

An Act

ENROLLED HOUSE
BILL NO. 1279

By: Lawson and Munson of the
House

and

Stanley of the Senate

An Act relating to mental health; amending 43A O.S. 2011, Sections 5-502, as amended by Section 1, Chapter 280, O.S.L. 2016, 5-503 and 5-511 (43A O.S. Supp. 2018, Section 5-502), which relate to definitions; modifying definition; providing for voluntary and involuntary admission for treatment; expanding requirements for admission to hospital or inpatient mental health or substance abuse treatment; requiring hearings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act; modifying procedure for determining if a minor is in need of treatment; placing authority to grant a jury trial for certain cases in the discretion of the judge; and providing an effective date.

SUBJECT: Inpatient Mental Health and Substance Abuse Treatment of
Minors Act

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

SECTION 1. AMENDATORY 43A O.S. 2011, Section 5-502, as 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;

2. a. "Minor in need of treatment" means a minor who because of his or her mental illness or drug or alcohol dependency:
- (1) poses a substantial risk of physical harm to self in the near future as manifested by evidence of serious threats of or attempts at suicide or other significant self-inflicted bodily harm,
 - (2) poses a substantial risk of physical harm to another person or persons in the near future as manifested by evidence of violent behavior directed toward another person or persons,
 - (3) has placed another person or persons in a reasonable fear of violent behavior or serious physical harm directed toward such person or persons as manifested by serious and immediate threats,
 - (4) is in a condition of severe deterioration such that, without intervention, there exists a substantial risk that severe impairment or injury to the minor will result in the near future, or
 - (5) poses a substantial risk of serious physical injury to self or death in the near future as manifested by evidence that the minor is unable to provide for and is not providing for his or her basic physical needs.
- b. The mental health or substance abuse history of the minor may be used as part of the evidence to determine whether the minor is a minor in need of treatment as defined in this section. The mental health or substance abuse history of the minor shall not be the sole basis for this determination.
- c. The term "minor in need of treatment" shall not mean a minor afflicted with epilepsy, a developmental disability, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs or who is truant or sexually active unless the minor also meets the

criteria for a minor in need of treatment pursuant to subparagraph a or b of this paragraph;

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

4. "Individualized treatment plan" means a specific plan for the care and treatment of an individual minor who requires inpatient mental health treatment. The plan shall be developed with maximum involvement of the family of the minor, consistent with the desire of the minor for confidentiality and with the treatment needs of the minor, and shall clearly include the following:

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

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

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

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

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

- a. a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology or American Osteopathic Board of Neurology and Psychiatry,
- b. a physician licensed pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act or the Oklahoma Osteopathic Medicine Act,
- c. a clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists,
- d. a professional counselor licensed pursuant to the Licensed Professional Counselors Act,
- e. a person licensed as a clinical social worker pursuant to the provisions of the Licensed Social Workers Act,
- f. a licensed marital and family therapist as defined in the Marital and Family Therapist Licensure Act,
- g. a licensed behavioral practitioner as defined in the Licensed Behavioral Practitioner Act,

- h. an advanced practice nurse, as defined in the Oklahoma Nursing Practice Act, specializing in mental health,
- i. a physician assistant, who is licensed in good standing in this state, or
- j. a licensed alcohol and drug counselor/mental health (LADC/MH) as defined in the Licensed Alcohol and Drug Counselors Act.

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

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

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

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

12. "Parent" means:

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

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

- a. when the minor is in the legal custody of a private child care agency, the Department of Human Services or the Office of Juvenile Affairs, the caseworker or other person designated by the agency to supervise the case, or
- b. when the minor is a ward of the court and under the court-ordered supervision of the Department of Human Services, the Office of Juvenile Affairs or a statutorily constituted juvenile bureau, the person designated by the Department of Human Services, the Office of Juvenile Affairs or juvenile bureau to supervise the case;

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

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

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

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

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

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

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

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

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

- a. the minor appears to have a mental illness or drug or alcohol dependence serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment, and
- b. based upon the following, inpatient treatment is determined to be the least restrictive alternative that meets the needs of the minor:

- (1) reasonable efforts have been made to provide for the treatment needs of the minor through the provision of less restrictive alternatives and such alternatives have failed to meet the treatment needs of the minor, or
 - (2) after a thorough consideration of less restrictive alternatives to inpatient treatment, the condition of the minor is such that less restrictive alternatives are unlikely to meet the treatment needs of the minor, and
- c. the minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment.

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

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

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

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

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

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

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

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

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

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

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

H. If the parent who consented to the admission of a minor under this section revokes such consent at any time, the minor shall be discharged within forty-eight (48) hours, excluding weekends and holidays, unless the district attorney is requested to file a petition alleging the minor to be a minor in need of treatment and to require inpatient treatment in accordance with the provisions of this title. If the district attorney refuses to file a petition, the district attorney must immediately notify the requesting facility, in writing, of the refusal to file.

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

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

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

B. The minor may remain silent as a matter of right in hearings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act and shall be so advised. No statement, admission or confession made by the minor alleged to be a minor in need of treatment shall be used against the minor for any purpose except for proceedings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

C. A decision determining a minor to be a minor in need of treatment shall be made by the judge; provided, however, the judge on his or her own motion may call a jury to try any such case. Such

decision must be based on sworn testimony and the minor must have the opportunity for cross-examination unless the facts are stipulated. Where the facts are stipulated, the judge must ascertain from the minor if the minor agrees with the stipulation and understands the consequences of stipulating the facts.

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

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

~~2. When the hearing is conducted as a jury trial, any witness on behalf of the district attorney shall be subject to cross-examination by the attorney for the minor alleged to be a minor requiring treatment.~~

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

SECTION 4. This act shall become effective November 1, 2019.

Passed the House of Representatives the 7th day of May, 2019.

Presiding Officer of the House
of Representatives

Passed the Senate the 23rd day of April, 2019.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____