SENATE FLOOR VERSION
March 23, 2011
As Amended

ENGROSSED HOUSE
BILL NO. 1271 By: Coody of the House

and

Barrington of the Senate

An Act relating to mental health; amending 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), which relates to definitions; modifying definition; deleting definition; amending 43A O.S. 2001, Section 5-410, as last amended by 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; amending 22 O.S. 2001, Section 1175.1, as amended by Section 2, Chapter 106, O.S.L. 2004 (22 O.S. Supp. 2010, Section 1175.1), which relates to definitions; modifying certain definition; and providing an 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:

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 an individual with mental illness, or drug or alcohol dependency, gambling addiction, eating disorders, an opioid substitution treatment program, including, but not limited to, public or private hospitals, community mental health centers, clinics, satellites or

facilities; provided that facility shall not mean a child guidance center operated by the State Department of Health;

8. "Consumer" 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 consumers 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 pursuant to Section 480 et seq. or Section 620 et seq. of Title 59 of the Oklahoma Statutes,

c. a clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists,

d. a professional counselor licensed pursuant to Section 1901 et seq. of Title 59 of the Oklahoma Statutes,

e. a person licensed as a clinical social worker pursuant to the provisions of the Social Worker's Licensing Act,

f. a licensed marital and family therapist as defined in Section 1925.1 et seq. of Title 59 of the Oklahoma Statutes,

g. a licensed behavioral practitioner as defined in Section 1930 et seq. of Title 59 of the Oklahoma Statutes,

h. an advanced practice nurse as defined in Section 567.1 et seq. of Title 59 of the Oklahoma Statutes specializing in mental health, or

i. a physician's assistant who is licensed in good standing in this state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;

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~~ his or her mental illness ~~of the person represents a risk of harm to self or others, or~~

~~(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~~ drug or alcohol dependency:

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

(2) poses a substantial risk of physical harm in the near future to another person or persons as manifested by evidence of violent behavior directed toward another person or persons, **or**

(3) has 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 and immediate threats, **or**

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

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

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

~~b.~~

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

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

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

(3) a person with seizure disorder,

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

(5) a person who is homeless.

~~c.~~

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:

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 immediate physical harm to self as manifested by evidence or serious threats of or~~

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

~~b. a substantial risk of immediate 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 and immediate threats,~~

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

~~e. a substantial risk of immediate serious physical injury to self, or immediate death, 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.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. "Qualified forensic examiner" means any:

a. psychiatrist with forensic training and experience,

b. psychologist with forensic training and experience, or

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

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

a. the maximum sentence specified for the most serious offense with which the defendant is charged, or

b. a maximum period of two (2) years; and

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

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

COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN SERVICES, dated 3-21-11 - DO PASS, As Amended.