

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 674

By: Cain of the Senate

and

Braddock of the House

COMMITTEE SUBSTITUTE

An Act relating to mental health; amending 43A O.S. 2001, Sections 5-501, 5-502, 5-503, 5-504, 5-505, 5-506, 5-507, 5-508, 5-509, 5-510, 5-511, 5-512 and 5-513, as amended by Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, Chapter 327, O.S.L. 2002 (43A O.S. Supp. 2002, Sections 5-501, 5-502, 5-503, 5-504, 5-505, 5-506, 5-507, 5-508, 5-509, 5-510, 5-511, 5-512 and 5-513), which relate to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act; clarifying language; modifying, expanding and deleting definitions; specifying procedures related to an application for a petition alleging a child to be in need of mental health treatment; clarifying type of custody; providing for nonconsent of certain minor; limiting conditions under which a parent may consent to certain minor's admission; specifying procedures for admission of certain child who objects to specified admission; clarifying procedures related to emergency custody hearing for a child taken into custody; modifying requirements regarding the mental health evaluation report; modifying procedures related to the filing of a petition and the contents of a proposed individual treatment plan; providing for entry of prehearing detention orders; specifying provisions related to the right to trial by jury; specifying time period for submission of specified report; clarifying procedures related to discharge planning; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 2001, Section 5-501, as amended by Section 1, Chapter 327, O.S.L. 2002 (43A O.S. Supp. 2002, Section 5-501), is amended to read as follows:

Section 5-501. A. Sections 5-501 through 5-513 of this title shall be known and may be cited as the "Inpatient Mental Health and Substance Abuse Treatment of Minors Act".

B. The Oklahoma Legislature hereby declares that the public policy of this state is to assure adequate treatment of minors needing mental health treatment or treatment for drug or alcohol abuse, to establish behavioral standards for determination of dangerousness of persons in need of such treatment, to require the use of the least restrictive alternative in the determination of the method of treatment, to provide orderly and reliable procedures for admission or commitment of minors alleged to be in need of inpatient mental health treatment or treatment for drug or alcohol abuse consistent with due process of law, and to protect the rights of patients hospitalized pursuant to law.

C. It is the intent of the Legislature that:

1. Mental health and substance abuse treatment services shall be provided in the manner most likely to preserve, support and strengthen the family of the minor and to assist the minor and the family of the minor; ~~and~~

2. Minors needing mental health services or substance abuse treatment shall, to the maximum extent possible, receive those services on an outpatient basis; and ~~that inpatient~~

3. Inpatient evaluation and treatment services shall be utilized only as necessary to preserve the health or safety of the minor or, for the protection of others in the case of a minor who as a result of a demonstrable mental illness or drug or alcohol dependence can be expected to intentionally or unintentionally seriously and physically injure another person, ~~for the protection of others.~~

SECTION 2. AMENDATORY 43A O.S. 2001, Section 5-502, as amended by Section 2, Chapter 327, O.S.L. 2002 (43A O.S. Supp. 2002, Section 5-502), is amended to read as follows:

Section 5-502. As used in the Inpatient Mental Health and Substance Abuse Treatment of Minors Act:

1. "Minor" means any person under eighteen (18) years of age;
2. "Minor in need of treatment" means a minor:
 - a. who has a demonstrable mental illness or who is drug or alcohol dependent and as a result of that mental illness or dependency can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person, and who 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 or is drug or alcohol dependent of sufficient severity to cause substantial impairment or disability in at least two of the following major areas of functioning in the minor's life:
 - (1) family relations,
 - (2) school performance,
 - (3) social interactions ~~or,~~
 - (4) ability to perform independently the basic tasks of personal hygiene, hydration and nutrition, or
 - (5) self-protection.

A determination regarding the ability of the minor to perform independently ~~said~~ such basic tasks shall be based upon the age of the minor and the reasonable and appropriate expectation of the abilities of a minor of such age to perform ~~said~~ such tasks.

