

1 ENGROSSED SENATE AMENDMENTS  
TO

2 ENGROSSED HOUSE  
3 BILL NO. 1271

By: Coody of the House

and

Barrington of the Senate

4  
5  
6  
7 An Act relating to mental health; amending 43A O.S.  
8 2001, Section 1-103, as last amended by Section 1,  
9 Chapter 287, O.S.L. 2010 (43A O.S. Supp. 2010,  
10 Section 1-103), which relates to definitions;  
11 modifying definition; deleting definition; amending  
12 43A O.S. 2001, Section 5-410, as last amended by  
13 Section 18, Chapter 97, O.S.L. 2006 (43A O.S. Supp.  
2010, Section 5-410), which relates to a petition  
regarding a person requiring treatment; expanding  
list of those persons authorized to file a petition;  
and providing an effective date.

14 AMENDMENT NO. 1. Page 4, lines 21 and 22, after the word  
15 "means" on line 21 and before the first word  
16 "a" on line 22, strike all language and  
renumber subsequent subdivisions as  
divisions (1) through (5)

17 AMENDMENT NO. 2. Page 5, line 9, after the comma insert the  
18 word "or"

19 AMENDMENT NO. 3. Page 5, line 14, after the comma insert the  
20 word "or"

21 AMENDMENT NO. 4. Page 5, line 19, after the comma insert the  
22 word "or"

23 AMENDMENT NO. 5. Page 6, line 7, before the word "The" delete  
24 the language "(2)" and insert the language  
"b." and reletter subsequent subparagraphs

AMENDMENT NO. 6. Page 12, line 9 1/2, insert a new Section 3  
to read

1 "SECTION 3. AMENDATORY 22 O.S. 2001, Section 1175.1, as  
2 amended by Section 2, Chapter 106, O.S.L. 2004 (22 O.S. Supp. 2010,  
3 Section 1175.1), is amended to read as follows:

4 Section 1175.1. As used in Sections 1175.1 through 1176 of this  
5 title:

6 1. "Competent" or "competency" means the present ability of a  
7 person arrested for or charged with a crime to understand the nature  
8 of the charges and proceedings brought against him or her and to  
9 effectively and rationally assist in his or her defense;

10 2. "Incompetent" or "incompetency" means the present inability  
11 of a person arrested for or charged with a crime to understand the  
12 nature of the charges and proceedings brought against him or her and  
13 to effectively and rationally assist in his or her defense;

14 3. "Dangerous" means a person who ~~poses a substantial risk of~~  
15 ~~harm to self or others~~ is a person requiring treatment as defined in  
16 Section 1-103-~~(18)~~ ~~(a) or (b)~~ of Title 43A of the Oklahoma Statutes;

17 4. "Criminal proceeding" means every stage of a criminal  
18 prosecution after arrest and before judgment, including, but not  
19 limited to, interrogation, lineup, preliminary hearing, motion  
20 dockets, discovery, pretrial hearings and trial;

21 5. "Qualified forensic examiner" means any:

- 22 a. psychiatrist with forensic training and experience,  
23 b. psychologist with forensic training and experience, or

24

1 c. a licensed mental health professional whose forensic  
2 training and experience enable him or her to form  
3 expert opinions regarding mental illness, competency  
4 and dangerousness and who has been approved to render  
5 such opinions by the court;

6 6. "Reasonable period of time" means a period not to exceed the  
7 lesser of:

- 8 a. the maximum sentence specified for the most serious  
9 offense with which the defendant is charged, or  
10 b. a maximum period of two (2) years; and

11 7. "Public guardian" means the Office of Public Guardian as  
12 established under the Oklahoma Public Guardianship Act in Section 6-  
13 101 et seq. of Title 30 of the Oklahoma Statutes."

14 and renumber subsequent section

15 and amend the title to conform

16 Passed the Senate the 30th day of March, 2011.

17  
18 \_\_\_\_\_  
19 Presiding Officer of the Senate

20 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
21 2011.

22  
23 \_\_\_\_\_  
24 Presiding Officer of the House  
of Representatives

1 ENGROSSED HOUSE  
2 BILL NO. 1271

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7 An Act relating to mental health; amending 43A O.S.  
8 2001, Section 1-103, as last amended by Section 1,  
9 Chapter 287, O.S.L. 2010 (43A O.S. Supp. 2010,  
10 Section 1-103), which relates to definitions;  
11 modifying definition; deleting definition; amending  
12 43A O.S. 2001, Section 5-410, as last amended by  
13 Section 18, Chapter 97, O.S.L. 2006 (43A O.S. Supp.  
14 2010, Section 5-410), which relates to a petition  
15 regarding a person requiring treatment; expanding  
16 list of those persons authorized to file a petition;  
17 and providing an effective date.

