AN ACT

RELATING TO CHILDREN; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 TO ELIMINATE THE ROLE OF RESOURCE CONSULTANTS IN THE CHILDREN'S MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ACT; REPEALING A SECTION OF THE NMSA 1978.

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

Section 1. Section 32A-6-2 NMSA 1978 (being Laws 1995, Chapter 207, Section 2) is amended to read:

"32A-6-2. DEFINITIONS.--As used in the Children's Mental Health and Developmental Disabilities Act:

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

B. "clinician" means a physician, licensed psychologist, licensed independent social worker or licensed professional clinical counselor;

C. "consistent with the least drastic means principle" means that the habilitation or treatment and the conditions of habilitation or treatment for the child, separately and in combination:

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

(2) involve no restrictions on physical

movement and no requirement for residential care, except as reasonably necessary for the administration of treatment or for the protection of the child or others from physical injury; and

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

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

E. "developmental disability" means a severe chronic disability that:

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

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

(3) is expected to continue indefinitely;

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

(a) self-care;

(b) receptive and expressive language;

(c) learning;

(d) mobility;

(e) self-direction;

(f) capacity for independent living; or

(g) economic self-sufficiency; and

(5) reflects a person's need for a combination and sequence of special, interdisciplinary or

generic treatments or other supports and services that are of lifelong or extended duration and that are individually planned or coordinated;

F. "evaluation facility" means a community mental health or developmental disability program, a medical facility having psychiatric or developmental disability services available or, if none of the foregoing is reasonably available or appropriate, the office of a licensed physician or a licensed psychologist, any of which shall be capable of performing a mental status examination adequate to determine the need for involuntary treatment;

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

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

I. "habilitation" means the process by which professional persons and their staff assist the developmentally disabled child in acquiring and maintaining those skills and behaviors that enable the child to cope more effectively with the demands of his own person and of his environment and to raise the level of his physical, mental and social efficiency. "Habilitation" includes programs of formal, structured education and treatment;

J. "likelihood of serious harm to oneself" means

that it is more likely than not that in the near future the child will attempt to commit suicide or will cause serious bodily harm to himself by violent or other self-destructive means, including grave passive neglect;

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

L. "mental disorder" means a substantial disorder of the child's emotional processes, thought or cognition that grossly impairs judgment, behavior or capacity to recognize reality, but does not mean developmental disability;

M. "mental health or developmental disabilities professional" means a physician or other professional who, by training or experience, is qualified to work with individuals with mental disorders or developmental disabilities;

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

O. "psychosurgery" means those operations currently referred to as lobotomy, psychiatric surgery and behavioral surgery and all other forms of brain surgery if the surgery is performed for the following purposes:

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

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

(3) treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions or behavior.

"Psychosurgery" does not include prefrontal sonic treatment in which there is no destruction of brain tissue;

P. "residential treatment or habilitation program" means diagnosis, evaluation, care, treatment or habilitation rendered inside or on the premises of a mental health or developmental disabilities facility, hospital, clinic, institution, supervisory residence or nursing home when the individual resides on the premises and where one or more of the following measures is available for use:

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

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

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

(4) the involuntary emergency administration of psychotropic medication; and

Q. "treatment" means any effort to accomplish a

significant change in the mental or emotional condition or behavior of the child."

Section 2. Section 32A-6-11.1 NMSA 1978 (being Laws 1995, Chapter 207, Section 13) is amended to read:

"32A-6-11.1. CONSENT TO PLACEMENT IN A RESIDENTIAL TREATMENT OR HABILITATION PROGRAM--CHILDREN YOUNGER THAN FOURTEEN YEARS OF AGE.--

A. A child younger than fourteen years of age shall not receive residential treatment for mental disorders or habilitation for developmental disabilities, except as provided in this section or Section 32A-6-13 NMSA 1978.

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

C. In order to admit a child younger than fourteen years of age to a residential treatment or habilitation program, the child's parent, guardian or legal custodian shall knowingly and voluntarily execute a consent to admission document prior to the child's admission. The consent to admission document shall be in a form designated by the supreme court. The consent to admission document shall include a clear statement of the parent's, guardian's or legal custodian's right to voluntarily consent to or refuse the child's admission; the parent's, guardian's or legal custodian's right to request the child's immediate discharge from the residential treatment program at any time; and the parent's, guardian's or legal custodian's rights when the parent, guardian or legal custodian requests

the child's discharge and the child's physician, licensed psychologist or the director of the residential treatment facility determines that the child needs continued treatment. The facility shall ensure that each statement is clearly explained in the child's and parent's, guardian's or legal custodian's primary language, if that is their language of preference, and in a manner appropriate to the child's and parent's, guardian's or legal custodian's developmental abilities. Each statement shall be initialed by the child's parent, guardian or legal custodian.

