

1 **SENATE FLOOR VERSION**

2 April 11, 2022

3 ENGROSSED HOUSE

4 BILL NO. 4227

By: Boatman of the House

and

Paxton of the Senate

8 An Act relating to mental health; amending 43A O.S.
2021, Section 1-103, which relates to definitions;
9 adding definition; amending 43A O.S. 2021, Section 5-
207, which relates to immediate emergency action;
10 modifying requirement; amending 43A O.S. 2021,
Section 5-302, which relates to the status of
11 informal patient; including private centers; amending
43A O.S. 2021, Section 5-309, which relates to
12 detention of persons; including private centers;
amending 43A O.S. 2021, Section 5-415, which relates
13 to records; creating exemption; amending 43A O.S.
2021, Section 5-420, which relates to the review
14 status of persons involuntarily committed; modifying
requirement; repealing 43A O.S. 2021, Sections 8-101,
15 8-103, 8-104, 8-105, 8-106, 8-107, and 8-108, which
relate to mental health; and providing an effective
16 date.

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

19 SECTION 1. AMENDATORY 43A O.S. 2021, Section 1-103, is
20 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:

- 1 1. "Department" means the Department of Mental Health and
2 Substance Abuse Services;
- 3 2. "Chair" means the chair of the Board of Mental Health and
4 Substance Abuse Services;
- 5 3. "Mental illness" means a substantial disorder of thought,
6 mood, perception, psychological orientation or memory that
7 significantly impairs judgment, behavior, capacity to recognize
8 reality or ability to meet the ordinary demands of life;
- 9 4. "Board" means the Board of Mental Health and Substance Abuse
10 Services as established by the Mental Health Law;
- 11 5. "Commissioner" means the individual selected and appointed
12 by the Board to serve as Commissioner of Mental Health and Substance
13 Abuse Services;
- 14 6. "Indigent person" means a person who has not sufficient
15 assets or resources to support the person and to support members of
16 the family of the person lawfully dependent on the person for
17 support;
- 18 7. "Facility" means any hospital, school, building, house or
19 retreat, authorized by law to have the care, treatment or custody of
20 an individual with mental illness, or drug or alcohol dependency,
21 gambling addiction, eating disorders, an opioid substitution
22 treatment program including, but not limited to, public or private
23 hospitals, community mental health centers, clinics, satellites or
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1 facilities; provided, that facility shall not mean a child guidance
2 center operated by the State Department of Health;

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

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

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

16 11. "Licensed mental health professional" means:

- 17 a. a psychiatrist who is a diplomate of the American
18 Board of Psychiatry and Neurology,
- 19 b. a psychiatrist who is a diplomate of the American
20 Osteopathic Board of Neurology and Psychiatry,
- 21 c. a physician licensed pursuant to the Oklahoma
22 Allopathic Medical and Surgical Licensure and
23 Supervision Act or the Oklahoma Osteopathic Medicine
24 Act,

- d. a clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists,
- e. a professional counselor licensed pursuant to the Licensed Professional Counselors Act,
- f. a person licensed as a clinical social worker pursuant to the provisions of the Social Worker's Licensing Act,
- g. a licensed marital and family therapist as defined in the Marital and Family Therapist Licensure Act,
- h. a licensed behavioral practitioner as defined in the Licensed Behavioral Practitioner Act,
- i. an advanced practice nurse as defined in the Oklahoma Nursing Practice Act,
- j. a physician's assistant who is licensed in good standing in this state, or
- k. a licensed drug and alcohol counselor/mental health (LADC/MH) as defined in the Licensed Alcohol and Drug Counselors Act;

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

1 13. a. "Person requiring treatment" means a person who
2 because of his or her mental illness or drug or
3 alcohol dependency:

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

8 (2) poses a substantial risk of immediate physical
9 harm to another person or persons as manifested
10 by evidence of violent behavior directed toward
11 another person or persons,

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

17 (4) is in a condition of severe deterioration such
18 that, without immediate intervention, there
19 exists a substantial risk that severe impairment
20 or injury will result to the person, or

21 (5) poses a substantial risk of immediate serious
22 physical injury to self or death as manifested by
23 evidence that the person is unable to provide for
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1 and is not providing for his or her basic
2 physical needs.