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

19 SECTION 1. AMENDATORY 43A O.S. 2001, Section 1-103, as  
20 last amended by Section 1, Chapter 287, O.S.L. 2010 (43A O.S. Supp.  
21 2010, Section 1-103), is amended to read as follows:

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

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

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

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

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

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

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

16           7. "Facility" means any hospital, school, building, house or  
17 retreat, authorized by law to have the care, treatment or custody of  
18 an individual with mental illness, or drug or alcohol dependency,  
19 gambling addiction, eating disorders, an opioid substitution  
20 treatment program, including, but not limited to, public or private  
21 hospitals, community mental health centers, clinics, satellites or  
22 facilities; provided that facility shall not mean a child guidance  
23 center operated by the State Department of Health;

24

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

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

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

14 11. "Licensed mental health professional" means:

- 15 a. a psychiatrist who is a diplomate of the American  
16 Board of Psychiatry and Neurology,  
17 b. a physician licensed pursuant to Section 480 et seq.  
18 or Section 620 et seq. of Title 59 of the Oklahoma  
19 Statutes,  
20 c. a clinical psychologist who is duly licensed to  
21 practice by the State Board of Examiners of  
22 Psychologists,  
23 d. a professional counselor licensed pursuant to Section  
24 1901 et seq. of Title 59 of the Oklahoma Statutes,

- 1 e. a person licensed as a clinical social worker pursuant  
2 to the provisions of the Social Worker's Licensing  
3 Act,  
4 f. a licensed marital and family therapist as defined in  
5 Section 1925.1 et seq. of Title 59 of the Oklahoma  
6 Statutes,  
7 g. a licensed behavioral practitioner as defined in  
8 Section 1930 et seq. of Title 59 of the Oklahoma  
9 Statutes,  
10 h. an advanced practice nurse as defined in Section 567.1  
11 et seq. of Title 59 of the Oklahoma Statutes  
12 specializing in mental health, or  
13 i. a physician's assistant who is licensed in good  
14 standing in this state and has received specific  
15 training for and is experienced in performing mental  
16 health therapeutic, diagnostic, or counseling  
17 functions;

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

21 13. a. "Person requiring treatment" means:

- 22 (1) a person who because of a his or her mental  
23 illness ~~of the person represents a risk of harm~~  
24 ~~to self or others, or~~

1           ~~(2) a person who is a drug or alcohol dependent~~  
2           ~~person and who as a result of dependency~~  
3           ~~represents a risk of harm to self or others~~ drug  
4           or alcohol dependency:

5           (a) poses a substantial risk of physical harm in  
6           the near future to self as manifested by  
7           evidence or serious threats of or attempts  
8           at suicide or other significant self-  
9           inflicted bodily harm,

10          (b) poses a substantial risk of physical harm in  
11          the near future to another person or persons  
12          as manifested by evidence of violent  
13          behavior directed toward another person or  
14          persons,

15          (c) has placed another person or persons in a  
16          reasonable fear of violent behavior directed  
17          towards such person or persons or serious  
18          physical harm to them as manifested by  
19          serious and immediate threats,

20          (d) is in a condition of severe deterioration  
21          such that, without intervention, there  
22          exists a substantial risk that severe  
23          impairment or injury will result to the  
24          person in the near future, or

1                   (e) poses a substantial risk of serious physical  
2                   injury to self in the near future, or death  
3                   in the near future, as manifested by  
4                   evidence that the person is unable to  
5                   provide for and is not providing for his or  
6                   her basic physical needs.

7                   (2) The mental health or substance abuse history of  
8                   the person may be used as part of the evidence to  
9                   determine whether the person is a person  
10                   requiring treatment. The mental health or  
11                   substance abuse history of the person shall not  
12                   be the sole basis for this determination.

13                   b. Unless a person also meets the criteria established in  
14                   subparagraph a of this paragraph, person requiring  
15                   treatment shall not mean:

16                   (1) a person whose mental processes have been  
17                   weakened or impaired by reason of advanced years,  
18                   dementia, or Alzheimer's disease,

19                   (2) a mentally retarded or developmentally disabled  
20                   person as defined in Title 10 of the Oklahoma  
21                   Statutes,

22                   (3) a person with seizure disorder,

23                   (4) a person with a traumatic brain injury, or

24                   (5) a person who is homeless.

