

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 1279

By: Lawson

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5  
6 AS INTRODUCED

7 An Act relating to mental health; amending 43A O.S.  
8 2011, Sections 5-502, as amended by Section 1,  
9 Chapter 280, O.S.L. 2016, 5-503, 5-511 and 5-512 (43A  
10 O.S. Supp. 2018, Section 5-502), which relate to  
11 definitions; modifying definition; providing for  
12 voluntary and involuntary admission for treatment;  
13 expanding requirements for admission to hospital or  
14 inpatient mental health or substance abuse treatment;  
15 requiring hearings pursuant to the Inpatient Mental  
16 Health and Substance Abuse Treatment of Minors Act;  
17 modifying rights to type of hearing; providing for  
18 commitment to treatment facility; modifying court  
19 finding requirements; and providing an effective  
20 date.

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

22 SECTION 1. AMENDATORY 43A O.S. 2011, Section 5-502, as  
23 amended by Section 1, Chapter 280, O.S.L. 2016 (43A O.S. Supp. 2018,  
24 Section 5-502), is amended to read as follows:

Section 5-502. As used in the Inpatient Mental Health and  
Substance Abuse Treatment of Minors Act:

1. "Minor" means any person under eighteen (18) years of age;

1           2. a. "Minor in need of treatment" means a minor who because  
2 of his or her mental illness or drug or alcohol  
3 dependency:

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

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

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

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

21           (5) poses a substantial risk of serious physical  
22 injury to self or death in the near future as  
23 manifested by evidence that the minor is unable  
24

1 to provide for and is not providing for his or  
2 her basic physical needs.

3 b. The mental health or substance abuse history of the  
4 minor may be used as part of the evidence to determine  
5 whether the minor is a minor in need of treatment as  
6 defined in this section. The mental health or  
7 substance abuse history of the minor shall not be the  
8 sole basis for this determination.

9 c. The term "minor in need of treatment" shall not mean a  
10 minor afflicted with epilepsy, a developmental  
11 disability, organic brain syndrome, physical  
12 handicaps, brief periods of intoxication caused by  
13 such substances as alcohol or drugs or who is truant  
14 or sexually active unless the minor also meets the  
15 criteria for a minor in need of treatment pursuant to  
16 subparagraph a or b of this paragraph;

17 3. "Consent" means the voluntary, express, and informed  
18 agreement to treatment in a mental health facility by a minor  
19 sixteen (16) years of age or older or by a parent of the minor;

20 4. "Individualized treatment plan" means a specific plan for  
21 the care and treatment of an individual minor who requires inpatient  
22 mental health treatment. The plan shall be developed with maximum  
23 involvement of the family of the minor, consistent with the desire  
24

1 of the minor for confidentiality and with the treatment needs of the  
2 minor, and shall clearly include the following:

- 3 a. a statement of the presenting problems of the minor,  
4 short- and long-term treatment goals and the estimated  
5 date of discharge. The short- and long-term goals  
6 shall be based upon a clinical evaluation and shall  
7 include specific behavioral and emotional goals  
8 against which the success of treatment can be  
9 measured,
- 10 b. treatment methods and procedures to be used to achieve  
11 these goals, which methods and procedures are related  
12 to each of these goals and which include, but are not  
13 limited to, specific prognosis for achieving each of  
14 these goals,
- 15 c. identification of the types of professional personnel  
16 who will carry out the treatment procedures including,  
17 but not limited to, appropriate licensed mental health  
18 professionals, education professionals, and other  
19 health or social service professionals, and
- 20 d. documentation of the involvement of the minor or the  
21 parent of the minor or legal custodian in the  
22 development of the treatment plan and whether all  
23 persons have consented to such plan;

1           5. "Inpatient treatment" means treatment services offered or  
2 provided for a continuous period of more than twenty-four (24) hours  
3 in residence after admission to a mental health or substance abuse  
4 treatment facility for the purpose of observation, evaluation or  
5 treatment;

6           6. "Least restrictive alternative" means the treatment and  
7 conditions of treatment which, separately and in combination, are no  
8 more intrusive or restrictive of freedom than reasonably necessary  
9 to achieve a substantial therapeutic benefit to the minor, or to  
10 protect the minor or others from physical injury;