3 b. The mental health or substance abuse history of the
4 person may be used as part of the evidence to
5 determine whether the person is a person requiring
6 treatment or an assisted outpatient. The mental
7 health or substance abuse history of the person shall
8 not be the sole basis for this determination.

9 c. Unless a person also meets the criteria established in
10 subparagraph a or b of this paragraph, "person
11 requiring treatment" or an "assisted outpatient" shall
12 not mean:

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

16 (2) a person with intellectual or developmental
17 disability as defined in Title 10 of the Oklahoma
18 Statutes,

19 (3) a person with seizure disorder,

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

21 (5) a person who is homeless.

22 d. A person who meets the criteria established in this
23 section but who is medically unstable, or the facility
24 holding the person is unable to treat the additional

1 medical conditions of that person, should be
2 discharged and transported in accordance with Section
3 1-110 of this title;

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

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,

- 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;

18. "Telemedicine" means technology-enabled health and care management and delivery systems that extend capacity and access, which includes:

- a. synchronous mechanisms, which may include live audiovisual interaction between a patient and a health

1 care professional or real-time provider to provider
2 consultation through live interactive audiovisual
3 means,

4 b. asynchronous mechanisms, which include store and
5 forward transfers, online exchange of health
6 information between a patient and a health care
7 professional and online exchange of health information
8 between health care professionals, but shall not
9 include the use of automated text messages or
10 automated mobile applications that serve as the sole
11 interaction between a patient and a health care
12 professional,

13 c. remote patient monitoring, and

14 d. other electronic means that support clinical health
15 care, professional consultation, patient and
16 professional health-related education, public health
17 and health administration;

18 19. "Recovery and recovery support" means nonclinical services
19 that assist individuals and families to recover from alcohol or drug
20 problems. They include social support, linkage to and coordination
21 among allied service providers including but not limited to
22 transportation to and from treatment or employment, employment
23 services and job training, case management and individual services
24

1 coordination, life skills education, relapse prevention, housing
2 assistance, child care, and substance abuse education;

3 20. "Assisted outpatient" means a person who:

- 4 a. is either currently under the care of a facility
5 certified by the Department of Mental Health and
6 Substance Abuse Services as a Community Mental Health
7 Center, or is being discharged from the custody of the
8 Oklahoma Department of Corrections, or is being
9 discharged from a residential placement by the Office
10 of Juvenile Affairs,
- 11 b. is suffering from a mental illness,
- 12 c. is unlikely to survive safely in the community without
13 supervision, based on a clinical determination,
- 14 d. has a history of lack of compliance with treatment for
15 mental illness that has:
 - 16 (1) prior to the filing of a petition, at least twice
17 within the last thirty-six (36) months been a
18 significant factor in necessitating
19 hospitalization or treatment in a hospital or
20 residential facility including admission to a
21 community-based structured crisis center as
22 certified by the Oklahoma Department of Mental
23 Health and Substance Abuse Services, or receipt
24 of services in a forensic or other mental health

1 unit of a correctional facility, or a specialized
2 treatment plan for treatment of mental illness in
3 a secure juvenile facility or placement in a
4 specialized residential program for juveniles, or
5 (2) prior to the filing of the petition, resulted in
6 one or more acts of serious violent behavior
7 toward self or others or threats of, or attempts
8 at, serious physical harm to self or others
9 within the last twenty-four (24) months,

10 e. is, as a result of his or her mental illness, unlikely
11 to voluntarily participate in outpatient treatment
12 that would enable him or her to live safely in the
13 community,

14 f. in view of his or her treatment history and current
15 behavior, is in need of assisted outpatient treatment
16 in order to prevent a relapse or deterioration which
17 would be likely to result in serious harm to the
18 person or persons as defined in this section, and

19 g. is likely to benefit from assisted outpatient
20 treatment; ~~and~~

21 21. "Assisted outpatient treatment" means outpatient services
22 which have been ordered by the court pursuant to a treatment plan
23 approved by the court to treat an assisted outpatient's mental
24 illness and to assist the person in living and functioning in the

1 community, or to attempt to prevent a relapse or deterioration that
2 may reasonably be predicted to result in suicide or the need for
3 hospitalization; and

4 22. "Urgent recovery clinics" means clinics that offer
5 voluntary services aimed at the assessment and immediate
6 stabilization of acute symptoms of mental illness, alcohol and other
7 drug abuse, and emotional distress. Unless the person receiving
8 treatment consents to a longer duration, or if the person is placed
9 into emergency detention status, no more than twenty-three (23)
10 hours and fifty-nine (59) minutes of services may be provided to a
11 consumer during one episode of care at an urgent recovery clinic.

