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 and whenever the court finds it desirable to use state facilities to assist in making the evaluation, the court shall contact the secretary of health and environment for arrangement and designation of suitable available facilities. Upon such contact, the secretary shall advise the court whether the defendant shall be retained in the local facilities available to the court for visit by diagnostic personnel furnished by the state or whether the defendant shall be transported by the county to facilities designated by the secretary for the purpose of making an evaluation. Misdemeanor defendants shall be evaluated at local facilities.

B. If the secretary elects to have the defendant retained at the court's local facilities, he shall notify the court when the state diagnostic personnel will visit the local facilities; provided that the visit shall be not later than two weeks from the time of the court's initial contact with the secretary.

(1) After the evaluation of the defendant is completed, the state diagnostic personnel shall make themselves available for deposition to declare their findings. The usual rules of evidence governing the use and admission of the deposition shall prevail.

(2) If the secretary finds that the state diagnostic personnel will be unable to initiate the investigation within two weeks from the time of the court's initial contact with the secretary, then the secretary 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 for the purpose of conducting the evaluation.

C. If the secretary elects to have the defendant transported to the facilities designated by the secretary 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, may be returned by the secretary to the facilities of the court upon not less than three days' notice. After the evaluation is completed, the state diagnostic personnel shall make themselves available for deposition to declare their findings. The usual rules of evidence governing the use and

admissibility of the deposition shall prevail.

D. Documents reasonably required by the secretary 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 court may commit a defendant to the secretary for custody and treatment. A defendant so committed shall be treated as any other patient committed involuntarily. When deemed by the secretary to be medically appropriate, the defendant may be returned to the custody of the court upon not less than three days' notice.

F. All acts to be performed by the secretary of health and environment pursuant to 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.

The 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.

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 §§ 48, 527.
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.

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 [this article]:

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 health and environment department;

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 must 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 health and environment department, 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;

U. "residential treatment program for mental disorders" means a facility or program which provides diagnosis, evaluation, care or treatment for a minor who has a mental disorder; and

V. "division" means the behavioral health services division of the health and environment department.

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.

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.

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.

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. - 41 Am. Jur. 2d Incompetent Persons §§ 8 to 25.
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.
44 C.J.S. Insane Persons § 20.

§ 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.

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.

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. - 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.

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 parent if the client is a minor and the parent has custody of 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.

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.

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

§ 43-1-10. 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.

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.

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).

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. - 41 Am. Jur. 2d Incompetent Persons §§ 8 to 25, 33 to 43.
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.
44 C.J.S. Insane Persons §§ 8 to 34.

§ 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.

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.

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).

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.

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).

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 [45-1-101 to 45-7-401 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.

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 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.

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).

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. - 41 Am. Jur. 2d Incompetent Persons §§ 39, 43.

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

A. No 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.

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 Probate Code pursuant to Section 45-5-303 NMSA 1978.

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.

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.

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.

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

Probate code. - See 45-1-101 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).

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

§ 43-1-16. Voluntary residential treatment of minors.

A. No minor may receive treatment for mental disorders on a voluntary residential basis except as provided in this section.

B. Any minor twelve years of age or older may voluntarily admit himself to a residential treatment program for mental disorder for a period not to exceed sixty days subject to the requirements of this section.

C. To have a minor voluntarily admitted for residential treatment in a residential program for a mental disorder, the minor and his parent or guardian shall knowingly and voluntarily execute, prior to admission, a minor's voluntary consent to admission document. The document shall include a clear statement of the minor's right to voluntarily consent or refuse to consent to his admission, his right to request an immediate discharge from the residential treatment program at any time and his rights should he request a discharge and his physician, certified psychologist or the director of the residential treatment facility determines the minor needs continued treatment. Each statement shall be clearly explained, and each statement shall be initialed by the minor and his parent or guardian.

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

E. Upon the filing of the minor's voluntary consent to admission document in the patient's hospital record, the director of the residential treatment program or his designee shall, on the next business day of the court following the minor's admission, notify the district court or the special commissioner of the admission, giving the minor's name, birthdate and the date and place of admission.

