

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1641

By: Davis

AS INTRODUCED

An Act relating to mental health; amending Section 2, Chapter 298, O.S.L. 1992, as last amended by Section 3, Chapter 254, O.S.L. 1995, Section 3, Chapter 298, O.S.L. 1992, as amended by Section 4, Chapter 254, O.S.L. 1995, Section 5, Chapter 298, O.S.L. 1992, Section 6, Chapter 298, O.S.L. 1992, and Section 8, Chapter 298, O.S.L. 1992, as amended by Section 7, Chapter 254, O.S.L. 1995 (43A O.S. Supp. 1996, Sections 5-502, 5-503, 5-505, 5-506, and 5-508), which relate to the inpatient mental health treatment of children; modifying age requirement for consent by child; and providing an effective date.

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

SECTION 1. AMENDATORY Section 2, Chapter 298, O.S.L. 1992, as last amended by Section 3, Chapter 254, O.S.L. 1995 (43A O.S. Supp. 1996, Section 5-502), is amended to read as follows:

Section 5-502. As used in the Inpatient Mental Health Treatment of Children Act:

1. "Child" means any person under eighteen (18) years of age;
2. "Child in need of mental health treatment" means a child:

- a. who 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 herself 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
- b. who has a demonstrable mental illness of sufficient severity to cause substantial impairment or disability in at least two of the following major areas of functioning in the child's life: family relations, school performance, social interactions or ability to perform independently the basic tasks of personal hygiene, hydration and nutrition, or self-protection. A determination regarding the ability of the child to perform independently said basic tasks shall be based upon the age of the child and reasonable and appropriate expectation of the abilities of a child of such age to perform said tasks.

The term "child in need of mental health treatment" shall not mean a child afflicted with epilepsy, developmental disability, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs or who is truant or sexually active unless the child also meets the criteria for a child in need of treatment pursuant to subparagraphs a and b of this paragraph;

3. "Consent" means the voluntary, express, and informed agreement to treatment in a mental health facility by a child ~~fourteen (14)~~ sixteen (16) years of age or older and by a parent having custody of the child or a legally authorized custodian;

4. "Independent" means a licensed mental health professional conducting an outpatient or inpatient mental health evaluation and submitting a report to the district attorney or court pursuant to the provisions of the Inpatient Mental Health Treatment of Children Act who is not and will not be treating the child and has no financial interest in a facility in which the child will be placed or any significant interest in the hospitalization of the child that would constitute a conflict of interest, and has signed an affidavit to that effect, provided, a licensed mental health professional employed by a community mental health center shall be exempt from the requirement that he or she is not and will not be treating the child;

5. "Individualized treatment plan" means a specific plan for the care and treatment of an individual child who requires inpatient mental health treatment. The plan shall be developed with maximum involvement of the child's family, consistent with the child's desire for confidentiality and with the treatment needs of the child, and shall clearly include the following:

- a. a statement of the presenting problems of the child, short- and long-term treatment goals and the estimated date of discharge. The short- and long-term goals shall be based upon a clinical evaluation and shall include specific behavioral and emotional goals against which the success of treatment can be measured,
- b. treatment methods and procedures to be used to achieve these goals, which methods and procedures are related to each of these goals and which include, but are not limited to, specific prognosis for achieving each of these goals,
- c. identification of the types of professional personnel who will carry out the treatment procedures including,

but not limited to, appropriate licensed mental health professionals, education professionals, and other health or social service professionals,

d. documentation of the involvement of the child in the development of the treatment plan and:

(1) the involvement of a parent in the development of the treatment plan and the consent of the child to the plan, or

(2) when the child is in the legal custody of a public or private child care agency, the involvement of a designated representative of the agency in the development of the treatment plan and documentation of the consent of the agency to the treatment plan;

6. "Inpatient treatment" means mental health treatment services offered or provided for a continuous period of more than twenty-four (24) hours in residence after admission to a mental health facility for the purpose of observation, evaluation or treatment;

7. "Least restrictive alternative" means the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit to the child or to protect the child or others from physical injury;

8. "Less restrictive alternative to inpatient treatment" means and includes but is not limited to outpatient counseling services, including services provided in the home of the child and which may be referred to as "home-based services", day treatment or day hospitalization services, respite care, or foster care or group home care, as defined by Title 10 of the Oklahoma Statutes, through a program established and specifically designed to meet the needs of children in need of mental health treatment, or a combination thereof;

9. "Licensed mental health professional" means a person who has received specific training for and is experienced in performing mental health therapeutic, diagnostic or counseling functions and is not related by blood or marriage to the person being examined or does not have any interest in the estate of the person being examined, and who is:

- a. a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology,
- b. a clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists,
- c. a licensed professional counselor as defined in Section 1902 of Title 59 of the Oklahoma Statutes,
- d. a person licensed as a licensed social worker pursuant to the provisions of the Licensed Social Workers Act, Section 1250 et seq. of Title 59 of the Oklahoma Statutes, or
- e. a Doctor of Medicine who is duly licensed to practice by the State Board of Medical Licensure and Supervision, or a Doctor of Osteopathy who is duly licensed to practice by the Oklahoma Board of Osteopathic Examiners, or a qualified examiner as defined in Section 1-103 of this title.