12 SECTION 2. AMENDATORY 43A O.S. 2021, Section 5-207, is
13 amended to read as follows:

14 Section 5-207. A. Any person who appears to be or states that
15 such person is mentally ill, alcohol-dependent, or drug-dependent to
16 a degree that immediate emergency action is necessary may be taken
17 into protective custody and detained as provided pursuant to the
18 provisions of this section. Nothing in this section shall be
19 construed as being in lieu of prosecution under state or local
20 statutes or ordinances relating to public intoxication offenses.

21 B. 1. Any peace officer who reasonably believes that a person
22 is a person requiring treatment as defined in Section 1-103 of this
23 title shall take the person into protective custody. The officer
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1 shall make every reasonable effort to take the person into custody
2 in the least conspicuous manner.

3 2. Upon taking the person into protective custody, the officer
4 may relinquish custody of the person believed to require treatment
5 to a duly qualified reserve officer or deputy employed by the same
6 agency to fulfill the officer's duties as required by this title.

7 C. The officer shall prepare a written statement indicating the
8 basis for the officer's belief that the person is a person requiring
9 treatment and the circumstances under which the officer took the
10 person into protective custody. The officer shall give a copy of
11 the statement to the person or the person's attorney upon the
12 request of either. If the officer does not make the determination
13 to take an individual into protective custody on the basis of the
14 officer's personal observation, the officer shall not be required to
15 prepare a written statement. However, the person stating to be
16 mentally ill, alcohol-dependent or drug-dependent or the person upon
17 whose statement the officer relies shall sign a written statement
18 indicating the basis for such person's belief that the person is a
19 person requiring treatment. Any false statement given to the
20 officer by the person upon whose statement the officer relies shall
21 be a misdemeanor and subject to the sanctions of Title 21 of the
22 Oklahoma Statutes.

23 D. If the person is medically stable, the officer shall
24 immediately transport the person to an urgent recovery clinic or to

1 the nearest facility, as defined in Section 1-103 of this title, for
2 an initial assessment within a thirty (30) mile radius of the peace
3 officer's operational headquarters, or may use telemedicine with a
4 licensed mental health professional employed or under contract with
5 a facility operated by, certified by or contracted with the
6 Department of Mental Health and Substance Abuse Services to perform
7 an initial assessment. If, subsequent to an initial assessment, it
8 is determined that emergency detention is warranted, the officer
9 shall immediately transport the person to the nearest facility that
10 has bed space available if the facility is within thirty (30) miles
11 of the peace officer's operational headquarters and the individual
12 was determined to be a person requiring treatment. The Department
13 of Mental Health and Substance Abuse Services may contract for the
14 use of alternative transportation providers to transport individuals
15 to facilities designated for emergency detention when the nearest
16 facility with available bed space is more than thirty (30) miles
17 from the peace officer's operational headquarters and the individual
18 was determined to be a person requiring treatment. For the purposes
19 of this section, "urgent recovery clinics" means clinics that offer
20 services aimed at the assessment and immediate stabilization of
21 acute symptoms of mental illness, alcohol and other drug abuse and
22 emotional distress~~7;~~ provided that, unless the person consents to a
23 longer duration, no more than twenty-three (23) hours and fifty-nine
24 (59) minutes of services are provided to a consumer during one

1 episode of care. If it is determined by the facility director or
2 designee that the person is not medically stable, the officer shall
3 immediately transport the person to the nearest hospital or other
4 appropriate treatment facility.

5 E. If the person is medically unstable, the person may be
6 transported to an appropriate medical facility for medical
7 treatment. A treating physician may authorize that the person be
8 detained until the person becomes medically stable. When the person
9 becomes medically stable, if in the opinion of the treating or
10 discharging physician, the patient is still a person requiring
11 treatment as defined in Section 1-103 of this title, the physician
12 shall authorize detention of the patient for transportation as
13 provided in subsection D of this section.

14 F. The parent, brother or sister who is eighteen (18) years of
15 age or older, child who is eighteen (18) years of age or older, or
16 guardian of the person, or a person who appears to be or states that
17 such person is mentally ill, alcohol-dependent or drug-dependent to
18 a degree that emergency action is necessary may request the
19 administrator of a facility designated by the Commissioner as an
20 appropriate facility for an initial assessment to conduct an initial
21 assessment to determine whether the condition of the person is such
22 that emergency detention is warranted and, if emergency detention is
23 warranted, to detain the person as provided in Section 5-206 of this
24 title.

1 SECTION 3. AMENDATORY 43A O.S. 2021, Section 5-302, is
2 amended to read as follows:

3 Section 5-302. A. Any person may be admitted to a state mental
4 hospital or state-operated community mental health center or a
5 private mental health hospital or private community mental health
6 center on a voluntary basis as an informal consumer when there are
7 available accommodations and in the judgment of the person in charge
8 of the facility or a designee such person may require treatment
9 therein. Such person may be admitted as an informal consumer
10 without making formal or written application therefor and any such
11 informal consumer shall be free to leave such facility on any day
12 between the hours of 9:00 a.m. and 5:00 p.m. and at such other times
13 as the person in charge of the facility may determine.

14 B. No person shall be admitted as an informal consumer pursuant
15 to the provisions of this section to any state mental hospital or
16 state-operated community mental health center unless the person in
17 charge of the facility or a designee has informed such consumer in
18 writing of the following:

19 1. The rules and procedures of the facility relating to the
20 discharge of informal consumers;

21 2. The legal rights of an informal consumer receiving treatment
22 from the facility; and

23 3. The types of treatment which are available to the informal
24 consumer at the facility.

1 SECTION 4. AMENDATORY 43A O.S. 2021, Section 5-309, is
2 amended to read as follows:

3 Section 5-309. No consumer admitted to a state or private
4 mental hospital under the provisions of the Mental Hospital
5 Voluntary Admission Procedures Act shall be detained in a mental
6 hospital against the will of the person more than one hundred twenty
7 (120) hours or five (5) days, excluding weekends and holidays, after
8 the consumer gives notice in writing to the executive director of
9 the facility of the desire of the consumer to be discharged from the
10 facility. The executive director of the facility may designate one
11 or more employees of the facility to receive a notification provided
12 by this section with the same effect as if delivered to the
13 executive director personally.

14 SECTION 5. AMENDATORY 43A O.S. 2021, Section 5-415, is
15 amended to read as follows:

16 Section 5-415. A. Upon receiving a petition alleging a person
17 to be a person requiring treatment, the court shall set a day and
18 time for the hearing.

19 1. If the person alleged to be a person requiring treatment
20 does not have an attorney, the court shall immediately appoint an
21 attorney for the person.

22 2. If a copy of a mental health evaluation is not attached to
23 the petition at the time it is filed, the court shall immediately
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1 order a mental health evaluation of the person as provided by
2 Section 5-414 of this title.

3 B. If the court deems it necessary, or if the person alleged to
4 be a person requiring treatment demands, the court shall schedule
5 the hearing on the petition as a jury trial to be held within one
6 hundred twenty (120) hours or five (5) days of the demand, excluding
7 weekends and holidays, or within as much additional time as is
8 requested by the attorney of such person upon good cause shown.

9 C. The court, at the hearing on the petition, shall determine
10 by clear and convincing evidence whether the person is a person
11 requiring treatment.

12 1. The court shall take evidence and make findings of fact
13 concerning the person's competency to consent to or refuse the
14 treatment that may be ordered, including, but not limited to, the
15 consumer's right to refuse medication.

16 2. If a jury trial is not demanded, the court may receive as
17 evidence and act upon the affidavits of the licensed mental health
18 professionals who evaluated the person and the mental health
19 evaluation.

20 3. When the hearing is conducted as a jury trial, the
21 petitioner and any witness in behalf of the petitioner shall be
22 subject to cross-examination by the attorney for the person alleged
23 to be a person requiring treatment. The person alleged to be a
24

1 person requiring treatment may also be called as a witness and
2 cross-examined.

3 D. After the hearing, when the court determines that the person
4 is not a person requiring treatment, the court shall dismiss the
5 petition and, if the person is being detained, order the person to
6 be discharged from detention.

7 E. After the hearing, when the court determines the person to
8 be a person requiring treatment, the court shall order the person to
9 receive the least restrictive treatment consistent with the
10 treatment needs of the person and the safety of the person and
11 others.

12 1. The court shall not order hospitalization without a thorough
13 consideration of available treatment alternatives to hospitalization
14 and may direct the submission of evidence as to the least
15 restrictive treatment alternative or may order a mental health
16 examination.

17 2. If the court finds that a program other than hospitalization
18 is appropriate to meet the treatment needs of the individual and is
19 sufficient to prevent injury to the individual or to others, the
20 court may order the individual to receive whatever treatment other
21 than hospitalization that is appropriate for a period set by the
22 court, during which time the court shall continue its jurisdiction
23 over the individual as a person requiring treatment.

24

1 3. If the court orders the person to be committed for
2 involuntary inpatient treatment, the court shall commit the person
3 to the custody of the Department of Mental Health and Substance
4 Abuse Services for a placement that is suitable to the person's
5 needs or to a private facility willing to accept the person for
6 treatment.

7 4. The person shall be delivered to the custody of the
8 Department of Mental Health and Substance Abuse Services for a
9 placement that is suitable to the person's needs or to a private
10 facility willing to accept the person for treatment.

11 5. If the person is placed in the custody of the Department,
12 the Department may designate two or more facilities to provide
13 treatment and if the person to be treated or a parent, spouse,
14 guardian, brother, sister or child, who is at least eighteen (18)
15 years of age, of the person, expresses a preference for one such
16 facility, the Department shall attempt, if administratively
17 possible, to comply with the preference.

18 6. The person shall be discharged from inpatient treatment at
19 such time as the person no longer requires treatment as determined
20 by the executive director of the facility or the designee of the
21 executive director, or as otherwise required by law.

22 F. The court shall make and keep records of all cases brought
23 before it.
24

1 1. Except as provided in Section ~~3~~ 1290.27 of ~~this act~~ Title 21
2 of the Oklahoma Statutes, no records of proceedings pursuant to this
3 section shall be open to public inspection except by order of the
4 court or to employees of the Department of Mental Health and
5 Substance Abuse Services if the person is placed at a state facility
6 or the employees of the private facility where admitted if accepted
7 into a private facility, the person's attorney of record, the
8 person's treatment advocate as defined pursuant to Section 1-109.1
9 of this title, if any, a person having a valid power of attorney
10 with health care decision-making authority, a person having valid
11 guardianship with health care decision-making authority, a person
12 having an advance health care directive, a person having an
13 attorney-in-fact as designated in a valid mental health advance
14 directive or persons having a legitimate treatment interest, unless
15 specifically indicated otherwise by the instrument or court order.
16 The documents shall not identify the alleged person requiring
17 treatment directly or indirectly as a person with a substance abuse
18 disorder.

19 2. Bonded abstractors may be deemed to be persons having a
20 legitimate interest for the purpose of having access to records
21 regarding determinations of persons requiring treatment under this
22 section.

23 SECTION 6. AMENDATORY 43A O.S. 2021, Section 5-420, is
24 amended to read as follows:

1 Section 5-420. A. The Board of Mental Health and Substance
2 Abuse Services shall adopt rules and procedures to ensure that
3 persons involuntarily committed to the facilities of the Department
4 of Mental Health and Substance Abuse Services for treatment by a
5 court receive review of their involuntary status at least once every
6 three (3) months, and the Department of Mental Health and Substance
7 Abuse Services shall take appropriate action based upon this review.

8 B. Any person receiving involuntary inpatient treatment, or
9 such person's attorney, may at any time file a written request that
10 the treatment order be reviewed by the committing court, or a court
11 in the county where the person is located. If a review is
12 requested, the court shall hear the matter within thirty (30) days
13 after the request, and the court shall give notice to the person and
14 such person's attorney and the person in charge of the facility of
15 the time and place of the hearing. The hearing shall be to
16 determine if the person can be treated on a less restrictive basis.
17 At the conclusion of the hearing, the court may confirm the order of
18 treatment, modify the order of treatment, discharge the respondent,
19 or enter any appropriate order.

20 SECTION 7. REPEALER 43A O.S. 2021, Sections 8-101, 8-
21 103, 8-104, 8-105, 8-106, 8-107 and 8-108, are hereby repealed.

22 SECTION 8. This act shall become effective November 1, 2022.

23 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
24 April 11, 2022 - DO PASS