

An Act

ENROLLED SENATE
BILL NO. 1716

By: Gollihare and Woods of the
Senate

and

Kannady and Swope of the
House

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.

SUBJECT: Mental health records

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;

2. Discussing negotiations concerning employees and representatives of employee groups;

3. Discussing the purchase or appraisal of real property;

4. Confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest;

5. Permitting district boards of education to hear evidence and discuss the expulsion or suspension of a student when requested by the student involved or the student's parent, attorney or legal guardian;

6. Discussing matters involving a specific ~~handicapped~~ disabled child;

7. Discussing any matter where disclosure of information would violate confidentiality requirements of state or federal law;

8. Engaging in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act;

9. Discussing matters involving safety and security at state penal institutions or correctional facilities used to house state inmates;

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

11. Discussing the following:

- a. the investigation of a plan or scheme to commit an act of terrorism,
- b. assessments of the vulnerability of government facilities or public improvements to an act of terrorism,
- c. plans for deterrence or prevention of or protection from an act of terrorism,
- d. plans for response or remediation after an act of terrorism,
- e. information technology of the public body but only if the discussion specifically identifies:
 - (1) design or functional schematics that demonstrate the relationship or connections between devices or systems,
 - (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,
- b. the documents reviewed or discussed are kept confidential, privileged and not discoverable in civil actions, and not made available to the public, and
- c. the licensee is given the opportunity to be present during any witness testimony or discussion of the mental health documents.

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

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

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

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

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

5. The Oklahoma Health Research Committee for purposes of conferring on matters pertaining to research and development of

products, if public disclosure of the matter discussed would interfere with the development of patents, copyrights, products, or services;

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

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

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

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

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

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

12. The Oklahoma Indigent Defense System Board for purposes of discussing negotiating strategies in connection with making possible counteroffers to offers to contract to provide legal representation to indigent criminal defendants and indigent juveniles in cases for which the System must provide representation pursuant to the provisions of the Indigent Defense Act;

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

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

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

D. Except as otherwise specified in this subsection, an executive session for the purpose of discussing the purchase or appraisal of real property shall be limited to members of the public body, the attorney for the public body and the immediate staff of the public body. No landowner, real estate salesperson, broker, developer or any other person who may profit directly or indirectly by a proposed transaction concerning real property which is under consideration may be present or participate in the executive session, unless they are operating under an existing agreement to represent the public body.

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

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

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

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

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

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

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

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

A. A professional licensing board shall keep confidential all records of any mental health diagnosis, counseling, or treatment of a licensee retained by the licensing board. Such records may only be released:

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

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

3. Upon a court order; or

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

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

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

Passed the Senate the 5th day of March, 2024.

Presiding Officer of the Senate

Passed the House of Representatives the 16th day of April, 2024.

Presiding Officer of the House
of Representatives

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: _____