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February 6, 2024

By: Gollihare

An Act relating to mental health records; amending 25 O.S. 2021, Section 307, as amended by Section 1, Chapter 182, O.S.L. 2022 (25 O.S. Supp. 2023, Section 307), which relates to executive sessions under the Oklahoma Open Meeting Act; authorizing executive session by professional licensing board under certain circumstances; requiring professional licensing board to keep certain records confidential; providing exceptions; requiring destruction of records under certain circumstances; updating statutory language; updating statutory reference; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 25 O.S. 2021, Section 307, as amended by Section 1, Chapter 182, O.S.L. 2022 (25 O.S. Supp. 2023, Section 307), is amended to read as follows:

Section 307. A. No public body shall hold executive sessions unless otherwise specifically provided in this section.

B. Executive sessions of public bodies will be permitted only for the purpose of:

1. Discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee;

- 1 2. Discussing negotiations concerning employees and
2 representatives of employee groups;
- 3 3. Discussing the purchase or appraisal of real property;
- 4 4. Confidential communications between a public body and its
5 attorney concerning a pending investigation, claim, or action if the
6 public body, with the advice of its attorney, determines that
7 disclosure will seriously impair the ability of the public body to
8 process the claim or conduct a pending investigation, litigation, or
9 proceeding in the public interest;
- 10 5. Permitting district boards of education to hear evidence and
11 discuss the expulsion or suspension of a student when requested by
12 the student involved or the student's parent, attorney or legal
13 guardian;
- 14 6. Discussing matters involving a specific ~~handicapped~~ disabled
15 child;
- 16 7. Discussing any matter where disclosure of information would
17 violate confidentiality requirements of state or federal law;
- 18 8. Engaging in deliberations or rendering a final or
19 intermediate decision in an individual proceeding pursuant to
20 Article II of the Administrative Procedures Act;
- 21 9. Discussing matters involving safety and security at state
22 penal institutions or correctional facilities used to house state
23 inmates;
- 24

1 10. Discussing contract negotiations involving contracts
2 requiring approval of the State Board of Corrections, which shall be
3 limited to members of the public body, the attorney for the public
4 body, and the immediate staff of the public body. No person who may
5 profit directly or indirectly by a proposed transaction which is
6 under consideration may be present or participate in the executive
7 session; ~~or~~

8 11. Discussing the following:

- 9 a. the investigation of a plan or scheme to commit an act
10 of terrorism,
- 11 b. assessments of the vulnerability of government
12 facilities or public improvements to an act of
13 terrorism,
- 14 c. plans for deterrence or prevention of or protection
15 from an act of terrorism,
- 16 d. plans for response or remediation after an act of
17 terrorism,
- 18 e. information technology of the public body but only if
19 the discussion specifically identifies:
 - 20 (1) design or functional schematics that demonstrate
21 the relationship or connections between devices
22 or systems,
 - 23 (2) system configuration information,

- (3) security monitoring and response equipment placement and configuration,
- (4) specific location or placement of systems, components or devices,
- (5) system identification numbers, names, or connecting circuits,
- (6) business continuity and disaster planning, or response plans, or
- (7) investigation information directly related to security penetrations or denial of services, ~~or~~
- f. the investigation of an act of terrorism that has already been committed, or
- g. ~~For~~ for the purposes of this ~~subsection~~ paragraph, the term "terrorism" means any act encompassed by the definitions set forth in Section 1268.1 of Title 21 of the Oklahoma Statutes; or

12. Reviewing and discussing mental health documents related to a licensee under investigation or review by a professional licensing board if:

- a. the executive session is held only to review or discuss mental health documents directly related to the licensee or to receive testimony from relevant witnesses as necessary for the board to make a determination in the matter,

1 b. the documents reviewed or discussed are kept
2 confidential, privileged and not discoverable in civil
3 actions, and not made available to the public, and
4 c. the licensee is given the opportunity to be present
5 during any witness testimony or discussion of the
6 mental health documents.

7 C. Notwithstanding the provisions of subsection B of this
8 section, the following public bodies may hold executive sessions:

9 1. The ~~State~~ Banking Board, as provided for under Section 306.1
10 of Title 6 of the Oklahoma Statutes;

11 2. The Oklahoma Industrial Finance Authority, as provided for
12 in Section 854 of Title 74 of the Oklahoma Statutes;

13 3. The Oklahoma Development Finance Authority, as provided for
14 in Section 5062.6 of Title 74 of the Oklahoma Statutes;

15 4. The Oklahoma Center for the Advancement of Science and
16 Technology, as provided for in Section 5060.7 of Title 74 of the
17 Oklahoma Statutes;