11           7. "Less restrictive alternative to inpatient treatment" means  
12 and includes, but is not limited to, outpatient counseling services,  
13 including services provided in the home of the minor and which may  
14 be referred to as "home-based services", day treatment or day  
15 hospitalization services, respite care, or foster care or group home  
16 care, as defined by Section 1-1-105 of Title 10A of the Oklahoma  
17 Statutes, through a program established and specifically designed to  
18 meet the needs of minors in need of mental health treatment, or a  
19 combination thereof;

20           8. "Licensed mental health professional" means a person who is  
21 not related by blood or marriage to the person being examined or  
22 does not have any interest in the estate of the person being  
23 examined, and who is:

24

- 1 a. a psychiatrist who is a diplomate of the American  
2 Board of Psychiatry and Neurology or American  
3 Osteopathic Board of Neurology and Psychiatry,  
4 b. a physician licensed pursuant to the Oklahoma  
5 Allopathic Medical and Surgical Licensure and  
6 Supervision Act or the Oklahoma Osteopathic Medicine  
7 Act,  
8 c. a clinical psychologist who is duly licensed to  
9 practice by the State Board of Examiners of  
10 Psychologists,  
11 d. a professional counselor licensed pursuant to the  
12 Licensed Professional Counselors Act,  
13 e. a person licensed as a clinical social worker pursuant  
14 to the provisions of the Licensed Social Workers Act,  
15 f. a licensed marital and family therapist as defined in  
16 the Marital and Family Therapist Licensure Act,  
17 g. a licensed behavioral practitioner as defined in the  
18 Licensed Behavioral Practitioner Act,  
19 h. an advanced practice nurse, as defined in the Oklahoma  
20 Nursing Practice Act, specializing in mental health,  
21 i. a physician assistant, who is licensed in good  
22 standing in this state, or  
23  
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1           j.    a licensed alcohol and drug counselor/mental health  
2                   (LADC/MH) as defined in the Licensed Alcohol and Drug  
3                   Counselors Act.

4 For the purposes of this paragraph, "licensed" means that the person  
5 holds a current, valid license issued in accordance with the laws of  
6 this state;

7           9.    "Mental health evaluation" means an examination or  
8 evaluation of a minor for the purpose of making a determination  
9 whether, in the opinion of the licensed mental health professional  
10 making the evaluation, the minor is a minor in need of treatment  
11 and, if so, is in need of inpatient treatment and for the purpose of  
12 preparing reports or making recommendations for the most appropriate  
13 and least restrictive treatment for the minor;

14           10. "Mental health facility" means a public or private hospital  
15 or related institution as defined by Section 1-701 of Title 63 of  
16 the Oklahoma Statutes offering or providing inpatient mental health  
17 services, a public or private facility accredited as an inpatient or  
18 residential psychiatric facility by the Joint Commission on  
19 Accreditation of Healthcare Organizations, or a facility operated by  
20 the Department of Mental Health and Substance Abuse Services and  
21 designated by the Commissioner of the Department of Mental Health  
22 and Substance Abuse Services as appropriate for the inpatient  
23 evaluation or treatment of minors;

1           11. "Mental illness" means a substantial disorder of the  
2 child's thought, mood, perception, psychological orientation or  
3 memory that demonstrably and significantly impairs judgment,  
4 behavior or capacity to recognize reality or to meet the ordinary  
5 demands of life. "Mental illness" may include substance abuse,  
6 which is the use, without compelling medical reason, of any  
7 substance which results in psychological or physiological dependency  
8 as a function of continued use in such a manner as to induce mental,  
9 emotional, or physical impairment and cause socially dysfunctional  
10 or socially disordering behavior;

11           12. "Parent" means:

- 12           a. a biological or adoptive parent who has legal custody  
13           of the minor or has visitation rights, ~~or~~  
14           b. a person judicially appointed as a legal guardian or  
15           custodian of the minor, or  
16           c. a relative within the third degree of consanguinity  
17           who exercises the rights and responsibilities of legal  
18           custody by delegation from a parent, as provided by  
19           law;