F. Within seven days of the admission, an attorney, representing the minor pursuant to the provisions of Section 43-1-4 NMSA 1978, shall meet with the minor. At the meeting with the minor, the attorney shall explain to the minor the following:

(1) his right to counsel;

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

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

(4) his rights under the provisions of Sections 43-1-4 through 43-1-7, 43-1-9 and 43-1-16 through 43-1-18 NMSA 1978 and all provisions of the Mental Health and Developmental Disabilities Code [this article].

G. If the attorney determines that the minor understands his rights and that the minor voluntarily and knowingly desires to remain as a patient in a residential treatment program, the attorney shall so certify on a form designated by the district court. The form, when completed by the attorney, shall be filed in the minor's patient record at the residential treatment program facility, and a copy shall be forwarded to the district court or special commissioner. The court or special commissioner shall, upon receipt of notice of a minor's voluntary admission to a residential treatment program, establish a confidential court file which shall keep the minor's identity anonymous. The attorney's statement, as required by this section, shall not identify the minor by name.

H. Upon reaching the age of majority, the minor, who was a voluntary admittee to a residential treatment program, may petition the district court for the records of the court regarding all matters pertinent to his voluntary admission to a residential treatment program. The court, upon receipt of the petition and upon a determination that the petitioner was in fact the minor who was a voluntary admittee to a residential treatment program, shall give all court records regarding the admission to the petitioner, including all copies in the court's possession.

I. No minor, who is a person seeking voluntary admission to a residential treatment program, shall be represented or counseled by an attorney who, in the previous two years, has advised or represented his parents, guardians or the residential treatment facility or who would otherwise have a serious conflict of interest.

J. Any minor voluntarily admitted to a residential treatment program pursuant to the provisions of this section has the right to an immediate discharge from the residential treatment program upon his request, except as provided in this section. If a minor informs the director, physician or any other member of the residential treatment program staff that he desires to be discharged from the voluntary program, the director, physician or other member shall provide for his immediate discharge. Upon such request, the residential treatment program shall notify his parent, guardian or other suitable party to take custody of the minor and remit the minor to the parent's or guardian's care. If the minor's family refuses to take physical custody of the minor, the court may order an alternative living arrangement for the minor and grant custody of the minor to another person. In such cases, the court shall retain jurisdiction until such time as the minor is placed in his family's home or attains the age of eighteen or arrangement of permanent custody is made. A minor requesting immediate discharge shall be discharged except in those situations where the director of the residential treatment program, a physician or a certified psychologist determines that the minor requires continued treatment and that the minor meets the criteria for involuntary residential treatment as otherwise provided under the Mental Health and Developmental Disabilities Code. In that event, the director, physician or certified psychologist after making the determination shall, on the first business day following the minor's request for release from the voluntary program, petition the district attorney or the residential treatment program, as appropriate, to initiate involuntary commitment proceedings pursuant to that code. The district attorney or an attorney representing the residential treatment program may, pursuant to the provisions of that code, petition for such a commitment. The minor has a right to a hearing on his continued treatment within seven days of his request for release.

K. A minor who is a voluntary admittee to a residential treatment program, pursuant to the provisions of this section, shall have his voluntary admission reviewed at the end of a sixty-day period from his initial date of admission to the program. The review shall be accomplished by the minor's physician or certified psychologist reviewing his treatment and determining whether it would be in the best interests of the minor to continue the voluntary admission. If he concludes that continuation of treatment is in the minor's best interests, he shall so state in a form to be filed in the minor's patient record. The residential treatment program shall notify the attorney for the minor at least seven days prior to the date that the sixty-day period is to run or if necessary request an attorney pursuant to Section 43-1-4 NMSA 1978. The attorney shall then personally meet with the minor and, pursuant to the provisions of this section, insure that the minor understands his rights as set forth in Subsection F of this section, that he understands the method for voluntary termination of his admission and that he knowingly and voluntarily consents to his continued treatment. If the attorney determines that the minor understands these rights and that the minor voluntarily and knowingly desires to remain as a patient in the residential treatment program and that the physician has recommended the continued stay in the program, the attorney shall so certify on a form designated by the district court. The disposition of these forms shall be as set forth in this section, with one copy going in the minor's patient record and the other being sent to the district court in a manner that preserves the child's anonymity. This procedure shall take place every sixty days from the last admission or attorney's certification,

whichever comes first.