The term "minor in need of treatment" shall not mean a minor afflicted with epilepsy, a 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 minor also meets the criteria for a minor in need of treatment pursuant to subparagraph a or b of this paragraph;

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

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

- a. a statement of the presenting problems of the minor, 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 minor or the minor's parent or legal custodian 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 minor to the plan, or~~

~~(2) when the minor 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 whether all persons have consented to such plan;~~

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

6. "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 minor, or to protect the minor or others from physical injury;

7. "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 minor 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 minors in need of mental health treatment, or a combination thereof;

8. "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,~~
- e. a licensed marital and family therapist as defined in Section 1925.2 of Title 59 of the Oklahoma Statutes,
~~or~~
- f. 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~~ Oklahoma State Board of Osteopathic Examiners, or a qualified examiner as defined in Section 1-103 of this title,
- g. a licensed behavioral practitioner as defined in Section 1931 of Title 59 of the Oklahoma Statutes, or
- h. an advanced practice nurse, as defined in Section 567.3a of Title 59 of the Oklahoma Statutes, specializing in mental health.

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;

9. "Mental health evaluation" means an examination or evaluation of a minor for the purpose of making a determination

whether, in the opinion of the licensed mental health professional making the evaluation, the minor is a minor in need of treatment and, if so, is in need of inpatient treatment and for the purpose of preparing reports or making recommendations for the most appropriate and least restrictive treatment for the minor;

10. "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 minors;

11. "Mental illness" means a substantial disorder of the child's ~~cognitive, volitional, or emotional processes~~ thought, mood, perception, psychological orientation or memory that demonstrably and significantly impairs judgment, behavior or capacity to recognize reality or to ~~control behavior~~ meet the ordinary demands of life. "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;

12. "Parent" means:

- a. a biological or adoptive parent who has legal custody of the minor, 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 minor, 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;

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

a. when the minor is ~~a ward of the court and~~ in the legal custody of a ~~public or~~ private child care agency, the Department of Human Services or the Office of Juvenile Affairs, the caseworker or other person designated by the agency to supervise the case, or

b. when the minor is a ward of the court and under the court-ordered supervision of the Department of Human Services, the Office of Juvenile Affairs or a statutorily constituted juvenile bureau, the person designated by the Department of Human Services, the Office of Juvenile Affairs or juvenile bureau to supervise the case;

14. ~~"Prescreening"~~ "Medical necessity review" means ~~a mental health evaluation conducted~~ an assessment of current and recent behaviors and symptoms to determine whether an admission for inpatient mental illness or drug or alcohol dependence treatment or evaluation constitutes the least restrictive level of care necessary. The review shall be performed by a licensed mental health professional to determine whether a minor 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 minor;

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

16. "Treatment" means any planned intervention intended to improve the functioning of a minor in those areas which show

impairment as a result of mental illness or drug or alcohol dependence; and

17. "Prehearing detention order" means a court order that authorizes a facility to detain a minor pending a hearing on a petition to determine whether the minor is a minor in need of treatment.

SECTION 3. AMENDATORY 43A O.S. 2001, Section 5-503, as amended by Section 3, Chapter 327, O.S.L. 2002 (43A O.S. Supp. 2002, Section 5-503), is amended to read as follows:

Section 5-503. A. A minor may be admitted for inpatient mental health or substance abuse treatment only pursuant to the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

B. A parent of a minor may consent to the voluntary admission of the minor for inpatient mental health or substance abuse treatment or, ~~when the~~ if a minor is age sixteen (16) years or older ~~and refuses to consent~~ or revokes ~~his or her~~ consent to inpatient mental health or substance abuse treatment, the parent may request that the district attorney ~~to~~ file a petition alleging the minor to be a minor in need of mental health treatment and ~~to~~ require inpatient treatment.

C. A mental health or substance abuse treatment facility may ~~make application to~~ request that the district attorney ~~for the filing of~~ file a petition alleging a minor to be a minor in need of treatment and ~~to~~ require inpatient treatment when the parent consenting to the admission of a minor or when the minor age sixteen (16) years or older who had previously consented to admission revokes such consent and the person in charge of the facility, ~~or other person authorized by the person in charge of the facility to make such determination~~ or a designee, determines that the condition of the minor is such that the minor should remain in the facility.

D. A minor who is in the legal custody of the Department of Human Services or the Office of Juvenile Affairs, or who is a ward of a court may be admitted to a hospital or other facility for inpatient mental health or substance abuse ~~evaluation or~~ treatment only pursuant to the provisions of Section 5-507 of this title.

