Children's Law Section

Children's Mental Health Law

A Brief Overview

I. The Civil Commitment Process for Children involves the following:

A. Admission to a Hospital. This can be voluntarily i.e. the child goes to the facility willingly, or can be involuntary. If involuntary a peace officer can detain and transport the child based on officer's belief that the child has just attempted suicide or poses a likelihood of serious harm to self or others and needs immediate detention. Also a peace officer can detain and transport a child to a psychiatric facility for an evaluation if the officer has certification from a clinician that as a result of a mental disorder the child presents a likelihood of serious harm to self or others and immediate detention is necessary. Please note that "Clinician" in the code means physician, licensed psychologist, licensed independent social worker, or licensed professional clinical counselor. See Sections 32A-6-1 1 and 32A-6-2.

B. Civil Commitment Hearing. A Hearing will be held within seven days of the child's emergency admission or within seven days of the child's declaration that he doesn't want to continue his voluntary treatment. At the Hearing the child is represented by counsel and this attorney has the right to cross-examine the witnesses testifying against the child, and to present testimony or other evidence from the child or other witnesses. The Court is required to ascertain whether the child's parents, guardians or custodians concur in the involuntary placement. Clear and convincing evidence must establish that the child has a mental disorder or developmental disability, needs the treatment, is likely to benefit from the treatment, the treatment is the least drastic available, and involuntary placement meets the treatment needs of the child. Please note that there is no requirement that there be proof of serious harm to self or others. If the child does not meet the criteria for involuntary commitment nonresidential treatment can be ordered. If the criteria are met the commitment can be ordered for up to 60 days initially and up to 6 months for subsequent commitments. See Section 32A-6-13.

C. Continued Placement Without a Hearing. This can occur if the child is 14 years of age or older and the child wishes to continue in treatment as a voluntary patient. In this instance the child has an attorney assigned who certifies to the Court that the child understands his rights as a voluntary patient. Placement without a hearing can also continue if the child is under the age of 14 and the child's court appointed Guardian ad Litem certifies to the Court that the placement is appropiate and consistent with the least drastic means principle. See Sections 32A-6-12 and 32A-6-11.1

II. Treatment for Children

A. In Patient. This involves several considerations. First the type of treatment will determine the appropriate procedure. if the treatment is psychotherapy, group psychotherapy, counseling or other verbal therapies that do not involve aversive stimuli or substantial deprivations the child has the right with or without parental consent to receive this form of treatment. Second no psychosurgery or convulsive treatment shall be performed on a child unless ordered by a court finding that this was

necessary to prevent the child from serious harm. Psychotropic medications or interventions involving aversive stimuli or substantial deprivation can. only be administered with proper consent. If the child is capable of informed consent i.e. understanding the nature of the treatment and its consequences that child's consent must be obtained before treatment is perfonned. This form of treatment involving psychotropic meds and/or aversive stimuli interventions requires parental consent if the child is under 14 years of age as well as the consent of the child if the child is capable of informed consent. If the child is 14 years of age or older the informed consent of the child must be obtained and the parent notified of the treatment. If the child 14 years older is not capable of informed consent the Court may appoint a treatment guardian to make substitute treatment decisions for the child. The maximum period for appointment of a treatment guardian is 1 year. Preference is given to the child's parent or guardian when appointing a treatment guardian for the child. The treatment guardian can apply for an enforcement order if the child refuses to take the medication that the treatment guardian has approved. A licensed physician can administer psychotropic medications on an emergency basis to protect the child from serious harm while a treatment guardian is being sought. See Section 32A-6-14 N.M.S.A.

B. Out Patient Treatment. This can be ordered by the Court if the child does not meet the criteria for involuntary commitment after a hearing is held. See Secton 32A-6- 13 (1). In addition a child can continue to receive treatment voluntarily as an out patient assuming that proper consent to treatment is obtained.

III. Confidentiality and the Child's Future

A. Court files. The Court is required to set up sequestered files for children in treatment who are voluntary patients as well as children who are under the age of 14 years whose placement has been certified to the Court as appropriate. Upon reaching the age of majority these children can request the District Court for their records and receive all records including all copies that pertain to the child's admission to a treatment facility. Sections 32A-6- 11.1 (I) & 32A-6-12(K)

B. Disclosure of Infonnation. Under Section 32A-6-15 no person shall without authorization of the child disclose or transmit confidential information which might identify the child. There are some very limited exceptions to this general rule. Also under this section the child has a right to access confidential information about himself unless a mental health professional believes that releasing the information would not be in the child's best interests.

C. Stay Orders. When I order a commitment involving a child I almost always order that the commitment be stayed and ultimately dismissed if the child does not run away from the facility and cooperates in treatment. This protects primarily the child's employment and academic future.