

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 817

By: Leftwich

AS INTRODUCED

An Act relating to domestic violence; creating within the Office of the Attorney General a Domestic Violence and Sexual Assault Unit; stating duty; defining term; creating the Domestic Violence and Sexual Assault Advisory Council; providing for membership and appointments; specifying duties; providing for continuation of certain current committee members; providing for terms of office and appointment of officers; amending 43A O.S. 2001, Sections 1-102, as amended by Section 1, Chapter 46, O.S.L. 2003, 3-302, as amended by Section 15, Chapter 46, O.S.L. 2003, 3-313, as last amended by Section 1, Chapter 389, O.S.L. 2004, 3-313a, 3-314, 3-314.1, as last amended by Section 2, Chapter 389, O.S.L. 2004 and 3-314.2, as amended by Section 8, Chapter 113, O.S.L. 2004 (43A O.S. Supp. 2004, Sections 1-102, 3-302, 3-313, 3-314.1 and 3-314.2), which relate to certain duties of the Department of Mental Health and Substance Abuse Services; transferring such duties to the Attorney General; amending 22 O.S. 2001, Section 1602, which relates to the Domestic Violence Fatality Review Board; adding to and modifying membership; amending 63 O.S. 2001, Section 1-227.4, which relates to the Child Abuse Prevention Task Force; adding to membership; providing for codification; providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18p-1 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created within the Office of the Attorney General a Domestic Violence and Sexual Assault Unit.

B. The duty of the Unit is to provide for the support and advocacy services for persons who require the services of a domestic violence or sexual assault program.

C. As used in this act, "domestic violence program" or "sexual assault program" means a facility, agency or organization which

offers or provides or a person who engages in the offering of shelter, residential services or support services to:

1. Victims or survivors of domestic abuse as defined in Section 60.1 of Title 22 of the Oklahoma Statutes, any dependent children of the victims or survivors and any other member of the family or household of such victim or survivor;

2. Victims or survivors of sexual assault;

3. Persons who are homeless as a result of domestic or sexual violence or both domestic and sexual violence; and

4. Persons who commit domestic violence, and which may provide other services, including, but not limited to, support and advocacy, counseling, case management, referrals or other similar services to victims or survivors of domestic abuse or sexual assault.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18p-2 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created, to continue until July 1, 2009, in accordance with provisions of the Oklahoma Sunset Law, the Domestic Violence and Sexual Assault Advisory Council. The Council shall be a nine-member committee appointed by the Attorney General.

B. Four of the members shall be selected from a list of eight nominees provided by the Oklahoma Coalition Against Domestic Violence and Sexual Assault and five of the members shall be selected by the Attorney General from the State of Oklahoma at large.

C. The Council shall select a chairperson annually. Appointment to the Council shall be for four (4) years. The Attorney General shall appoint persons to fill unexpired terms when necessary.

D. The duties of the Council shall be to review rules and overall policies relating to the operation and funding of domestic

violence and sexual assault programs in the state and make recommendations to the Attorney General regarding its findings.

E. The current members of the Domestic Violence and Sexual Assault Advisory Committee created pursuant to 43A O.S. 2001, Section 3-312, shall remain in effect as the Domestic Violence and Sexual Assault Advisory Council and carry on the powers and duties assigned to it according to law. The current members of the Committee shall remain on the Council until the expiration of their individual terms of office or until such offices are vacated. Future appointments to the Council shall be made according to the provisions of this section.

SECTION 3. AMENDATORY 43A O.S. 2001, Section 1-102, as amended by Section 1, Chapter 46, O.S.L. 2003 (43A O.S. Supp. 2004, Section 1-102), is amended to read as follows:

Section 1-102. A. The purpose of the Mental Health Law is to provide for the humane care and treatment of persons who:

1. Are mentally ill; or
2. Require treatment for drug or alcohol abuse; ~~or~~
- ~~3. Require domestic violence or sexual assault services.~~

B. All such residents of this state are entitled to care and treatment in accordance with the appropriate standard of care.

