

Opinion No. 88-02

January 7, 1988

OPINION OF: HAL STRATTON, Attorney General

BY: Michael J. Vargon, Assistant Attorney General

TO: Douglas R. Driggers, District Attorney, Third Judicial District, 135 East Griggs, Second Floor, Las Cruces, New Mexico 88001

QUESTIONS

1. May a private attorney petition a court for involuntary commitment of an adult to a mental health facility pursuant to Section 43-1-11 NMSA 1978?
2. May a private attorney petition a court for involuntary commitment of a minor to a mental health facility pursuant to Section 43-1-16.1 NMSA 1978?
3. Does the fact that a patient is indigent or nonindigent affect the commitment procedures in any way?
4. Does the fact that commitment to a private mental health facility is being sought change the commitment procedures in any way?

CONCLUSIONS

1. No.
2. Yes.
3. No.
4. No.

ANALYSIS

(1) The Mental Health and Development Disabilities Code (the "Code"), Sections 43-1-2 to 43-1-25 NMSA 1978, sets forth the procedures for involuntary commitment of adults and minors for evaluation and treatment of mental illness. Section 43-1-11E provides, in pertinent part:

Any interested person who reasonably believes that an adult is suffering from a mental disorder and presents a likelihood of serious harm to himself or others, but does not require emergency care, may request the district attorney to investigate and determine whether reasonable grounds exist to commit such adult for a thirty-day period of

evaluation and treatment... The district attorney shall act on the petition within seventy-two hours. If the district attorney determines that reasonable grounds exist to commit the adult, he may petition the court for a hearing.

The only person eligible to file a petition for involuntary commitment of an adult is the district attorney.

Before 1977, New Mexico law permitted a "friend, relative, spouse or guardian of the individual, ... a licensed physician, a health or public welfare officer or the head of any public or private institution in which such individual may be" to file with the district court an application for involuntary referral of an individual for mental health care. Section 34-2-5A NMSA 1953 (1975 Supplement). The court would appoint one or more licensed physicians to examine the individual and report their findings. Section 34-2-5C. A hearing then would be held, and the court could order the individual to be committed. Sections 34-2-5E, 34-2-5F, and 34-2-5G. The law was amended in 1977, 1978, and 1979. 1977 N.M. Laws, ch. 279; 1978 N.M. Laws, ch. 161; 1979 N.M. Laws, ch. 396.

The legislature's adoption of an amendment is evidence of an intent to change the original law. *Martinez v. Research Park, Inc.*, 75 N.M. 672, 681, 410 P.2d 200, 206 (1965). The 1977 amendments clearly evince a legislative intent to restrict the persons eligible to initiate court proceedings for involuntary commitment of adults. We conclude therefore that only district attorneys may file petitions for involuntary commitment of adults.

(2) The procedures delineated in the Code for the involuntary commitment of minors allow a much broader class of persons to file petitions. Section 43-1-16.1 NMSA 1978 governs involuntary commitment of minors. Unlike the provisions addressing involuntary commitment of adults, the Code permits "any person who believes that a minor, as a result of a mental disorder or developmental disability, is in need of residential mental health or developmental disabilities services," to file a petition. See Section 43-1-16.1B. The district attorney is not mentioned anywhere in Section 43-1-16.1B. A law review article that was co-authored by one of the principal draftsmen of the 1977 code states:

The Code provides that any person who believes that a child needs residential treatment or habilitation may petition the court for his commitment. The legislature envisioned that the petitioner would be the child's parents or guardians in almost all cases. However, other persons are authorized to file such a petition. This allows the court to consider a child's need for treatment even when the child's parents are unable or unwilling to propose his commitment.

Ellis & Carter, *Treating Children Under The New Mexico Mental Health and Developmental Disabilities Code*, 10 N.M.L.Rev. 279, 289 (1980) (footnotes omitted). The legislature thus has established a broader class of persons who are eligible to file petitions for involuntary commitment of a minor.

We are aware of only one case that has addressed squarely the constitutional issues of private parties litigating involuntary mental commitment. In *In re Kossow*, 393 A.2d 97 (D.C. 1978), the District of Columbia Court of Appeals determined that the due process clause of the United States Constitution does not prohibit a private party from filing a petition for involuntary commitment. *Id.* at 109. See also *Parham v. J.R.*, 442 U.S. 584 (1979) (due process clause of United States Constitution does not compel adversarial hearing for commitment of child by parents). We therefore conclude that a private attorney may petition a court for involuntary commitment of a minor.

(3) We note that the commitment procedures do not make any distinctions on the basis of a patient's status as indigent or nonindigent. Section 43-1-25 provides that indigents may receive care and treatment at state-operated facilities without charge. It further provides that such facilities may charge nonindigent patients for cost of care and treatment on the basis of their ability to pay. This section does not, however, change in any way the method by which an individual is involuntarily committed.

(4) The Code does not distinguish between private and public mental health facilities in the method of commitment. The procedures are the same.

For these reasons, we conclude that only district attorneys may file petitions for involuntary commitment of adults pursuant to Section 43-1-11 NMSA 1978. Private parties, however, may file petitions for involuntary commitment of minors pursuant to Section 43-1-16.1 NMSA 1978. The procedures for commitment of indigent and nonindigent patients are the same. The procedures for commitment to a public mental health facility are identical to the procedures for commitment to a private mental health facility.

ATTORNEY GENERAL

HAL STRATTON Attorney General