CHAPTER 43
Commitment Procedures

ARTICLE 1
Mental Health and Developmental Disabilities

43-1-1. Mental condition of criminal defendants; evaluation; treatment.

A. Whenever a district court finds it necessary to obtain an evaluation of the mental condition of a defendant in a criminal case, the court shall order an evaluation from a qualified professional available to the local facilities of the court or from a qualified professional at a local mental health center designated by the secretary of health, and whenever the court finds it desirable to use state personnel or facilities to assist in making the evaluation, the court shall in its order for an evaluation require service upon the secretary of health of the court's order for evaluation. The secretary of health shall arrange for a qualified professional furnished by the state to visit the defendant in local facilities available to the court or shall designate suitable available facilities. If the secretary of health designates a local mental health center or a state facility for the defendant's evaluation within forty-eight hours of service of the evaluation order, the secretary of health shall notify the court of such designation. The court shall then enter an appropriate transport order which also provides for the return of the defendant to the local facilities of the court. The defendant shall be transported by the county to facilities designated by the secretary of health for the purpose of making an evaluation. Misdemeanor defendants shall be evaluated locally.

B. If the secretary of health elects to have the defendant retained at the district court's local facilities, the qualified professional furnished by the state shall visit the local facilities not later than two weeks from the time of service of the court's evaluation order upon the secretary of health and:

(1) after the evaluation of the defendant is completed, the qualified professional furnished by the state shall be available for deposition to declare his findings. The usual rules of evidence governing the use and admission of the deposition shall prevail; and

(2) if the secretary of health finds that the qualified professional will be unable to initiate the evaluation within two weeks from the time of service of the court's evaluation order upon the secretary of health, the secretary of health shall call upon the county sheriff of the county in which the defendant is incarcerated and have the defendant transported to facilities designated by the secretary of health for the purpose of conducting the evaluation.

C. If the secretary of health elects to have the defendant transported to the facilities designated by the secretary of health for the purpose of evaluation, the evaluation shall be commenced as soon as possible after the admission of the defendant to the facility, but, in no event, shall the evaluation be commenced later than seventy-two hours after the admission. The defendant, at the conclusion of the evaluation, shall be returned by the county sheriff to the local facilities of the court upon not less than three days' notice. After the evaluation is completed, the qualified professional furnished by the state shall be available for deposition to declare his findings. The usual rules of evidence governing the use and admissibility of the deposition shall prevail.

D. Documents reasonably required by the secretary of health to show the medical and forensic history of the defendant shall be furnished by the court when required.

E. After an evaluation and upon reasonable notice, the district court may commit a dangerous defendant charged with a felony pursuant to Section 31-9-1.2 NMSA 1978 or may dismiss the charges without prejudice and refer the defendant to the district attorney for possible initiation of proceedings under the Mental Health and Developmental Disabilities Code [this article]. A defendant so committed under the Mental Health and Developmental Disabilities Code shall be treated as any other patient committed involuntarily. Whenever the secretary of health determines that he does not have the ability to meet the medical needs of a defendant committed pursuant to Sections 31-9-1.2 through 31-9-1.5 NMSA 1978, the secretary or his designee shall serve upon the district court and the parties a written certification of the lack of ability to meet the medical needs of the defendant. The court shall set a hearing upon the certification within ten days of its filing and shall, after the hearing, make a determination regarding disposition of the criminal case. When deemed by the secretary of health to be medically appropriate, a dangerous defendant committed pursuant to Section 31-9-1.2 NMSA 1978 may be returned by the county sheriff to the custody of the court upon not less than three days' notice. The secretary shall provide written notification to the court and parties within three days of the defendant's discharge.

F. All acts to be performed by the secretary of health pursuant to provisions of this section may be performed by the secretary's designee.

History: 1953 Comp., § 34-2-26, enacted by Laws 1976, ch. 43, § 1; 1977, ch. 253, § 45; 1989, ch. 94, § 2; 1989, ch. 128, § 1; 1993, ch. 240, § 7; 1993, ch. 249, § 7; 1999, ch. 149, § 6.

ANNOTATIONS

Cross references. — For the Children's Mental Health and Developmental Disabilities Act, see Chapter 32A, Article 6 NMSA 1978.

For procedures relating to evaluation of persons charged with criminal offenses, see Rule 5-602 NMRA of the Rules of Criminal Procedure for the District Courts and Rule 7-

507 NMRA of the Rules of Criminal Procedure for the Metropolitan Courts. See also Section 31-9-1.5 NMSA 1978.

For the evaluation of children accused of committing delinquent acts, see Rule 10-220 NMRA of the Children's Court Rules and Forms.

1989 amendments. — Laws 1989, ch. 94, § 2, effective July 1, 1989, inserting "or a municipal court" near the beginning of the first sentence of Subsection A, substituting "secretary of health and environment" for "secretary of the health and environment department" in the first sentence of Subsection A and in Subsection F, and making minor stylistic changes in Subsection B, was approved March 17, 1989. However, Laws 1989, ch. 128, § 1, effective June 16, 1989, substituting "secretary of health and environment" for "secretary of the health and environment department" in the first sentence of Subsection A and in Subsection F; adding the last sentence of Subsection A; and making minor stylistic changes in Subsection B, was approved March 29, 1989. The section is set out as amended by Laws 1989, ch. 128, § 1. See 12-1-8 NMSA 1978.

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 240, § 7 and Laws 1993, ch. 249, § 7, both effective June 18, 1993, which rewrote the section to the extent that a detailed comparison is impracticable. The section is set out above as amended by Laws 1993, ch. 249, § 7. See 12-1-8 NMSA 1978.

The 1999 amendment, effective June 18, 1999, deleted "or of a defendant found incompetent to proceed in a criminal case in a proceeding for involuntary hospitalization pursuant to the Mental Health and Development Disabilities Code" following "a criminal case" in Subsection A, substituted "shall" for "will" in Subsection B, deleted "then" following "secretary of health" in Subsection B(2), in Subsection E inserted "charged with a felony" in the first sentence and added the third, fourth and sixth sentences, and inserted "provisions of" in Subsection F.

Temporary restraint not violative of due process. — Persons may be deprived of their liberty for the good of society or themselves. This is not a deprivation of due process of law, but a temporary restraint on liberty, based on the extent of the illness, the need for treatment and hospitalization, as well as the protection of society. State v. Sanchez, 80 N.M. 438, 457 P.2d 370 (1969), appeal dismissed, 396 U.S. 276, 90 S. Ct. 588, 24 L. Ed. 2d 469 (1970).

And prescription of judicial methods deemed proper legislative function. — The right to prescribe, within constitutional bounds, a judicial method of determining a person to be a lunatic or non compos mentis, and regulating the custody and control of his person and property, is a proper legislative function. State v. Sanchez, 80 N.M. 438, 457 P.2d 370 (1969), appeal dismissed, 396 U.S. 276, 90 S. Ct. 588, 24 L. Ed. 2d 469 (1970).

But strict statutory compliance required. — Cases conducted for the purpose of determining the sanity of a citizen are required to be in strict compliance with statutory requirements. State v. Sanchez, 80 N.M. 438, 457 P.2d 370 (1969), appeal dismissed, 396 U.S. 276, 90 S. Ct. 588, 24 L. Ed. 2d 469 (1970).

Code does not distinguish between private and public mental health facilities in the method of commitment. The procedures are the same. 1988 Op. Att'y Gen. No. 88-02.

Law reviews. — For note, "Statutory Proposals for Expanding Outpatient Treatment in New Mexico," see 2 Nat. Resources J. 153 (1962).

For note, "Implementing the Right to Treatment for Involuntarily Confined Mental Patients: Wyatt v. Stickney," see 3 N.M.L. Rev. 338 (1973).

For note, "Constitutional Problems of Civil Commitment Procedures in New Mexico," see 6 N.M.L. Rev. 113 (1975).

For article, "Disclosure of Medical Information - Criminal Prosecution of Medicaid Fraud in New Mexico," see 9 N.M.L. Rev. 321 (1979).

For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 21 Am. Jur. 2d Criminal Law §§ 49, 794 et seq.

When finding or adjudication as to one's mental condition by official or body not clearly judicial is conclusive evidence or has effect of a judgment as regards legal mental status, 108 A.L.R. 47.

Validity and construction of statutes providing for psychiatric examination of accused to determine mental condition, 32 A.L.R.2d 434.

Validity of conditions imposed when releasing person committed to institution as consequence of acquittal of crime on ground of insanity, 2 A.L.R.4th 934.

43-1-2. Short title.

Chapter 43, Article 1 NMSA 1978 may be cited as the "Mental Health and Developmental Disabilities Code".

History: 1953 Comp., § 34-2A-1, enacted by Laws 1977, ch. 279, § 1; 1989, ch. 128, § 2.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "Chapter 43, Article 1 NMSA 1978" for "Sections 1 through 19 and 21 through 23 of this act".

43-1-3. Definitions.

As used in the Mental Health and Developmental Disabilities Code [Chapter 43, Article 1 NMSA 1978]:

A. "aversive stimuli" means anything which, because it is believed to be unreasonably unpleasant, uncomfortable or distasteful to the client, is administered or done to the client 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 which are not used for purposes of punishment;

B. "client" means any patient who is requesting or receiving mental health services or any person requesting or receiving developmental disabilities services or who is present in a mental health or developmental disabilities facility for the purpose of receiving such services or who has been placed in a mental health or developmental disabilities facility by his parent or guardian or by any court order;

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

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

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

(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 client or others from physical injury; and

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

E. "convulsive treatment" means any form of mental health treatment which depends upon creation of a convulsion by any means, including but not limited to electroconvulsive treatment and insulin coma treatment;

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

G. "department" means the behavioral health services division of the department of health;

H. "developmental disability" means a disability of a person which is attributable to mental retardation, cerebral palsy, autism or neurological dysfunction which requires treatment or habilitation similar to that provided to persons with mental retardation;

I. "evaluation facility" means a community mental health or developmental disability program, a medical facility having psychiatric or developmental disability services available, including the Las Vegas medical center, the Los Lunas hospital and training school or, if none of the foregoing is reasonably available or appropriate, the office of a licensed physician or a certified psychologist, any of which shall be capable of performing a mental status examination adequate to determine the need for involuntary treatment;

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

K. "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;

L. "habilitation" means the process by which professional persons and their staff assist the developmentally disabled client in acquiring and maintaining those skills and behaviors which enable him 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 but is not limited to programs of formal, structured education and treatment;

M. "likelihood of serious harm to oneself" means that it is more likely than not that in the near future the person will attempt to commit suicide or will cause serious bodily harm to himself by violent or other self-destructive means, including but not limited to grave passive neglect;

N. "likelihood of serious harm to others" means that it is more likely than not that in the near future the person 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 person;

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

P. "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;

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

R. "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 purpose of the following:

(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;

S. "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 or supervisory residence or nursing home when the individual resides on the premises;

T. "treatment" means any effort to accomplish a significant change in the mental or emotional condition or behavior of the client; and

U. "division" means the behavioral health services division of the department of health.

History: 1953 Comp., § 34-2A-2, enacted by Laws 1977, ch. 279, § 2; 1978, ch. 161, § 1; 1979, ch. 213, § 1; 1979, ch. 396, § 1; 1989, ch. 128, § 3; 1993, ch. 77, § 231.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, in Subsection I substituted "including the Las Vegas Medical Center" for "the New Mexico state hospital" and added all of the language following "physician"; added present Subsection K; redesignated former Subsections K through O as present Subsections L through P; deleted "as evidenced by behavior causing, attempting or threatening the infliction of serious bodily harm to himself" at the end of present Subsection M; added "but does not mean developmental disability" at the end of present Subsection O; added present Subsection Q;

redesignated former Subsections P through U as present Subsections R through V; and made minor stylistic changes throughout the section.

The 1993 amendment, effective July 1, 1993, substituted "department of health" for "health and environment department" in Subsections G, Q, and U; substituted "shall be capable" for "must be capable" near the end of Subsection I; deleted former Subsection U, defining "residential treatment program for mental disorders"; and redesignated former Subsection V as present Subsection U.

Behavior threatening harm sufficient. — The behavior at issue in Subsections M and N does not have to have caused the requisite harm; behavior threatening the requisite harm is sufficient. State v. Pernell, 92 N.M. 490, 590 P.2d 638 (Ct. App. 1979).

Law reviews. — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Test or criterion of mental condition within contemplation of statute providing for commitment of persons because of mental condition, 158 A.L.R. 1220.

