

ENGROSSED HOUSE
BILL NO. 1554

By: Seikel of the House

and

Monson of the Senate

An Act relating to mental health; amending Section 3, Chapter 298, O.S.L. 1992, Section 4, Chapter 298, O.S.L. 1992, Section 7, Chapter 298, O.S.L. 1992, as amended by Section 2, Chapter 156, O.S.L. 1994, Section 8, Chapter 298, O.S.L. 1992, Section 9, Chapter 298, O.S.L. 1992, Section 10, Chapter 298, O.S.L. 1992, Section 12, Chapter 298, O.S.L. 1992, and Section 13, Chapter 298, O.S.L. 1992 (43A O.S. Supp. 1994, Sections 5-503, 5-504, 5-507, 5-508, 5-509, 5-510, 5-512 and 5-513), which relate to the Inpatient Mental Health Treatment of Children Act; clarifying language relating to physical custody and emergency custody; modifying place of venue; modifying when certain children may be admitted to a hospital or mental health facility; including the Office of Juvenile Affairs in procedures; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 3, Chapter 298, O.S.L. 1992 (43A O.S. Supp. 1994, Section 5-503), is amended to read as follows:

Section 5-503. A. ~~On and after July 1, 1993,~~ a A child may be admitted for inpatient mental health treatment only pursuant to the provisions of the Inpatient Mental Health Treatment of Children Act.

B. A parent of a child may consent to the voluntary admission of the child for inpatient mental health treatment or, when the child is age fourteen (14) or older and refuses to consent or revokes his consent to inpatient mental health treatment, request the district attorney to file a petition alleging the child to be a child in need of mental health treatment and to require inpatient treatment.

C. A mental health facility may make application to the district attorney for the filing of a petition alleging a child to be a child in need of mental health treatment and to require inpatient treatment when the parent consenting to a child's admission revokes said consent and the person in charge of the mental health facility, or other person authorized by the person in charge of the facility to make such determination, determines that the condition of the child is such that the child should remain in the mental health facility.

D. A child who is a ward of a court may be admitted to a hospital or other mental health facility for inpatient mental health evaluation or treatment only pursuant to the provisions of Section 7 5-507 of this ~~act~~ title.

1. a. A parent having legal custody of a child who is a ward of the court, with the consent of the person responsible for the supervision of the case, may request the district attorney to file a petition alleging the child to be a child in need of mental health treatment and to require inpatient treatment, or

b. The Department of Human Services, the Office of Juvenile Affairs or the juvenile bureau having supervision of the case may make said request.

2. A public or private child care agency having legal custody of a child may request the district attorney to file a petition alleging the child to be a child in need of mental health treatment and to require inpatient treatment.

E. Nothing in ~~this act~~ the Inpatient Mental Health Treatment of Children Act shall be interpreted to prohibit or preclude the provision of outpatient mental health treatment or services including, but not limited to, an outpatient mental health evaluation, counseling, educational, rehabilitative or other mental health services to the child, as necessary and appropriate, in the absence of a specific court order for such services.

F. 1. An order of a court committing a child to a mental health facility for inpatient evaluation or treatment shall not, by itself, relieve a parent of the obligation to provide for the support of the child or of liability for the cost of mental health treatment provided to the child.

2. Nothing in the Inpatient Mental Health Treatment of Children Act shall be interpreted to:

- a. limit the authority of the court to order a parent to make support payments or to make payments or reimbursements for medical care or treatment, including mental health care or treatment, to the person, institution, agency or Department having custody of the child or providing the treatment, or
- b. abrogate the right of the child to any benefits provided through public funds for which the child is otherwise eligible.

3. An order committing a child to a mental health facility for inpatient treatment shall not by itself serve to preclude a

subsequent adjudication which finds the child to be delinquent, in need of supervision or deprived or shall not cause the vacation of any such order of adjudication previously entered.

SECTION 2. AMENDATORY Section 4, Chapter 298, O.S.L. 1992 (43A O.S. Supp. 1994, Section 5-504), is amended to read as follows:

Section 5-504. A. Upon the filing of a petition alleging that a child is a child in need of mental health treatment and requires inpatient mental health treatment, or upon the assumption of protective or emergency custody of an alleged deprived child pursuant to the provisions of Section 1107 of Title 10 of the Oklahoma Statutes, or when a child is the ward of the court, the judge of the district court having juvenile docket responsibility shall have jurisdiction of any child who is or is alleged to be in need of mental health treatment and of the parent or legal custodian of said child, regardless of where the parent or legal custodian is found. When jurisdiction has been obtained over a child who is or is alleged to be in need of mental health treatment, such jurisdiction may be retained until the child is discharged from mental health treatment ordered by the court. For the convenience of the parties and in the interest of justice, a proceeding under the Inpatient Mental Health Treatment of Children Act may be transferred to the district court in any other county.