20           13. "Person responsible for the supervision of the case" means:

- 21           a. when the minor is in the legal custody of a private  
22           child care agency, the Department of Human Services or  
23           the Office of Juvenile Affairs, the caseworker or  
24



1 other person designated by the agency to supervise the  
2 case, or

3 b. when the minor is a ward of the court and under the  
4 court-ordered supervision of the Department of Human  
5 Services, the Office of Juvenile Affairs or a  
6 statutorily constituted juvenile bureau, the person  
7 designated by the Department of Human Services, the  
8 Office of Juvenile Affairs or juvenile bureau to  
9 supervise the case;

10 14. "Initial assessment (medical necessity review)" means the  
11 examination of current and recent behaviors and symptoms of a minor  
12 who appears to be mentally ill, alcohol-dependent, or drug-dependent  
13 and a minor requiring treatment, whose condition is such that it  
14 appears that emergency detention may be warranted by a licensed  
15 mental health professional at a facility approved by the  
16 Commissioner of Mental Health and Substance Abuse Services, or a  
17 designee, as appropriate for such examination to determine if  
18 emergency detention of the minor is warranted, and whether admission  
19 for inpatient mental illness or drug- or alcohol-dependence  
20 treatment or evaluation constitutes the least restrictive level of  
21 care necessary;

22 15. "Ward of the court" means a minor adjudicated to be a  
23 deprived child, a child in need of supervision, or a delinquent  
24 child;

1       16. "Treatment" means any planned intervention intended to  
2 improve the functioning of a minor in those areas which show  
3 impairment as a result of mental illness or drug or alcohol  
4 dependence; and

5       17. "Prehearing detention order" means a court order that  
6 authorizes a facility to detain a minor pending a hearing on a  
7 petition to determine whether the minor is a minor in need of  
8 treatment.

9       SECTION 2.       AMENDATORY       43A O.S. 2011, Section 5-503, is  
10 amended to read as follows:

11       Section 5-503. A. A parent of a minor or a minor sixteen (16)  
12 years of age or older may consent to the voluntary admission of the  
13 minor for inpatient mental health or substance abuse treatment.

14       B. Upon the application of a minor sixteen (16) years of age or  
15 older or a parent of a minor, a mental health or substance abuse  
16 facility may admit the minor for inpatient evaluation or treatment  
17 if the person in charge of the facility, or a designee, determines  
18 the minor to be clinically eligible for such admission, and:

19       1. After an initial assessment, a licensed mental health  
20 professional determines and states in writing that there is  
21 reasonable cause to believe that the minor may be a minor in need of  
22 treatment and that an evaluation is necessary to properly determine  
23 the condition and treatment needs of the minor, if any; and  
24

1        2. After an outpatient or inpatient mental health evaluation, a  
2 licensed mental health professional determines and states in writing  
3 that in the opinion of the professional, the minor is a minor in  
4 need of treatment and:

5            a. the minor appears to have a mental illness or drug or  
6 alcohol dependence serious enough to warrant inpatient  
7 treatment and is reasonably likely to benefit from the  
8 treatment, and

9            b. based upon the following, inpatient treatment is  
10 determined to be the least restrictive alternative  
11 that meets the needs of the minor:

12            (1) reasonable efforts have been made to provide for  
13 the treatment needs of the minor through the  
14 provision of less restrictive alternatives and  
15 such alternatives have failed to meet the  
16 treatment needs of the minor, or

17            (2) after a thorough consideration of less  
18 restrictive alternatives to inpatient treatment,  
19 the condition of the minor is such that less  
20 restrictive alternatives are unlikely to meet the  
21 treatment needs of the minor, and

22            c. the minor has been provided with a clinically  
23 appropriate explanation of the nature and purpose of  
24 the treatment.

1 The consenting parent shall have the opportunity to discuss the  
2 findings with a person involved in the treatment of the minor.

3 C. The determinations and written statements of a licensed  
4 mental health professional made pursuant to this section shall, upon  
5 the admission of the minor for inpatient evaluation or treatment, be  
6 made a part of the medical record of the minor.