L. If the attorney determines that the minor does not voluntarily desire to remain in the program or if the physician or certified psychologist of the minor has not recommended continued stay by the minor in the residential treatment program, the minor shall be released, or the involuntary commitment procedures of Subsection J of this section and the provisions of Section 43-1-16.1 NMSA 1978 shall be followed.

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

History: 1978 Comp., § 43-1-16, enacted by Laws 1979, ch. 213, § 2; 1989, ch. 128, § 9.

Repeals and reenactments. - Laws 1979, ch. 213, § 2, repealed former 43-1-16 NMSA 1978 (as amended by Laws 1978, ch. 161, § 10), relating to residential treatment and rehabilitation of minors, and enacted a new 43-1-16 NMSA 1978.

The 1989 amendment, effective June 16, 1989, inserted "certified psychologist" following "physician" throughout the section; substituted "Sections 43-1-4 through 43-1-7, 43-1-9 and 43-1-16 through 43-1-18" for "43-1-4, 43-1-5, 43-1-6, 43-1-7, 43-1-9, 43-1-16, 43-1-16.1, 43-1-17 and 43-1-18" in subsection F(4); and made minor stylistic changes throughout the section.

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, "Child Welfare Under the Indian Child Welfare Act of 1978: A New Mexico Focus," see 10 N.M.L. Rev. 413 (1980).

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

§ 43-1-16.1. Involuntary residential treatment of minor.

A. No minor may receive treatment for mental disorders or habilitation for developmental disabilities on an involuntary residential basis except as provided in this section.

B. Any person who believes that a minor, as a result of a mental disorder or developmental disability, is in need of residential mental health or developmental disabilities services may file a petition with the court for the minor's commitment. The petition shall include a detailed description of the symptoms or behaviors of the minor which support the allegations in the petition; a list of prospective witnesses for commitment; and a summary of matters to which they will testify. The petition should also contain a discussion of the alternatives to residential care which have been

considered and the reasons for rejecting the alternatives. A copy of the petition shall be served upon the child and, in the event the parents or legal guardians did not bring the petition, a copy of the petition shall be served upon a parent or legal guardian.

C. The court shall, upon receiving the petition, appoint counsel for the minor, unless the minor has retained an attorney, or an attorney has been appointed pursuant to the provisions of Section 43-1-16 NMSA 1978. The attorney shall represent the minor at all stages of the proceedings. In no case shall the minor's attorney be a person who, in the previous two years, has advised or represented either the person seeking the commitment of the minor or the residential treatment facility, or who would otherwise have a significant conflict of interest.

D. If, after interviewing his client, the minor's attorney determines that the minor understands his rights and desires to waive a hearing on the issue of commitment, the attorney shall submit a verified written statement to the court explaining his understanding of the minor's intent. If the court is satisfied that the minor has voluntarily and knowingly waived his right to a hearing, the minor may be committed to residential treatment or habilitation. By waiving the right to a precommitment hearing, the minor waives no other rights.

E. Unless a valid waiver of the precommitment hearing is acquired in accordance with Subsection D of this section, a commitment hearing shall be held within ten days of the appointment of counsel, or within seven days of the emergency admission of the minor to a residential facility under Subsection L [K] of this section, or within seven days from a minor's declaration that he desires to terminate his voluntary admission to a residential treatment program for mental disorder as provided in Section 43-1-16 NMSA 1978.

F. At the commitment hearing, the minor shall at all times be represented by counsel; have the right to present evidence, including the testimony of a mental health and developmental disabilities professional of his own choosing; have the right to cross-examine witnesses; have the right to a complete record of the proceedings; and have the right to an expeditious appeal of an adverse ruling.

G. The court shall make an order committing the minor to residential care only if it is shown by clear and convincing evidence:

(1) that as a result of mental disorder or developmental disability the minor needs and is likely to benefit from the treatment or habilitation services proposed; and

(2) that the proposed commitment is consistent with the treatment needs of the minor and with the least drastic means principle.