SECTION 4. AMENDATORY 43A O.S. 2001, Section 3-302, as amended by Section 15, Chapter 46, O.S.L. 2003 (43A O.S. Supp. 2004, Section 3-302), is amended to read as follows:

Section 3-302. As used in the Unified Community Mental Health Services Act:

1. "Certified behavioral health case manager" means any person who is certified by the Department of Mental Health and Substance Abuse Services to offer behavioral health case management services within the confines of a mental health facility, ~~domestic violence or sexual assault program,~~ or services for alcohol and drug dependents, that is operated by the Department or contracts with the

state to provide behavioral services or a person who is certified by the Attorney General to provide domestic violence program services;

2. "Case management" means the application of case management principles and practices of linking, advocacy and referral in partnership with the consumer to support the consumer in self-sufficiency and community tenure for consumers of mental health substance abuse ~~and domestic violence and sexual assault services;~~

3. "Catchment area or service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services;

4. "Community mental health center" means a facility offering:

- a. a comprehensive array of community-based mental health services, including, but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education, and
- b. certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation programs;

5. "Community mental health services", in conformance with federal requirements, means services for the treatment of alcoholism, drug addiction or abuse, and mental illness, and the prevention, diagnosis, or rehabilitation of such persons;

6. "Mental health facility" means:

- a. a community mental health center,
- b. an outpatient facility offering diagnostic and treatment services,
- c. a day care facility offering a treatment program for children or adults suffering from mental or emotional problems, or

- d. community residential mental health programs and facilities which provide supervised residential care, counseling, case management or other similar services to children or adults suffering from mental or emotional problems;

7. "Domestic violence program" or "sexual assault program" means a facility, agency or organization which offers or provides or a person who engages in the offering of shelter, residential services or support services to:

- a. victims or survivors of domestic abuse as defined in Section 60.1 of Title 22 of the Oklahoma Statutes, any dependent children of said victims or survivors and any other member of the family or household of such victim or survivor,
- b. victims or survivors of sexual assault,
- c. persons who are homeless as a result of domestic or sexual violence or both domestic and sexual violence, and
- d. persons who commit domestic violence,

and which may provide other services, including, but not limited to, counseling, ~~case management~~ support and advocacy, referrals or other similar services to victims or survivors of domestic abuse or sexual assault;

8. "Day treatment program" means a structured, comprehensive program designed to improve or maintain a person's ability to function in the community, which includes, but is not limited to, nonresidential, partial hospitalization programs, and day hospital programs; and

9. "Program of assertive community treatment" means a facility, agency or organization that offers or provides a self-contained clinical team, under the medical supervision of a licensed psychiatrist, to provide needed treatment, rehabilitation, and

support services to individuals with serious mental illness who have severe symptoms and impairments not effectively remedied by available treatments or to individuals who resist or avoid involvement in other needed mental health services.

SECTION 5. AMENDATORY 43A O.S. 2001, Section 3-313, as last amended by Section 1, Chapter 389, O.S.L. 2004 (43A O.S. Supp. 2004, Section 3-313), is amended to read as follows:

Section 3-313. A. ~~The Department of Mental Health and Substance Abuse Services~~ Attorney General is hereby authorized and directed to enter into agreements and to contract for the shelter and other services as are needed for victims of domestic abuse or sexual assault. Any domestic violence or sexual assault program providing services pursuant to a contract or subcontract with and receiving funds from the ~~Department of Mental Health and Substance Abuse Services, the Board of Mental Health and Substance Abuse Services, or any facility of the Department of Mental Health and Substance Abuse Services~~ Attorney General shall be subject to the provisions of ~~the Unified Community Mental Health Services Act~~ certification by the Office of the Attorney General.

B. 1. Except as otherwise provided by paragraph ~~2~~ 3 of this subsection, the case records, case files, case notes, client records, or similar records of a domestic violence or sexual assault program certified by the ~~Department of Mental Health and Substance Abuse Services~~ Attorney General or of any employee or trained volunteer of a program regarding an individual who is residing or has resided in the program or who has otherwise utilized or is utilizing the services of a domestic violence or sexual assault program or counselor shall be confidential and shall not be disclosed.

2. For purposes of this ~~paragraph~~ subsection, the term "client records" shall include, but not be limited to, all communications,

records, and information regarding clients of domestic violence and sexual assault programs.