1. ~~a. A parent having legal custody of a minor 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 minor to be a minor in need of 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 such request.~~

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

2. Nothing in the Inpatient Mental Health and Substance Abuse Treatment of Minors Act shall be interpreted to prohibit or preclude the provision of outpatient treatment or services including, but not limited to, outpatient evaluation, counseling, educational, rehabilitative or other mental health and substance abuse services to the minor, as necessary and appropriate, in the absence of a specific court order for such services.

E. 1. An order of a court committing a minor to a facility for inpatient mental health or substance abuse evaluation or treatment shall not, by itself, relieve a parent of the obligation to provide for the support of the minor nor of liability for the cost of treatment provided to the minor.

2. Nothing in the Inpatient Mental Health and Substance Abuse Treatment of Minors 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, or agency ~~or Department~~ having custody of the minor or providing the treatment, or
- b. abrogate the right of the minor to any benefits provided through public funds for which the minor is otherwise eligible.

3. An order committing a minor to a facility for inpatient mental health or substance abuse treatment shall not by itself serve to preclude a subsequent adjudication which finds the minor to be delinquent, in need of supervision or deprived nor shall it cause the vacation of any such order of adjudication previously entered.

F. If a peace officer ~~determines~~ reasonably believes that a minor is a ~~threat to self or others as a result of mental illness or drug or alcohol dependence to a degree that immediate emergency action is necessary~~ minor in need of treatment, the officer shall take ~~said~~ the minor into protective custody and shall transport ~~said~~ the minor to a mental health or substance abuse treatment facility for evaluation. Peace officers providing such transportation services shall be entitled to reimbursement pursuant to Section 1-110 of this title.

SECTION 4. AMENDATORY 43A O.S. 2001, Section 5-504, as amended by Section 4, Chapter 327, O.S.L. 2002 (43A O.S. Supp. 2002, Section 5-504), is amended to read as follows:

Section 5-504. A. Upon the filing of a petition alleging that a minor is a minor in need of treatment and requires inpatient mental health or substance abuse treatment, or upon the assumption of ~~protective or emergency~~ custody of an alleged deprived child pursuant to the provisions of Section 7003-2.1 of Title 10 of the Oklahoma Statutes, or when a minor is the ward of the court, the

judge of the district court having juvenile docket responsibility shall have jurisdiction of any minor who is or is alleged to be a minor in need of treatment and of the parent or legal custodian of ~~said~~ the minor, regardless of where the parent or legal custodian is found. When jurisdiction has been obtained over a minor who is or is alleged to be in need of treatment, such jurisdiction may be retained until the minor is discharged from treatment ordered by the court. For the convenience of the parties and in the interest of justice, a proceeding under the Inpatient Mental Health and Substance Abuse Treatment of Minors Act may be transferred to the district court in any other county.

1. The venue for legal proceedings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act shall be:

- a. the county where the minor resides,
- b. when the minor is in the custody of a public or private child care agency, the county in which the minor 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 7003-2.1 of Title 10 of the Oklahoma Statutes may retain jurisdiction of a minor in need of treatment in such proceeding even if the minor is subject to the jurisdiction of another district court within the state. Any orders made by the court in which ~~said~~ the petition is filed shall control over prior orders in regard to the minor.

3. The district court in which a petition is filed which alleges that a minor is a minor in need of treatment may issue any temporary order or grant any interlocutory relief authorized by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act even if another district court within the state has jurisdiction of

the minor or has jurisdiction to determine the custody or support of the minor.

4. If the district court in which a petition is filed pursuant to either paragraph 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 minor. 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 and Substance Abuse Treatment of Minors 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 and Substance Abuse Treatment of Minors Act.

SECTION 5. AMENDATORY 43A O.S. 2001, Section 5-505, as amended by Section 5, Chapter 327, O.S.L. 2002 (43A O.S. Supp. 2002, Section 5-505), is amended to read as follows:

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

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

2. ~~The consent of a~~ A minor under the age of sixteen (16) ~~is not required for admission~~ years may be admitted without the minor's consent pursuant to the provisions of this section.