7 D. Inpatient treatment of a minor admitted under this section  
8 may not continue unless continued inpatient treatment has been  
9 authorized by appropriate hospital medical personnel, based upon  
10 their written findings that the criteria set forth in subsection B  
11 of this section continue to be met, after such persons have examined  
12 the minor and interviewed the consenting parent and reviewed reports  
13 submitted by members of the facility staff familiar with the  
14 condition of the minor. This finding is subject to the review  
15 provisions contained in Section 5-512 of this title.

16 E. A mental health or substance abuse treatment facility may  
17 request that the district attorney file a petition alleging a minor  
18 to be a minor in need of treatment and require inpatient treatment  
19 when the parent consenting to the admission of a minor or when the  
20 minor age sixteen (16) years or older who had previously consented  
21 to admission revokes such consent and the person in charge of the  
22 facility, or a designee, determines that the condition of the minor  
23 is such that the minor should remain in the facility. If the  
24 district attorney refuses to file a petition, the district attorney

1 must immediately notify the requesting facility, in writing, of the  
2 refusal to file.

3 F. A minor who is in the legal custody of the Department of  
4 Human Services or the Office of Juvenile Affairs,~~or~~ and who is a  
5 ward of a court may be admitted to a hospital or other facility for  
6 inpatient mental health or substance abuse treatment only pursuant  
7 to the provisions of Section 5-507 of this title.

8 1. A public or private child care agency having legal custody  
9 of a minor may request the district attorney to file a petition  
10 alleging the minor to be a minor in need of treatment and to require  
11 inpatient treatment.

12 2. Nothing in the Inpatient Mental Health and Substance Abuse  
13 Treatment of Minors Act shall be interpreted to prohibit or preclude  
14 the provision of outpatient treatment or services including, but not  
15 limited to, outpatient evaluation, counseling, educational,  
16 rehabilitative or other mental health and substance abuse services  
17 to the minor, as necessary and appropriate, in the absence of a  
18 specific court order for such services.

19 G. 1. An order of a court committing a minor to a facility for  
20 inpatient mental health or substance abuse evaluation or treatment  
21 shall not, by itself, relieve a parent of the obligation to provide  
22 for the support of the minor nor of liability for the cost of  
23 treatment provided to the minor.

24

1           2. Nothing in the Inpatient Mental Health and Substance Abuse  
2 Treatment of Minors Act shall be interpreted to:

- 3           a. limit the authority of the court to order a parent to  
4           make support payments or to make payments or  
5           reimbursements for medical care or treatment,  
6           including mental health care or treatment, to the  
7           person, institution, or agency having custody of the  
8           minor or providing the treatment, or  
9           b. abrogate the right of the minor to any benefits  
10           provided through public funds for which the minor is  
11           otherwise eligible.

12           3. An order committing a minor to a facility for inpatient  
13 mental health or substance abuse treatment shall not by itself serve  
14 to preclude a subsequent adjudication which finds the minor to be  
15 delinquent, in need of supervision or deprived nor shall it cause  
16 the vacation of any such order of adjudication previously entered.

17           H. If the parent who consented to the admission of a minor  
18 under this section revokes such consent at any time, the minor shall  
19 be discharged within forty-eight (48) hours, excluding weekends and  
20 holidays, unless the district attorney is requested to file a  
21 petition alleging the minor to be a minor in need of treatment and  
22 to require inpatient treatment in accordance with the provisions of  
23 this title. If the district attorney refuses to file a petition,  
24

1 the district attorney must immediately notify the requesting  
2 facility, in writing, of the refusal to file.

3 I. If a minor sixteen (16) years of age or older who consented  
4 to treatment subsequently revokes their consent at any time, the  
5 minor shall be discharged within forty-eight (48) hours, excluding  
6 weekends and holidays, unless the district attorney is requested to  
7 file a petition alleging the minor to be a minor in need of  
8 treatment and to require inpatient treatment in accordance with the  
9 provisions of this title or the parent of the minor subsequently  
10 consents to the treatment of the minor. If the district attorney  
11 refuses to file a petition, the district attorney must immediately  
12 notify the requesting facility, in writing, of the refusal to file.

