

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 2007

By: Toure

AS INTRODUCED

An Act relating to mental health; amending 43A O.S. 2001, Section 4-104, which relates to surgical operations for patients; prohibiting the sterilization of a mentally ill or mentally retarded person, except on order of the court; requiring petition; providing for contents of petition; providing for contents of order; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 2001, Section 4-104, is amended to read as follows:

Section 4-104. A. Before proceeding with any major operation which in the judgment of the superintendent of the institution is advisable or necessary, the superintendent shall notify or cause to be notified the spouse, parent or guardian, or one of the next of kin residing in Oklahoma, if such information is shown by the records on file with the superintendent and a copy of said notice shall be filed in the patient's records; except that in cases of grave emergency where the medical staff feels that surgical or other intervention is necessary to prevent serious consequences or death, authority is hereby given to proceed with such measure.

B. 1. A spouse, parent, guardian, or next of kin of the person shall not consent to the sterilization of a mentally ill or mentally retarded patient unless an order from the district court has been obtained in accordance with this subsection.

2. If a mentally ill or mentally retarded patient needs to undergo a medical procedure that would result in sterilization, the

spouse, parent, guardian, or next of kin shall petition the court for an order to permit the spouse, parent, guardian, or next of kin to consent to the procedure. The petition shall contain the following:

- a. a sworn statement from a physician licensed in this state who has examined the patient that the proposed procedure is medically necessary and not for the sole purpose of sterilization or for the purpose of hygiene or convenience,
- b. the name and address of the physician who will perform the procedure,
- c. a sworn statement from a psychiatrist or psychologist licensed in this state who has examined the patient as to whether the mentally ill or mentally retarded patient is able to comprehend the nature of the proposed procedure and its consequences and provide an informed consent to the procedure, and
- d. if the patient is able to comprehend the nature of the proposed procedure and its consequences, the sworn consent of the patient to the procedure.

3. A copy of the petition shall be served on the patient personally. If the patient is unable to comprehend the nature of the proposed procedure and its consequences and is unable to provide an informed consent, the court shall appoint an attorney to represent the patient.

4. Should the patient or the attorney for the patient request a hearing, a hearing shall be held. Otherwise, the court may enter an order without the appearance of witnesses. If a hearing is held, the spouse, parent, guardian, or next of kin and the patient may present evidence.

5. If the court finds the following, the court shall enter an order permitting the spouse, parent, guardian or next of kin to consent to the proposed procedure if:

- a. the patient is capable of comprehending the procedure and its consequences and has consented to the procedure, or the patient is unable to comprehend the procedure and its consequences, and
- b. the procedure is medically necessary and is not solely for the purpose of sterilization or for hygiene or convenience.

SECTION 2. This act shall become effective November 1, 2005.

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