~~2.~~ 3. The case records, case files, or case notes of programs specified in paragraph 1 of this subsection shall be confidential and shall not be disclosed except with the written consent of the individual, or in the case of the individual's death or disability, of the individual's personal representative or other person authorized to sue on the individual's behalf or by court order for good cause shown by the judge in camera.

C. The district court shall not order the disclosure of the address of a domestic violence shelter, the location of any person seeking or receiving services from a domestic violence or sexual assault program, or any other information which is required to be kept confidential pursuant to subsection B of this section.

D. The home address, personal telephone numbers and social security number of board members, staff and volunteers of certified domestic violence and sexual assault programs shall not be construed to be open records pursuant to the Oklahoma Open Records Act.

E. Certified domestic violence shelters and domestic violence and sexual assault programs shall report client services electronically using a unique identifier for services reported as domestic violence and sexual assault services. Certified domestic violence shelters and domestic violence and sexual assault programs shall not be required to electronically report data which:

1. Would disclose the identity of individual receiving domestic violence and/or sexual assault services; or

2. Could increase the risk of harm to the client if reported.

SECTION 6. AMENDATORY 43A O.S. 2001, Section 3-313a, is amended to read as follows:

Section 3-313a. A. A domestic violence shelter facility may provide shelter and care to a minor mother, who is the victim of domestic abuse or is seeking relief from domestic abuse for herself

or on behalf of any of her children or both herself and any of her children.

B. A domestic violence shelter facility may provide such shelter or care only during an emergency constituting an immediate danger to the physical health or safety of the minor mother or her child or both the minor mother and any of her children. Such shelter or care shall not extend beyond thirty (30) days unless the facility receives an order issued by the court to continue such services or the parent or guardian of the minor mother consents to such services.

C. The provisions of Section 856 of Title 21 of the Oklahoma Statutes shall not apply to any domestic violence shelter facility and any person operating such facility who in good faith is providing shelter and care pursuant to the provisions of this section, to a minor mother and any of her children who is a runaway from her parent or legal guardian.

D. The ~~show cause~~ emergency custody hearing provided for in ~~Sections 1107 and 1107.1~~ Section 7003-2.4 of Title 10 of the Oklahoma Statutes shall be provided for the minor mother who is seeking relief from domestic abuse for herself or on behalf of any of the children.

SECTION 7. AMENDATORY 43A O.S. 2001, Section 3-314, is amended to read as follows:

Section 3-314. The ~~Department of Mental Health and Substance Abuse Services~~ Office of the Attorney General shall be responsible for the development, maintenance and operation of a twenty-four-hour statewide telephone communication service for the victims of rape, forcible sodomy and domestic violence. The purpose of the service is to provide information to such victim regarding any immediate action which should be taken by the victim, the social services available, and the legal rights and remedies of the victim.

SECTION 8. AMENDATORY 43A O.S. 2001, Section 3-314.1, as last amended by Section 2, Chapter 389, O.S.L. 2004 (43A O.S. Supp. 2004, Section 3-314.1), is amended to read as follows:

Section 3-314.1 A. ~~The Board of Mental Health and Substance Abuse Services~~ Attorney General shall adopt and promulgate rules and standards for certification of domestic violence programs and for private facilities and organizations which offer domestic and sexual assault services in this state. These facilities shall be known as "Certified Domestic Violence Shelters" or "Certified Domestic Violence Programs" or "Certified Sexual Assault Programs" or "Certified Treatment Programs for Batterers", as applicable.

B. Applications for certification as a certified domestic violence shelter, domestic violence program, sexual assault program or treatment program for batterers, pursuant to the provisions of this section, shall be made to the ~~Department of Mental Health and Substance Abuse Services~~ Office of the Attorney General on prescribed forms. ~~The Board, or the Commissioner upon delegation by the Board,~~ Attorney General may certify the shelter or program for a period of three (3) years subject to renewal as provided in the rules promulgated by the ~~Board~~ Attorney General. Nothing in this section shall preclude the ~~Department~~ Office of the Attorney General from making inspection visits to a shelter or program to determine contract or program compliance.

C. Licensed physicians, licensed psychologists, licensed social workers, individual members of the clergy, licensed marital and family therapists, licensed behavioral practitioners, and licensed professional counselors shall be exempt from certification requirements; provided, however, these exemptions shall only apply to individual professional persons in their private practice and not to any domestic violence program or sexual assault program operated by such person.