For the purposes of this paragraph, "licensed" means that the person holds a current, valid license issued in accordance with the laws of this state;

10. "Mental health evaluation" means an examination or evaluation of a child for the purpose of making a determination whether, in the opinion of the licensed mental health professional making the evaluation, the child is a child in need of mental health treatment and, if so, is in need of inpatient mental health treatment and for the purpose of preparing reports or making

recommendations for the most appropriate and least restrictive treatment for the child;

11. "Mental health facility" means a public or private hospital or related institution as defined by Section 1-701 of Title 63 of the Oklahoma Statutes offering or providing inpatient mental health services, a public or private facility accredited as an inpatient or residential psychiatric facility by the Joint Commission on Accreditation of Healthcare Organizations, or a facility operated by the Department of Mental Health and Substance Abuse Services and designated by the Commissioner of the Department of Mental Health and Substance Abuse Services as appropriate for the inpatient evaluation or treatment of children;

12. "Mental illness" means a substantial disorder of the child's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior. "Mental illness" may include substance abuse, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior;

13. "Parent" means:

- a. a biological or adoptive parent who has legal custody of the child, including either parent if custody is shared under a joint decree or agreement, or
- b. a person judicially appointed as a legal guardian of the child, or
- c. a relative within the third degree of consanguinity who exercises the rights and responsibilities of legal custody by delegation from a parent, as provided by law;

14. "Person responsible for the supervision of the case" means:

- a. when the child is a ward of the court and in the legal custody of a public or private child care agency, the caseworker or other person designated by the agency to supervise the case, or
- b. when the child is a ward of the court and under the court-ordered supervision of the Department of Human Services or a statutorily constituted juvenile bureau, the person designated by the Department of Human Services or juvenile bureau to supervise the case;

15. "Prescreening" means a face-to-face mental health evaluation conducted by a licensed mental health professional to determine whether a child requires an inpatient evaluation or an emergency mental health admission and may include consultation with other mental health professionals and a review of all available records on the child;

16. "Ward of the court" means a child adjudicated to be a deprived child, a child in need of supervision, or a delinquent child; and

17. "Treatment" means any planned intervention intended to improve a child's functioning in those areas which show impairment as a result of mental illness.

SECTION 2. AMENDATORY Section 3, Chapter 298, O.S.L. 1992, as amended by Section 4, Chapter 254, O.S.L. 1995 (43A O.S. Supp. 1996, Section 5-503), is amended to read as follows:

Section 5-503. 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)~~ sixteen (16) 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 5-507 of this 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 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 3. AMENDATORY Section 5, Chapter 298, O.S.L. 1992 (43A O.S. Supp. 1996, Section 5-505), is amended to read as follows:

Section 5-505. A. A child may be admitted to a mental health facility willing to admit the child for inpatient treatment upon application and with the consent of a parent having custody of the child as follows:

1. A child ~~fourteen (14)~~ sixteen (16) years of age or older may be admitted to a willing mental health facility for inpatient treatment upon the joint application and consent of the child and the child's parent; and

2. The consent of a child under the age of ~~fourteen (14)~~ sixteen (16) is not required for admission pursuant to the provisions of this section.

B. Upon the application of a parent of the child, a mental health facility may admit the child for inpatient mental health evaluation or treatment if the person in charge of the mental health facility or his designee and a licensed mental health professional determines the child to be clinically eligible for such admission.

1. A child may be eligible for admission for inpatient evaluation when, after a prescreening examination, a licensed mental health professional determines and states in writing that there is reasonable cause to believe that the child may be in need of mental health treatment and that such evaluation is necessary to properly determine the condition of the child and the mental health treatment needs of the child, if any.

2. A child may be eligible for inpatient mental health treatment when, after an outpatient or inpatient mental health evaluation, a licensed mental health professional determines and states in writing that in his professional opinion the child is a child in need of mental health treatment and:

- a. the child appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment, and
- b. based upon the following, inpatient treatment is determined to be the least restrictive alternative that meets the needs of the child:

- (1) 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
- (2) 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
- c. the child has been provided with a clinically appropriate explanation of the nature and purpose of the treatment, and
- d. if the child is ~~fourteen (14)~~ sixteen (16) years of age or older, he has been provided with an explanation of his rights under this act as they would apply if he were to object to admission, and he has consented to admission.