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

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

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

- a. the minor appears to have a mental illness or drug or alcohol dependence 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 minor:
 - (1) reasonable efforts have been made to provide for the treatment needs of the minor through the provision of less restrictive alternatives and such alternatives have failed to meet the treatment needs of the minor, or
 - (2) after a thorough consideration of less restrictive alternatives to inpatient treatment, the condition of the minor is such that less

restrictive alternatives are unlikely to meet the treatment needs of the minor, and

- c. the minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment, and
- d. if the minor is sixteen (16) years of age or older, the minor has been provided with an explanation of ~~the~~ his or her rights ~~of the minor under this act as they would apply if the minor were~~ pursuant to the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, including the right to object to admission, ~~and the minor has consented to admission.~~

3. If admission or transfer from a private facility to a state-operated facility is sought, the community mental health center serving the area in which the minor resides shall provide the 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 minor for inpatient evaluation or treatment, be made a part of the medical record of the minor.

D. Inpatient treatment of a minor admitted under this section may not exceed ~~ninety (90)~~ thirty (30) 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 minor and interviewed the consenting parent and reviewed reports submitted by members of the facility staff familiar with the minor's condition.

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

F. ~~1.~~ If the parent who consented to the admission of a minor under this section revokes such consent at any time, or if a minor sixteen (16) years of age or older objects at any time to further treatment, the minor shall be discharged within forty-eight (48) hours to the custody of such consenting parent, unless ~~the parent of the minor refusing or revoking such consent or, when the parent revokes such consent, the facility, requests~~ the district attorney is requested to file a petition alleging the minor to be a minor in need of treatment and to require inpatient treatment in accordance with the provisions of ~~subsection B of Section 5-506 of this title.~~

~~2.~~ ~~In such cases, the minor may be detained up to seventy-two (72) hours, excluding weekends and legal holidays, pending the filing of the petition and if a petition is filed, the minor may be detained in the 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 minor to a mental health or substance abuse treatment facility when the condition of the minor warrants such admission. Whenever the admission of a minor who has been admitted to a 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 6. AMENDATORY 43A O.S. 2001, Section 5-506, as amended by Section 6, Chapter 327, O.S.L. 2002 (43A O.S. Supp. 2002, Section 5-506), is amended to read as follows:

Section 5-506. A. Upon the application of a parent and following a medical necessity review, a minor sixteen (16) years of age or older who objects to admission or revokes his or her consent to inpatient treatment may be admitted ~~to~~ or detained on an emergency basis in a mental health or substance abuse treatment facility that is willing to admit or detain the minor for ~~up a period not to seventy-two (72) hours~~ exceed five (5) days from the time of admission or detention, excluding weekends and legal holidays. The admission or detention for an emergency basis may only exceed five (5) days, excluding weekends or holidays, if the facility receives a prehearing detention order authorizing detention pending a hearing on a petition to determine whether the minor is a minor in need of treatment and to require inpatient treatment. If admission or transfer from a private facility to a state-operated facility is sought, the community mental health center serving the area in which the minor resides shall provide the required evaluations and reports and shall ensure that the necessary written findings have been made.

B. 1. A minor admitted or detained pursuant to this section ~~or detained as provided by Section 5-505 of this title~~ shall be evaluated ~~within forty-eight (48) hours of admission or detention~~ by a licensed mental health professional ~~and~~ to determine whether the minor is a minor in need of treatment.

a. If the licensed mental health professional determines that the minor is a minor in need of treatment, the licensed mental health professional shall submit a report of the evaluation shall be submitted to the district attorney within forty-eight (48) hours, excluding weekends or holidays, of admission,

detention, or revocation of the consent of the minor sixteen (16) years of age or older or to the parent.

- b. If the licensed mental health professional determines that the minor is not a minor in need of treatment, the minor shall immediately be discharged.

2. Upon admission or detention of a minor pursuant to this section ~~or detention pursuant to Section 5-505 of this title~~, the person requesting the petition shall immediately notify the district attorney. ~~The minor may be held by the facility longer than~~ district attorney shall file a petition as provided in Section 5-509 of this title within three (3) days, excluding weekends and legal holidays, only after a petition is filed and upon an of receipt of the report and shall request a prehearing detention order of from the court authorizing further detention of the child in the facility pending a hearing on a petition alleging the minor to be a minor in need of treatment and to require inpatient treatment and further order of the court.