D. Facilities providing services for victims or survivors of domestic abuse or sexual assault and any dependent children of such victims or survivors shall comply with standards ~~adopted~~ promulgated by the ~~Board~~ Attorney General; provided, that the certification requirements and standards ~~adopted~~ promulgated by the ~~Board~~ Attorney General shall not apply to programs and services offered by the State Department of Health and the Department of Human Services. The domestic violence or sexual assault programs certified pursuant to the provisions of this section shall cooperate with inspection personnel of the state and shall promptly file all reports required by the ~~Department~~ Office of the Attorney General. Failure to comply with rules and standards promulgated by the ~~Board~~ Attorney General shall be grounds for revocation of certification, after proper notice and hearing. Certified domestic violence shelters and domestic violence and sexual assault programs shall report client services electronically using a unique identifier for services reported as domestic violence and sexual assault services. Certified domestic violence shelters and domestic violence and sexual assault programs shall not be required to electronically report data which:

1. Would disclose the identity of individual receiving domestic violence and/or sexual assault services; or
2. Could increase the risk of harm to the client if reported.

E. The ~~Department~~ Attorney General is hereby authorized to collect from each applicant the sum of One Hundred Dollars (\$100.00) annually to help defray the costs incurred in the certification procedure.

SECTION 9. AMENDATORY 43A O.S. 2001, Section 3-314.2, as amended by Section 8, Chapter 113, O.S.L. 2004 (43A O.S. Supp. 2004, Section 3-314.2), is amended to read as follows:

Section 3-314.2 A. The Attorney General, the Department of Mental Health and Substance Abuse Services and any district attorney

may bring an action for an injunction against any domestic violence program or sexual assault program found to be in violation of the provisions of Section 3-314.1 of this title or of any order or determination of the ~~Department~~ Attorney General.

B. In any action for an injunction brought pursuant to this section, any findings of the ~~Department~~ Attorney General, after hearing and due notice, shall be prima facie evidence of the facts found therein.

SECTION 10. AMENDATORY 22 O.S. 2001, Section 1602, is amended to read as follows:

Section 1602. A. The Domestic Violence Fatality Review Board shall be composed of ~~sixteen (16)~~ seventeen (17) members, or their designees, as follows:

1. ~~Seven~~ Eight of the members shall be:

- a. the Chief Medical Examiner,
- b. a designee of the ~~Commissioner of the Department of Mental Health and Substance Abuse Services~~ Attorney General. The designee shall be a person assigned to the Domestic Violence and Sexual Assault Services ~~Division~~ Unit of the ~~Department~~ Office of the Attorney General,
- c. the State Commissioner of Health,
- d. the Director of the Criminal Justice Resource Center,
- e. the Chief of Injury Prevention Services of the State Department of Health,
- f. a member of the Oklahoma Council on Violence Prevention, ~~and~~
- g. the Director of the Oklahoma State Bureau of Investigation, and
- h. a designee of the Department of Mental Health and Substance Abuse Services; and

2. Nine of the members shall be appointed by the Commissioner of the Oklahoma Department of Mental Health and Substance Abuse Services, shall serve for terms of two (2) years and shall be eligible for reappointment. The members shall be persons having training and experience in matters related to domestic violence. The appointed members shall include:

- a. a county sheriff selected from a list submitted by the executive board of the Oklahoma Sheriff's Association,
- b. a chief of a municipal police department selected from a list submitted by the Oklahoma Association of Chiefs of Police,
- c. an attorney licensed in this state who is in private practice selected from a list submitted by the executive board of the Oklahoma Bar Association,
- d. a district attorney selected from a list submitted by the District Attorneys Council,
- e. a physician selected from a list submitted by the Oklahoma State Medical Association,
- f. a physician selected from a list submitted by the Oklahoma Osteopathic Association,
- g. a nurse selected from a list submitted by the Oklahoma Nurses Association, and
- h. two individuals, at least one of whom shall be a survivor of domestic violence, selected from lists submitted by the Oklahoma Coalition Against Domestic Violence and Sexual Assault.