Standard of proof required under statute providing for commitment of sexual offenders or sexual psychopaths, 96 A.L.R.3d 840.

43-1-4. Legal representation of clients.

A. All clients shall be represented by counsel at all proceedings under the code, and shall be entitled to obtain advice of counsel at any time regarding their status under the code.

B. When a client has not retained his own attorney and is unable to do so, the court shall appoint counsel to represent him. When appointing counsel, the court shall give preference to nonprofit organizations offering representation to mentally ill and developmentally disabled persons. When a client is not indigent, he shall be liable for the cost of his legal representation.

History: 1953 Comp., § 34-2A-3, enacted by Laws 1977, ch. 279, § 3; 1978, ch. 161, § 2.

ANNOTATIONS

Meaning of "code". — See 43-1-3C and 43-1-2 NMSA 1978.

Attorney's fees for appointed counsel on appeal. — Upon a finding by the trial court that the client is indigent, an award of attorney's fees for the services of counsel on appeal is proper. State v. Clayton, 95 N.M. 644, 625 P.2d 99 (Ct. App. 1981).

Law reviews. — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53 Am. Jur. 2d Mentally Impaired Persons §§ 3, 24, 35 et seq.

Right to counsel in insanity or incompetency adjudication proceedings, 87 A.L.R.2d 950.

Right of party to have his attorney or physician, or a court reporter, present during his physical or mental examination by a court-appointed expert, 7 A.L.R.3d 881.

Right to notice and hearing prior to revocation of conditional release status of mental patient, 29 A.L.R.4th 394.

57 C.J.S. Mental Health § 31.

43-1-5. Competence.

Neither the fact that a person has been accepted at or admitted to a hospital or institutional facility, nor the receiving of mental health or developmental disability treatment services, shall constitute a sufficient basis for a finding of incompetence or the denial of any right or benefit of whatever nature which he would have otherwise.

History: 1953 Comp., § 34-2A-4, enacted by Laws 1977, ch. 279, § 4.

ANNOTATIONS

Section does not bar consideration of history of hospitalizations along with other evidence, in reaching a conclusion as to a patient's current condition. State v. Pernell, 92 N.M. 490, 590 P.2d 638 (Ct. App. 1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Admissibility and probative force on issue as to mental condition, of evidence that one had been adjudged incompetent or insane, or had been confined in insane asylum, 7 A.L.R. 568, 68 A.L.R. 1309.

43-1-6. Personal rights of residential clients.

All clients who receive residential treatment or habilitation services shall have the rights provided in this section.

A. Subject to restrictions by a physician for good cause, each resident client has the right to receive visitors of his own choosing daily. Hours during which visitors may be received shall be limited only in the interest of effective treatment and the reasonable efficiency of the supervised residential facility and shall be sufficiently flexible to accommodate the individual needs of the resident client and his visitors. Notwithstanding the above, each resident client has the right to receive visits from his

attorney, physician, psychologist, clergyman or social worker in private at any reasonable time, irrespective of visiting hours, provided the visitor shows reasonable cause for visiting at times other than normal visiting hours.

B. Writing material and postage stamps shall be reasonably available for the resident clients' use in writing letters and other communications. Reasonable assistance shall be provided for writing, addressing and posting letters and other documents upon request. The resident client has the right to send and receive sealed and uncensored mail. The resident client has the right to reasonable private access to telephones and, in cases of personal emergencies when other means of communication are not satisfactory, he shall be afforded reasonable use of long distance calls. Provided that for other than mail or telephone calls to a court or an attorney, a physician or certified psychologist may, for good cause, restrict mailing or telephone privileges. A resident client who is indigent shall be furnished such writing, postage and telephone facilities without charge.

C. Each resident client has the right to follow or abstain from the practice of religion. The supervised residential facility shall provide appropriate assistance in this connection including reasonable accommodations for religious worship and transportation to nearby religious services. Clients who do not wish to participate in religious practice shall be free from pressure to do so or to accept religious beliefs.

D. Each resident client has the right to a humane psychological and physical environment. He shall be provided a comfortable bed and adequate changes of linen and reasonable storage space for his personal possessions. Except when curtailed for reason of safety or therapy as documented in his record by his physician, he shall be afforded reasonable privacy in his sleeping and personal hygiene practices.

E. Each resident client shall have reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment.

F. Each resident client has the right to a nourishing, well-balanced, varied and appetizing diet.

G. Each resident client has the right to prompt and adequate medical attention for any physical ailments and shall receive a complete physical examination upon admission and at least once every twelve months thereafter; provided, however, that clients who have received a complete physical examination within two days prior to the current admission shall not receive a complete physical examination unless the physician deems it necessary.

H. All resident clients have the right to a clean, safe, comfortable environment in a structure which complies with generally applicable fire safety requirements.

I. All resident clients have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written order of a licensed physician or by a verbal order, noted promptly in the patient's medical record and signed by the physician within twenty-four hours. Medication shall be administered only by a licensed physician, registered nurse or licensed practical nurse or by a medical or nursing student under the direct supervision of a licensed physician or registered nurse. The attending physician shall be responsible for all medication given or administered to a resident client. Notation of each individual's medication shall be kept in his medical records and shall include a notation by the physician of the behavioral or symptomatic baseline data upon which the medication order was made. The attending physician shall review on a regular basis the drug regimen of each resident client under his care. All prescriptions for psychotropic medications shall be written with a termination date which shall not exceed thirty days. Medication shall not be used as a punishment, for the convenience of staff, as a substitute for programs or in quantities that interfere with the client's treatment or habilitation program.

History: 1953 Comp., § 34-2A-5, enacted by Laws 1977, ch. 279, § 5; 1978, ch. 161, § 3; 1989, ch. 128, § 4.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "client has" for "client shall have" throughout the section, inserted "or certified psychologist" in the fifth sentence of Subsection B, and substituted "twelve months" for "six months" in Subsection G.

Law reviews. — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

For comment, "Mental Health Law - Temporary Detention of 'Voluntary' Patients by Hospital Authorities: Due Process Issues," see 12 N.M.L. Rev. 791 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guaranty, 74 A.L.R.4th 1099.

Right of state prison authorities to administer neuroleptic or antipsychotic drugs to prisoner without his or her consent - state cases, 75 A.L.R.4th 1124.

Validity, construction, application and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997-1997j, 93 A.L.R. Fed. 706.

43-1-7. Right to treatment.

Each resident client receiving mental health services shall have the right to prompt treatment pursuant to an individualized treatment plan and consistent with the least drastic means principle.

History: 1953 Comp., § 34-2A-6, enacted by Laws 1977, ch. 279, § 6.

ANNOTATIONS

Law reviews. — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

43-1-8. Right to habilitation.

Each resident client receiving developmental disabilities services shall have the right to prompt habilitation services pursuant to an individualized habilitation plan and consistent with the least drastic means principle.

History: 1953 Comp., § 34-2A-7, enacted by Laws 1977, ch. 279, § 7.

43-1-9. Individualized treatment or habilitation plans.

A. An individualized treatment or habilitation plan shall be prepared within fourteen days of a client's admission to residential treatment or services.

B. Each client shall, to the maximum extent possible, be involved in the preparation of his own individualized treatment or habilitation plan.

C. Each individualized treatment or habilitation plan shall include:

(1) a statement of the nature of the specific problem and the specific needs of the client;

(2) a statement of the least restrictive conditions necessary to achieve the purposes of treatment or habilitation;

(3) a description of intermediate and long-range goals, with the projected timetable for their attainment;

(4) a statement and rationale for the plan of treatment or habilitation for achieving these intermediate and long-range goals;

(5) specification of staff responsibility and a description of the proposed staff involvement with the client in order to attain these goals; and

(6) criteria for release to less restrictive settings for treatment or habilitation, criteria for discharge and a projected date for discharge.

D. A treatment or habilitation plan for resident clients shall include:

(1) mental status examination;

(2) intellectual function assessment;

(3) psychological assessment, which may include the use of psychological testing;

(4) educational assessment;

(5) vocational assessment;

(6) social assessment;

(7) medication assessment; and

(8) physical assessment.

E. The individualized treatment or habilitation plan shall be available upon request to the following persons: the client; the client's attorney; any mental health or developmental disabilities professional designated by the client; and the client's guardian or treatment guardian if one has been appointed. The client's progress in attaining the goals and objectives set forth in his individualized treatment or habilitation plan shall be monitored and noted in his records, and revisions in the plan may be made as circumstances require; provided that the persons authorized by this subsection to have access to the individualized plan shall be informed of major changes and shall have the opportunity to participate in such decision. Nothing in this subsection shall require disclosure of information to a client or to his parent when the attending physician or certified psychologist believes that disclosure of that particular information would be damaging to the client and so records in the client's medical record.

History: 1953 Comp., § 34-2A-8, enacted by Laws 1977, ch. 279, § 8; 1989, ch. 128, § 5; 1993, ch. 77, § 232.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, added present Subsection D; redesignated former Subsection D as present Subsection E; inserted "or certified psychologist" in the last sentence of present Subsection E; and made minor stylistic changes throughout the section.

The 1993 amendment, effective July 1, 1993, deleted "the client's parent if the client is a minor and the parent has custody of the client" following "the client" in the first sentence of Subsection E.

Law reviews. — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guaranty, 74 A.L.R.4th 1099.

43-1-10. Emergency mental health evaluation and care.

A. A peace officer may detain and transport a person for emergency mental health evaluation and care in the absence of a legally valid order from the court only if:

(1) the person is otherwise subject to lawful arrest;

(2) the peace officer has reasonable grounds to believe the person has just attempted suicide;

(3) the peace officer, based upon his own observation and investigation, has reasonable grounds to believe that the person, as a result of a mental disorder, presents a likelihood of serious harm to himself or others and that immediate detention is necessary to prevent such harm. Immediately upon arrival at the evaluation facility, the peace officer shall be interviewed by the admitting physician or his designee; or

(4) a licensed physician or a certified psychologist has certified that the person, as a result of a mental disorder, presents a likelihood of serious harm to himself or others and that immediate detention is necessary to prevent such harm. Such certification shall constitute authority to transport the person.

B. An emergency evaluation under this section shall be accomplished upon the request of a peace officer, or jail or detention facility administrator or his designee, or upon the certification of a licensed physician or certified psychologist as described in Subsection C of this section. A court order is not required under this section. If an application is made to a court, the court's power to act in furtherance of an emergency admission shall be limited to ordering that:

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

(2) a peace officer transport the person to an evaluation facility.

C. An evaluation facility may accept for an emergency based admission any person when a licensed physician or certified psychologist certifies that such person, as a result of a mental disorder, presents a likelihood of serious harm to himself or others and that immediate detention is necessary to prevent such harm. Such certification shall constitute authority to transport the person.

D. Any person detained under this section shall, whenever possible, be taken immediately to an evaluation facility. Detention facilities shall be used as temporary shelter for such persons only in cases of extreme emergency for protective custody, and

no person taken into custody under the provisions of the code shall remain in a detention facility longer than necessary and in no case longer than twenty-four hours. If use of a detention facility is necessary, the proposed client:

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

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

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

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

E. The admitting physician or certified psychologist shall evaluate whether reasonable grounds exist to detain the proposed client for evaluation and treatment, and, if such reasonable grounds are found, the proposed client shall be detained. If the admitting physician or certified psychologist determines that reasonable grounds do not exist to detain the client for evaluation and treatment, the client shall not be detained.

F. Upon arrival at an evaluation facility, the proposed client shall be informed orally and in writing by the evaluation facility of the purpose and possible consequences of the proceedings, the allegations in the petition, his right to a hearing within seven days, his right to counsel and his right to communicate with an attorney and an independent mental health professional of his own choosing, and shall have the right to receive necessary and appropriate treatment.

G. A peace officer who transports any client to an evaluation facility under the provisions of this section shall not require a court order to be reimbursed by the referring county.

History: 1953 Comp., § 34-2A-9, enacted by Laws 1977, ch. 279, § 9; 1978, ch. 161, § 4; 1979, ch. 396, § 2; 1989, ch. 128, § 6.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted the present catchline for "Residential mental health treatment of adults - involuntary - emergency"; in Subsection A inserted "and transport" in the introductory paragraph, inserted "likelihood of" in the first sentence of Paragraph (3), and added Paragraph (4); added present Subsection B; redesignated former Subsections B through E as present Subsections C through F; inserted "or certified psychologist" in present Subsections C and E; in present Subsection C substituted "for an emergency based admission" for "on an emergency basis" in the first sentence and added the second sentence; and added Subsection G.