13 SECTION 3. AMENDATORY 43A O.S. 2011, Section 5-511, is  
14 amended to read as follows:

15 Section 5-511. A. Hearings pursuant to the Inpatient Mental  
16 Health and Substance Abuse Treatment of Minors Act shall be private  
17 unless specifically ordered by the judge to be conducted in public,  
18 but persons having a direct interest in the case shall be admitted.  
19 Stenographic notes or other transcript of the hearings shall be kept  
20 as in other cases, but they shall not be open to inspection except  
21 by order of the court or as otherwise provided by Title 10A of the  
22 Oklahoma Statutes for court records relating to children.

23 B. The minor may remain silent as a matter of right in hearings  
24 pursuant to the Inpatient Mental Health and Substance Abuse

1 Treatment of Minors Act and shall be so advised. No statement,  
2 admission or confession made by the minor alleged to be a minor in  
3 need of treatment shall be used against the minor for any purpose  
4 except for proceedings pursuant to the Inpatient Mental Health and  
5 Substance Abuse Treatment of Minors Act.

6 C. In hearings to determine whether a minor is a minor in need  
7 of treatment, the minor shall have the right to demand a nonjury  
8 trial, which shall be granted as in other cases, unless waived. A  
9 decision determining a minor to be a minor in need of treatment must  
10 be based on sworn testimony and the minor must have the opportunity  
11 for cross-examination unless the facts are stipulated. Where the  
12 facts are stipulated, the judge must ascertain from the minor if the  
13 minor agrees with the stipulation and understands the consequences  
14 of stipulating the facts.

15 ~~D. In hearings to determine whether a minor is a minor in need~~  
16 ~~of treatment, the minor shall have the right to demand a trial by~~  
17 ~~jury, which shall be granted as in other cases, unless waived, or~~  
18 ~~the judge on his or her own motion may call a jury to try any such~~  
19 ~~case. Such jury shall consist of six persons.~~

20 ~~1. If a jury trial is not demanded, the court may receive as~~  
21 ~~evidence and act upon the evaluation or report of the licensed~~  
22 ~~mental health professional who evaluated the minor;~~

23 ~~2. When the hearing is conducted as a jury trial, any witness~~  
24 ~~on behalf of the district attorney shall be subject to cross-~~



1 ~~examination by the attorney for the minor alleged to be a minor~~  
2 ~~requiring treatment.~~

3 ~~E.~~ If authorized by the court, any proceeding held pursuant to  
4 the Inpatient Mental Health and Substance Abuse Treatment of Minors  
5 Act may be conducted via teleconference communication; provided,  
6 that when a parent or child appears for a proceeding via  
7 teleconference, the attorney representing that parent or child shall  
8 personally appear at the hearing. For purposes of this paragraph,  
9 "teleconference communication" means participation in the hearing by  
10 interactive telecommunication, including telephonic communication,  
11 by the absent party, those parties present in court, the attorneys,  
12 and others deemed to be necessary participants to the proceeding  
13 including, but not limited to, foster parents and facility staff  
14 where a child may be receiving care or treatment.

15 SECTION 4. AMENDATORY 43A O.S. 2011, Section 5-512, is  
16 amended to read as follows:

17 Section 5-512. A. At the hearing the court shall determine  
18 whether by clear and convincing evidence:

19 1. The minor has a demonstrable mental illness or is drug or  
20 alcohol dependent and as a result of that mental illness or drug or  
21 alcohol dependence can be expected within the near future to inflict  
22 or attempt to inflict serious bodily harm to himself or herself, or  
23 another person if services are not provided, and has engaged in one  
24

1 or more recent overt acts or made significant recent threats which  
2 substantially support that expectation; ~~and~~ or

3 2. The minor has a demonstrable mental illness or is drug or  
4 alcohol dependent of sufficient severity to cause substantial  
5 impairment or disability in at least two of the following major  
6 areas of functioning in the minor's life:

7 a. family relations,

8 b. school performance,

9 c. school interactions,

10 d. ability to perform independently the basic tasks of  
11 personal hygiene, hydration and nutrition, or

12 e. self-protection; or

13 3. The minor is ~~a minor~~ in need of treatment proposed in the  
14 individualized treatment plan and is likely to benefit from ~~such~~ the  
15 treatment.