1. The venue for legal proceedings pursuant to the Inpatient Mental Health Treatment of Children Act shall be:

- a. the county ~~of legal residence of the parent~~ where the child resides, ~~or~~
- b. when the child is in the custody of a public or private child care agency, the county in which the child resides at the time legal proceedings are initiated, or
- c. the county of original jurisdiction.

2. The district court in which a petition is filed or the district court in which custody has been assumed pursuant to the provisions of Section 1107 of Title 10 of the Oklahoma Statutes may retain jurisdiction of a child in need of mental health treatment in such proceeding even if the child is subject to the jurisdiction of another district court within the state. Any orders made by the court in which said petition is filed shall control over prior orders in regard to the child.

3. The district court in which a petition is filed which alleges that a child is in need of mental health treatment may issue any temporary order or grant any interlocutory relief authorized by the Inpatient Mental Health Treatment of Children Act even if another district court within the state has jurisdiction of the child or has jurisdiction to determine the custody or support of the child.

4. If the district court in which a petition is filed pursuant to either paragraphs 2 or 3 of this subsection sustains the petition, the district court shall have the jurisdiction to make a final determination on the petition or to transfer the proceedings to a court having prior jurisdiction over the child. Where the other proceeding is pending in the same judicial district in which the petition is filed, the chief judge of the judicial district shall determine which judge shall try the issues when the judges to whom the cases have been assigned are unable to agree on the procedure that should be followed.

B. Unless otherwise specifically provided by the Inpatient Mental Health Treatment of Children Act and Title 43A of the Oklahoma Statutes, the rules of civil procedure shall apply to all legal proceedings pursuant to the Inpatient Mental Health Treatment of Children Act.

SECTION 3. AMENDATORY Section 7, Chapter 298, O.S.L. 1992, as amended by Section 2, Chapter 156, O.S.L. 1994 (43A O.S. Supp. 1994, Section 5-507), is amended to read as follows:

Section 5-507. A. No child who is taken into protective or emergency custody pursuant to Section 1107 of Title 10 of the Oklahoma Statutes or an alleged deprived child, or who is a ward of the court shall be admitted to a hospital or mental health facility:

1. On an emergency psychiatric basis except as provided by subsection C of this section;
2. For an inpatient mental health evaluation except as provided by subsection D of this section; or
3. For inpatient mental health care and treatment except upon a commitment order of the court after a finding that the child requires such services as provided by Section 5-512 of this title.

B. 1. Whenever a child is taken into protective custody as provided by Section 1107 of Title 10 of the Oklahoma Statutes and is believed to be a child in need of mental health treatment, the child shall be taken to a shelter, hospital, foster home or other appropriate place as designated by the court, or the child shall be taken immediately before a judge of the district court for the purpose of obtaining an order for protective custody. When a child has been taken into protective custody as a child in need of mental health treatment without a court order, the peace officer or employee of the court taking the child into protective custody shall immediately report the fact of the detention of the child to a judge of the district court in the county in which the child was taken into protective custody. If no judge is available locally, the detention shall be reported immediately to the presiding judge of the judicial administrative district, or if the presiding judge of the judicial administrative district cannot be reached, then to any judge regularly serving within the judicial administrative district.

2. The parent or legal guardian of the child shall be given immediate notice of the protective custody of the child whenever possible and prior adequate notice of any hearing pursuant to this subsection. Within the next two (2) judicial days following the taking of the child into protective custody, and thereafter at such intervals as may be determined by the court, the court shall conduct a hearing to determine whether the child should remain in protective custody or be released to the parent, guardian, legal custodian or another responsible person pending further proceedings pursuant to the Inpatient Mental Health Treatment of Children Act, ~~Section 5-501 et seq. of this title.~~

3. The court may release a child alleged to be in need of mental health treatment from protective custody upon such conditions as the court finds reasonably necessary for the protection of the child or others.

