

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 2025

By: Thornbrugh, Williams,
Anthony and Breckinridge
of the House

and

Mickle of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to mental health; amending 43A O.S. 1991, Sections 1-107, 5-101 and 5-212, which relate to hearings required by Mental Health Law; authorizing video teleconferencing and closed-circuit television; providing conditions and requirements; providing for admission of certain persons to certain institutions; requiring certain protective steps; authorizing certain treatment; providing certain use of treatment as a defense; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 1991, Section 1-107, is amended to read as follows:

Section 1-107. A. Hearings required by the Mental Health Law for emergency detention or involuntary commitment of a person may be held within the mental health facility in which the person is being detained or is to be committed whenever the judge deems such venue would be in the best interest of the patient.

Such hearings shall be conducted by any judge designated by the presiding judge of the judicial district in which the mental health facility is located. Hearings may be held in an area of the hospital designated by the Commissioner of Mental Health and Substance Abuse Services and agreed upon by the presiding judge of that judicial district.

B. The Department of Mental Health and Substance Abuse Services, if funds become available, or any board of county

commissioners within the judicial district in which a mental health facility is located may purchase or otherwise provide for the operation, maintenance and equipping of a video teleconferencing system in the mental health facility for conducting any nonjury hearings pursuant to this section or such other uses determined necessary by the board of county commissioners.

C. The court may conduct any nonjury hearing required or authorized pursuant to the provisions of the Mental Health Law for detained or confined persons, at the discretion of the judge, by video teleconferencing after advising the person subject to possible detention or commitment of his constitutional rights. If the video teleconferencing hearing is conducted, the image of the detainee or person subject to commitment may be broadcast by closed-circuit television to the judge. A closed-circuit television system shall provide for two-way communications including image and sound between the detainee or person to be committed and the judge.

D. The provisions for criminal venue as provided otherwise by law shall not be applicable to proceedings encompassed by commitment statutes referred to in the Mental Health Law which are deemed civil in nature.

~~C.~~ E. Unless otherwise provided by law, the rules of civil procedure shall apply to all judicial proceedings provided for in the Mental Health Law, including but not limited to the rules concerning vacation of orders and appellate review.

SECTION 2. AMENDATORY 43A O.S. 1991, Section 5-212, is amended to read as follows:

Section 5-212. A. Upon the filing of a request for an order authorizing detention and petition pursuant to Section ~~9~~ 5-211 of this ~~act~~ title alleging a person to be a person requiring treatment, an alcohol-dependent person, or a drug-dependent person and stating that there is probable cause to detain the person in emergency detention prior to a hearing, the court shall:

1. Dismiss the petition and order the person released from protective custody or emergency detention; or

2. Issue an order authorizing the facility to detain the person prior to a hearing on the petition. If the court issues an order for detention, it shall immediately set a date, time, and place for a hearing on the petition.

B. The district court may certify the person after consideration of the petition and sworn statement provided for in Section ~~9~~ 5-211 of this ~~act~~ title for not more than twenty-eight (28) days of involuntary treatment under the following conditions:

1. The district court shall provide for an immediate hearing on the petition and shall appoint an attorney for the person being detained. The person allegedly requiring involuntary treatment shall have the right to a closed hearing unless such person requests otherwise. The court, at the hearing on the petition, shall determine by clear and convincing evidence if the person is a person requiring treatment, an alcohol-dependent person, or a drug-dependent person as otherwise defined by law and if such person poses an immediate likelihood of becoming a serious harm to himself or others. The court shall take evidence and make findings of fact concerning the competency of the person to consent to or refuse the treatment that may be ordered, including but not limited to the right of the patient to refuse medication. The court shall advise the respondent of his constitutional rights. If a jury trial is not demanded, the court may receive as evidence and may act upon the affidavits and reports of the persons performing the examination and evaluation, without further evidence being presented. ~~The court shall advise the respondent of his constitutional rights.~~ If a jury trial is not demanded, the court may conduct the hearing by closed-circuit television as provided for in Section 1-107 of this title. If the court deems it necessary, or if the person alleged to be a person requiring treatment, an alcohol-dependent person, or a drug-dependent person or a person acting on their behalf shall so demand, the court shall schedule the hearing on the petition as a jury trial to be held within seventy-two (72) hours of the demand, excluding days when the court is not officially in session, or within as much

additional time as is requested by the attorney of the person requiring treatment, upon good cause shown;

2. Two (2) licensed mental health professionals of the agency or facility providing evaluation services have examined and evaluated the condition of the person and have found that the person, as a result of mental disorder or impairment by chronic alcoholism or drug abuse, poses an immediate likelihood of serious harm to himself or others; and

3. The person has been advised of, but has not accepted, voluntary treatment or has been found by the district court to be incompetent to consent to voluntary treatment as provided by paragraph 1 of this subsection.