- a. If the court finds probable cause exists that the minor is a minor in need of treatment, the court shall issue a prehearing detention order authorizing the facility to detain the minor until the hearing on the petition and to immediately set a date and time for a hearing on the petition. A certified copy of the prehearing detention order shall constitute authority for a facility to detain or continue to detain the minor who is the subject of the order.

- b. If the court does not find probable cause exists that the minor is a minor in need of treatment, the court shall dismiss the petition and request for a prehearing detention order and order the release of the minor to the minor's parent.

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

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

SECTION 7. AMENDATORY 43A O.S. 2001, Section 5-507, as amended by Section 7, Chapter 327, O.S.L. 2002 (43A O.S. Supp. 2002, Section 5-507), is amended to read as follows:

Section 5-507. A. No minor who is taken into ~~protective or emergency~~ custody pursuant to Section 7003-2.1 of Title 10 of the Oklahoma Statutes as an alleged deprived child, or who has been adjudicated a ward of the court shall be admitted to a hospital or mental health or substance abuse treatment 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 treatment except upon a commitment order of the court pursuant to the provisions of subsection D of this section and after a finding that the minor requires such services as provided by Section 5-512 of this title.~~

B. ~~1. Whenever a minor is taken into protective custody as provided by Section 7003-2.1 of Title 10 of the Oklahoma Statutes and is believed to be a minor in need of treatment, the minor shall be taken to a shelter, hospital, foster home or other appropriate place as designated by the court, or the minor shall be taken immediately before a judge of the district court for the purpose of obtaining an order for emergency custody. When a minor has been~~

~~taken into protective custody as a minor in need of treatment without a court order, the peace officer or employee of the court taking the minor into protective custody shall immediately report the fact of the detention of the minor to a judge of the district court in the county in which the minor 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 minor shall be given immediate notice of the protective custody of the minor 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 minor 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 minor 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 and Substance Abuse Treatment of Minors Act.~~

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

~~C. After a prescreening examination medical necessity review 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 or drug or alcohol dependence there exists an imminent danger that the minor will intentionally or unintentionally seriously physically injure himself or another person, a minor is a minor in need of treatment, the minor may be~~

admitted to a hospital or mental health or substance abuse treatment facility on an emergency psychiatric basis. ~~Except upon an order of the court for an inpatient evaluation of the minor as provided by subsection D of this section, such emergency admission shall be for not more than two (2) days, excluding weekends and legal holidays~~

~~D. After a prescreening evaluation and upon an application by the district attorney, the court may issue an order for an evaluation of a minor 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 minor in need of treatment. The evaluation shall be made by a licensed mental health professional.~~

~~1. The court shall order an inpatient evaluation only after a finding that there exists an imminent danger that the minor will cause serious physical injury to that minor or another person and therefore the 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 evaluation of the minor to be conducted on an outpatient basis in or near the community in which the minor resides at the time of such order.~~

~~E. An order committing a minor who is a ward of the court for inpatient evaluation shall order the commitment of the minor for not more than three (3) days, excluding weekends and holidays for a period not to exceed five (5) days from the time of admission, excluding weekends and holidays. On the next business day following admission, notice of such admission shall be given by the person responsible for the supervision of the case, as applicable, to the minor's attorney, Court Appointed Special Advocate (CASA) or guardian ad litem, the court and district attorney.~~

~~1. C. A minor admitted on an emergency basis pursuant to this section shall be evaluated and a report submitted to the district attorney within forty-eight (48) hours of admission, excluding~~

weekends and holidays. The evaluation shall be performed by a licensed mental health professional and a report of the evaluation submitted to the district attorney at the facility.

~~2.~~ D. If after ~~the~~ an inpatient or outpatient evaluation it appears that the minor may require inpatient treatment, the district attorney ~~may~~ shall file a petition ~~with the court~~ as provided by Section 5-509 of this title within three (3) days after receiving the evaluation report requesting an order committing the minor to a facility for inpatient treatment. After the filing of a petition and upon ~~an~~ issuance of a prehearing detention order of the court, the minor may be detained in the facility for no longer than necessary for a hearing on the petition ~~and~~ as provided by Section 5-510 of this title or further order of the court.