D. The parent's, guardian's or legal custodian's executed consent to admission document shall be filed with the child's hospital records within twenty-four hours of the time of admission.

E. Upon the filing of the parent's, guardian's or legal custodian's consent to admission document in the child's hospital records, the director of the residential treatment or habilitation program or the director's designee shall, on the next business day following the child's admission, notify the district court or the special commissioner regarding the admission and provide the child's name, date of birth and the date and place of admission. The court or special commissioner shall, upon receipt of notice regarding a child's admission to a residential treatment or habilitation program, establish a sequestered court file.

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

child. When the court receives the petition, the court shall appoint a guardian ad litem. The court may order the parent to reimburse the state pursuant to the provisions of the Children's Code.

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

(1) whether the child's parent, guardian or legal custodian understands and consents to the child's admission to a residential treatment or habilitation program;

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

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

H. If a guardian ad litem determines that the child's parent, guardian or legal custodian understands and consents to the child's admission and that the admission is in the child's best interests, is appropriate for the child and is consistent with the least drastic means principle, the guardian ad litem shall so certify on a form designated by the supreme court. The form, when completed by the guardian ad litem, shall be filed in the child's patient record kept by the residential treatment or habilitation

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

I. Upon reaching the age of majority, a child who was admitted to a residential treatment or habilitation program pursuant to this section may petition the district court for the records of the district court regarding all matters pertinent to the child's admission to a residential treatment or habilitation program. The district court, upon receipt of the petition and upon a determination that the petitioner is in fact a child who was admitted to a residential treatment or habilitation program, shall provide all court records regarding the admission to the petitioner, including all copies in the court's possession.

J. Any parent, guardian or legal custodian who consents to admission of his child to a residential treatment or habilitation program has the right to request the child's immediate discharge from the residential treatment or habilitation program, subject to the provisions of this section. If a child's parent, guardian or legal custodian informs the director, a physician or any other member of the residential treatment or habilitation program staff that the parent, guardian or legal custodian desires the child to be discharged from the program, the director, physician or other staff shall provide for the child's immediate discharge and remit the child to the parent's, guardian's or legal custodian's care. The residential treatment or habilitation program shall also notify the child's guardian ad litem. A child whose parent, guardian

or legal custodian requests his immediate discharge shall be discharged, except when the director of the residential treatment program, a physician or a licensed psychologist determines that the child requires continued treatment and that the child meets the criteria for involuntary residential treatment. In that event, the director, physician or licensed psychologist shall, on the first business day following the child's parent's, guardian's or legal custodian's request for release of the child from the program, request that the children's court attorney initiate involuntary residential treatment proceedings. The children's court attorney may petition the court for such proceedings. The child has a right to a hearing regarding his continued treatment within seven days of the request for release.

K. A child who is admitted to a residential treatment or habilitation program pursuant to this section shall have his admission reviewed at the end of the sixty-day period following the date of the child's initial admission to the program. The child's physician or licensed psychologist shall review the child's residential treatment or habilitation program and determine whether it is in the best interests of the child to continue the admission. If the child's physician or licensed psychologist concludes that continuation of the residential treatment or habilitation program is in the child's best interests, the child's clinician shall so state in a form to be filed in the child's patient records. The residential treatment or habilitation program shall notify the guardian ad litem for the child at least seven days prior to the date that the

sixty-day period is to end or, if necessary, request a guardian ad litem pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act. The guardian ad litem shall then personally meet with the child, the child's parent, guardian or legal custodian and the child's clinician and ensure that the child's parent, guardian or legal custodian understands and consents to the child's continued admission to the residential treatment or habilitation program. If the guardian ad litem determines that the child's parent, guardian or legal custodian understands and consents to the child's continued admission to the residential treatment or habilitation program, that the continued admission is in the child's best interest, that the placement continues to be appropriate for the child and consistent with the least drastic means principle and that the clinician has recommended the child's continued stay in the program, the guardian ad litem shall so certify on a form designated by the supreme court. The disposition of these forms shall be as set forth in this section, with one copy going in the child's patient record and the other being sent to the district court in a manner that preserves the child's anonymity. This procedure shall take place every sixty days following the child's last admission or a guardian ad litem's certification, whichever occurs first.

L. When a guardian ad litem determines that the child's parent, guardian or legal custodian does not understand or consent to the child's admission to a residential treatment or habilitation program, that the admission is not in the child's best interests, that the placement is inappropriate for the child or is inconsistent

with the least drastic means principle or that the child's clinician has not recommended a continued stay by the child in the residential treatment or habilitation program, the child shall be released or involuntary placement procedures shall be initiated.

