person;~~

7 I. ~~"likely to result in serious harm to self" 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 H. "harm to others" means that within the relevant  
13 past, the person has inflicted, attempted to inflict or  
14 threatened to inflict serious bodily harm on another, has acted  
15 in such a way as to create a substantial risk of serious bodily  
16 harm to another or has engaged in extreme destruction of  
17 property and that there is a reasonable probability that the  
18 conduct will be repeated;

19 I. "harm to self" means that:

20 (1) a person is unable, without care,  
21 supervision and the continued assistance of others not  
22 otherwise available, to exercise self-control, judgment and  
23 discretion in the conduct of the person's daily  
24 responsibilities and social relations or to satisfy the  
25 person's need for nourishment, personal or medical care,

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1 shelter or self-protection and safety; and

2 (2) there is a reasonable probability of the  
3 person suffering serious physical debilitation in the near  
4 future unless adequate treatment is provided pursuant to the  
5 Assisted Outpatient Treatment Act. A showing of behavior that  
6 is grossly irrational, actions that a person is unable to  
7 control, behavior that is grossly inappropriate to a situation  
8 or other evidence of severely impaired insight and judgment  
9 creates a prima facie inference that a person is unable to care  
10 for the person's self;

11 J. "mandated service" means a service specified in  
12 a court order requiring assisted outpatient treatment;

13 K. "participating municipality or county" means a  
14 municipality or county that has entered into a memorandum of  
15 understanding with its respective district court with respect  
16 to the funding of such district court's administrative  
17 expenses, including legal fees, for proceedings pursuant to the  
18 Assisted Outpatient Treatment Act;

19 L. "patient" means a person receiving assisted  
20 outpatient treatment pursuant to a court order;

21 M. "power of attorney for health care" means the  
22 designation of an agent to make health care decisions for the  
23 individual granting the power, made while the individual has  
24 capacity;

25 N. "provider" means an individual or organization

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1 licensed, certified or otherwise authorized or permitted by law  
2 to provide mental or physical health diagnosis or treatment in  
3 the ordinary course of business or practice of a profession;

4 O. "qualified professional" means a physician,  
5 licensed psychologist, prescribing psychologist, certified  
6 nurse practitioner or clinical nurse specialist with a  
7 specialty in mental health, or a physician assistant with a  
8 specialty in mental health;

9 P. "qualified protective order" means, with respect  
10 to protected health information, an order of a district court  
11 or stipulation of parties to a proceeding under the Assisted  
12 Outpatient Treatment Act;

13 Q. "respondent" means a person who is the subject  
14 of a petition or order for assisted outpatient treatment;

15 R. "surrogate decision-maker" means:

16 (1) an agent designated by the respondent;

17 (2) a guardian; or

18 (3) a treatment guardian; and

19 S. "treatment guardian" means a person appointed  
20 pursuant to Section 43-1-15 NMSA 1978 to make mental health  
21 treatment decisions for a person who has been found by clear  
22 and convincing evidence to be incapable of making the person's  
23 own mental health treatment decisions."