Meaning of "code". — See 43-1-3C and 43-1-2 NMSA 1978.

Protection against unreasonable seizure. — To the extent that the involuntary seizure of a person for an emergency mental health evaluation mirrors a criminal arrest, the Fourth Amendment's protection against unreasonable searches and seizures more specifically applies to the involuntary seizure for emergency mental health purposes than the Fourteenth Amendment's general substantive and procedural due process guarantees. Pino v. Higgs, 75 F.3d 1461 (10th Cir. 1996).

Probable cause analysis applies. — In the criminal arrest context, a Fourth Amendment seizure is reasonable if it is based on "probable cause"; because similar underlying interests arise in the context of a detention for an emergency health evaluation, the "probable cause" doctrine applies in determining the validity of the government's seizure of a person for mental health reasons. Pino v. Higgs, 75 F.3d 1461 (10th Cir. 1996).

Twenty-four hour detention limitation. — The provisions of Subsection D are clear and unambiguous - mentally ill persons being held in detention facilities pending transfer to a proper evaluation facility may not be so confined for a period longer than twenty-four hours. By including this specific time limitation and failing to make exceptions for weekends and legal holidays, the legislature intended the twenty-four hour limitation to apply in all instances, including weekends and legal holidays. 1990 Op. Att'y Gen. No. 90-15.

Requirements for criminal bail do not apply as basis for considering stay of commitment order. State v. Pernell, 92 N.M. 490, 590 P.2d 638 (Ct. App. 1979).

Court may consider circumstances. — In considering the question of a release during commitment proceedings, the trial court may consider the circumstances alleged, and after ordering a commitment may consider the circumstances as well as the length of the commitment ordered. State v. Pernell, 92 N.M. 490, 590 P.2d 638 (Ct. App. 1979).

"Right" to stay of commitment order is not absolute. State v. Pernell, 92 N.M. 490, 590 P.2d 638 (Ct. App. 1979).

Appellate review for abuse of discretion. — Appellate review is on the basis of whether the trial court's order in connection with a stay was an abuse of discretion. State v. Pernell, 92 N.M. 490, 590 P.2d 638 (Ct. App. 1979).

Private physician's 42 U.S.C. 1983 liability. — A private physician who certifies a person for purposes of Subsection A is not subject to Section 1983 liability simply because a state police officer responds by transporting or detaining that person. Pino v. Higgs, 75 F.3d 1461 (10th Cir. 1996).

Law reviews. — For comment, "Mental Health Law - Temporary Detention of 'Voluntary' Patients by Hospital Authorities: Due Process Issues," see 12 N.M.L. Rev. 791 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53 Am. Jur. 2d Mentally Impaired Persons § 3 et seq.

Modern status of rules as to standard of proof required in civil commitment proceedings, 97 A.L.R.3d 780.

Necessity and sufficiency of statements informing one under investigation for involuntary commitment of right to remain silent, 23 A.L.R.4th 563.

57 C.J.S. Mental Health § 21 et seq.

43-1-11. Commitment of adults for thirty-day period.

A. Every adult client involuntarily admitted to an evaluation facility pursuant to Section 43-1-10 NMSA 1978 has the right to a hearing within seven days of admission unless waived after consultation with counsel. If the division, physician or evaluation facility decides to seek commitment of the client for evaluation and treatment, a petition shall be filed with the court within five days of admission requesting the commitment. The petition shall include a description of the specific behavior or symptoms of the client which evidence a likelihood of serious harm to the client or others and shall include an initial screening report by the evaluating physician individually or with the assistance of a mental health professional or, if a physician is not available, by a mental health professional acceptable to the court. The petition shall list the prospective witnesses for commitment and a summary of the matters to which they will testify. Copies of the petition shall be served on the client and the client's attorney.

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

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

(1) as a result of a mental disorder, the client presents a likelihood of serious harm to himself or others;

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

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

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

E. 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 the adult for a thirty-day period of evaluation and treatment. The applicant may present to the district attorney any medical reports or other evidence immediately available to him, but shall not be required to obtain a medical report or other particular evidence in order to make such petition. 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 court may issue a summons to the proposed client to appear at the time designated for a hearing which shall be not less than five days from the date the petition is served. If the proposed client is summoned and fails to appear at the proposed time and upon a finding of the court that the proposed client has failed to appear, or appears without having been evaluated, the court may order the proposed client to be detained for evaluation as provided for in Subsection C of Section 43-1-10 NMSA 1978.

F. Any hearing provided for pursuant to Subsection E of this section shall be conducted in conformance with the requirements of Subsection B of this section.

History: 1953 Comp., § 34-2A-10, enacted by Laws 1977, ch. 279, § 10; 1978, ch. 161, § 5; 1979, ch. 396, § 3; 1989, ch. 128, § 7.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted the present language of Subsection D for "If the court finds that the client meets the criteria for commitment set forth in Subsection C of this section but does not require residential care, it may order the client to undergo such nonresidential treatment as may be appropriate and necessary", and made minor stylistic changes throughout the section.

Civil commitment interests generally. — In the civil commitment situation, the interests of the state are pitted against restrictions on the liberty of the individual. The language of 34-2-5, 1953 Comp. (now repealed) indicated that the aim of the state is first to protect society from the mentally ill, a manifestation of the state's police power, and also to protect the mentally ill from themselves, while providing care and treatment. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975).

Nature of commitment process. — The civil commitment process, though technically a civil proceeding, has elements of both criminal and civil proceedings, with some of the

rights guaranteed to criminal defendants applicable to defendants in commitment hearings. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975).

Compliance with due process mandated. — Compliance with due process requirements, as far as the burden of proof in commitment proceedings for the mentally ill is concerned, is mandated. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975).

Proof beyond reasonable doubt too stringent. — Although the highest standard of proof would be desirable, in the civil commitment process, proof beyond a reasonable doubt is too stringent a standard to be applied. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975).

Rather, proof that is clear, cogent and convincing is highest standard of proof possible at the current state of the medical arts. For evidence to be clear and convincing, it must instantly tilt the scales in the affirmative when weighed against the evidence in opposition and the fact finder's mind must be left with an abiding conviction that the evidence is true. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975).

The state's interests are sufficient and the realities of treatment are adequate to justify subjecting individuals to possible commitment based on a "clear and convincing" standard of proof. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975).

And preponderance of evidence is definitely constitutionally unacceptable for civil commitment hearings, in view of the fact that fundamental liberties of the patient are so often at stake. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975)(decided under former law).

Only district attorneys may file petitions. — A private attorney may not petition a court for involuntary commitment of an adult to a mental health facility. Only district attorneys may file petitions for involuntary commitment of adults. 1988 Op. Att'y Gen. No. 88-02.

The seven-day hearing requirement was constitutional. — The seven-day time limitation within this section is not constitutionally required; moreover, the 14-day delay in this case did not violate the respondent's due process rights. New Mexico Dep't of Health v. Compton, 2001-NMSC-032, 131 N.M. 204, 34 P.3d 593.

Hearing may be postponed for good cause. — Seven-day hearing requirement in Subsection A is subject to postponement for good cause and should be narrowly prescribed and allowed only for so long as necessity demands; a determination of good cause should consider: (1) any objection by the client; (2) the client's substantial interest in not being mistakenly confined against his or her will; and (3) the legislature's intent to require a prompt hearing on a thirty-day commitment petition. New Mexico Dep't of Health v. Compton, 2001-NMSC-032, 131 N.M. 204, 34 P.3d 593.

Hearing deadline violation remedy. — In light of the urgent need for treatment in civil commitment cases, the potentially harmful consequences to either the individual or to others for an improper release, the express provision of a statutory remedy, and the availability of the alternative remedy of habeas corpus, the legislature did not intend dismissal of the petition as a proper remedy for a violation of the time requirements in this section. New Mexico Dep't of Health v. Compton, 2001-NMSC-032, 131 N.M. 204, 34 P.3d 593.

Hearing to be set with time for counsel to prepare case. — To ensure the effectiveness of the right to counsel guaranteed by Subsection B, the hearing required by Subsection A to be held within seven days must be set so that counsel has sufficient time to prepare his client's case; even if the hearing must be held beyond the seven-day limit. State v. Bunnell, 100 N.M. 242, 668 P.2d 1119 (Ct. App. 1983).

Need for preliminary hearing if hearing not within seven days. — If the hearing required by Subsection A cannot be held within seven days because of a client's counsel's need of time to prepare the case, the trial court must hold a preliminary hearing to determine whether the state can present sufficient evidence to justify holding the client beyond the seven-day emergency period allowed under 43-1-10 NMSA 1978. State v. Bunnell, 100 N.M. 242, 668 P.2d 1119 (Ct. App. 1983).

No requirement that persons making screening report testify at hearing. — There is no implicit requirement that the person or persons making the initial screening report required by Subsection A testify at the hearing. State v. Dean, 94 N.M. 45, 607 P.2d 132 (Ct. App.), cert. denied, 94 N.M. 628, 614 P.2d 545 (1980).

Right to appeal commitment. — A person involuntarily committed to a mental hospital under this section has a right to appeal under N.M. Const., art. VI, § 2, even though no appeal is provided for by statute. State v. Pernell, 92 N.M. 490, 590 P.2d 638 (Ct. App. 1979).

Entitlement to independent mental health professional. — The language of Subsections B and D of 43-1-12 NMSA 1978, when read along with the provisions of this section, clearly evinces a legislative intent to accord to a client the right to the assistance of an independent mental health professional. Dominguez v. State, 110 N.M. 618, 798 P.2d 219 (Ct. App. 1990).

Effective treatment to be afforded. — Mental illness is not a crime, and thus patients must be afforded some type of effective treatment since their liberty is abridged. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975).

Mere custodial care is not sufficient. In re Valdez, 88 N.M. 338, 540 P.2d 818 (1975).

Law reviews. — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

For comment, "Mental Health Law - Temporary Detention of 'Voluntary' Patients by Hospital Authorities: Due Process Issues," see 12 N.M.L. Rev. 791 (1982).

For article, "The Guilty But Mentally Ill Verdict and Plea in New Mexico," see 13 N.M.L. Rev. 99 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Test or criterion of mental condition within contemplation of statute providing for commitment of persons because of mental condition, 158 A.L.R. 1220.

Modern status of rules as to standard of proof required in civil commitment proceedings, 97 A.L.R.3d 780.

Necessity and sufficiency of statements informing one under investigation for involuntary commitment of right to remain silent, 23 A.L.R.4th 563.

43-1-12. Extended commitment of adults.

A. The department, physician or evaluation facility may file a petition for extended commitment within twenty-one days after the beginning of the thirty-day commitment. The petition must explain the necessity for extended commitment, specify the treatment which has been provided during the evaluation, and must include an individual treatment plan for the proposed commitment period. The petition shall also list the prospective witnesses for commitment and a summary of the matters to which they will testify. Copies of the petition shall be served on the client and the client's attorney.

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

C. If, at the conclusion of the hearing, the fact finder determines by clear and convincing evidence that the client presents a likelihood of harm to himself or others, that extended treatment is likely to improve the client's condition and that the proposed extended commitment is consistent with the least drastic means principle, the court shall order commitment of the client for a period not to exceed six months, except that when the client has been committed for two consecutive periods of commitment, any commitment commencing thereafter shall not exceed one year. At the expiration of the commitment order the client may be detained only after a new commitment hearing, unless waived after consultation with the client's attorney, and entry of a new order for commitment not to exceed six months.

D. Any client involuntarily referred for treatment pursuant to this section shall be entitled to a reexamination of the order for his involuntary referral for treatment on his own petition, or that of his legal guardian, parent, spouse, relative or friend, to the district court of the county in which he resides or is detained. Upon receipt of the

petition, the court shall conduct a proceeding in accordance with this section except that such proceeding shall not be required to be conducted if the petition is filed sooner than sixty days after the issuance of the order for involuntary referral for treatment or sooner than sixty days after the filing of a previous petition under this subsection.

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

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

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

History: 1953 Comp., § 34-2A-11, enacted by Laws 1977, ch. 279, § 11; 1978, ch. 161, § 6.

ANNOTATIONS

Meaning of "code". — See 43-1-3C and 43-1-2 NMSA 1978.

Entitlement to independent mental health professional. — The language of Subsections B and D, when read along with the provisions of 43-1-11 NMSA 1978, clearly evinces a legislative intent to accord to a client the right to the assistance of an independent mental health professional. Dominguez v. State, 110 N.M. 618, 798 P.2d 219 (Ct. App. 1990).