H. If the court determines that the minor does not meet the criteria for commitment set forth in Subsection G of this section, it may order the minor to undergo such nonresidential treatment as may be appropriate and necessary, or it may order no

treatment. If the court determines that the minor should not be committed to residential care and if the minor's family refuses to take the minor back into the home, the court may order an alternative living arrangement for the minor and grant custody of the minor to another person. In such cases, the court shall retain jurisdiction until such time as the minor is placed back in his family's home, attains the age of eighteen or arrangement for permanent custody is made.

I. Every minor receiving involuntary residential treatment for a mental disorder or developmental disability under this section shall have a right to periodic review of his commitment at the end of every commitment period. The commitment period shall not exceed sixty days, and any commitment period commencing thereafter shall not exceed six months. At the expiration of a commitment period, the minor may continue in residential care only after a new commitment hearing, unless waived under the terms of Subsection D of this section, and entry of a new order of commitment for one commitment period.

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

K. If the person seeking the commitment of a minor to residential treatment or habilitation believes that the minor is likely to cause serious bodily harm to himself or to others during the period which would be required to hold a commitment hearing as provided in this section, the minor may be admitted to residential care on an emergency basis. If the minor is admitted on an emergency basis, appointment of counsel and other procedures shall then take place as provided elsewhere in this section.

L. Nothing set forth in the Mental Health and Developmental Disabilities Code [this article] prohibits a minor, who has been involuntarily committed and thereafter discharged and released, from subsequently voluntarily consenting to admission under the provisions of Section 43-1-16 NMSA 1978.

History: 1978 Comp., § 43-1-16.1, enacted by Laws 1979, ch. 213, § 3.

Children's court is presumed to know what evidence is necessary to find a child "committable," in order that the court may be able to make the necessary finding under 32-1-29A(4)(c) NMSA 1978, that the child is not committable. State v. Doe, 98 N.M. 567, 650 P.2d 851 (Ct. App. 1982).

And court may find child "not committable". - Where, no matter how the defendant's problems might be classified, there is no available program or facility that can adequately treat him, the court can find that he is not "committable." State v. Doe, 98 N.M. 567, 650 P.2d 851 (Ct. App. 1982).

Private attorney may petition a court for involuntary commitment of a minor to a mental health facility. 1988 Op. Att'y Gen. No. 88-02.

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, "Child Welfare Under the Indian Child Welfare Act of 1978: A New Mexico Focus," see 10 N.M.L. Rev. 413 (1980).

§ 43-1-17. Treatment and habilitation of minors; liability.

A. Any minor shall have the right, with or without parental consent, to consent to and receive individual psychotherapy, group psychotherapy, guidance, counseling, or other forms of verbal therapy which do not include any aversive stimuli or substantial deprivations.

B. No psychosurgery or convulsive therapy shall be performed on a minor except by order of a court upon a finding that such treatment is necessary to prevent serious harm to the minor. Consent of a minor or his parent to such treatment without a court order shall be invalid and shall not be a defense against any legal action which might be brought against the provider of such treatment.

C. Psychotropic medications and behavior modification programs involving aversive stimuli or substantial deprivations may be administered to minors under the age of fourteen only with the consent of the minor's parent or guardian. Such treatment may be administered to minors fourteen years of age and older with the consent of the minor unless his parent or guardian objects. If the consent of the minor is not obtained, or his parent or guardian objects, and the treatment provider or another interested person believes that the administration of the drug or program is necessary to protect the minor from serious harm, any interested party may petition the court for appointment of a treatment guardian under the same procedures as provided in Section 43-1-15 NMSA 1978.

D. If a licensed physician believes that the administration of psychotropic medication is necessary to protect the minor from serious harm which would occur while the provisions of Subsection C of this section are being satisfied, he may administer the medication on an emergency basis. When medication is administered to a minor on an emergency basis, the treating physician shall prepare and place in the minor'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 minor from serious harm.