C. 1. Certification shall be for no more than twenty-eight (28) days, and shall terminate as soon as, in the opinion of the licensed mental health professional in charge of the treatment of the person certified, the person has improved sufficiently for him to leave, or the person is prepared to accept voluntary treatment on referral or to remain in the facility providing intensive treatment on a voluntary basis.

2. If, prior to the expiration of the twenty-eight-day period of certification, it appears to the administrator of the facility that the condition of the person is such that continued inpatient treatment is necessary for the protection of the person or others, the administrator shall file pursuant to Section 5-401 of this title a petition with the district court of the county in which the patient was certified.

3. Persons who have been certified for twenty-eight (28) days of treatment shall be released at the end of twenty-eight (28) days unless:

- a. the person agrees to receive further treatment on a voluntary basis, or
- b. the person is, during the twenty-eight (28) days of temporary treatment, certified for further treatment pursuant to the provisions of Section 5-401 or 9-102 of this title.

When a person is discharged from a facility pursuant to the provisions of this subsection, the person in charge of the facility shall notify the committing or certifying court of such discharge within forty-eight (48) hours prior to the actual discharge.

D. Any individual who knowingly and willfully detains a person for more than twenty-eight (28) days in violation of the provisions of subsection C of this section may be liable to that person in civil damages.

E. When the Department of Mental Health and Substance Abuse Services can designate two or more facilities to provide treatment and the person to be treated, his parent, spouse, guardian, brother, sister, or child who is at least eighteen (18) years of age expresses a preference for one such facility, the professional person certifying the person to be treated shall attempt, if administratively possible, to comply with the preference.

F. Nothing in this section shall prohibit the professional person in charge of a treatment facility, or his designee, from permitting a person certified for treatment to leave the facility for short periods during the involuntary treatment of the person.

SECTION 3. AMENDATORY 43A O.S. 1991, Section 5-101, is amended to read as follows:

Section 5-101. A. Any person alleged to be mentally ill or alcohol- or drug-dependent to a degree which warrants institutional treatment or care, and who is not in confinement in a jail or adult lock-up on a criminal charge, and who has no criminal charges pending against him, may be admitted to and confined in an institution within the Department of Mental Health and Substance Abuse Services, a state ~~psychopathic~~ psychiatric hospital, or a licensed private institution by compliance with any one of the following procedures:

- ~~(a)~~ 1. Emergency admission;
- ~~(b)~~ 2. On voluntary application; and
- ~~(c)~~ 3. On involuntary court certification.

~~Provided, however, any~~ B. Any person alleged to be mentally ill or alcohol- or drug-dependent to a degree which warrants

institutional treatment or care who has criminal charges pending against him but is not confined in a jail or adult lock-up facility may be admitted to an institution within the Department, a state psychiatric hospital or a licensed private institution pursuant to the provisions of subsection A of this section; provided, the institution or hospital is authorized to take such reasonable steps necessary to assure the protection of the public, residents of the institution or hospital and the person, including but not limited to segregation and private facilities. Provided, treatment received pursuant to this subsection shall not constitute a defense in any criminal proceeding except as otherwise provided by Title 22 of the Oklahoma Statutes.

C. Any person confined pursuant to a criminal charge ~~or who has a criminal charge pending against him~~ may be admitted to and confined pursuant to a court order issued in compliance with the provisions of Section 1175.6 of Title 22 of the Oklahoma Statutes.

No person shall be deprived of his liberty on the grounds that he is, or is supposed to be, mentally ill or in need of mental health treatment, except in accordance with the provisions of the Mental Health Law.

SECTION 4. This act shall become effective September 1, 1994.

44-2-L9603 KSM