Payment of cost for independent mental health professional. — The state is required to defray the reasonable cost of providing an independent mental health professional for an indigent client. Dominguez v. State, 110 N.M. 618, 798 P.2d 219 (Ct. App. 1990).

Law reviews. — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

For article, "Habeas Corpus in New Mexico," see 11 N.M.L. Rev. 291 (1981).

For comment, "Mental Health Law - Temporary Detention of 'Voluntary' Patients by Hospital Authorities: Due Process Issues," see 12 N.M.L. Rev. 791 (1982).

For article, "The Guilty But Mentally Ill Verdict and Plea in New Mexico," see 13 N.M.L. Rev. 99 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Standard of proof required under statute providing for commitment of sexual offenders or sexual psychopaths, 96 A.L.R.3d 840.

Modern status of rules as to standard of proof required in civil commitment proceedings, 97 A.L.R.3d 780.

43-1-13. Involuntary commitment of developmentally disabled adults to residential care.

A. A guardian, appointed pursuant to the Probate Code [Chapter 45 NMSA 1978], may file an application with the department or an evaluation facility seeking residential habilitation services for his ward. The application shall set forth the basis for the guardian's belief that residential habilitation is necessary and shall include a copy of pertinent medical and psychological evaluations which have been completed.

B. Upon receipt of an application filed according to Subsection A of this section, the department or evaluation facility may accept the client for a period of evaluation and treatment not to exceed fourteen days. An evaluation facility shall prepare an individual habilitation plan which shall be consistent with the least drastic means principle.

C. If the habilitation plan recommends residential services, the department or evaluation facility shall file with the court a petition for extended residential placement. Upon receipt of the petition, the court shall appoint an attorney to represent the client. Notice of the hearing scheduled on the petition and a copy of the habilitation plan shall be given to the client, his attorney and his guardian. The petition shall contain a list of the names and addresses of proposed witnesses.

D. At the hearing on the petition, the proposed client shall be represented by counsel, and shall have the right to present evidence on his behalf, including testimony of a developmental disability professional of his choosing, to cross-examine witnesses, to be present at the hearing, and to trial by a six-person jury, if requested. A complete record of the hearing shall be made. There shall be a right to an expeditious appeal.

E. The court shall order residential placement of the proposed client if it is established by clear and convincing evidence that the proposed client has a developmental disability which creates an imminent likelihood of serious harm to himself or others or the person is so greatly disabled that residential services would be in his best interest and that such residential placement is, in his case, the least drastic means. The court's order of residential placement shall be for a period not to exceed six months. At the expiration of the commitment order, the client may be detained only after a new commitment hearing, unless waived after consultation with the client's attorney, and entry of a new order for commitment not to exceed six months.

F. The court shall order that placement which is least restrictive to the client, and may order attendance and participation as a nonresident in habilitation programs conducted at residential or nonresidential facilities.

G. Any client involuntarily referred for habilitation treatment shall be entitled to a reexamination of the order for his involuntary referral for habilitation and treatment on

his own petition, or that of his legal guardian, parent, spouse, relative or friend, to the district court of the county in which he resides or is detained. Upon receipt of the petition, the court shall conduct or cause to be conducted by a special commissioner a proceeding in accordance with this section except that such proceeding shall not be required to be conducted if the petition is filed sooner than sixty days after the issuance of the order for involuntary referral for habilitation and treatment or sooner than sixty days after the filing of a previous petition under this subsection.

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

I. No developmental disabilities treatment or habilitation facility is required to detain, treat or provide services to a client when the client does not appear to require such detention, treatment or habilitation.

History: 1953 Comp., § 34-2A-12, enacted by Laws 1977, ch. 279, § 12; 1978, ch. 161, § 7.

ANNOTATIONS

Cross references. — For Office of Guardianship Act, see 28-16B-1 NMSA 1978.

Petition for court order provides adversary hearing. — A petition for a court order under this section does not involve a judicial review of administrative action. Rather it provides for an adversary hearing between the health and environment department (now the department of health) and the patient. State v. Clayton, 95 N.M. 644, 625 P.2d 99 (Ct. App. 1981).

Court may order specific placement. — Subsections E and F authorize the district court to order the specific placement of an individual client within an adequate habilitation program. State v. Clayton, 95 N.M. 644, 625 P.2d 99 (Ct. App. 1981).

Commitment facility as site for hearing. — Absent a showing by the "developmentally disabled" person that his substantive rights have in any way been abridged if his involuntary commitment hearing is not held at the county seat, the district court is not precluded from adopting the practice of holding such hearings at the commitment facility when, in its discretion, such practice would better serve the public convenience. 1979 Op. Att'y Gen. No. 79-20.

Law reviews. — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

For article, "Habeas Corpus in New Mexico," see 11 N.M.L. Rev. 291 (1981).

For comment, "Mental Health Law - Temporary Detention of 'Voluntary' Patients by Hospital Authorities: Due Process Issues," see 12 N.M.L. Rev. 791 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Modern status of rules as to standard of proof required in civil commitment proceedings, 97 A.L.R.3d 780.

Necessity and sufficiency of statements informing one under investigation for involuntary commitment of right to remain silent, 23 A.L.R.4th 563.

43-1-14. Voluntary admission to residential treatment or habilitation.

A. Consistent with the provisions of Section 43-1-16 NMSA 1978, any person may voluntarily present himself for admission to residential treatment or habilitation.

B. Nothing in this section shall be construed as depriving voluntary clients of any right given to involuntary clients.

C. Any client voluntarily admitted to residential treatment or habilitation shall have the right to immediate discharge from the residential facility upon request, unless the director of the facility or a physician determines that the client requires continued confinement and meets the criteria for involuntary residential treatment or habilitation under the code. If the director or physician so determines they [he] shall, on the first business day following the client's request for release, request the district attorney to initiate commitment proceedings under the code. The client has a right to a hearing on his confinement within five days of his request for release.

History: 1953 Comp., § 34-2A-13, enacted by Laws 1977, ch. 279, § 13; 1978, ch. 161, § 8.

ANNOTATIONS

Meaning of "code". — See 43-1-3C and 43-1-2 NMSA 1978.

Section 43-1-16 NMSA 1978, referred to in Subsection A, was repealed in 1993. For present comparable provisions, see 32A-6-12 NMSA 1978.

Law reviews. — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

For comment, "Mental Health Law - Temporary Detention of 'Voluntary' Patients by Hospital Authorities: Due Process Issues," see 12 N.M.L. Rev. 791 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53 Am. Jur. 2d Mentally Impaired Persons §§ 3, 5, 152.

43-1-15. Consent to treatment; adult clients.

A. No psychotropic medication, psychosurgery, convulsive therapy, experimental treatment or behavior modification program involving aversive stimuli or substantial deprivations shall be administered to any client without proper consent. If the client is capable of understanding the proposed nature of treatment and its consequences and is capable of informed consent, his consent shall be obtained before the treatment is performed. A client shall not be presumed to be incapable of giving consent for administration of psychotropic medications solely because he has been involuntarily committed to a treatment facility or is awaiting a hearing on whether he should be involuntarily committed to a treatment facility.

B. If the mental health or developmental disabilities professional or physician who is proposing this or any other course of treatment or any other interested person believes that the client is incapable of informed consent, he may petition the court for the appointment of a treatment guardian to make a substitute decision for the client. This petition shall be served on the client and his attorney. A hearing on the petition shall be held within three court days. At the hearing, the client shall be represented by counsel and shall have the right to be present, to present witnesses and to cross-examine opposing witnesses. If after the hearing the court finds that the client is not capable of making his own treatment decisions, the court may order the appointment of a treatment guardian. The treatment guardian shall make a decision on behalf of the client whether to accept treatment, depending on whether the treatment appears to be in the client's best interest and is the least drastic means for accomplishing the treatment objective. In making his decision, the treatment guardian shall consult with the client and consider his expressed opinions, if any, even if those opinions do not constitute valid consent or rejection of treatment. He shall give consideration to any previous decisions made by the client in similar circumstances when the client was able to make treatment decisions. If a client, who is not a resident of a medical facility and for whom a treatment guardian has been appointed, refuses to comply with the decision of the treatment guardian, the treatment guardian may apply to the court for an enforcement order. Such an order may authorize any peace officer to take the client into custody and to transport him to an evaluation facility and may authorize the facility forcibly to administer treatment. The treatment guardian shall consult with the physician or other professional who is proposing treatment, the client's attorney and interested friends or relatives of the client as he deems appropriate in making his decision. If the client, physician or other professional wishes to appeal the decision of the treatment guardian, he may do so, filing an appeal with the court within three calendar days of receiving notice of the treatment guardian's decision. In such a decision, the client shall be represented by counsel. The court may overrule the treatment guardian's decision if it finds that decision to be against the best interest of the client.

C. When the court appoints a treatment guardian, it shall specify the length of time during which he may exercise his powers, up to a maximum period of one year. If at the end of his guardianship period the treatment guardian believes that the client is still incapable of making his own treatment decisions, he shall petition the court for reappointment or for appointment of a new treatment guardian. The guardianship shall be extended or a new guardian shall be appointed only if the court finds the client is, at

the time of the hearing, incapable of understanding and expressing an opinion regarding treatment decisions. The client shall be represented by counsel and shall have the right to be present and present evidence at all such hearings.

D. If during a period of a treatment guardian's power the treatment guardian, the client, the treatment provider, a member of the client's family or the client's attorney believes that the client has regained competence to make his own treatment decisions, he shall petition the court for a termination of the treatment guardianship. If the court finds the client is capable of making his own treatment decisions, it shall terminate the power of the treatment guardian and restore to the client the power to make his own treatment decisions.

E. A treatment guardian shall only have those powers enumerated in the code, unless the treatment guardian has also been appointed a guardian under the Uniform Probate Code [Chapter 45 NMSA 1978] pursuant to provisions of Section 45-5-303 NMSA 1978. Any person carrying out the duties of a treatment guardian as provided in this section shall not be liable in any civil or criminal action so long as the treatment guardian is not acting in bad faith or with malicious purpose.

F. If a licensed physician believes that the administration of psychotropic medication is necessary to protect the client from serious harm which would occur while the provisions of Subsection B of this section are being satisfied, he may administer the medication on an emergency basis. When medication is administered to a client on an emergency basis, the treating physician shall prepare and place in the client's medical records a report explaining the nature of the emergency and the reason that no treatment less drastic than administration of psychotropic medication without proper consent would have protected the client from serious harm. Upon the sworn application of the treating physician, the court may issue an order permitting the treating physician to continue to administer psychotropic medication until a treatment guardian is appointed, if the requirements of Subsection B of this section for appointment of a treatment guardian are in the process of being satisfied in a timely manner.

History: 1953 Comp., § 34-2A-14, enacted by Laws 1977, ch. 279, § 14; 1978, ch. 161, § 9; 1979, ch. 140, § 1; 1989, ch. 128, § 8; 1993, ch. 240, § 8; 1993, ch. 249, § 8; 1999, ch. 239, § 1.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, in Subsection A substituted "informed consent" for "expressing a decision regarding its acceptance or refusal" in the second sentence; in Subsection B substituted "client" for "patient" in the second sentence, deleted "to be represented by counsel" following "present," in the fourth sentence, and added the present ninth and tenth sentences; substituted "client" for "patient" in Subsection D; substituted "the code" for "this code" in Subsection E; and made minor stylistic changes throughout the section.

1993 amendments. — Identical amendments to this section were enacted by Laws 1993, ch. 240, § 8 and Laws 1993, ch. 249, § 8, both effective June 18, 1993, which added the second sentence of Subsection E. The section is set out above as amended by Laws 1993, ch. 249, § 8. See 12-1-8 NMSA 1978.

The 1999 amendment, effective April 7, 1999, in Subsection A inserted "psychotropic medication" in the first sentence and added the third sentence, and added the third sentence in Subsection F.

Meaning of "code". — See 43-1-3C and 43-1-2 NMSA 1978 and notes thereto.

Burden of proof. — The burden of proof in cases seeking to appoint a treatment guardian is on the party seeking to have the guardianship approved, and the moving party must establish such need by clear and convincing evidence. Sanders v. New Mexico Health & Env't Dep't, 108 N.M. 434, 773 P.2d 1241 (Ct. App. 1989).