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

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

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

SECTION 8. AMENDATORY 43A O.S. 2001, Section 5-508, as amended by Section 8, Chapter 327, O.S.L. 2002 (43A O.S. Supp. 2002, Section 5-508), is amended to read as follows:

Section 5-508. A. The report of a 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 minor appears to ~~have demonstrable mental illness or drug or alcohol dependence and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or~~

~~herself or another person if services are not provided, has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation,~~ be a minor in need of treatment and is reasonably likely to benefit from treatment; and

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

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

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

4. If the minor is sixteen (16) years of age or older and was admitted to or detained in a mental health or substance abuse treatment facility pursuant to Section 5-506 of this title, the minor has been provided with an explanation of ~~the~~ his or her rights ~~of the minor~~ pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act ~~as they would apply if the minor were to object to admission, and the minor has objected to admission~~ including the right to object to admission or detention.

B. Any report of a mental health evaluation of a minor alleged to be a minor in need of treatment that recommends that the minor be found to be eligible for inpatient mental health or substance abuse treatment shall be signed by the licensed mental health professional examining the minor.

C. ~~The report of a mental health evaluation of a minor 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 minor 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 minor.

SECTION 9. AMENDATORY 43A O.S. 2001, Section 5-509, as amended by Section 9, Chapter 327, O.S.L. 2002 (43A O.S. Supp. 2002, Section 5-509), is amended to read as follows:

Section 5-509. A. A petition alleging a minor to be a minor in need of 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 a licensed mental health professional stating that in the opinion of ~~said~~ the professional the minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to ~~the minor~~ himself or herself or another person if services are not provided, and upon the request of:

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

2. When the minor 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 minor with the consent of the ~~Department or Office,~~ as applicable agency, 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 minor shall be discharged to the custody of the consenting parent or public or private agency having custody of the minor; 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 5-510 of this title.

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

2. The petition shall allege that the minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself, or another person if 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 based upon information and belief. ~~It~~ The petition shall set forth:

- a. with particularity the facts which bring the minor within the purview of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act,
- b. the name, age and residence of the minor,
- c. the names and residences of the parents of the minor,
- d. the name and residence of the legal guardian of the minor, if ~~there be~~ one,
- e. the name and residence of the person or persons having custody or control of the minor,
- 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, if the minor has been admitted to a facility, ~~the person requesting the petition~~ facility shall ensure that a proposed individual treatment plan for the minor 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 10. AMENDATORY 43A O.S. 2001, Section 5-510, as amended by Section 10, Chapter 327, O.S.L. 2002 (43A O.S. Supp. 2002, Section 5-510), is amended to read as follows:

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

1. Appoint an attorney to represent the minor if the minor is not represented by counsel. An attorney so appointed shall consult with the minor 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 7003-3.7 of Title 10 of the Oklahoma Statutes;

2. Enter any prehearing detention orders as may be necessary;

3. Set a date for a hearing on the petition. ~~Said~~ The 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 minor, the date of the hearing may be extended once for up to an additional three (3) days, excluding weekends and holidays; and

~~3.~~ 4. Cause notice of the date, time, place and purpose of the hearing to be given to the petitioner, the minor, and, if not the petitioner, the parent(s) or legal custodian of the minor and, if applicable, the person in charge of the mental health or substance abuse treatment facility. If the minor is a ward of the court, and if not the petitioner, or is in the custody of the Department of Human Services or the Office of Juvenile Affairs, notice shall also

be given to a public or private child care agency having legal custody of the minor, 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~~ The 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 an evaluation of the minor by a licensed mental health professional shall be attached to a petition for an order committing a minor to a facility for inpatient 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 additional evaluation of the minor and the preparation of a proposed individualized treatment plan for the minor.~~

~~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 11. AMENDATORY 43A O.S. 2001, Section 5-511, as amended by Section 11, Chapter 327, O.S.L. 2002 (43A O.S. Supp. 2002, Section 5-511), is amended to read as follows:

Section 5-511. A. Hearings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act shall be private unless specifically ordered by the judge to be conducted in public, but persons having a direct interest in the case shall be admitted. Stenographic notes or other transcript of the hearings shall be kept as in other cases, but they shall not be open to inspection except by order of the court or as otherwise provided by Title 10 of the Oklahoma Statutes for court records relating to children.