C. After a prescreening examination and a determination by a licensed mental health professional that there is reasonable cause to believe that as a result of a demonstrable mental illness there exists an imminent danger that the child will intentionally or unintentionally seriously physically injure himself ~~or herself~~ or another person, a child may be admitted to a hospital or mental health facility on an emergency psychiatric basis. Except upon an order of the court for an inpatient mental health evaluation of the child as provided by subsection D of this section, such emergency psychiatric admission shall be for not more than two (2) days, excluding weekends and legal holidays.

D. After a prescreening mental health evaluation and upon an application by the district attorney, the court may issue an order for a mental health evaluation of a child who is a ward of the court, or who has been taken into protective or emergency custody as otherwise provided by Title 10 of the Oklahoma Statutes, and who appears to be a child in need of mental health treatment. The

evaluation shall be made by an independent licensed mental health professional.

1. The court shall order an inpatient mental health evaluation only after a finding that there exists an imminent danger that the child will seriously physically injure himself ~~or herself~~ or another person and therefore the mental health evaluation cannot be conducted on an outpatient basis. Such finding shall be based upon clear and convincing evidence.

2. In all other cases, the court shall order the mental health evaluation of the child to be conducted on an outpatient basis in or near the community in which the child resides at the time of such order.

E. An order committing a child who is a ward of the court for inpatient evaluation shall order the commitment of the child for not more than three (3) days, excluding weekends and holidays.

1. A child admitted pursuant to this section shall be evaluated within forty-eight (48) hours of admission by an independent licensed mental health professional and a report of the evaluation shall be submitted to the district attorney.

2. If after the inpatient evaluation it appears that the child may require inpatient mental health treatment, the district attorney may file a petition with the court requesting an order committing the child to a mental health facility for inpatient mental health treatment. After the filing of a petition and upon an order of the court, the child may be detained in the mental health facility for no longer than necessary for a hearing on the petition and further order of the court.

F. Nothing in this section shall be interpreted to preclude or prohibit:

1. The admission of a child to a hospital for needed medical care and services, other than mental health treatment or examination; or

2. A parent having physical custody of a child who is a ward of the court from arranging for an emergency psychiatric admission of the child. In such cases, the parent shall immediately notify the person responsible for the supervision of the case of said admission.

SECTION 4. AMENDATORY Section 8, Chapter 298, O.S.L. 1992 (43A O.S. Supp. 1994, Section 5-508), is amended to read as follows:

Section 5-508. A. The report of an independent licensed mental health professional prepared pursuant to Section ~~6-er-7~~ 5-506 or 5-507 of this ~~act~~ title shall include written findings as to whether:

1. The child appears to have demonstrable mental illness and as a result of that mental illness can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or another person if mental health services are not provided, has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation, and is reasonably likely to benefit from mental health treatment; and

2. Based upon the following, inpatient treatment is the least restrictive alternative that meets the needs of the child:

- a. reasonable efforts have been made to provide for the mental health treatment needs of the child through the provision of less restrictive alternatives and such alternatives have failed to meet the treatment needs of the child, or
- b. after a thorough consideration of less restrictive alternatives to inpatient treatment, the condition of the child is such that less restrictive alternatives are unlikely to meet the mental health treatment needs of the child; and

3. The child has been provided with a clinically appropriate explanation of the nature and purpose of the treatment; and

4. If the child is fourteen (14) years of age or older and was admitted to or detained in a mental health facility pursuant to Section ~~6~~ 5-506 of this ~~act~~ title, ~~he~~ such child has been provided with an explanation of his rights ~~under this act~~ pursuant to the Inpatient Mental Health Treatment of Children Act as they would apply if he were to object to admission, and he has objected to admission.

B. Any report of a mental health evaluation of a child alleged to be a child in need of mental health treatment that recommends that the child be found to be eligible for inpatient mental health treatment shall be signed by ~~two mental health professionals, at least one of whom shall be an~~ the independent licensed mental health professional examining the child.

C. The report of a mental health evaluation of a child pursuant to Section ~~6 or 7~~ 5-506 or 5-507 of this ~~act~~ title shall be submitted to the district attorney.

D. The parents, all public agencies, and all providers or programs which have treated or are treating the child shall cooperate with the person conducting a mental health evaluation for the purpose of providing a report to a district attorney or to a district court and shall promptly deliver, as otherwise provided by law, all records related to the treatment or education of the child.