3. If admission or transfer from a private mental health facility to a state-operated mental health facility is sought, the community mental health center serving the area in which the child resides shall provide the mental health evaluation required by this section and shall ensure that the necessary written findings have been made before approving the admission.

4. A copy of the written findings of the evaluation required by this section shall be provided to the consenting parent and the parent shall have the opportunity to discuss the findings with the person conducting the evaluation.

C. The determinations and written statements of a licensed mental health professional made pursuant to this section shall, upon the admission of the child for inpatient evaluation or treatment, be made a part of the medical record of the child.

D. Inpatient treatment of a child admitted under this section may not exceed ninety (90) consecutive days unless continued

inpatient treatment has been authorized by appropriate hospital medical personnel, based upon their written findings that the criteria set forth in subsection B of this section continue to be met, after such persons have examined the child and interviewed the consenting parent and reviewed reports submitted by members of the facility staff familiar with the child's condition.

E. Any child admitted under this section while younger than ~~fourteen (14)~~ sixteen (16) years of age and his consenting parent shall be informed orally and in writing by the director of the facility for inpatient treatment within five (5) days prior to his fourteenth birthday that continued voluntary treatment under the authority of this section requires his consent.

F. 1. If the parent who consented to a child's admission under this section revokes his consent at any time, or if a child ~~fourteen (14)~~ sixteen (16) or older objects at any time to further treatment, the child shall be discharged within forty-eight (48) hours to the custody of such consenting parent, unless the parent of the child refusing or revoking his consent or, when the parent revokes his consent, the facility, requests 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 in accordance with the provisions of subsection B of Section ~~6~~ 5-506 of this ~~act~~ title.

2. In such cases, the child may be detained up to three (3) days, excluding weekends and legal holidays, pending the filing of the petition and if a petition is filed, the child may be detained in the mental health facility only upon an order of the court pending hearing on the petition and further order of the court.

G. Nothing in this section shall be interpreted to prohibit or preclude an emergency admission of a child to a mental health facility when the condition of the child warrants such admission. Whenever the admission of a child who has been admitted to a mental health facility as an emergency patient continues for longer than

seventy-two (72) hours for the purpose of continued inpatient evaluation or treatment the provisions of subsection B of this section shall apply.

SECTION 4. AMENDATORY Section 6, Chapter 298, O.S.L. 1992 (43A O.S. Supp. 1996, Section 5-506), is amended to read as follows:

Section 5-506. A. Upon the application of a parent with whom the child resides, a child ~~fourteen (14)~~ sixteen (16) years of age or older who objects to admission may be admitted to a mental health facility willing to admit the child for up to three (3) days, excluding weekends and legal holidays. If admission or transfer from a private mental health facility to a state-operated facility is sought, the community mental health center serving the area in which the child resides shall provide the required mental health evaluations and reports and shall ensure that the necessary written findings have been made.

B. 1. A child admitted pursuant to this section or detained as provided by Section ~~§~~ 5-505 of this ~~act~~ title shall be evaluated within forty-eight (48) hours of his admission or detention by an independent licensed mental health professional and a report of the evaluation shall be submitted to the district attorney.

2. Upon admission of a child pursuant to this section or detention pursuant to Section ~~§~~ 5-505 of this ~~act~~ title, the person requesting the petition shall immediately notify the district attorney. The child may be held by the mental health facility longer than three (3) days, excluding weekends and legal holidays, only after a petition is filed and upon an order of the court pending a hearing on a petition alleging the child to be a child in need of mental health treatment and to require inpatient treatment and further order of the court.

C. A child admitted under this section who rescinds his objection may be retained in the hospital pursuant to Section ~~5~~ 5-505 of this ~~act~~ title.

D. If the parent who consented to a child's admission under this section revokes his consent at any time, the child shall be released within forty-eight (48) hours to the parent's custody unless the person in charge of the facility, or his designee, requests the filing of a petition as provided by subsection C of Section ~~3~~ 5-503 of this ~~act~~ title.

SECTION 5. AMENDATORY Section 8, Chapter 298, O.S.L. 1992, as amended by Section 7, Chapter 254, O.S.L. 1995 (43A O.S. Supp. 1996, 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 5-506 or 5-507 of this 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)~~ sixteen (16) years of age or older and was admitted to or detained in a mental health facility pursuant to Section 5-506 of this title, the child has been provided with an explanation of the rights of the child pursuant to the Inpatient Mental Health Treatment of Children Act as they would apply if the child were to object to admission, and the child 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 the independent licensed mental health professional examining the child.

C. The report of a mental health evaluation of a child pursuant to Section 5-506 or 5-507 of this 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 6. This act shall become effective November 1, 1997.

46-1-5849

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