16 B. After a hearing, the court shall order the minor to receive  
17 the least restrictive care and treatment appropriate for the  
18 treatment needs of the minor until such time as the care and  
19 treatment are no longer necessary.

20 C. The court shall not commit a minor to a facility for  
21 inpatient treatment unless the court determines:

22 1. The minor has a demonstrable mental illness or is drug or  
23 alcohol dependent and as a result of that mental illness or drug or  
24 alcohol dependence can be expected within the near future to inflict

1 or attempt to inflict serious bodily harm to himself or herself, or  
2 another person if services are not provided, and has engaged in one  
3 or more recent overt acts or made significant recent threats which  
4 substantially support that expectation; or

5 2. The minor has a demonstrable mental illness or is drug or  
6 alcohol dependent of sufficient severity to cause substantial  
7 impairment or disability in at least two of the following major  
8 areas of functioning in the minor's life:

9 a. family relations,

10 b. school performance,

11 c. school interactions,

12 d. ability to perform independently the basic tasks of  
13 personal hygiene, hydration and nutrition, or

14 e. self-protection; or

15 3. That all reasonable efforts have been made to provide for  
16 the treatment needs of the minor through the provision of less  
17 restrictive alternatives to inpatient treatment and that such  
18 alternatives have failed to meet the treatment needs of the minor;  
19 or

20 ~~3.~~ 4. After a thorough consideration of less restrictive  
21 alternatives to inpatient treatment, that the condition of the minor  
22 is such that less restrictive alternatives are unlikely to meet the  
23 treatment needs of the minor; and

24

1       ~~4.~~ 5. There are no comparably effective services available to  
2 the minor that are less physically intrusive or restrictive.

3       D. Whenever, after a hearing, the court finds that the minor:

4       1. Is not a minor in need of treatment the court shall dismiss  
5 the case; or

6       2. Is a minor in need of treatment but does not require  
7 inpatient treatment, the court may order treatment or services  
8 through a less restrictive alternative to inpatient mental health or  
9 substance abuse treatment, which may include ordering the minor to  
10 take medication as prescribed by a physician and, upon a finding  
11 that it is in the best interests of the minor, the court may order  
12 the parents or other adult persons living in the home of the minor  
13 to comply with reasonable conditions relating to the treatment of  
14 the minor.

15       E. Whenever, after a hearing, the court finds that the minor is  
16 a minor in need of treatment and requires inpatient treatment in a  
17 mental health or substance abuse treatment facility, the court shall  
18 order the commitment of the minor to a mental health or substance  
19 abuse treatment facility until the minor is no longer a "minor in  
20 need of treatment" as determined by medical staff, subject to the  
21 review provisions contained in this section, and:

22       1. When the minor is in the custody of a parent or legal  
23 guardian, order the parent or legal guardian to make arrangements  
24 for the admission of the minor to a public or private mental health

1 or substance abuse treatment facility appropriate for the inpatient  
2 care and treatment of minors which is willing to admit the minor for  
3 treatment; and

4 2. When the minor is in the custody of the Department of Human  
5 Services or the Office of Juvenile Affairs, order the Department or  
6 Office, as applicable, to make arrangements for the placement of the  
7 minor in a public or private mental health or substance abuse  
8 treatment facility appropriate for the inpatient treatment needs of  
9 the minor.

10 F. Whenever the court commits a minor to a mental health or  
11 substance abuse treatment facility for inpatient treatment pursuant  
12 to this section, the court shall set the matter for review and shall  
13 review the matter not more than thirty (30) days from the date of  
14 commitment and shall continue to review the matter at intervals of  
15 not more than thirty (30) days until the minor is discharged from  
16 inpatient treatment. Not less than three (3) days prior to the  
17 review hearing, the mental health or substance abuse treatment  
18 facility shall submit a report regarding the minor's progress and  
19 treatment and make a recommendation as to whether the minor needs  
20 inpatient care and the reasons therefor.

21 SECTION 5. This act shall become effective November 1, 2019.

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23 57-1-5093 SH 01/04/19

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