SECTION 5. AMENDATORY Section 9, Chapter 298, O.S.L. 1992 (43A O.S. Supp. 1994, Section 5-509), is amended to read as follows:

Section 5-509. A. A petition alleging a child to be a child in need of inpatient mental health treatment shall be filed by a district attorney and may be filed by a district attorney only after receipt and review of the report of an independent licensed mental health professional stating that in the opinion of said professional

the child has a demonstrable mental illness and as a result of that mental illness can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or another person if mental health services are not provided, and upon the request of:

1. A parent, a public or private child care agency having legal custody of the child, or a mental health facility; or

2. When the child is a ward of the court, the Department of Human Services, the Office of Juvenile Affairs or juvenile bureau having supervision of the case or by the parent of the child with the consent of the Department or Office, as applicable, or juvenile bureau having supervision of the case.

B. If after receipt and review of the report of a licensed mental health professional:

1. The district attorney declines to file a petition, the child shall be discharged to the custody of the consenting parent or public or private agency having custody of the child; or

2. The petition is filed, a copy of the report of the licensed mental health professional shall be attached to the petition and notice shall be given as provided by Section ~~40~~ 5-510 of this ~~act~~ title.

C. 1. The proceeding shall be entitled "In the matter of _____, a child alleged to be in need of inpatient mental health treatment".

2. The petition shall allege that the child has a demonstrable mental illness and as a result of that mental illness can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or another person if mental health services are not provided and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation and shall be verified and may be upon information and belief. It shall set forth:

- a. with particularity the facts which bring the child within the purview of the Inpatient Mental Health Treatment of Children Act,
- b. the name, age and residence of the child,
- c. the names and residences of his parents,
- d. the name and residence of his legal guardian, if there be one,
- e. the name and residence of the person or persons having custody or control of the child,
- f. the name and residence of the nearest known relative, if no parent or guardian can be found,
- g. the relief requested, and
- h. an endorsement of witnesses intended to be called by the petitioner.

D. Upon the filing of a petition pursuant to this section, the person requesting the petition shall ensure that a proposed individual treatment plan for the child is prepared and submitted to the court at least twenty-four (24) hours prior to the time set for the hearing. Whenever possible, the proposed individual treatment plan shall be attached to the petition.

SECTION 6. AMENDATORY Section 10, Chapter 298, O.S.L. 1992 (43A O.S. Supp. 1994, Section 5-510), is amended to read as follows:

Section 5-510. A. Upon the filing of a petition alleging a child to be a child in need of mental health treatment, the court shall:

1. If the child is not represented by counsel, appoint an attorney to represent the child. An attorney so appointed shall consult with the child at least twenty-four (24) hours prior to the date set for hearing the petition. In addition, the court may appoint a guardian ad litem as provided by Section 1109 of Title 10 of the Oklahoma Statutes;

2. Set a date for a hearing on the petition. Said date shall not be less than one (1) day, or more than three (3) days, excluding weekends and legal holidays, from the date of the filing of the petition. Upon the request of the attorney for the child, the date of the hearing may be extended once for up to an additional three (3) days, excluding weekends and holidays; and

3. Cause notice of the date, time, place and purpose of the hearing to be given to the petitioner, the child, and, if not the petitioner, the parents of the child and, if applicable, the person in charge of the mental health facility. If the child is a ward of the court, and if not the petitioner, notice shall also be given to a public or private child care agency having legal custody of the child, if any, or to the person at the Department of Human Services, the Office of Juvenile Affairs or the applicable juvenile bureau responsible for the supervision of the case. Said notice shall be given at least twenty-four (24) hours prior to the date set for the hearing and shall be given in such manner as directed by the court.

B. The report of a mental health evaluation of the child by an independent licensed mental health professional shall be attached to a petition for an order committing a child to a facility for inpatient mental health treatment.

1. If the court finds the report submitted with the petition to be inadequate to aid the court in the disposition of the case, the court shall order an independent mental health evaluation of the child and the preparation of a proposed individualized treatment plan for the child.

2. The court may order such other reports as it deems necessary in order to aid the court in the disposition of the case.

SECTION 7. AMENDATORY Section 12, Chapter 298, O.S.L. 1992 (43A O.S. Supp. 1994, Section 5-512), is amended to read as follows:

Section 5-512. A. At the hearing the court shall determine whether by clear and convincing evidence:

1. The child has a demonstrable mental illness and as a result of that mental illness can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or another person if mental health services are not provided and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation; and

2. The child is in need of the inpatient mental health treatment proposed in the individualized treatment plan and is likely to benefit from such treatment.

B. After a hearing, the court shall order the child to receive the least restrictive mental health care and treatment appropriate for the treatment needs of the child until such time as the care and treatment are no longer necessary.