18 5. The Oklahoma Health Research Committee for purposes of
19 conferring on matters pertaining to research and development of
20 products, if public disclosure of the matter discussed would
21 interfere with the development of patents, copyrights, products, or
22 services;

1 6. The Oklahoma Workers' Compensation Commission for the
2 purposes provided for in Section ~~20~~ 22 of Title 85A of the Oklahoma
3 Statutes;

4 7. A review committee, as provided for in Section 855 of Title
5 62 of the Oklahoma Statutes;

6 8. The Child Death Review Board for purposes of receiving and
7 conferring on matters pertaining to materials declared confidential
8 by law;

9 9. The Domestic Violence Fatality Review Board as provided in
10 Section 1601 of Title 22 of the Oklahoma Statutes;

11 10. The Opioid Overdose Fatality Review Board, as provided in
12 Section 2-1001 of Title 63 of the Oklahoma Statutes;

13 11. All nonprofit foundations, boards, bureaus, commissions,
14 agencies, trusteeships, authorities, councils, committees, public
15 trusts, task forces or study groups supported in whole or part by
16 public funds or entrusted with the expenditure of public funds for
17 purposes of conferring on matters pertaining to economic development
18 including the transfer of property, financing, or the creation of a
19 proposal to entice a business to remain or to locate within their
20 jurisdiction if public disclosure of the matter discussed would
21 interfere with the development of products or services or if public
22 disclosure would violate the confidentiality of the business;

23 12. The Oklahoma Indigent Defense System Board for purposes of
24 discussing negotiating strategies in connection with making possible

1 counteroffers to offers to contract to provide legal representation
2 to indigent criminal defendants and indigent juveniles in cases for
3 which the System must provide representation pursuant to the
4 provisions of the Indigent Defense Act;

5 13. The Quality Investment Committee for purposes of discussing
6 applications and confidential materials pursuant to the terms of the
7 Oklahoma Quality Investment Act;

8 14. The Oklahoma Municipal Power Authority established pursuant
9 to Section 24-101 et seq. of Title 11 of the Oklahoma Statutes and
10 in its role as an electric utility regulated by the federal
11 government, for purposes of discussing security plans and procedures
12 including, but not limited to, cybersecurity matters; and

13 15. The Oklahoma Tax Commission for purposes of discussing
14 confidential taxpayer matters as provided in Section 205 of Title 68
15 of the Oklahoma Statutes, and in compliance with subsection E of
16 this section.

17 D. Except as otherwise specified in this subsection, an
18 executive session for the purpose of discussing the purchase or
19 appraisal of real property shall be limited to members of the public
20 body, the attorney for the public body and the immediate staff of
21 the public body. No landowner, real estate salesperson, broker,
22 developer or any other person who may profit directly or indirectly
23 by a proposed transaction concerning real property which is under
24 consideration may be present or participate in the executive

1 session, unless they are operating under an existing agreement to
2 represent the public body.

3 E. No public body may go into an executive session unless the
4 following procedures are strictly complied with:

5 1. The proposed executive session is noted on the agenda as
6 provided in Section 311 of this title;

7 2. The executive session is authorized by a majority vote of a
8 quorum of the members present and the vote is a recorded vote; and

9 3. Except for matters considered in executive sessions of the
10 ~~State~~ Banking Board and the Oklahoma Tax Commission, and which are
11 required by state or federal law to be confidential, any vote or
12 action on any item of business considered in an executive session
13 shall be taken in public meeting with the vote of each member
14 publicly cast and recorded.

15 F. A willful violation of the provisions of this section shall:

16 1. Subject each member of the public body to criminal sanctions
17 as provided in Section 314 of this title; and

18 2. Cause the minutes and all other records of the executive
19 session including tape recordings, to be immediately made public.

20 SECTION 2. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 24A.34 of Title 51, unless there
22 is created a duplication in numbering, reads as follows:

23 A. A professional licensing board shall keep confidential all
24 records of any mental health diagnosis, counseling, or treatment of

1 a licensee retained by the licensing board. Such records may only
2 be released:

3 1. To the licensee who is the subject of the records;

4 2. To an authorized representative of the licensing board that
5 holds the records for the purpose of evaluating the fitness of the
6 licensee to engage in the practice of the licensed profession;

7 3. Upon a court order; or

8 4. In case of emergency if the licensee poses a danger to
9 himself or herself or others.

10 B. Upon request of the licensee, any mental health records
11 retained by the licensing board shall be destroyed when the licensee
12 retires or resigns from the licensed profession or in accordance
13 with the laws of this state for archiving records, whichever is
14 earlier.

15 SECTION 3. This act shall become effective November 1, 2024.

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
17 February 6, 2024 - DO PASS
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