1 c. A person who meets the criteria established in this  
2 section, but who is medically unstable, or the  
3 facility holding the person is unable to treat the  
4 additional medical conditions of that person should be  
5 discharged and transported in accordance with Section  
6 1-110 of this title;

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

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

11 16. "Private hospital or facility" means any general hospital  
12 maintaining a neuro-psychiatric unit or ward, or any private  
13 hospital or facility for care and treatment of a person having a  
14 mental illness, which is not supported by the state or federal  
15 government. The term "private hospital" or "facility" shall not  
16 include nursing homes or other facilities maintained primarily for  
17 the care of elderly and disabled persons;

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

22 a. a statement of treatment goals or objectives, based  
23 upon and related to a clinical evaluation, which can  
24

1 be reasonably achieved within a designated time  
2 interval,

3 b. treatment methods and procedures to be used to obtain  
4 these goals, which methods and procedures are related  
5 to each of these goals and which include specific  
6 prognosis for achieving each of these goals,

7 c. identification of the types of professional personnel  
8 who will carry out the treatment procedures, including  
9 appropriate medical or other professional involvement  
10 by a physician or other health professional properly  
11 qualified to fulfill legal requirements mandated under  
12 state and federal law,

13 d. documentation of involvement by the individual  
14 receiving treatment and, if applicable, the accordance  
15 of the individual with the treatment plan, and

16 e. a statement attesting that the executive director of  
17 the facility or clinical director has made a  
18 reasonable effort to meet the plan's individualized  
19 treatment goals in the least restrictive environment  
20 possible closest to the home community of the  
21 individual; and

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

23 a. ~~a substantial risk of immediate physical harm to self~~  
24 ~~as manifested by evidence or serious threats of or~~

1 ~~attempts at suicide or other significant self-~~  
2 ~~inflicted bodily harm,~~

3 ~~b. a substantial risk of immediate physical harm to~~  
4 ~~another person or persons as manifested by evidence of~~  
5 ~~violent behavior directed toward another person or~~  
6 ~~persons,~~

7 ~~c. having placed another person or persons in a~~  
8 ~~reasonable fear of violent behavior directed towards~~  
9 ~~such person or persons or serious physical harm to~~  
10 ~~them as manifested by serious and immediate threats,~~

11 ~~d. there exists a substantial risk that without immediate~~  
12 ~~intervention severe impairment or injury will result~~  
13 ~~to the person alleged to be a person requiring~~  
14 ~~treatment, or~~

15 ~~e. a substantial risk of immediate serious physical~~  
16 ~~injury to self, or immediate death, as manifested by~~  
17 ~~evidence that the person is unable to provide for and~~  
18 ~~is not providing for the basic physical needs of the~~  
19 ~~person and that appropriate provision for those needs~~  
20 ~~cannot be made immediately available in the community.~~

21 ~~Unless a person also meets the criteria established in~~  
22 ~~subparagraphs a, b, c, d, or e of this paragraph, "risk of harm to~~  
23 ~~self or others" does not mean a person who is homeless; and~~  
24

1       ~~19.~~ "Telemedicine" means the practice of health care delivery,  
2 diagnosis, consultation, evaluation, treatment, transfer of medical  
3 data, or exchange of medical education information by means of  
4 audio, video, or data communications. Telemedicine uses audio and  
5 video multimedia telecommunication equipment which permits two-way  
6 real-time communication between a health care practitioner and a  
7 patient who are not in the same physical location. Telemedicine  
8 shall not include consultation provided by telephone or facsimile  
9 machine.

10       SECTION 2.       AMENDATORY       43A O.S. 2001, Section 5-410, as  
11 last amended by Section 18, Chapter 97, O.S.L. 2006 (43A O.S. Supp.  
12 2010, Section 5-410), is amended to read as follows:

13       Section 5-410. A. The following persons may file or request  
14 the district attorney to file a petition with the district court,  
15 upon which is hereby conferred jurisdiction, to determine whether an  
16 individual is a person requiring treatment, and to order the least  
17 restrictive appropriate treatment for the person:

18       1. A treatment advocate as defined in Section 1-109.1 of this  
19 title;

20       2. The father, mother, husband, wife, brother, sister, guardian  
21 or child, over the age of eighteen (18) years, of an individual  
22 alleged to be a person requiring treatment;

23       ~~2.~~ 3. A licensed mental health professional;

24

1       ~~3.~~ 4. The executive director of a facility designated by the  
2 Commissioner of Mental Health and Substance Abuse Services as  
3 appropriate for emergency detention;

4       ~~4.~~ 5. An administrator of a hospital that is approved by the  
5 Joint Commission on Accreditation of Healthcare Organizations;  
6 provided, however, in any involuntary commitment procedure in which  
7 a hospital is the petitioner pursuant to the provisions of this  
8 section, the hospital may participate in such hearing without  
9 retaining their own legal counsel if the hospital provides as a  
10 witness a mental health therapist or a licensed mental health  
11 professional;

12       ~~5.~~ 6. A person in charge of any correctional institution;

13       ~~6.~~ 7. Any peace officer within the county in which the  
14 individual alleged to be a person requiring treatment resides or may  
15 be found; or

16       ~~7.~~ 8. The district attorney in whose district the person  
17 resides or may be found.

18       B. The petition shall contain a statement of the facts upon  
19 which the allegation is based and, if known, the names and addresses  
20 of any witnesses to the alleged facts.

21       1. The petition shall be verified and made under penalty of  
22 perjury.

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