

ENROLLED HOUSE
BILL NO. 1063

By: Gilbert of the House

and

Robinson of the Senate

An Act relating to mental health; amending 43A O.S. 2001, Section 5-502, as last amended by Section 2 of Enrolled Senate Bill No. 674 of the 1st Session of the 49th Oklahoma Legislature, which relates to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act; amending 43A O.S. 2001, Section 1-103, as amended by Section 1, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2002, Section 1-103), which relates to the Mental Health Law; modifying and updating certain definitions; amending 43 O.S. 2001, Section 5-101, as last amended by Section 4 of Enrolled Senate Bill No. 705 of the 1st Session of the 49th Oklahoma Legislature, which relates to inpatient care of certain persons; and removing certain admission authorizations.

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

SECTION 1. AMENDATORY 43A O.S. 2001, Section 5-502, as last amended by Section 2 of Enrolled Senate Bill No. 674 of the 1st Session of the 49th Oklahoma Legislature, 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,
- (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 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 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, and
- d. documentation of the involvement of the minor or the minor's parent or legal custodian in the development of the treatment plan and 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 physician licensed pursuant to Chapter 11 or Chapter 14 of Title 59 of the Oklahoma Statutes who has received specific training for and is experienced in, performing mental health therapeutic, diagnostic, or counseling functions,
- c. a clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists,
- ~~e.~~ d. a ~~licensed~~ professional counselor ~~as defined in Section 1902~~ licensed pursuant to Chapter 44 of Title 59 of the Oklahoma Statutes,
- ~~d.~~ e. a person licensed as a ~~licensed~~ clinical social worker pursuant to the provisions of the Licensed Social Workers Act,
- ~~e.~~ f. a licensed marital and family therapist as defined in ~~Section 1925.2~~ Chapter 44A of Title 59 of the Oklahoma Statutes,
- ~~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 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~~ Chapter 44B of Title 59 of the Oklahoma Statutes, or
- h. an advanced practice nurse, as defined in ~~Section 567.3a~~ Chapter 12 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 thought, mood, perception, psychological orientation or memory that demonstrably and significantly impairs judgment, behavior or capacity to recognize reality or to 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 in the legal custody of a 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. "Medical necessity review" means 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;

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

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 2. AMENDATORY 43A O.S. 2001, Section 1-103, as amended by Section 1, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2002, Section 1-103), is amended to read as follows:

Section 1-103. When used in this title, unless otherwise expressly stated, or unless the context or subject matter otherwise requires:

1. "Department" means the Department of Mental Health and Substance Abuse Services;

2. "Chair" means the chair of the Board of Mental Health and Substance Abuse Services;

3. "Mental illness" means a substantial disorder of thought, mood, perception, psychological orientation or memory that significantly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life;

4. "Board" means the "Board of Mental Health and Substance Abuse Services" as established by this law;

5. "Commissioner" means the individual selected and appointed by the Board to serve as Commissioner of Mental Health and Substance Abuse Services;

6. "Indigent person" means a person who has not sufficient assets or resources to support the person and to support members of the family of the person lawfully dependent on the person for support;

7. "Facility" means any hospital, school, building, house or retreat, authorized by law to have the care, treatment or custody of the mentally ill or drug-dependent or alcohol-dependent persons including, but not limited to, public or private hospitals, community mental health centers, clinics, satellites or institutions; provided that facility shall not mean a child guidance center operated by the State Department of Health;

8. "Patient" means a person under care or treatment in a facility pursuant to the Mental Health Law, or in an outpatient status;

9. "Care and treatment" means medical care and behavioral health services, as well as food, clothing and maintenance, furnished to a person;

10. Whenever in this law or in any other law, or in any rule or order made or promulgated pursuant to this law or to any other law, or in the printed forms prepared for the admission of patients or for statistical reports, the words "insane", "insanity", "lunacy", "mentally sick", "mental disease" or "mental disorder" are used, such terms shall have equal significance to the words "mental illness";

11. "Licensed mental health professional" means:

- a. a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology,
- b. a physician licensed Doctor of Medicine or Doctor of Osteopathy pursuant to Chapter 11 or Chapter 14 of Title 59 of the Oklahoma Statutes who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions,
- c. a ~~licensed~~ clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists,
- d. a ~~licensed~~ professional counselor as defined in Section 1906 licensed pursuant to Chapter 44 of Title 59 of the Oklahoma Statutes,
- e. a person licensed as a clinical social worker pursuant to the provisions of ~~Section 1250 et seq. of Title 59 of the Oklahoma Statutes~~ the Licensed Social Workers Act,
- f. a licensed marital and family therapist as defined in ~~Section 1925.2~~ Chapter 44A of Title 59 of the Oklahoma Statutes,

- g. a licensed behavioral practitioner as defined in ~~Section 1931~~ Chapter 44B of Title 59 of the Oklahoma Statutes, or
- h. an advanced practice nurse as defined in ~~Section 567.3a~~ Chapter 12 of Title 59 of the Oklahoma Statutes specializing in mental health;

12. "Mentally incompetent person" means any person who has been adjudicated mentally or legally incompetent by an appropriate district court;

13. a. "Person requiring treatment" means:

- (1) a person who because of a mental illness of the person represents a risk of harm to self or others,
- (2) a person who is a drug- or alcohol-dependent person and who as a result of dependency represents a risk of harm to self or others, or
- (3) a person who appears to require inpatient treatment:
 - (a) (i) for a previously diagnosed history of schizophrenia, bipolar disorder, or major depression with suicidal intent, or
 - (ii) due to the appearance of symptoms of schizophrenia, bipolar disorder, or major depression with suicidal intent, and
 - (b) for whom such treatment is reasonably believed will prevent progressively more debilitating mental impairment.

b. Person requiring treatment shall not mean:

- (1) a person whose mental processes have been weakened or impaired by reason of advanced years,
- (2) a mentally retarded person as defined in Title 10 of the Oklahoma Statutes,
- (3) a person with seizure disorder, or
- (4) a person with a traumatic brain injury,

unless the person also meets the criteria set forth in subparagraph a of this paragraph;

14. "Petitioner" means a person who files a petition alleging that an individual is a person requiring treatment;

15. "Executive director" means the person in charge of a facility as defined in this section;

16. "Private hospital or institution" means any general hospital maintaining a neuro-psychiatric unit or ward, or any private hospital or facility for care and treatment of a person having a mental illness, which is not supported by state or federal government, except that the term shall include the Oklahoma Memorial Hospital Neuro-psychiatric Unit. The term "private hospital" or "institution" shall not include nursing homes or other facilities maintained primarily for the care of elderly and disabled persons;

17. "Individualized treatment plan" means a proposal developed during the stay of an individual in a facility, under the provisions of this title, which is specifically tailored to the treatment needs of the individual. Each plan shall clearly include the following:

- a. a statement of treatment goals or objectives, based upon and related to a clinical evaluation, which can be reasonably achieved within a designated time interval,
- b. treatment methods and procedures to be used to obtain these goals, which methods and procedures are related to each of these goals and which include specific prognosis for achieving each of these goals,
- c. identification of the types of professional personnel who will carry out the treatment procedures, including appropriate medical or other professional involvement by a physician or other health professional properly qualified to fulfill legal requirements mandated under state and federal law,
- d. documentation of involvement by the individual receiving treatment and, if applicable, the accordance of the individual with the treatment plan, and
- e. a statement attesting that the executive director of the facility or clinical director has made a reasonable effort to meet the plan's individualized treatment goals in the least restrictive environment possible closest to the home community of the individual; and

18. "Risk of harm to self or others" means:

- a. a substantial risk of physical harm to self as manifested by evidence or serious threats of or attempts at suicide or other self-inflicted or bodily harm,
- b. a substantial risk of physical harm to another person or persons as manifested by evidence of violent behavior directed toward another person or persons,
- c. having placed another person or persons in a reasonable fear of violent behavior directed towards such person or persons or serious physical harm to them as manifested by serious threats,

- d. a reasonable certainty that without immediate treatment severe impairment or injury will result to the person alleged to be a person requiring treatment as manifested by the inability of the person to avoid or protect self from such impairment or injury, or
- e. a substantial risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the basic physical needs of the person and that appropriate provision for those needs cannot be made immediately available in the community.

SECTION 3. AMENDATORY 43A O.S. 2001, Section 5-101, as last amended by Section 4 of Enrolled Senate Bill No. 705 of the 1st Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 5-101. A. ~~1. Except as otherwise provided by paragraph 2 of this subsection, any~~ Any person who has a mental illness or is alcohol- or drug-dependent to a degree which warrants inpatient treatment or care, and who is not in confinement in a jail or adult lockup facility on a criminal charge and who has no criminal charges pending against him or her, may be admitted to and confined in a facility within the Department of Mental Health and Substance Abuse Services, a state psychiatric hospital, or a licensed private institution by compliance with any one of the following procedures:

~~a. emergency~~

1. Emergency admission

~~b. on;~~

2. On voluntary application; or

~~c. on~~

3. On involuntary court commitment.

~~2. Any person, whether or not such person is confined in an adult jail or lockup facility on a criminal charge or who has a criminal charge pending may be admitted and confined to a facility within the Department, a state psychiatric hospital or a licensed private institution as authorized by paragraph 1 of this subsection if:~~

~~a. the person is over eighteen (18) years of age,~~

~~b. is subject to proceedings under the Oklahoma Juvenile Code, and~~

~~c. has a mental illness or is alcohol- or drug-dependent to a degree which warrants inpatient treatment or care.~~

B. Any person who has a mental illness or is alcohol- or drug-dependent to a degree which warrants inpatient treatment or care and who has criminal charges pending against him or her but is not

confined in a jail or adult lockup facility may be admitted to a facility within the Department or a licensed private institution pursuant to the provisions of subsection A of this section; provided, the facility or hospital shall be authorized to take such reasonable steps as necessary to assure the protection of the public, the residents of the facility or hospital and the person, including but not limited to segregation and private facilities. Provided further, treatment received pursuant to this subsection shall not constitute a defense in any criminal proceeding except as otherwise provided by Title 22 of the Oklahoma Statutes.

C. 1. Any person confined pursuant to a criminal charge shall only be admitted to and confined pursuant to a court order issued in compliance with the provisions of Section 1175.6 of Title 22 of the Oklahoma Statutes.

2. No person shall be deprived of his or her liberty on the grounds that such person is, or is supposed to have, a mental illness or is in need of mental health treatment, except in accordance with the provisions of the Mental Health Law.

Passed the House of Representatives the 19th day of May, 2003.

Presiding Officer of the House of
Representatives

Passed the Senate the 23rd day of May, 2003.

Presiding Officer of the Senate