

1 **SENATE FLOOR VERSION**

2 April 2, 2019

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 1279

6 By: Lawson and Munson of the
7 House

8 and

9 Stanley of the Senate

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

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

23 SECTION 1. AMENDATORY 43A O.S. 2011, Section 5-502, as
24 amended by Section 1, Chapter 280, O.S.L. 2016 (43A O.S. Supp. 2018,
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 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
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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
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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
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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.

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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,
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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. A decision determining a minor to be a minor in need of
7 treatment shall be made by the judge; provided, however, the judge
8 on his or her own motion may call a jury to try any such case. Such
9 decision must be based on sworn testimony and the minor must have
10 the opportunity for cross-examination unless the facts are
11 stipulated. Where the facts are stipulated, the judge must
12 ascertain from the minor if the minor agrees with the stipulation
13 and understands the consequences of stipulating the facts.

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

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

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

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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. This act shall become effective November 1, 2019.

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
17 April 2, 2019 - DO PASS AS AMENDED
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