M. If the child's parent, guardian or legal custodian is unavailable to take custody of the child and immediate discharge of the child would endanger the child, the residential treatment or habilitation program may detain the child until a safe and orderly discharge is possible. If the child's family refuses to take physical custody of the child, the residential treatment or habilitation program shall refer the case to the department for an abuse and neglect or family in need of court-ordered services investigation. The department may take the child into protective custody pursuant to the provisions of the Abuse and Neglect Act or the Family in Need of Services Act."

Section 3. Section 32A-6-12 NMSA 1978 (being Laws 1995, Chapter 207, Section 14) is amended to read:

"32A-6-12. VOLUNTARY RESIDENTIAL TREATMENT OR HABILITATION.--

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

B. Any child fourteen years of age or older may voluntarily admit himself to a residential treatment or habilitation program, with the informed consent of his parent, guardian or legal custodian, for a period not to exceed sixty days, subject to the requirements of this

section.

C. To have a child voluntarily admitted to a residential treatment or habilitation program, the child and the child's parent, guardian or legal custodian shall knowingly and voluntarily execute, prior to admission, a child's voluntary consent to admission document. The document shall include a clear statement of the child's right to voluntarily consent or refuse to consent to his admission; the child's right to request an immediate discharge from the residential treatment program at any time; and the child's rights when he requests a discharge and his physician, licensed psychologist or the director of the residential treatment facility determines the child needs continued treatment. The facility shall ensure that each statement is clearly explained in the child's and parent's, guardian's or legal custodian's primary language, if that is their language of preference, and in a manner appropriate to the child's and parent's, guardian's or legal custodian's developmental abilities, and each statement shall be initialed by the child and his parent, guardian or legal custodian.

D. The child's parent, guardian or legal custodian shall obtain an independent attorney for the child and shall notify the residential treatment facility of that attorney's name within seventy-two hours of the child's voluntary admission. Prior to admission, the residential treatment facility shall inform the child's parent, guardian or legal custodian of the duty to obtain an independent attorney for the child within seventy-two hours. If the child's parent, guardian or legal custodian is indigent, the

parent, guardian or legal custodian may petition the court to appoint an attorney for the child.

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

F. Upon the filing of the child's voluntary consent to admission document in the patient's hospital record, the director of the residential treatment or habilitation program or the director's designee shall, on the next business day following the child's admission, notify the district court or the special commissioner of the admission, giving the child's name, date of birth and the date and place of admission. The court or special commissioner shall, upon receipt of notice of a child's voluntary admission to a residential treatment program, establish a sequestered court file.

G. If within seventy-two hours of the child's voluntary admission the child has not met with an independent attorney and the child's parent, guardian or legal custodian has not notified the residential treatment or habilitation program of the name of the child's independent attorney, the residential treatment or habilitation program shall, during the next business day, petition the court to appoint an attorney. When the court receives the petition, the court shall appoint an attorney. The court may order the parent to reimburse the state pursuant to the provisions of the Children's Code.

H. If within seventy-two hours of the child's voluntary admission the child has met with an independent attorney or the child's parent, guardian or legal custodian

has notified the residential treatment or habilitation program of the name of the child's independent attorney, the residential treatment or habilitation program shall, during the next business day, notify the court or the special commissioner of the name of the child's independent attorney.

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

(1) the child's right to an attorney;

(2) the child's right to terminate his voluntary admission and the procedures to effect termination;

(3) the effect of terminating the child's voluntary admission and options of the physician and other interested parties to the petition for an involuntary admission; and

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

(a) legal representation;

(b) a presumption of competence;

(c) receive daily visitors of the child's choice;

(d) receive and send uncensored mail;

(e) have access to telephones;

(f) follow or abstain from the

practice of religion;

(g) a humane and safe environment;

(h) physical exercise and outdoor exercise;

(i) a nourishing, well-balanced, varied and appetizing diet;

(j) medical treatment;

(k) educational services;

(l) freedom from unnecessary or excessive medication;

(m) individualized treatment and habilitation; and

(n) participation in the development of the individualized treatment plan and access to that plan on request.

J. If the attorney determines that the child understands his rights and that the child voluntarily and knowingly desires to remain as a patient in a residential treatment or habilitation program, the attorney shall so certify on a form designated by the supreme court. The form, when completed by the attorney, shall be filed in the child's patient record at the residential treatment or habilitation program facility, and a copy shall be forwarded to the court or special commissioner within seven days of the child's admission. The attorney's statement shall not identify the child by name.