B. Every two (2) years the Board shall elect from among its membership a chair and a vice-chair. The Board shall meet at least quarterly and may meet more frequently as necessary as determined by the chair. Members shall serve without compensation but may be reimbursed for necessary travel out of funds available to the Oklahoma Criminal Justice Resource Center pursuant to the State

Travel Reimbursement Act; provided, that the reimbursement shall be paid in the case of state employee members by the agency employing the member.

C. With funds appropriated or otherwise available for that purpose, the Criminal Justice Resource Center shall provide administrative assistance and services to the Domestic Violence Fatality Review Board.

SECTION 11. AMENDATORY 63 O.S. 2001, Section 1-227.4, is amended to read as follows:

Section 1-227.4 A. The Commission on Children and Youth shall appoint an interagency child abuse prevention task force which shall be composed of sixteen (16) members as follows:

1. Two of whom shall be representatives of the child welfare services of the Department of Human Services;

2. One of whom shall be a representative of the maternal and child health services of the State Department of Health;

3. One of whom shall be a representative of the child guidance services of the State Department of Health;

4. One of whom shall be a representative of the Department of Education;

5. ~~Three~~ Two of whom shall be representatives of the Department of Mental Health and Substance Abuse Services, one each with expertise in the treatment of mental illness, and substance abuse ~~and domestic violence~~;

6. One representative of the Office of the Attorney General with expertise in the treatment of domestic abuse;

7. One of whom shall be a representative of the Office of the Chief Medical Examiner;

~~7.~~ 8. One of whom shall be a representative of the Oklahoma Chapter of the American Academy of Pediatrics;

~~8.~~ 9. One of whom shall be a representative of the judiciary, the legal profession, or law enforcement; and

~~9.~~ 10. Five of whom shall be persons having expertise in the identification and treatment of families at risk of child abuse and neglect and who shall be representatives of private agencies, programs and services for the prevention of child abuse and neglect. One of the five shall be a licensed psychologist.

B. The Office of Child Abuse Prevention and the interagency child abuse prevention task force of the Oklahoma Commission on Children and Youth shall prepare the comprehensive state plan for prevention of child abuse and neglect for the approval of the Commission. The development and preparation of said plan shall include but not be limited to:

1. Adequate opportunity for appropriate local private and public agencies and organizations and private citizens to participate in the development of the state plan at the local level. Appropriate local groups shall include but not be limited to community mental health centers, district attorney's offices, courts having juvenile docket responsibility, school boards, private or public programs with recognized expertise in working with families at risk of child abuse and neglect, voluntary self-help abuse prevention and treatment programs, day care centers, law enforcement and private or public programs with expertise in maternal and infant health care;

2. Guidelines for the formation of the district child abuse prevention task forces provided for in Section 1-227.5 of this title and establishment of a basic format to be utilized by the district task forces in the preparation of district plans, the provision of technical assistance to district task forces as requested and review of the district plans in order to determine compliance with the provisions of subsection E of Section 1-227.5 of this title; and

3. Incorporation of the district plans and information provided by district task forces and public and private agencies into the comprehensive state plan.

C. 1. The interagency child abuse prevention task force and the Office of Child Abuse Prevention shall review and evaluate all proposals submitted for grants or contracts for child abuse prevention programs and services. Upon completion of such review and evaluation, the interagency child abuse prevention task force and the Office of Child Abuse Prevention shall make the final recommendations as to which proposals should be funded pursuant to the provisions of the Child Abuse Prevention Act and shall submit its findings to the Oklahoma Commission on Children and Youth. The Commission shall review the findings of the interagency child abuse prevention task force and the Office of Child Abuse Prevention for compliance of such approved proposals with the comprehensive state plan and district plans prepared pursuant to the provisions of the Child Abuse Prevention Act.

2. Upon ascertaining compliance with said plans, the Commission shall deliver the findings of the interagency child abuse prevention task force and the Office of Child Abuse Prevention to the Commissioner of Health.

3. The Commissioner shall authorize the Office of Child Abuse Prevention to use the Child Abuse Prevention Fund to fund such grants or contracts for child abuse prevention programs and services which are approved by the Commissioner.

4. Whenever the Commissioner approves a grant or contract which was not recommended by the interagency task force and the Office of Child Abuse Prevention, the Commissioner shall state in writing the reason for such decision.

SECTION 12. This act shall become effective November 1, 2005.

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