E. Liability of persons providing mental health and developmental disability services to minors shall be as follows:

(1) no mental health or developmental disability professional or treatment facility is required to detain, treat or provide services to a minor when the minor does not require such detention, treatment or services;

(2) no mental health or developmental disability professional or facility may be held liable solely on the basis of misrepresentations made to them by a minor seeking treatment or habilitation services or by a minor's parent, provided that the professional or the facility's staff acted in good faith;

(3) nothing in this code shall be construed to relieve any professional or facility from liability for negligence in the diagnosis and treatment or services provided to any minor; and

(4) nothing in this code shall be construed to relieve any professional or facility from duties placed on them by reporting laws relating to the detection of child abuse.

F. A parent shall be responsible for the cost of mental health services provided to his minor child. This section does not affect the right of any minor to receive free mental health or developmental disability services under any publicly supported program or the right of any parent to reimbursement from, or payment on his behalf by, any publicly supported program or private insurer.

G. Except as provided in this section and Section 43-1-16 NMSA 1978, minor clients shall have the same rights as adult clients are afforded under the code.

History: 1953 Comp., § 34-2A-16, enacted by Laws 1977, ch. 279, § 16; 1978, ch. 161, § 11.

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).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 59 Am. Jur. 2d Parent and Child § 11.

§ 43-1-18. Right to education.

A minor who is a client in a residential facility shall be provided such education and training as necessary to encourage and stimulate developmental progress and achievement. Such minor shall be educated in regular classes with nonhandicapped minors whenever appropriate. In no event shall a minor be allowed to remain in a residential facility for more than thirty days without receiving educational services.

History: 1953 Comp., § 34-2A-17, enacted by Laws 1977, ch. 279, § 17.

Educational services. - Public schools have no constitutional or statutory obligation to provide educational services to students within private, for-profit adolescent psychiatric

care and substance abuse treatment centers, but if the student is handicapped, federal law may require such education. 1988 Op. Att'y Gen. No. 88-10.

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

§ 43-1-19. 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 which 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 to the parent or the legal guardian is essential for the treatment of the minor;

(4) 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

(5) 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 which 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.

H. Nothing in this section shall prohibit a clerk of a district court from providing to any person authorized under Sections 47-4-1 through 47-4-8 NMSA 1978 to conduct abstracter's business within New Mexico information concerning the appointment of a guardian or conservator pursuant to Sections 45-5-201 through 45-5-432 NMSA 1978; provided that such information shall be limited to:

(1) docket entries;

(2) date of the proceeding, appointment and termination;

(3) duration and type of the guardianship or conservatorship;

(4) limitations, if any, on the powers of the guardian or conservator; and

(5) the name and other information necessary to identify the ward; provided, however, such disclosure shall not include any diagnostic treatment or other medical information.

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.

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.

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.

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.

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. 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. 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.

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.

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.

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)

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

§§ 43-1A-1 to 43-1A-12. Recompiled.

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.

Article 2

Alcoholics and Intoxicated Persons; Detoxification

§ 43-2-1. Repealed.

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;

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

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.

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. (Effective until July 1, 1991.)

It is the policy of this state that alcoholics and intoxicated persons may be subjected to criminal prosecution because of their consumption of alcoholic beverages only under circumstances of chronic public intoxication and, whenever possible, should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

History: 1953 Comp., § 46-12-2.1, enacted by Laws 1977, ch. 374, § 2; 1989, ch. 378, § 1.

The 1989 amendment, effective June 16, 1989, made minor stylistic changes, deleted "not" following "intoxicated persons may", and inserted "only under circumstances of chronic public intoxication and, whenever possible,".

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

§ 43-2-3. Policy of state regarding alcoholism. (Effective July 1, 1991.)

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.

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.

§ 43-2-4. Adoption and enforcement of laws by a political subdivision. (Effective until July 1, 1991.)

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, unless that law, ordinance, resolution or rule is substantially the same as the provisions of Section 43-2-8.1 NMSA 1978.

B. No county, municipality or other political subdivision may interpret or apply any law of general application to circumvent 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: 1953 Comp., § 46-12-2.2, enacted by Laws 1977, ch. 374, § 3; 1989, ch. 47, § 2; 1989, ch. 378, § 2.