Subsection D requires that the petitioner make a prima facie showing that he is capable of making informed treatment decisions in any action initiated by him seeking to terminate the appointment of a treatment guardianship during the period of the existing guardianship. To establish a prima facie case petitioner is required to establish that he is capable of understanding the proposed treatment and its consequences and capable of expressing a decision thereon. Sanders v. New Mexico Health & Env't Dep't, 108 N.M. 434, 773 P.2d 1241 (Ct. App. 1989).

Hearing postponement permissible. — Where a patient's hearing on the petition for a treatment guardian was delayed one week due to the judge's illness, the computed delay of five days did not substantially interfere with the patient's right to prompt treatment; good cause existed, and the patient's liberty interest was not implicated. New Mexico Dep't of Health v. Compton, 2001-NMSC-032, 131 N.M. 204, 34 P.3d 593.

Hearing deadline violation remedy. — In light of the urgent need for treatment in civil commitment cases, the potentially harmful consequences to either the individual or to others for an improper release, the express provision of a statutory remedy, the legislature did not intend dismissal of the petition as a proper remedy for a violation of the time requirements in this section. New Mexico Dep't of Health v. Compton, 2001-NMSC-032, 131 N.M. 204, 34 P.3d 593.

Law reviews. — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Nonconsensual treatment of involuntarily committed mentally ill persons with neuroleptic or antipsychotic drugs as violative of state constitutional guaranty, 74 A.L.R.4th 1099.

43-1-16 to 43-1-18. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 77, § 234F repeals 43-1-16, and 43-1-16.1 to 43-1-18 NMSA 1978, as amended by Laws 1989, ch. 128, § 9, enacted by Laws 1979, ch. 213, § 3, amended by Laws 1978, ch. 161, § 11, and enacted by Laws 1977, ch. 279, § 17, respectively, relating to treatment of minors and right to education, effective July 1, 1993. For provisions of former sections, see 1989 Replacement Pamphlet. For present comparable provisons, see 32A-6-1 to 32A-6-21 NMSA 1978.

43-1-19. Disclosure of information.

A. Except as otherwise provided in the code, no person shall, without the authorization of the client, disclose or transmit any confidential information from which a person well acquainted with the client might recognize the client as the described person, or any code, number or other means that can be used to match the client with confidential information regarding him.

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

(1) when the request is from a mental health or developmental disability professional or from an employee or trainee working with mentally disordered or developmentally disabled persons, to the extent their practice, employment or training on behalf of the client requires that they have access to such information;

(2) when such disclosure is necessary to protect against a clear and substantial risk of imminent serious physical injury or death inflicted by the client on himself or another;

(3) when the disclosure of such information is to the primary caregiver of the client and the disclosure is only of information necessary for the continuity of the client's treatment in the judgment of the treating physician or certified psychologist who discloses the information; or

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

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

(1) is in writing and signed; and

(2) contains a statement of the client's right to examine and copy the information to be disclosed, the name or title of the proposed recipient of the information and a description of the use that may be made of the information.

D. The client has a right of access to confidential information about himself and has the right to make copies of any information and to submit clarifying or correcting statements and other documentation of reasonable length for inclusion with the confidential information. The statements and other documentation shall be kept with the relevant confidential information, shall accompany it in the event of disclosure and shall be governed by the provisions of this section to the extent they contain confidential information. Nothing in this subsection shall prohibit the denial of access to such records when a physician or other mental health or developmental disabilities professional believes and notes in the client's medical records that such disclosure would not be in the best interests of the client. In any such case, the client has the right to petition the court for an order granting such access.

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

F. Information concerning a client disclosed under this section shall not be released to any other person, agency or governmental entity or placed in files or computerized data banks accessible to any persons not otherwise authorized to obtain information under this section.

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

History: 1953 Comp., § 34-2A-18, enacted by Laws 1977, ch. 279, § 18; 1978, ch. 161, § 12; 1979, ch. 140, § 2; 1989, ch. 128, § 10; 1993, ch. 77, § 233; 1998, ch. 32, § 2.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "the code" for "this code" in Subsections A and G; in Subsection B added present Paragraph (4) and redesignated former Paragraph (4) as present Paragraph (5); and made minor stylistic changes throughout the section.

The 1993 amendment, effective July 1, 1993, deleted former Subsection B(3), which read "when the disclosure of such information to the parent or the legal guardian is essential for the treatment of the minor", and redesignated former Paragraphs (4) and (5) of Subsection B as present Paragraphs (3) and (4).

The 1998 amendment substituted "that" for "which" preceding "may" in Paragraph C(2), and deleted Subsection H. Laws 1998, ch. 32 contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Severability clauses. — Laws 1993, ch. 77, § 235 provides for the severability of the act if any part or application thereof is held invalid.

Meaning of "code". — See 43-1-3C and 43-1-2 NMSA 1978.

Law reviews. — For article, "Disclosure of Medical Information - Criminal Prosecution of Medicaid Fraud in New Mexico," see 9 N.M.L. Rev. 321 (1979).

For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

43-1-20. Special commissioner.

The court may conduct the proceedings required by this code, or may, by general or special order, appoint a special commissioner to do so. The special commissioner must be a licensed attorney. Upon conclusion of the hearing the special commissioner shall file his findings and recommendations with the court promptly.

History: 1953 Comp., § 34-2A-19, enacted by Laws 1977, ch. 279, § 19.

ANNOTATIONS

Meaning of "code". — See 43-1-3C and 43-1-2 NMSA 1978.

Law reviews. — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

43-1-21. Convalescent status; rehospitalization.

A. The head of a residential facility may release an improved involuntary client on convalescent status when he believes that such release is in the best interests of the client. Release on convalescent status shall include provisions for continuing responsibility to and of the hospital. Prior to the expiration of the client's commitment period, the director of the residential facility shall re-examine the facts relating to the commitment of the client on convalescent status and, if he determines that in view of the condition of the client, commitment is no longer appropriate he shall discharge the client.

B. Prior to such discharge, the director of the residential facility from which the client is given convalescent status may at any time readmit the client. If there is reason to

believe that the client requires rehospitalization, the director of the residential facility may issue an order for the immediate return of the client. Such an order, if not voluntarily complied with, shall, upon order by a judge of the district court of the county in which the client is resident or present, authorize any health or police officer to take the client into custody and transport him to the residential facility.

History: 1953 Comp., § 34-2A-20, enacted by Laws 1977, ch. 279, § 21.

ANNOTATIONS

Hospital maintains and has jurisdiction of every patient who is released as an improved patient on convalescent status as long as he is within the jurisdiction of the state of New Mexico, and, if said patient refuses to return when ordered by the hospital, the hospital, after having said order endorsed by the judge of the district court of the county in which the patient is resident or present, can compel the patient to return to the hospital, if he can be located. 1953-54 Op. Att'y Gen. No. 54-5901 (opinion rendered under former law).

Until removed into another jurisdiction. — As soon as a patient removes himself from the jurisdiction of the state of New Mexico and goes into another jurisdiction, the hospital loses control and jurisdiction over the patient, for the reason that the board would not have any jurisdiction. 1953-54 Op. Att'y Gen. No. 54-5901 (opinion rendered under former law).

43-1-22. Transportation.

Whenever a proposed patient is to be committed to a residential mental health or developmental disability facility, or to be returned to such a facility during commitment, the court ordering the commitment or authorizing the return of the patient may direct the sheriff, the state police or other appropriate persons to furnish suitable transportation in order to effect such commitment or return, contacting the department for directions as to the destination of the patient.

History: 1953 Comp., § 34-2A-21, enacted by Laws 1977, ch. 279, § 22.

43-1-23. Violation of clients' rights.

Any client who believes that his rights, as established by this code or by the constitution of the United States or of New Mexico, have been violated shall have a right to petition the court for redress. The client shall be represented by counsel. The court shall grant relief as is appropriate, subject to the provisions of the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978].

History: 1953 Comp., § 34-2A-22, enacted by Laws 1977, ch. 279, § 23; 1978, ch. 161, § 13.

ANNOTATIONS

Meaning of "code". — See 43-1-3C and 43-1-2 NMSA 1978.

43-1-24. Appeals; court of appeals.

Appeals taken pursuant to this code shall be taken to the court of appeals according to the rules of appellate procedure of the supreme court.

History: 1953 Comp., § 34-2A-23, enacted by Laws 1978, ch. 161, § 14.

ANNOTATIONS

Meaning of "code". — See 43-1-3C and 43-1-2 NMSA 1978.

Law reviews. — For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

43-1-25. Cost of care.

Clients who are indigent may receive care and treatment at state-operated facilities without charge. The governing authorities of such facilities may require payment for the cost of care and treatment from all others pursuant to established fee schedules based on ability to pay.

History: 1953 Comp., § 34-2A-24, enacted by Laws 1978, ch. 161, § 15.

ANNOTATIONS

Reimbursement from county under Indigent Hospital Claims Act. — Individuals committed to private or county-operated facilities under statutory involuntary commitment procedures are responsible for their hospital expenses, and eligible hospitals treating indigent patients may look to the applicable county for reimbursement under the Indigent Hospital Claims Act. 1989 Op. Att'y Gen. No. 89-35.

ARTICLE 1A
Developmental Disabilities Community Services

(Recompiled)

43-1A-1 to 43-1A-12. Recompiled.

ANNOTATIONS

Recompilations. — Sections 43-1A-1 to 43-1A-12 NMSA 1978, as enacted by Laws 1984, Chapter 100, have been recompiled as 28-16-1 to 28-16-12 NMSA 1978. Sections 28-16-1 to 28-16-12 NMSA 1978 were repealed by Laws 1993, ch. 50, § 19. For present comparable provisions, see 28-16A-1 to 28-16A-18 NMSA 1978.

ARTICLE 2
Alcoholics and Intoxicated Persons; Detoxification

43-2-1. Repealed.

ANNOTATIONS

Repeals. — Laws 1983, ch. 177, § 11, repeals 43-2-1 NMSA 1978, relating to the definition of "division", effective June 17, 1983.

43-2-2. Definitions.

As used in Sections 43-2-2 through 43-2-15 NMSA 1978:

A. "alcoholic" means a person who habitually lacks self-control as to the use of alcoholic beverages or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted;

B. "approved private treatment facility" means a private facility meeting the standards prescribed in regulations of the division for the care and treatment of alcoholics or drug-impaired persons;

C. "approved public treatment facility" means any institution under the supervision of the division and approved by the substance abuse bureau for the care and treatment of alcoholics or drug-impaired persons, or any public institution approved by the bureau for the care and treatment of alcoholics or drug-impaired persons, but not specifically under the supervision of the division;

D. "department" means the health and environment department [department of health];

E. "division" means the behavioral health services division of the health and environment department [department of health];

F. "drug-impaired person" means a person who habitually lacks self-control as to the use of drugs or uses drugs to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted;

G. "incapacitated by alcohol or drugs" means that a person, as a result of the use of alcohol or drugs, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making rational decisions;

H. "intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or drugs;

I. "treatment" means the broad range of emergency, outpatient, intermediate and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics, drug-impaired and intoxicated persons;

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

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

(2) involve no restrictions on physical movement and require no residential care except as reasonably necessary for the administration of treatment or for the protection of such client or another from physical injury; and

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

K. "likely to inflict serious physical harm on himself" means that it is more likely than not that in the near future the person will attempt to commit suicide or will cause serious bodily harm to himself by violent or passive or other self-destructive means as evidenced by behavior causing, attempting or threatening the infliction of serious bodily harm to himself; and

L. "likely to inflict serious physical harm on an other" means that it is more likely than not that in the near future the person 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 that person.

History: 1953 Comp., § 46-12-2, enacted by Laws 1977, ch. 374, § 1; 1979, ch. 264, § 1; 1983, ch. 177, § 2; 1989, ch. 47, § 1.

ANNOTATIONS

Bracketed material. — The bracketed reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA

1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

The 1989 amendment, effective June 16, 1989, inserted "or drug-impaired persons" following "alcoholics" in Subsections B and C, substituted "substance abuse bureau" for "alcoholism bureau" in Subsection C, added present Subsection F, redesignated former Subsections F through K as present Subsections G through L, and inserted "or drugs" in Subsections G and H.

Repeals. — Laws 1976 (S.S.), ch. 9, § 14, repeals former 46-12-2, 1953 Comp., relating to officers of the commission on alcoholism, effective July 1, 1976.

43-2-3. Policy of state regarding alcoholism.

It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

History: 1978 Comp., § 43-2-3, enacted by Laws 1989, ch. 378, § 4.