B. The minor may remain silent as a matter of right in hearings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act and shall be so advised. No statement, admission or confession made by the minor alleged to be a minor in

need of treatment shall be used against the minor for any purpose except for proceedings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

C. A decision determining a minor to be a minor in need of treatment must be based on sworn testimony and the minor must have the opportunity for cross-examination unless the facts are stipulated. Where the facts are stipulated, the judge must ascertain from the minor if the minor agrees with the stipulation and understands the consequences of stipulating the facts.

D. In hearings to determine whether a minor is a minor in need of treatment, the minor shall have the right to demand a trial by jury, which shall be granted as in other cases, unless waived, or the judge on his or her own motion may call a jury to try any such case. Such jury shall consist of six ~~(6)~~ persons.

1. If a jury trial is not demanded, the court may receive as evidence and act upon the evaluation or report of the licensed mental health professional who evaluated the minor;

2. When the hearing is conducted as a jury trial, any witness on behalf of the district attorney shall be subject to cross-examination by the attorney for the minor alleged to be a minor requiring treatment.

SECTION 12. AMENDATORY 43A O.S. 2001, Section 5-512, as amended by Section 12, Chapter 327, O.S.L. 2002 (43A O.S. Supp. 2002, 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 minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself, or another person if 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 minor is a minor in need of treatment proposed in the individualized treatment plan and is likely to benefit from such treatment.

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

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

1. The minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself, or another person if 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 treatment needs of the minor through the provision of less restrictive alternatives to inpatient treatment and that such alternatives have failed to meet the treatment needs of the minor; or

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

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

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

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

2. Is a minor in need of treatment but does not require inpatient treatment, the court may order treatment or services through a less restrictive alternative to inpatient mental health or substance abuse treatment, which may include ordering the minor to take medication as prescribed by a physician and, upon a finding that it is in the best interests of the minor, the court may order the parents or other adult persons living in the home of the minor to comply with reasonable conditions relating to the treatment of the minor.

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

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

2. When the minor 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 minor in a public or private mental health or substance abuse treatment facility appropriate for the inpatient treatment needs of the minor.

F. Whenever the court commits a minor to a mental health or substance abuse treatment 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 minor is discharged from

inpatient treatment. ~~After the review and a determination by the court that the minor 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~~ Not less than three (3) days prior to the review hearing, the mental health or substance abuse treatment facility shall submit a report regarding the minor's progress and treatment and make a recommendation as to whether the minor needs inpatient care and the reasons therefor.

SECTION 13. AMENDATORY 43A O.S. 2001, Section 5-513, as amended by Section 13, Chapter 327, O.S.L. 2002 (43A O.S. Supp. 2002, Section 5-513), is amended to read as follows:

Section 5-513. A. Within ten (10) days after the admission of a minor for inpatient treatment, ~~whether through a voluntary admission or an order of commitment pursuant to Section 5-512 of this title,~~ the person in charge of the facility in which the minor is being treated shall ensure that an individualized treatment plan has been prepared by the person responsible for the treatment of the minor. The minor shall be involved in the preparation of the treatment plan to the maximum extent consistent with the ability of the minor to understand and participate. The parent or legal custodian of the minor or, if the minor 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 agency, shall be involved to the maximum extent consistent with the treatment needs of the minor.

B. The minor shall be discharged from the facility when the minor no longer meets the admission or commitment criteria, as determined by appropriate medical staff review after such persons have examined the minor and reviewed reports submitted by facility staff familiar with the condition of the minor. If not previously discharged, a minor committed by a court ~~to~~ for inpatient treatment

shall be discharged upon the expiration of a court order committing the minor for inpatient treatment or an order of the court directing the discharge of the minor.

C. Prior to the discharge of the minor from inpatient treatment, a discharge plan for the minor shall be prepared and explained to the minor and the parent or ~~legal custodian of the minor, or, if the minor is in the custody of the Department of Human Services or the Office of Juvenile Affairs, a designated representative of the agency~~ the person responsible for the supervision of the case. The plan shall include, but not be limited to:

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

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

3. Information regarding medication which should be prescribed to the minor; and

4. An appointment for follow-up outpatient treatment and medication management.

~~D. If the minor 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, 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 14. This act shall become effective November 1, 2003.

49-1-6604 KSM 03/25/03