The 1989 amendments. - Laws 1989, ch. 47, § 2, effective June 16, 1989, inserting "or drugs" in Subsection C, was approved March 15, 1989. However, Laws 1989, ch. 378, § 2, effective June 16, 1989, adding all of the language of Subsection A beginning with "unless", and inserting "or drugs" near the beginning of Subsection C, was approved April 7, 1989. This section is set out as amended by Laws 1989, ch. 378, § 2. See 12-1-8 NMSA 1978.

§ 43-2-4. Adoption and enforcement of laws by a politcal subdivision. (Effective July 1, 1991.)

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.

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.

§ 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 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.

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.

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.

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. Chronic intoxicated condition; penalty. (Effective until July 1, 1991.)

A. Any person who pursuant to Paragraph (5) of Subsection A of Section 43-2-8 NMSA 1978 has been taken into protective custody for a third or subsequent time within thirty consecutive days because of his intoxicated condition is guilty of a misdemeanor and upon conviction shall be sentenced to imprisonment in jail for a definite period not exceeding ninety days or to a fine not exceeding one hundred dollars ($100), or both.

B. The sentencing court may defer the sentence under Subsection A of this section of any person who:

(1) upon an examination ordered by the court, is determined to be an alcoholic or intoxicated person in need of treatment; and

(2) voluntarily agrees to necessary treatment at an approved public or private treatment facility for a period of time which shall be a condition of the deferred sentence.

History: 1978 Comp., § 43-2-8.1, enacted by Laws 1989, ch. 378, § 3.

Delayed repeals. - Laws 1989, ch. 378, § 6 repeals 43-2-8.1 NMSA 1978, as enacted by Laws 1989, ch. 378, § 3, effective July 1, 1991.

Effective dates. - Laws 1989, ch. 378 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

§ 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.

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. 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.

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.

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. - 41 Am. Jur. 2d Incompetent Persons §§ 39, 43.

§ 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.

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

§ 43-2-13. Repealed.

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.

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.

§ 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.

§ 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.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 41 Am. Jur. 2d Incompetent Persons § 60.

§ 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] may be held for a period of no more than twelve hours from the time of his arrival at the jail; 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 as defined in Section 43-3-3 NMSA 1978 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.

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.

Compiler's notes. - Section 43-3-3 NMSA 1978, referred to near the end of Subsection A, was repealed by Laws 1985, ch. 185, § 8. Present comparable provisions may be found at 43-3-7 NMSA 1978 et seq.

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.

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 43-3-7 NMSA 1978 et seq.

§ 43-3-7. Community alcoholism treatment and detoxification fund; created; liquor excise tax proceeds.

A. There is created in the state treasury the "community alcoholism treatment and detoxification fund".

B. The proceeds of the tax imposed by Section 7-17-5 NMSA 1978 and directed to be distributed under Section 7-1-6.3 NMSA 1978 to the fund specified in Subsection A of this section shall be transferred pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

C. Money in the community alcoholism treatment and detoxification fund is earmarked for the purposes of the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act [43-3-7 to 43-3-13 NMSA 1978] and is subject to appropriation and expenditure only for the purpose of that act. The health and environment department shall administer the money in the community alcoholism treatment and detoxification fund.

History: Laws 1981, ch. 39, § 126; 1982, ch. 18, § 23; 1983, ch. 214, § 7; 1985, ch. 185, § 7.

§ 43-3-8. Short title.

This act [43-3-7 to 43-3-13 NMSA 1978] may be cited as the "Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act".

History: Laws 1985, ch. 185, § 1.

§ 43-3-9. Legislative declaration.

The legislature finds that alcoholism, as a disease, is New Mexico's most costly and debilitating public health problem and alcohol abuse is one of New Mexico's most dangerous behavioral problems. Therefore, an effective treatment and prevention program for alcoholism must be pursued. The legislature further finds that the

prevention and treatment of alcoholism can best be effected on a community level, coordinated through a statewide plan based on a statewide needs assessment which also reflects local planning, concerns and priorities. The legislature further finds that increased emphasis on prevention, a statewide systems approach to treatment services and involvement with law enforcement by the treatment system are required as part of a comprehensive approach to alcoholism and alcohol abuse problems. As a means of more effectively integrating alcoholism treatment and law enforcement activities, the legislature finds that screening programs are needed to determine whether offenders are physically dependent on alcohol or have developed an entrenched pattern of abuse, and are thus in need of treatment for alcoholism or alcohol abuse. Driving while intoxicated (DWI) offenders, unless they have been determined to be neither alcoholic nor alcohol abusers by a screening program, should be directed into appropriate treatment programs. For such offenders, DWI school should not be considered an appropriate alternative either to imposition of sentence or to alcoholism treatment.