ANNOTATIONS

Repeals and reenactments. — Laws 1989, ch. 378, § 4 repeals 43-2-3 NMSA 1978, as amended by Laws 1989, ch. 378, § 1, relating to policy of state regarding alcoholism, and enacts the above section, effective July 1, 1991.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Prosecution of chronic alcoholic for drunkenness offenses, 40 A.L.R.3d 321.

43-2-4. Adoption and enforcement of laws by a politcal [political] subdivision.

A. No county, municipality or other political subdivision may adopt or enforce a local law, ordinance, resolution or rule having the force of law that includes drinking, being a common drunkard or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or a sanction.

B. No county, municipality or other political subdivision may interpret or apply any law of general application to circumvent he [the] provision of Subsection A of this section.

C. Nothing in this section affects any law, ordinance, resolution or rule against driving under the influence of alcohol or drugs or other similar offense involving the operation of a vehicle, aircraft, boat, machinery or other equipment or regarding the

sale, purchase, dispensing, possessing or use of alcoholic beverages at stated times and places or by a particular class of persons.

History: 1978 Comp., § 43-2-4, enacted by Laws 1989, ch. 378, § 5.

ANNOTATIONS

Repeals and reenactments. — Laws 1989, ch. 378, § 5 repeals 43-2-4 NMSA 1978, as amended by Laws 1989, ch. 378, § 2, relating to adoption and enforcement of laws by a political subdivision, and enacts the above section, effective July 1, 1991.

Bracketed material. — The bracketed material in the section heading and in Subsection B was inserted by the compiler. It was not enacted by the legislature, and it is not a part of the law.

43-2-5. Duties of substance abuse bureau.

The substance abuse bureau of the division shall study the problem of alcoholism and drug abuse, including methods and facilities available for the care, custody, detention, treatment, employment and rehabilitation of persons addicted to the intemperate use of spirituous or intoxicating liquors or drugs. The bureau shall promote meetings for the discussion of problems confronting clinics and agencies engaged in the treatment and rehabilitation of alcoholics and drug-impaired persons and shall disseminate information on the subject of alcoholism and drug abuse for the assistance and guidance of residents and courts of the state. The bureau shall suggest to the division reasonable regulations respecting the care and treatment of patients and persons committed to state institutions by reason of alcoholism or impairment due to drugs being a primary or contributory factor to the cause for such commitment, and the division, with the approval of the secretary of health and environment, shall make such reasonable regulations respecting the care and treatment of patients and persons committed to the bureau's care and the management of the bureau's affairs as it deems necessary. The health and environment department [department of health] shall adopt and may amend and repeal rules and regulations for acceptance of persons into treatment programs, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics, intoxicated persons and persons impaired by drugs. In establishing the rules and regulations, the division shall be guided by the following standards:

A. if possible, a patient shall be treated on a voluntary rather than an involuntary basis;

B. a patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless he is found to require inpatient treatment;

C. a person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment;

D. an individual treatment plan shall be prepared and maintained on a current basis for each patient; and

E. provisions shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

History: 1941 Comp., § 61-1203, enacted by Laws 1949, ch. 114, § 3; 1953 Comp., § 46-12-3; Laws 1957, ch. 12, § 1; 1976 (S.S.), ch. 9, § 3; 1977, ch. 253, § 51; 1977, ch. 374, § 4; 1983, ch. 177, § 3; 1989, ch. 47, § 3.

ANNOTATIONS

Bracketed material. — The bracketed reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

The 1989 amendment, effective June 16, 1989, substituted "substance abuse" for "alcoholism" in the catchline and in the first sentence of the undesignated introductory paragraph; and in the undesignated introductory paragraph inserted "and drug abuse" and "or drugs" in the first sentence, inserted "and drug-impaired persons" and "and drug abuse" in the second sentence, in the third sentence twice substituted "care and treatment" for "care, treatment and discipline" and inserted "or impairment due to drugs", and substituted "alcoholics, intoxicated persons and persons impaired by drugs" for "alcoholics and intoxicated persons" at the end of the fourth sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 41 Am. Jur. 2d Incompetent Persons § 35.

43-2-6. Gifts.

The bureau may accept or refuse on behalf of and in the name of the state any gift of any valuable thing, however the gift be created, for any purpose connected with the work of the bureau. Any such property so given shall be received and held by the state treasurer, but the division, upon recommendation of the governor and with the approval of the state board of finance, shall have the power to direct the disposition of any property so donated to it for any purpose consistent with the terms and conditions under which such gift was created.

History: 1941 Comp., § 61-1205, enacted by Laws 1949, ch. 114, § 5; 1953 Comp., § 46-12-5; Laws 1957, ch. 12, § 3; 1976 (S.S.), ch. 9, § 4; 1983, ch. 177, § 4.

43-2-7. Repealed.

ANNOTATIONS

Repeals. — Laws 1978, ch. 154, § 1, repeals 46-12-6, 1953 Comp. (43-2-7 NMSA 1978), relating to the chief of the division.

43-2-8. Emergency commitment.

A. An intoxicated or drug-impaired person may be committed to an approved public or private treatment facility for emergency treatment, if he:

(1) has threatened, attempted or inflicted physical harm on himself or another;

(2) is likely to inflict serious physical harm on himself;

(3) is likely to inflict serious physical harm on another unless committed;

(4) is incapacitated by alcohol or drugs; or

(5) has been taken into protective custody three or more times within thirty consecutive days by a peace officer or public service officer because of his intoxicated or drug-impaired condition as provided for in Subsection C of Section 43-2-18 NMSA 1978, provided there is space available in a treatment facility for that person.

A refusal to undergo treatment does not constitute conclusive evidence of lack of judgment as to the need for treatment.

B. The certifying physician, spouse, guardian or relative of the person to be committed or any other responsible person, including a public employee or elected official, may make a written application for commitment under this section, directed to the administrator of the approved public treatment facility or the district attorney where the proposed patient is in residence or is present, who shall direct the application to the administrator of an approved public or private treatment facility. The application shall state facts to support the need for emergency treatment, consistent with the least drastic means principle, and, unless a medical examination has been refused, shall be accompanied by a physician's certificate, except as provided in this section, stating that he has examined the person sought to be committed within two days before the certificate's date and facts supporting the need for emergency treatment. A physician employed by the admitting facility or the division is not eligible to be the certifying physician. A peace officer or public service officer submitting an application for emergency commitment pursuant to Paragraph (5) of Subsection A of this section shall not be required to present with the application a physician's certificate or evidence of

refusal of medical examination, but shall certify three or more dates from the record of protective custody maintained as required by Subsection D of Section 43-2-22 NMSA 1978 on which the intoxicated or drug-impaired person was placed in protective custody, which dates are within the thirty days preceding the date upon which the application is submitted.

C. Upon approval of the application by the administrator in charge of the approved public or private treatment facility, the person shall be brought to the facility by the applicant for commitment, the person's spouse, the person's guardian, any other interested person or by a peace officer if the applicant for commitment, the person's spouse, the person's guardian or any other interested person is unable to bring the person to the facility, or by a peace officer or public service officer if the application for commitment was submitted pursuant to Paragraph (5) of Subsection A of this section. The person shall be retained at the facility to which he was admitted or transferred to another appropriate public or private treatment facility until discharged under Subsection E of this section.

D. The administrator in charge of an approved public or private treatment facility shall refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment.

E. When, on the advice of the medical staff, the administrator determines that the grounds for commitment no longer exist, he shall discharge a person committed under this section. No person committed under this section may be detained in any treatment facility for more than five days. If a petition for involuntary commitment under Section 43-2-9 NMSA 1978 has been filed within the five days and the administrator in charge of an approved public or private treatment facility finds that grounds for emergency commitment still exist, he may detain the person until the petition has been heard and determined but no longer than ten days after filing the petition.

F. A copy of the written application for commitment and the physician's certificate and a written explanation of the person's right to counsel shall be given to the person and to the district attorney within twelve hours after commitment by the administrator, who shall provide a reasonable opportunity for the person to consult counsel.

History: 1953 Comp., § 46-12-6.1, enacted by Laws 1977, ch. 374, § 5; 1979, ch. 264, § 2; 1985, ch. 182, § 1; 1989, ch. 47, § 4.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, inserted "or drug impaired" in the introductory paragraph of Subsection A, in Subsection A(5), and in the last sentence of Subsection B; inserted "or drugs" in Subsection A(4); and inserted "NMSA 1978" near the end of Subsection A(5).

43-2-8.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 378, § 6 repeals 43-2-8.1 NMSA 1978, as enacted by Laws 1989, ch. 378, § 3, relating to penalty for chronic intoxicated condition, effective July 1, 1991. For provisions of former section, see 1989 Replacement Pamphlet.

43-2-9. Commitment; hearing.

A. A person may be committed to the custody of the substance abuse bureau of the division or to an approved, licensed private treatment facility by the district court upon the petition of the district attorney on behalf of the person's spouse, guardian or relative, the certifying physician or the administrator in charge of any approved public or private treatment facility. The petition shall allege that the person is an alcoholic or drug impaired and habitually lacks self-control as to the use of alcoholic beverages or drugs and that he has threatened, attempted or inflicted physical harm on himself or another and that unless committed is likely to inflict physical harm on himself or another or that he is incapacitated by alcohol or drugs. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within two days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition.

B. Upon filing the petition, the court shall fix a date for a hearing no later than ten days after the date the petition was filed. The person whose commitment is sought shall be represented by counsel at all stages of the proceeding regardless of his wishes. The court shall appoint counsel if the person whose commitment is sought is indigent. A copy of the petition and notice of hearing, including the date fixed by the court and appointed counsel, shall be served on the petitioner, the person whose commitment is sought, a parent or a legal guardian if he is a minor, the administrator in charge of an approved public or private facility to which he has been committed for emergency care and any other person the court believes advisable. Also to be served upon the person whose commitment is sought is an advice of rights informing the person that he has a right to be examined by a licensed physician of his choice prior to the hearing date. If the person is unable to obtain a licensed physician and requests examination by a physician within five days of service of the petition, the court shall employ a licensed physician. If the person whose commitment is sought refuses to see a licensed physician and the prosecuting attorney believes that such examination is necessary, the prosecuting attorney upon motion may ask the court to grant leave for an examination to be ordered against the person whose commitment is sought. Cost for the examination shall be borne by the county in which the person resides if he is indigent. Upon the court granting such motion, the court may issue an order to the person informing him that he shall be examined by a licensed physician at the date, time and place stated in the order, and the hearing shall be continued for a period not to exceed seven days.

C. At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person shall be present unless the court or his counsel believes that his presence is likely to be injurious to him or he is so incapacitated that he cannot understand the nature of the proceeding. The person shall at all times be represented by counsel. The court shall examine the person in open court or, if advisable, shall examine the person out of court. If the person has failed to appear at a court-ordered examination prior to the hearing and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him to the substance abuse bureau or an approved licensed private treatment facility for a period of not more than five days for the purposes of diagnostic examination.

D. If after hearing all relevant evidence, including the results of any diagnostic examination by the substance abuse bureau or an approved licensed private treatment facility, the court finds that grounds for involuntary commitment have been established by clear and convincing proof, it shall make an order of commitment to the substance abuse bureau or to an approved licensed private treatment facility. It shall not order commitment of a person unless it determines that the appropriate treatment for him is available and the treatment is likely to be beneficial.

E. A person committed under this section shall remain in the custody of the substance abuse bureau or an approved licensed private treatment facility for treatment for a period of thirty days unless sooner discharged. At the end of the thirty-day period, he shall be discharged automatically unless the substance abuse bureau or an approved licensed private treatment facility, before the expiration of the period, obtains a court order for his recommitment upon the grounds set forth in Subsection A of this section for a period of ninety days unless sooner discharged. If a person has been committed because he is likely to inflict physical harm on another, the substance abuse bureau or an approved licensed private treatment facility shall apply for recommitment if after examination it is determined that the likelihood still exists.

F. A person recommitted under Subsection E of this section who has not been discharged by the substance abuse bureau or an approved licensed private treatment facility before the end of the ninety-day period shall be discharged at the expiration of that period unless the substance abuse bureau or an approved licensed private treatment facility, before the expiration of the period, obtains a court order on the grounds set forth in Subsection A of this section for recommitment for a further period not to exceed ninety days. If a person has been committed because he is likely to inflict physical harm on another, the substance abuse bureau or an approved licensed private treatment facility shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under Subsections E and F of this section are permitted.