C. The court shall not commit a child to a mental health facility for inpatient treatment unless the court determines:

1. The child has a demonstrable mental illness and as a result of that mental illness can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or another person if mental health services are not provided and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation; or

2. That all reasonable efforts have been made to provide for the mental health treatment needs of the child through the provision of less restrictive alternatives to inpatient treatment and that such alternatives have failed to meet the treatment needs of the child; or

3. After a thorough consideration of less restrictive alternatives to inpatient treatment, that the condition of the child is such that less restrictive alternatives are unlikely to meet the mental health treatment needs of the child; and

4. There are no comparably effective mental health services available to the child that are less physically intrusive or restrictive.

D. Whenever, after a hearing, the court finds that the child:

1. Is not a child in need of mental health treatment the court shall dismiss the case; or

2. Is a child in need of mental health treatment but does not require inpatient treatment, the court may order mental health treatment or services through a less restrictive alternative to inpatient mental health treatment and, upon a finding that it is in the best interests of the child, the court may order the parents or other adult persons living in the home of the child to comply with reasonable conditions relating to the treatment of the child.

E. Whenever, after a hearing, the court finds that the child is a child in need of mental health treatment and requires inpatient treatment in a mental health facility, the court shall order the commitment of the child to a mental health facility for not more than thirty (30) days, and:

1. When the child is in the custody of a parent or legal guardian, order the parent or legal guardian to make arrangements for the admission of the child to a public or private mental health facility appropriate for the inpatient care and treatment of children which is willing to admit the child for treatment; and

2. When the child is in the custody of the Department of Human Services or the Office of Juvenile Affairs, order the Department or Office, as applicable, to make arrangements for the placement of the child in a public or private mental health facility appropriate for the inpatient treatment needs of the child.

F. Whenever the court commits a child to a mental health facility for inpatient treatment pursuant to this section, the court shall set the matter for review and shall review the matter not more than thirty (30) days from the date of commitment and shall continue

to review the matter at intervals of not more than thirty (30) days until the child is discharged from inpatient mental health treatment. After the review and a determination by the court that the child continues to meet the criteria for inpatient treatment, the court may extend the commitment order for up to thirty (30) days and set the matter for review as required by this subsection.

SECTION 8. AMENDATORY Section 13, Chapter 298, O.S.L. 1992 (43A O.S. Supp. 1994, Section 5-513), is amended to read as follows:

Section 5-513. A. Within ten (10) days after the admission of a child for inpatient mental health treatment, whether through a voluntary admission or an order of commitment pursuant to Section ~~12~~ 5-512 of this ~~act~~ title, the person in charge of the facility in which the child is being treated shall ensure that an individualized treatment plan has been prepared by the person responsible for the child's treatment. The child shall be involved in the preparation of the treatment plan to the maximum extent consistent with his ability to understand and participate. The parent of the child or, if the child is in the custody of the Department of Human Services or the Office of Juvenile Affairs, the designated representative of the Department or Office, as applicable, shall be involved to the maximum extent consistent with the treatment needs of the child.

B. The child shall be discharged from the facility when he no longer meets the admission or commitment criteria, as determined by appropriate hospital medical staff review after such persons have examined the child and reviewed reports submitted by members of the facility staff familiar with the child's condition. If not previously discharged, a child committed by a court to inpatient mental health treatment shall be discharged upon the expiration of a court order committing the child for inpatient treatment or an order of the court directing the discharge of the child.

C. Prior to the discharge of the child from inpatient treatment, a discharge plan for the child shall be prepared and explained to the child and the parent of the child, or, if the child is in the custody of the Department of Human Services or the Office of Juvenile Affairs, a designated representative of the Department or Office, as applicable. The plan shall include but not be limited to:

1. The services required by the child in the community to meet his needs for treatment, education, housing and physical care and safety; and

2. Identification of the public or private agencies that will be involved in providing treatment and support to the child.

D. If the child is a ward of the court and is in the legal custody of the Department of Human Services, the Office of Juvenile Affairs or a private child care agency, or under the supervision of the Department ~~or~~, a statutorily constituted juvenile bureau or Office, as applicable, copies of the treatment and discharge plans shall be sent to the person at the Department of Human Services or other applicable person responsible for the supervision of the case.

SECTION 9. This act shall become effective November 1, 1995.

Passed the House of Representatives the 13th day of March, 1995.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate