

1 STATE OF OKLAHOMA

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

3 SENATE BILL 240

By: Fields

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5
6 AS INTRODUCED

7 An Act relating to persons requiring treatment for
8 mental health or substance abuse; amending 43A O.S.
9 2001, Sections 1-103, as last amended by Section 1,
10 Chapter 287, O.S.L. 2010 and 5-410, as last amended
11 by Section 18, Chapter 97, O.S.L. 2006 (43A O.S.
12 Supp. 2010, Sections 1-103 and 5-410), which relate
13 to mental health and substance abuse services;
14 modifying definitions; permitting treatment advocates
15 to file or request the district attorney to file
16 certain petition; and providing an effective date.

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

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

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

24 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;

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

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

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

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

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

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

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

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

11 11. "Licensed mental health professional" means:

- 12 a. a psychiatrist who is a diplomate of the American
13 Board of Psychiatry and Neurology,
- 14 b. a physician licensed pursuant to Section 480 et seq.
15 or Section 620 et seq. of Title 59 of the Oklahoma
16 Statutes,
- 17 c. a clinical psychologist who is duly licensed to
18 practice by the State Board of Examiners of
19 Psychologists,
- 20 d. a professional counselor licensed pursuant to Section
21 1901 et seq. of Title 59 of the Oklahoma Statutes,
- 22 e. a person licensed as a clinical social worker pursuant
23 to the provisions of the Social Worker's Licensing
24 Act,

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

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

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

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

15 12. "Mentally incompetent person" means any person who has been
16 adjudicated mentally or legally incompetent by an appropriate
17 district court;

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

19 (1) a person who because of a his or her mental
20 illness ~~of the person represents a risk of harm~~
21 ~~to self or others, or~~

22 ~~(2) a person who is a drug or alcohol dependent~~
23 ~~person and who as a result of dependency~~
24

1 ~~represents a risk of harm to self or others~~ or
2 drug or alcohol dependency:

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

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

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

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

23 (e) poses a substantial risk of serious physical
24 injury to self in the near future, or death

1 in the near future, as manifested by
2 evidence that the person is unable to
3 provide for and is not providing for his or
4 her basic physical needs.

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

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

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

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

20 (3) a person with seizure disorder,

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

22 (5) a person who is homeless.

23 c. A person who meets the criteria established in this
24 section, but who is medically unstable, or the

1 facility holding the person is unable to treat the
2 additional medical conditions of that person should be
3 discharged and transported in accordance with Section
4 1-110 of this title;

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

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

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

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

- 20 a. a statement of treatment goals or objectives, based
21 upon and related to a clinical evaluation, which can
22 be reasonably achieved within a designated time
23 interval,

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

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

- 21 ~~a. a substantial risk of immediate physical harm to self~~
22 ~~as manifested by evidence or serious threats of or~~
23 ~~attempts at suicide or other significant self-~~
24 ~~inflicted bodily harm,~~

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

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

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

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

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

22 ~~19. "Telemedicine" means the practice of health care delivery,~~
23 ~~diagnosis, consultation, evaluation, treatment, transfer of medical~~
24 ~~data, or exchange of medical education information by means of~~

1 audio, video, or data communications. Telemedicine uses audio and
2 video multimedia telecommunication equipment which permits two-way
3 real-time communication between a health care practitioner and a
4 patient who are not in the same physical location. Telemedicine
5 shall not include consultation provided by telephone or facsimile
6 machine.

7 SECTION 2. AMENDATORY 43A O.S. 2001, Section 5-410, as
8 last amended by Section 18, Chapter 97, O.S.L. 2006 (43A O.S. Supp.
9 2010, Section 5-410), is amended to read as follows:

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

15 1. A treatment advocate as described in Section 1-109.1 of this
16 title;

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

20 ~~2.~~ 3. A licensed mental health professional;

21 ~~3.~~ 4. The executive director of a facility designated by the
22 Commissioner of Mental Health and Substance Abuse Services as
23 appropriate for emergency detention;

24

1 ~~4.~~ 5. An administrator of a hospital that is approved by the
2 Joint Commission on Accreditation of Healthcare Organizations;
3 provided, however, in any involuntary commitment procedure in which
4 a hospital is the petitioner pursuant to the provisions of this
5 section, the hospital may participate in such hearing without
6 retaining their own legal counsel if the hospital provides as a
7 witness a mental health therapist or a licensed mental health
8 professional;

9 ~~5.~~ 6. A person in charge of any correctional institution;

10 ~~6.~~ 7. Any peace officer within the county in which the
11 individual alleged to be a person requiring treatment resides or may
12 be found; or

13 ~~7.~~ 8. The district attorney in whose district the person
14 resides or may be found.

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

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

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

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

4 C. The inpatient mental health treatment of minors shall be
5 pursuant to the provisions of the Inpatient Mental Health Treatment
6 of Minors Act.

7 SECTION 3. This act shall become effective November 1, 2011.

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