G. Upon the filing of a petition for recommitment under Subsection E or F of this section, the court shall fix a date for hearing no later than ten days after the date the

petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served on the petitioner, the person whose commitment is sought, his next of kin other than the petitioner, the original petitioner under Subsection A of this section, if different from the petitioner for recommitment, one of his parents or his legal guardian if he is a minor and any other person the court believes advisable. At the hearing, the court shall proceed as provided in Subsection C of this section.

H. The substance abuse bureau or an approved licensed private treatment facility shall provide for adequate and appropriate treatment of a person committed to its custody. The substance abuse bureau or an approved licensed private treatment facility may transfer any person committed to its custody from one approved public treatment facility to another only if transfer is medically advisable.

I. A person committed to the custody of the substance abuse bureau or an approved licensed private treatment facility for treatment shall be discharged at any time before the end of the period for which he has been committed if either of the following conditions is met:

(1) in case of an alcoholic or drug-impaired person committed on the grounds of likelihood of infliction of physical harm upon another, that he is no longer an alcoholic or impaired by drugs or the likelihood no longer exists; or

(2) in case of an alcoholic or person impaired by drugs committed on the grounds of the need for treatment and incapacity, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition or treatment is no longer adequate or appropriate.

J. If an approved private treatment facility agrees with the request of a patient or his parent, spouse, sibling, adult child or guardian to accept the patient for treatment, the administrator of the public treatment facility shall transfer him to the private treatment facility.

K. A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus.

L. The venue for proceedings under this section is the district court for the county in which the person to be committed resides or is present.

History: 1953 Comp., § 46-12-7, enacted by Laws 1977, ch. 374, § 6; 1979, ch. 264, § 3; 1983, ch. 177, § 5; 1989, ch. 47, § 5.

ANNOTATIONS

Repeals and reenactments. — Laws 1977, ch. 374, § 6, repealed 46-12-7, 1953 Comp., relating to court orders directing treatment of chronic alcoholics and committing certain persons to custody, and enacted a new 43-2-9 NMSA.

The 1989 amendment, effective June 16, 1989, substituted "substance abuse bureau or an approved licensed private treatment facility" for "alcoholism bureau" throughout the section; in Subsection A substituted "or drug impaired and" for "who", "beverages or drugs" for "beverages", and "alcohol or drugs" for "alcohol"; in Subsection D substituted "appropriate treatment for him is available" for "alcoholism bureau is able to provide adequate and appropriate treatment for him"; deleted "an alcoholic" preceding "likely" in the third sentence of Subsection E and in the second sentence of Subsection F; in Subsection H inserted "only" near the end of the second sentence; in Subsection I(1) inserted "or drug-impaired person" and "or impaired by drugs"; and in Subsection I(2) inserted "or person impaired by drugs".

No commitment to state hospital. — The New Mexico state hospital should not have been given any commitments under the provisions of 46-12-7, 1953 Comp. (now repealed). Whenever a chronic alcoholic was found to be mentally ill and subject to commitment as such mentally ill person, he should have been committed under the provisions of 34-2-5, 1953 Comp. (now repealed). 1955-56 Op. Att'y Gen. No. 56-6553.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 41 Am. Jur. 2d Incompetent Persons § 43.

43-2-10. Probation; discharge.

Any person committed to the custody of the substance abuse bureau or an approved licensed private treatment facility of the division under Section 43-2-9 NMSA 1978 may, not withstanding the terms of any order of commitment, be permitted to go at large on probation and without custody or restraint for such time and under such conditions as the chief of the substance abuse bureau or an approved licensed private treatment facility judges best. Persons placed in custody under any provision of Sections 43-2-2 through 43-2-15 NMSA 1978 may be discharged by the chief of the substance abuse bureau or an approved licensed private treatment facility pursuant to division regulations.

History: 1941 Comp., § 61-1208, enacted by Laws 1949, ch. 114, § 8; 1953 Comp., § 46-12-8; Laws 1976 (S.S.), ch. 9, § 7; 1977, ch. 253, § 53; 1983, ch. 177, § 6; 1989, ch. 47, § 6.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "substance abuse bureau or an approved licensed private treatment facility" for "alcoholism bureau" throughout the section.

Right of bureau to discharge patient. — The clear meaning and intent of this section is to vest in the commission (now substance abuse bureau or approved private facility) the right to discharge a patient notwithstanding the terms of any order of commitment. The commission (now substance abuse bureau or approved private facility) may

discharge a patient from its rehabilitation centers without the approval of the committing court. However, since the custody is joint, the court should be notified of the pending release of the patient so that the court may take such action in connection with the patient as it deems necessary or desirable. 1959-60 Op. Att'y Gen. No. 60-54.

43-2-11. Voluntary patients.

A. Upon the recommendation of the chief of the substance abuse bureau of the division, the administrator of any approved public treatment facility shall receive any alcoholic or drug-impaired person who applies to be received into the facility, treat him in the same manner as if committed by the district court and release him pursuant to the rules and regulations of the division.

B. If a voluntary patient leaves an approved public treatment facility with or against the advice of the administrator in charge of the facility, the division shall make reasonable provisions for his transportation to another facility or to his home. If he has no home, he shall be assisted in obtaining shelter.

C. Any resident of the state who voluntarily submits himself for treatment in accordance with Sections 43-2-2 through 43-2-15 NMSA 1978 shall not forfeit or abridge thereby any of his rights as a citizen of the state. The fact that he has submitted himself for treatment or that he has been given help or guidance shall not be used against him in any proceeding in any court. The record of any such voluntary patient shall be confidential and shall not be divulged except on order of the court.

History: 1941 Comp., § 61-1209, enacted by Laws 1949, ch. 114, § 9; 1953 Comp., § 46-12-9; Laws 1976 (S.S.), ch. 9, § 8; 1977, ch. 253, § 54; 1977, ch. 374, § 7; 1983, ch. 177, § 7; 1989, ch. 47, § 7.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, in Subsection A substituted "substance abuse" for "alcoholism" and inserted "or drug-impaired person", and in Subsection C twice deleted "of New Mexico" following "state" in the first sentence.

Rights generally. — No one who voluntarily seeks the help of the organization by submitting himself for treatment shall have such submission for treatment used against him in any court proceedings. Also, the record of such voluntary patient must be held confidential unless divulgence is ordered by a court. The service of a warrant is not in violation of either of these confidential compulsions. No violation exists as to this section by permitting a warrant to be served on any of the alcoholic patients. As to "information," the situation is quite different. If the information sought from anyone, whether of a private or official stature, is in any way connected with the material on the record of such voluntary patient or concerns information divulged to the organization as a natural concomitant of such admission, then the center is prohibited from divulging such information without an order of the court. 1957-58 Op. Att'y Gen. No. 58-67.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53 Am. Jur. 2d Mentally Impaired Persons §§ 3, 5, 152.

43-2-12. Assistance upon request.

The substance abuse bureau of the division shall accept for examination, diagnosis, guidance or treatment at any facility or clinic under its control any person who requests such assistance under regulations as may be prescribed by the division.

History: 1941 Comp., § 61-1210, enacted by Laws 1949, ch. 114, § 10; 1953 Comp., § 46-12-10; Laws 1976 (S.S.), ch. 9, § 9; 1983, ch. 177, § 8; 1989, ch. 47, § 8.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "substance abuse bureau" for "alcoholism bureau" and deleted "such" preceding "regulations".

43-2-13. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 47, § 10 repeals 43-2-13 NMSA 1978, as amended by Laws 1983, ch. 177, § 9 relating to commitment proceedings for ill persons in custody of division, effective June 16, 1989. For provisions of former section, see 1984 Replacement Pamphlet.

43-2-14. Costs of commitment and support.

The provisions of law with respect to the costs of commitment and the costs of support, including methods of determination of the persons liable for the costs, and all provisions of law enabling the state to secure reimbursement for any such items of cost, applicable to the commitment and support of mentally ill persons in state hospitals shall apply with equal force in respect to each item of expense incurred by the state in connection with the commitment, care, custody and treatment of any person committed to the substance abuse bureau of the division or to any institution maintained by the state. Voluntary patients may be required to pay the cost of their subsistence, care and treatment.

History: 1941 Comp., § 61-1212, enacted by Laws 1949, ch. 114, § 12; 1953 Comp., § 46-12-12; Laws 1967, ch. 78, § 3; 1976 (S.S.), ch. 9, § 11; 1983, ch. 177, § 10; 1989, ch. 47, § 9.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "for the costs" for "therefor" and "substance abuse bureau" for "alcoholism bureau" in the first sentence.

Responsibility for hospital expenses. — Individuals committed to private or county-operated facilities under statutory involuntary commitment procedures are responsible for their hospital expenses, and eligible hospitals treating indigent patients may look to the applicable county for reimbursement under the Indigent Hospital Claims Act. 1989 Op. Att'y Gen. No. 89-35.

43-2-15. Report.

On or before December 1 in each year, the division shall render a report to the governor and the state legislature of its activities, including recommendations for improvements therein, by legislation or otherwise.

History: 1941 Comp., § 61-1213, enacted by Laws 1949, ch. 114, § 13; 1953 Comp., § 46-12-13; Laws 1976 (S.S.), ch. 9, § 12.

43-2-16. Short title.

This act [43-2-16 to 43-2-22 NMSA 1978] may be cited as the "Detoxification Act."

History: 1953 Comp., § 46-14-1, enacted by Laws 1973, ch. 331, § 1.

43-2-17. Definitions.

As used in the Detoxification Act [43-2-16 to 43-2-22 NMSA 1978]:

A. "intoxicated person" means a person, in a public place, whose mental or physical functioning is so substantially impaired as a result of the use of alcohol that he has become disorderly or has become unable to care for his own safety;

B. "public service officer" means a person appointed by the chief of police or sheriff to assist peace officers in the transportation of an intoxicated person under the Detoxification Act; and

C. "health care facility" means a health care facility in the county in which the intoxicated person is apprehended which normally provides services to intoxicated persons who are not already its patients.

History: 1953 Comp., § 46-14-2, enacted by Laws 1973, ch. 331, § 2; 1977, ch. 374, § 8.

43-2-18. Transportation of intoxicated person by peace officer or public service officer.

A. A peace officer or public service officer may transport an intoxicated person to his residence when it appears to the peace officer or public service officer that the intoxicated person will thereby become orderly and able to care for his own safety.

B. A peace officer or public service officer may transport an intoxicated person to the nearest health care facility within the county when it appears to the peace officer or public service officer that the intoxicated person is unable to care for his own safety or in need of medical attention.

C. A peace officer or public service officer may transport to the city or county jail an intoxicated person who has become disorderly when it appears that the intoxicated person:

(1) has no residence in the county in which he is apprehended; or

(2) is unable to care for his own safety; or

(3) constitutes a danger to others if not transported to the jail.

History: 1953 Comp., § 46-14-3, enacted by Laws 1973, ch. 331, § 3.

ANNOTATIONS

"Disorderly" as used in this section has a different meaning from that in the criminal offense of disorderly conduct, but is more in line with the dictionary definition. State v. Johnson, 1996-NMCA-117, 122 N.M. 713, 930 P.2d 1165.

Officers were not required to have clear and convincing evidence that the defendant was disorderly or constituted a danger to others, but only probable cause or reasonable grounds to believe he was disorderly, intoxicated, and dangerous. State v. Johnson, 1996-NMCA-117, 122 N.M. 713, 930 P.2d 1165.

Officers were justified in taking intoxicated defendant to jail since he became combative when he was placed in the squad car, and a loaded gun was discovered in the car in which he was a passenger. State v. Johnson, 1996-NMCA-117, 122 N.M. 713, 930 P.2d 1165.

Law reviews. — For note, "Criminal Procedure - New Mexico Court of Appeals Defines the Scope of a Lawful Inventory Search of a Detainee Under the New Mexico Detoxification Act - State v. Johnson," see 28 N.M.L. Rev. 115 (1998).

43-2-19. Search by peace officer or public service officer; no liability.

A peace officer or public service officer may, if he reasonably believes it necessary for his own safety, make a protective search of an intoxicated person before

transporting him to a residence, health care facility or jail. No peace officer or public service officer shall be held criminally or civilly liable for assault, false imprisonment or other alleged torts or crimes on account of reasonable measures taken under the authority of the Detoxification Act [43-2-16 to 43-2-22 NMSA 1978], if such measures were, in fact, reasonable and did not involve use of excessive or unnecessary force.

History: 1953 Comp., § 46-14-4, enacted by Laws 1973, ch. 331, § 4.