History: Laws 1985, ch. 185, § 2.

§ 43-3-10. Definitions.

As used in the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act [43-3-7 to 43-3-13 NMSA 1978]:

A. "bureau" means the alcoholism bureau of the behavioral health services division of the department;

B. "department" means the health and environment department;

C. "detoxification program" means a residential program which provides physical care, education and counseling to persons who enter the program physically dependent on alcohol, to whom the program then offers the services necessary to provide for their health and safety during the process of physical withdrawal from alcohol dependence and to motivate the persons to accept further treatment for alcoholism as appropriate to their cases;

D. "long-term rehabilitation program" means a residential program offering individualized habilitative or rehabilitative programming to chronic alcoholics, ordinarily involving a residential stay of forty-five days or more, the object of which is to equip the alcoholic to establish a sober, productive life in the community and to assist the alcoholic in establishing such a life;

E. "outpatient program" means a program offering counseling, education, consultative and related services to alcohol abusers, alcoholics, families and other parties in the community who are not resident in an alcoholism treatment program;

F. "prevention program" means any program which has as its objective the amelioration

of conditions known to motivate excessive or abusive use of alcohol and other drugs or to increase the ability of the individual to resist pressures from other people to use or abuse alcohol and other drugs, through such techniques as affective education, values clarification, saying no to peer pressure, recreational alternatives to substance abuse and wilderness experience;

G. "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 individual 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;

H. "short-term rehabilitation program" means a residential program offering an organized counseling and educational curriculum for the treatment of alcoholism ordinarily involving a residential stay of forty-five days or less and serving the needs of persons from a region of the state; and

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

History: Laws 1985, ch. 185, § 3; 1989, ch. 146, § 1.

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.

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

A. The department shall adopt rules to provide for:

(1) minimum standards of service programs for prevention programs, screening programs, detoxification programs, short-term rehabilitation programs, long-term

rehabilitation programs and outpatient programs which contract for funds under the provisions of the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act [43-3-7 to 43-3-13 NMSA 1978]; provided that such rules shall, before adoption, have been presented to all interested parties in a public hearing;

(2) procedures and forms for applying for a contract for funds pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act;

(3) procedures for review and recommendations of such applications by the bureau to the secretary of the department;

(4) procedures for ensuring compliance with standards of service by contractors receiving funds under this act; and

(5) procedures for reporting of programmatic and financial information necessary to evaluate the effectiveness of programs funded through the provisions of the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act. Evaluation of program effectiveness shall be reported to the legislature annually.

B. Rules adopted by the department shall become effective when filed according to the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

C. The department is authorized to enter into contracts to provide services subject to the availability of appropriations for that purpose.

D. In awarding contract funds, the department shall emphasize development of statewide prevention and early intervention programming and shall work with other state agencies and local school boards and administrations to encourage the development of prevention, education and early intervention programs involving the schools.

E. Any screening programs funded pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act 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.

§ 43-3-12. Contract eligibility.

The department may enter into contracts with municipalities, counties, tribal or pueblo governments or organizations or private nonprofit corporations for the provision of services which are in conformity with the minimum standards set by the department pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment

Act [43-3-7 to 43-3-13 NMSA 1978]. Contracts with private for-profit organizations shall be authorized only where there is a demonstrated need for services which are consistent with the statewide alcoholism services plan and cannot be otherwise provided.

History: Laws 1985, ch. 185, § 5.

§ 43-3-13. Statewide alcoholism services plan.

A. The bureau shall develop and update annually prior to August 30 a statewide alcoholism services plan that documents the extent of New Mexico's alcoholism 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 alcoholism services plan for a period of no less than thirty days prior to its publication.

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

History: Laws 1985, ch. 185, § 6.