K. Upon reaching the age of majority, a child who was a voluntary admittee to a residential treatment or habilitation program may petition the district court for the records of the court regarding all matters pertinent to his

voluntary admission to a residential treatment or habilitation program. The court, upon receipt of the petition and upon a determination that the petitioner was in fact the child who was a voluntary admittee to a residential treatment or habilitation program, shall give all court records regarding the admission to the petitioner, including all copies in the court's possession.

L. Any child voluntarily admitted to a residential treatment or habilitation program has the right to an immediate discharge from the residential treatment or habilitation program upon his request, except as provided in this section. If a child informs the director, physician or any other member of the residential treatment or habilitation program staff that he desires to be discharged from the voluntary program, the director, physician or other staff member shall provide for the child's immediate discharge. The residential treatment or habilitation program shall not require that the child's request be in writing. Upon the request, the residential treatment or habilitation program shall notify the child's parent, guardian or legal custodian to take custody of the child and remit the child to the parent's, guardian's or legal custodian's care. The residential treatment or habilitation program shall also notify the child's attorney. If the child's parent, guardian or legal custodian is unavailable to take custody of the child and immediate discharge of the child would endanger the child, the residential treatment or habilitation program may detain the child until a safe and orderly discharge is possible. If the child's family refuses to take physical custody of the child, the

residential treatment or habilitation program shall refer the case to the department for an abuse and neglect or family in need of court-ordered services investigation. The department may take the child into protective custody pursuant to the provisions of the Abuse and Neglect Act or the Family in Need of Services Act. A child requesting immediate discharge shall be discharged, except in those situations when the director of the residential treatment or habilitation program, a physician or a licensed psychologist determines that the child requires continued treatment and that the child meets the criteria for involuntary residential treatment as otherwise provided under the Children's Mental Health and Developmental Disabilities Act. In that event, the director, physician or licensed psychologist, after making the determination, shall, on the first business day following the child's request for release from the voluntary program, request that the children's court attorney initiate involuntary placement proceedings. The children's court attorney may petition for such a placement. The child has a right to a hearing on his continued treatment within seven days of his request for release.

M. A child who is a voluntary admittee to a residential treatment or habilitation program shall have his voluntary admission reviewed at the end of a sixty-day period from the date of his initial admission to the program. The review shall be accomplished by having the child's physician or licensed psychologist review the child's treatment and determine whether it would be in the best interests of the child to continue the voluntary

admission. If the child's physician or licensed psychologist concludes that continuation of treatment is in the child's best interests, the child's clinician shall so state in a form to be filed in the child's patient record. The residential treatment or habilitation program shall notify the attorney for the child at least seven days prior to the date that the sixty-day period is to end or, if necessary, request an attorney pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act. The attorney shall then personally meet with the child and ensure that the child understands his rights as set forth in this section, that the child understands the method for voluntary termination of his admission and that the child knowingly and voluntarily consents to his continued treatment. If the attorney determines that the child understands these rights and that the child voluntarily and knowingly desires to remain as a patient in the residential treatment or habilitation program and that the clinician has recommended the continued stay in the program, the attorney shall so certify on a form designated by the supreme court. The disposition of these forms shall be as set forth in this section, with one copy going in the child's patient record and the other being sent to the district court in a manner that preserves the child's anonymity. This procedure shall take place every sixty days from the last admission or attorney's certification, whichever comes first.

N. If the attorney determines that the child does not voluntarily desire to remain in the program or if the clinician of the child has not recommended continued stay by the child in the residential treatment or habilitation

program, the child shall be released or the involuntary placement procedures set forth in this section and the Children's Mental Health and Developmental Disabilities Act shall be followed."

Section 4. Section 32A-18-1 NMSA 1978 (being Laws 1993, Chapter 77, Section 224, as amended) is amended to read:

"32A-18-1. CULTURAL RECOGNITION.--

A. A person who serves as a judge, prosecutor, guardian ad litem, treatment guardian, court appointed attorney, court appointed special advocate, foster parent, mental health commissioner or mental health treatment service provider for a child subject to an abuse or neglect petition, a family in need of services petition or a mental health placement shall receive periodic training, to the extent of available resources, to develop his knowledge about children, the physical and psychological formation of children and the impact of ethnicity on a child's needs. Institutions that serve children and their families shall, considering available resources, provide similar training to institutional staff.

B. The training shall include study of:

(1) cross-cultural dynamics and sensitivity;

(2) child development;

(3) family composition and dynamics;

(4) parenting skills and practices;

(5) culturally appropriate treatment plans; and

(6) alternative health practices."

Section 5. REPEAL.--Section 32A-6-10.1 NMSA (being Laws 1995, Chapter 207, Section 11) is repealed.

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.