ANNOTATIONS

Search of intoxicated person threatening suicide justified. — Since the defendant smelled of alcohol, appeared intoxicated, and was threatening suicide, a police officer could have reasonably concluded his safety justified a patdown search of the defendant before taking him into protective custody. State v. Blakely, 115 N.M. 466, 853 P.2d 168 (Ct. App. 1993).

Inventory searches of persons detained are not prohibited by the Detoxification Act. State v. Johnson, 1996-NMCA-117, 122 N.M. 713, 930 P.2d 1165.

43-2-20. Notification of family.

Whenever an intoxicated person is transported by a peace officer or public service officer to a health care facility or jail, the person in charge of that facility or jail at the time shall see that a responsible member of the intoxicated person's family is notified of his presence there as soon as practicable.

History: 1953 Comp., § 46-14-5, enacted by Laws 1973, ch. 331, § 5.

43-2-21. Liability for costs.

Any intoxicated person having transportation, shelter or treatment furnished to him as an intoxicated person under the Detoxification Act [43-2-16 to 43-2-22 NMSA 1978] shall be liable to the furnishing city, county or health care or other facility, for its reasonable costs in providing that transportation, shelter and treatment.

History: 1953 Comp., § 46-14-6, enacted by Laws 1973, ch. 331, § 6.

43-2-22. Transportation to jail; protective custody.

A. An intoxicated person held in protective custody under the Detoxification Act [43-2-16 to 43-2-22 NMSA 1978] shall be held in protective custody until the alcohol concentration in the person's blood or breath is less than five one-hundredths; provided that the local governing body of any home-rule municipality may by ordinance extend the protective custody of intoxicated persons under the provisions of this subsection to a maximum period of no more than seventy-two hours; and provided further that, within twenty-four hours of the original custody, a licensed physician, or a physician's assistant

or registered nurse functioning directly under standards established by a licensed physician, certifies that extension of the term of protective custody up to a maximum of seventy-two hours is in the best medical interest of the person in protective custody. Upon such certification, the intoxicated person may be retained in protective custody only in a detoxification facility or regional alcoholism treatment center for the remainder of the seventy-two hours.

B. An intoxicated person transported to a health care facility under the Detoxification Act shall not be detained at the facility:

(1) once he is no longer intoxicated; or

(2) for more than forty-eight hours after admission, unless he is committed under Section 43-2-8 NMSA 1978.

C. An intoxicated person held in protective custody at a jail or transported to a health care facility under the Detoxification Act shall not be considered to have been arrested or charged with any crime.

D. A peace officer or public service officer shall record the date, time and place of the protective custody of any intoxicated person. This record of protective custody shall not be considered as an arrest or criminal record.

E. For the purposes of this section, the determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

History: 1953 Comp., § 46-14-7, enacted by Laws 1973, ch. 331, § 7; 1977, ch. 319, § 1; 1977, ch. 374, § 9; 1983, ch. 119, § 1; 1993, ch. 66, § 3.

ANNOTATIONS

The 1993 amendment, effective January 1, 1994, substituted "shall be held in protective custody until the alcohol concentration in the person's blood or breath is less than five one-hundredths" for "may be held for a period of no more than twelve hours from the time of his arrival at the jail" in the first sentence of Subsection A; deleted "as defined in Section 43-3-3 NMSA 1978" following "treatment center" in the final sentence of Subsection A; and added Subsection E.

Inventory searches of persons detained are not prohibited by the Detoxification Act. State v. Johnson, 1996-NMCA-117, 122 N.M. 713, 930 P.2d 1165.

Law reviews. — For annual survey of New Mexico law relating to criminal procedure, see 12 N.M.L. Rev. 271 (1982).

ARTICLE 3
Community Alcoholism Treatment and Detoxification

43-3-1 to 43-3-6. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 185, § 8 repeals 43-3-1 to 43-3-6 NMSA 1978, as enacted by Laws 1978, ch. 133, §§ 1 to 6, relating to the Community Alcoholism Treatment and Detoxification Act, effective July 1, 1985. For provisions of former sections, see 1984 Replacement Pamphlet. For present comparable provisions, see 9-7-6.1 to 9-7-6.3 NMSA 1978.

43-3-7. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 65, § 23, repeals 43-3-7 NMSA 1978, as amended by Laws 1985, ch. 185, § 7, relating to the community alcoholism treatment and detoxification fund, effective July 1, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

43-3-8, 43-3-9. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 270, § 10 repeals 43-3-8 and 43-3-9 NMSA 1978, enacted by Laws 1985, ch. 185, §§ 1 and 2 and as amended by Laws 1993, ch. 65, § 9, relating to alcohol abuse prevention and treatment, effective July 1, 1999. For provisions of former sections, see 1993 Replacement Pamphlet. For present comparable provisions, see 9-7-6.1 to 9-7-6.3 NMSA 1978.

43-3-10. Definitions.

As used in Chapter 43, Article 3 NMSA 1978:

A. "board" means the board of county commissioners of a county;

B. "department" means the department of health;

C. "DWI program" means a community program specifically designed to provide treatment, aftercare or prevention of or education regarding driving while under the influence of alcohol or drugs;

D. "incarceration and treatment facility" means a minimum security detention facility that provides a DWI program;

E. "planning council" means a county DWI planning council;

F. "screening program" means a program that provides screening or examination by alcoholism treatment professionals of persons charged with or convicted of driving while intoxicated or other offenses to determine whether the person is:

(1) physically dependent on alcohol and thus suffering from the disease of alcoholism;

(2) an alcohol abuser who has not yet developed the alcoholism disease syndrome but has an entrenched pattern of pathological use of alcohol and social or occupational impairment in function from alcohol abuse; or

(3) neither an alcoholic nor an alcohol abuser such that alcoholism treatment is not necessary; and that provides referral or recommendation of such persons to the most appropriate treatment; and

G. "statewide substance abuse services plan" means the comprehensive plan for a statewide services network developed by the department that documents the extent of New Mexico's substance abuse problem and statewide needs for prevention, screening, detoxification, short-term and long-term rehabilitation, outpatient programs and DWI programs. The plan shall be based on the continuum of care concept of a comprehensive prevention and treatment system.

History: Laws 1985, ch. 185, § 3; 1989, ch. 146, § 1; 1993, ch. 65, § 10; 1999, ch. 270, § 5.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "forty-five days or more" for "over a month" in Subsection D, and substituted "forty-five" for "thirty" in Subsection H.

The 1993 amendment, effective July 1, 1993, deleted former Subsection A, defining "bureau"; inserted present Subsections A, B, E, and F and redesignated former Subsections B through I as present Subsections C, D, G, H, and J through M; substituted "department of health" for "health and environment department" in Subsection C; and, in the first sentence of Subsection M, substituted "department" for "bureau", added "DWI programs", and made a minor stylistic change.

The 1999 amendment, effective July 1, 1999, substituted "Chapter 43, Article 3 NMSA 1978" for "the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act" in the introductory language; deleted Subsections A, B, G, H, J, and L, which defined "aftercare", "detoxification program", "long-term rehabilitation program", "outpatient

program", "prevention program", and "short-term rehabilitation program", and redesignated subsequent subsections accordingly; and substituted "substance abuse" for "alcoholism" in three places in Subsection G.

43-3-11. Powers and duties of the department.

A. The department shall adopt rules to provide for:

(1) minimum standards of service for DWI programs that contract for funds pursuant to the department's behavioral health services rules; provided that rules adopted pursuant to this section shall, before adoption, have been presented to all interested parties in a public hearing;

(2) the format and guidelines for county DWI plans and the criteria for evaluating them; and

(3) procedures for reporting of programmatic and financial information necessary to evaluate the effectiveness of programs funded. Evaluation of program effectiveness shall include an analysis of outcome-based measures and the impact of the programs on the incidence of driving while under the influence of intoxicating liquor or drugs and shall be reported to the legislature annually.

B. The department shall provide technical assistance and training to assist each county as needed in developing its DWI plan.

C. The department shall review the impact of the programs on the reduction of the incidence of driving while under the influence of intoxicating liquor or drugs, approve county DWI plans and incorporate these plans into the statewide substance abuse services plan in accordance with Section 43-3-13 NMSA 1978.

D. Any screening programs funded pursuant to the behavioral health services rules shall be established in collaboration with the district, magistrate, metropolitan and municipal courts to be served by the screening program. Whenever feasible, the screening program shall not be provided by an alcoholism treatment program serving the judicial districts involved in order to avoid conflict of interest in recommending that offenders enter treatment.

History: Laws 1985, ch. 185, § 4; 1993, ch. 65, § 11; 1999, ch. 270, § 6.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, deleted "and bureau" at the end of the catchline; deleted "programs" following "service" near the beginning and inserted "and DWI programs" near the middle of Subsection A(1); inserted present Paragraph (2) and redesignated former Paragraphs (2) through (5) as present Paragraphs (3) through (6) in Subsection A; substituted "the secretary of health" for "the bureau to the secretary of

the department" in Subsection A(4); rewrote the second sentence of Subsection A(6), which read "Evaluation of program effectiveness shall be reported to the legislature annually"; inserted present Subsections C and D; redesignated former Subsections C through E as present Subsections E through G; inserted "and programs consistent with the priorities set forth in the statewide alcoholism services plan" in Subsection E; and made stylistic changes.

The 1999 amendment, effective July 1, 1999, rewrote this section to the extent that a detailed comparison is impracticable.

43-3-12. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 270, § 10 repeals 43-3-12 NMSA 1978, as enacted by Laws 1985, ch. 185, § 5, relating to alcohol abuse treatment, effective July 1, 1999. For provisions of former section, see 1993 Replacement Pamphlet. For present comparable provisions, see 9-7-6.1 to 9-7-6.3 NMSA 1978.

43-3-13. Statewide substance abuse services plan.

A. The department shall develop and update annually prior to August 30 a statewide substance abuse services plan that documents the extent of New Mexico's substance abuse problem. The plan shall describe the effectiveness of existing services and shall document needs based on a statewide assessment that reflects local planning, concerns and priorities.

B. The department shall annually invite comment and review of the substance abuse services plan for a period of no less than thirty days prior to its publication.

C. The department shall make decisions concerning proposed substance abuse programs consistent with the priorities and service system concepts contained in the current statewide substance abuse services plan.

History: Laws 1985, ch. 185, § 6; 1993, ch. 65, § 12; 1999, ch. 270, § 7.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, substituted "department" for "bureau" in the first sentence of Subsection A.

The 1999 amendment, effective July 1, 1999, substituted "substance abuse" for "alcoholism" throughout the section.

43-3-14. County DWI planning councils authorized; membership.

A. A board may create a county DWI planning council and appoint the members for terms set by the board. The members of the planning council shall be selected to represent a broad spectrum of interests and may include county officials, DWI program and service providers, law enforcement officers, alcohol counselors and therapists, school administrators and local political leaders.

B. The members of a planning council shall elect from among the membership of the planning council a chairman for a term designated by the board. The planning council shall meet at the call of the chairman.

C. Planning council members shall receive per diem and mileage reimbursement as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: Laws 1993, ch. 65, § 13.

43-3-15. County DWI plans.

A. With the advice of the planning council, the board or its designee shall prepare a county DWI plan. Upon approval of the DWI plan by the board and the planning council, the board shall submit the DWI plan to the department for approval and integration into the statewide alcoholism services plan.

B. Two or more boards may agree to establish a multicounty DWI plan.

C. Each county DWI plan shall include:

(1) a county needs assessment that identifies and quantifies:

(a) the major factors that affect access to and the success or effectiveness of local DWI programs;

(b) the gaps and needs not covered in local DWI programs; and

(c) the extent to which county residents use DWI programs available in other counties;

(2) an inventory of existing public and private DWI providers and programs in the county, including identification of any DWI program duplication, and existing governmental funding and other resources, including county funding, for county DWI programs; and

(3) recommendations and goals for providing, improving and funding DWI programs in the county, based on the needs assessment and inventory, and including proposals to eliminate duplication of programs and services, improve access to programs and services, establish new programs or services, provide additional funding,

in-kind contributions and other resources for existing programs and where feasible use DWI programs available in other counties.

D. The county DWI plan shall be updated at the request of the board or the department if the plan as implemented through the statewide alcoholism services plan is not achieving its stated goals, if the needs of the county have changed or if the department determines that the distribution of funds is not having an impact on the incidence of driving while under the influence of intoxicating liquor or drugs.

History: Laws 1993, ch. 65, § 14.