

05/12/2011 04:30:38 PM

HOUSE OF REPRESENTATIVES  
CONFERENCE COMMITTEE REPORT

Mr. President:  
Mr. Speaker:

The Conference Committee, to which was referred

**HB1271**

By: Coody of the House and Barrington of the Senate

Title: Mental health; persons requiring treatment; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recedes from its amendments 1, 2, 3, 4, 5 and 6; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_

**HOUSE CONFEREES**

Billy

~~WAD~~

Cox

Douglas G Cox M.P.

Derby

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Enns

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Fourkiller

Will Fourkiller

Kern

Saeer Kern

McAffrey

John G 977

Nelson

Jason Nelson

Peterson

Pam Peterson

Pruett

R. Prueett

Roberts (Sean)

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Sanders

Mike Sanders

Scott

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HB1271 CCR B

**SENATE CONFEREES**

Barrington

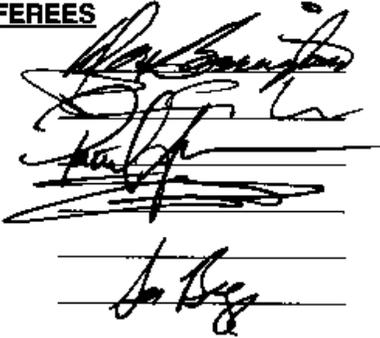
Crain

Anderson

Nichols

Adelson

Burrage



Handwritten signatures of the Senate conferees, including Barrington, Crain, Anderson, Nichols, Adelson, and Burrage, written over horizontal lines.

House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_

House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 CONFERENCE COMMITTEE  
4 SUBSTITUTE  
5 FOR ENGROSSED  
6 HOUSE BILL NO. 1271

By: Coody of the House

and

Barrington of the Senate

7  
8  
9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to mental health; amending 43A O.S.  
11 2001, Section 1-103, as last amended by Section 1,  
12 Chapter 287, O.S.L. 2010 (43A O.S. Supp. 2010,  
13 Section 1-103), which relates to definitions;  
14 modifying definition; deleting definition; amending  
15 43A O.S. 2001, Section 5-410, as last amended by  
16 Section 18, Chapter 97, O.S.L. 2006 (43A O.S. Supp.  
17 2010, Section 5-410), which relates to a petition  
18 regarding a person requiring treatment; expanding  
19 list of those persons authorized to file a petition;  
20 amending 22 O.S. 2001, Section 1175.1, as amended by  
21 Section 2, Chapter 106, O.S.L. 2004 (22 O.S. Supp.  
22 2010, Section 1175.1), which relates to determination  
23 of competency; modifying definition; and providing an  
24 effective date.

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

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

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

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

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

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

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

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

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

21 7. "Facility" means any hospital, school, building, house or  
22 retreat, authorized by law to have the care, treatment or custody of  
23 an individual with mental illness, or drug or alcohol dependency,  
24 gambling addiction, eating disorders, an opioid substitution

1 treatment program, including, but not limited to, public or private  
2 hospitals, community mental health centers, clinics, satellites or  
3 facilities; provided that facility shall not mean a child guidance  
4 center operated by the State Department of Health;

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

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

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

18 11. "Licensed mental health professional" means:

- 19 a. a psychiatrist who is a diplomate of the American  
20 Board of Psychiatry and Neurology,
- 21 b. a physician licensed pursuant to Section 480 et seq.  
22 or Section 620 et seq. of Title 59 of the Oklahoma  
23 Statutes,

24

- 1 c. a clinical psychologist who is duly licensed to  
2 practice by the State Board of Examiners of  
3 Psychologists,
- 4 d. a professional counselor licensed pursuant to Section  
5 1901 et seq. of Title 59 of the Oklahoma Statutes,
- 6 e. a person licensed as a clinical social worker pursuant  
7 to the provisions of the Social Worker's Licensing  
8 Act,
- 9 f. a licensed marital and family therapist as defined in  
10 Section 1925.1 et seq. of Title 59 of the Oklahoma  
11 Statutes,
- 12 g. a licensed behavioral practitioner as defined in  
13 Section 1930 et seq. of Title 59 of the Oklahoma  
14 Statutes,
- 15 h. an advanced practice nurse as defined in Section 567.1  
16 et seq. of Title 59 of the Oklahoma Statutes  
17 specializing in mental health, or
- 18 i. a physician's assistant who is licensed in good  
19 standing in this state and has received specific  
20 training for and is experienced in performing mental  
21 health therapeutic, diagnostic, or counseling  
22 functions;
- 23  
24

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

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

5 ~~(1) a person who because of a his or her mental~~  
6 ~~illness of the person represents a risk of harm~~  
7 ~~to self or others, or~~

8 ~~(2) a person who is a drug or alcohol dependent~~  
9 ~~person and who as a result of dependency~~  
10 ~~represents a risk of harm to self or others drug~~  
11 ~~or alcohol dependency:~~

12 (1) poses a substantial risk of immediate physical  
13 harm to self as manifested by evidence or serious  
14 threats of or attempts at suicide or other  
15 significant self-inflicted bodily harm,

16 (2) poses a substantial risk of immediate physical  
17 harm to another person or persons as manifested  
18 by evidence of violent behavior directed toward  
19 another person or persons,

20 (3) has placed another person or persons in a  
21 reasonable fear of violent behavior directed  
22 towards such person or persons or serious  
23 physical harm to them as manifested by serious  
24 and immediate threats,

1           (4) is in a condition of severe deterioration such  
2           that, without immediate intervention, there  
3           exists a substantial risk that severe impairment  
4           or injury will result to the person, or  
5           (5) poses a substantial risk of immediate serious  
6           physical injury to self or death as manifested by  
7           evidence that the person is unable to provide for  
8           and is not providing for his or her basic  
9           physical needs.

10        b.   The mental health or substance abuse history of the  
11        person may be used as part of the evidence to  
12        determine whether the person is a person requiring  
13        treatment. The mental health or substance abuse  
14        history of the person shall not be the sole basis for  
15        this determination.

16        c.    Unless a person also meets the criteria established in  
17        subparagraph a of this paragraph, person requiring  
18        treatment shall not mean:

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

22           (2) a mentally retarded or developmentally disabled  
23           person as defined in Title 10 of the Oklahoma  
24           Statutes,

- (3) a person with seizure disorder,
- (4) a person with a traumatic brain injury, or
- (5) a person who is homeless.

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

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 facility" 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 the state or federal government. The term "private hospital" or "facility" 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:

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

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

- 1           a. ~~a substantial risk of immediate physical harm to self~~  
2           ~~as manifested by evidence or serious threats of or~~  
3           ~~attempts at suicide or other significant self-~~  
4           ~~inflicted bodily harm,~~
- 5           b. ~~a substantial risk of immediate physical harm to~~  
6           ~~another person or persons as manifested by evidence of~~  
7           ~~violent behavior directed toward another person or~~  
8           ~~persons,~~
- 9           c. ~~having placed another person or persons in a~~  
10           ~~reasonable fear of violent behavior directed towards~~  
11           ~~such person or persons or serious physical harm to~~  
12           ~~them as manifested by serious and immediate threats,~~
- 13           d. ~~there exists a substantial risk that without immediate~~  
14           ~~intervention severe impairment or injury will result~~  
15           ~~to the person alleged to be a person requiring~~  
16           ~~treatment, or~~
- 17           e. ~~a substantial risk of immediate serious physical~~  
18           ~~injury to self, or immediate death, as manifested by~~  
19           ~~evidence that the person is unable to provide for and~~  
20           ~~is not providing for the basic physical needs of the~~  
21           ~~person and that appropriate provision for those needs~~  
22           ~~cannot be made immediately available in the community.~~
- 23  
24

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

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

13       SECTION 2.       AMENDATORY       43A O.S. 2001, Section 5-410, as  
14 last amended by Section 18, Chapter 97, O.S.L. 2006 (43A O.S. Supp.  
15 2010, Section 5-410), is amended to read as follows:

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

21       1. A treatment advocate as defined in Section 1-109.1 of this  
22 title;

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

4        ~~2.~~ 3. A licensed mental health professional;

5        ~~3.~~ 4. The executive director of a facility designated by the  
6 Commissioner of Mental Health and Substance Abuse Services as  
7 appropriate for emergency detention;

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

16        ~~5.~~ 6. A person in charge of any correctional institution;

17        ~~6.~~ 7. Any peace officer within the county in which the  
18 individual alleged to be a person requiring treatment resides or may  
19 be found; or

20        ~~7.~~ 8. The district attorney in whose district the person  
21 resides or may be found.

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

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

3           2. A request for the prehearing detention of the individual  
4 alleged to be a person requiring treatment may be attached to the  
5 petition.

6           3. If the individual alleged to be a person requiring treatment  
7 is being held in emergency detention, a copy of the mental health  
8 evaluation shall be attached to the petition.

9           C. The inpatient mental health treatment of minors shall be  
10 pursuant to the provisions of the Inpatient Mental Health and  
11 Substance Abuse Treatment of Minors Act.

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

15           Section 1175.1 As used in Sections 1175.1 through 1176 of this  
16 title:

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

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

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

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

8 5. "Qualified forensic examiner" means any:

- 9 a. psychiatrist with forensic training and experience,
- 10 b. psychologist with forensic training and experience, or
- 11 c. a licensed mental health professional whose forensic  
12 training and experience enable him or her to form  
13 expert opinions regarding mental illness, competency  
14 and dangerousness and who has been approved to render  
15 such opinions by the court;

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

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

21 7. "Public guardian" means the Office of Public Guardian as  
22 established under the Oklahoma Public Guardianship Act in Section 6-  
23 101 et seq. of Title 30 of the Oklahoma Statutes.

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SECTION 4. This act shall become effective November 1, 2011.

53-1-7780 AM 05/11/11