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SENATE BILL 539

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Gerald Ortiz y Pino

AN ACT

RELATING TO THE EMERGENCY CIVIL COMMITMENT OF ADULTS; AMENDING
A SECTION OF THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES
CODE TO PROVIDE THAT COMMITMENT PETITIONS BE FILED WHEN
DETERMINED TO BE IN THE BEST INTEREST OF THE CLIENT AND TO
PROVIDE FOR DISTRICT ATTORNEY REPRESENTATION OF THE PETITIONER.

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

SECTION 1. Section 43-1-11 NMSA 1978 (being Laws 1977,
Chapter 279, Section 10, as amended) is amended to read:

"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 a physician or
evaluation facility decides [~~to seek~~] commitment of the client

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1 for further evaluation and treatment is in the best interest of
2 the client, a petition shall be filed with the court within
3 five days of admission requesting the commitment. The
4 physician or facility petitioning for civil commitment pursuant
5 to this section shall be deemed to act on behalf of the state
6 and shall be represented by the district attorney of the county
7 in which the facility is located. The petition shall include a
8 description of the specific behavior or symptoms of the client
9 that evidence a likelihood of serious harm to the client or
10 others and shall include an initial screening report by the
11 evaluating physician individually or with the assistance of a
12 mental health professional or, if a physician is not available,
13 by a mental health professional acceptable to the court. The
14 petition shall list the prospective witnesses for commitment
15 and a summary of the matters to which they will testify.
16 Copies of the petition shall be served on the client, the
17 client's guardian, and treatment guardian if one has been
18 appointed, and the client's attorney.

19 B. At the hearing, the client shall be represented
20 by counsel and shall have the right to present evidence on the
21 client's behalf, including testimony by an independent mental
22 health professional of the client's own choosing, to cross-
23 examine witnesses and to be present at the hearing. The
24 presence of the client may be waived upon a showing to the
25 court that the client knowingly and voluntarily waives the

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1 right to be present. A complete record of all proceedings
2 shall be made.

3 C. A court-appointed guardian for an adult involved
4 in an involuntary commitment proceeding shall have automatic
5 standing to appear at all stages of the proceeding and shall be
6 allowed to testify by telephone or through affidavit if
7 circumstances make live testimony too burdensome.

8 D. The court shall include in its findings the
9 guardian's opinion regarding the need for involuntary treatment
10 or a statement detailing the efforts made to ascertain the
11 guardian's opinion.

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

16 (1) as a result of a mental disorder, the client
17 presents a likelihood of serious harm to the client's own self
18 or others;

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

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

24 F. Once the court has made the findings set forth in
25 Subsection E of this section, the court shall hear further

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1 evidence as to whether the client is capable of informed
2 consent. If the court determines that the client is incapable
3 of informed consent, the court shall appoint for the client a
4 treatment guardian who shall have only those powers enumerated
5 in Section 43-1-15 NMSA 1978.

6 G. An interested person who reasonably believes that
7 an adult is suffering from a mental disorder and presents a
8 likelihood of serious harm to the adult's own self or others,
9 but does not require emergency care, may request the district
10 attorney to investigate and determine whether reasonable
11 grounds exist to commit the adult for a thirty-day period of
12 evaluation and treatment. The applicant may present to the
13 district attorney any medical reports or other evidence
14 immediately available to the applicant, but shall not be
15 required to obtain a medical report or other particular
16 evidence in order to make a petition. The district attorney
17 shall act on the petition within seventy-two hours. If the
18 district attorney determines that reasonable grounds exist to
19 commit the adult, the district attorney may petition the court
20 for a hearing. The court may issue a summons to the proposed
21 client to appear at the time designated for a hearing, which
22 shall be not less than five days from the date the petition is
23 served. If the proposed client is summoned and fails to appear
24 at the proposed time and upon a finding of the court that the
25 proposed client has failed to appear, or appears without having

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1 been evaluated, the court may order the proposed client to be
2 detained for evaluation as provided for in Subsection C of
3 Section 43-1-10 NMSA 1978.

4 H. Any hearing provided for pursuant to Subsection G
5 of this section shall be conducted in conformance with the
6 requirements of Subsection B of this section."

7 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
8 provisions of this act is July 1, 2012.

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