

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1555

By: Hamilton (Jeff)

AS INTRODUCED

An Act relating to mental health; amending 43A O.S. 1991, Sections 5-212 and 5-401, as amended by Section 3, Chapter 389, O.S.L. 1992 (43A O.S. Supp. 1992, Section 5-401), which relates to persons in need of treatment; providing for placement of certain persons; providing for locations; providing for custody and placement of persons diagnosed as mentally retarded or developmentally disabled; and providing an effective date.

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

SECTION 1. 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. 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 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. The court may commit a person certified for treatment pursuant to this section:

1. To the custody of the Department of Mental Health and Substance Abuse Services for a placement that is suitable to the person's needs;

2. A private hospital or treatment facility willing to admit and treat the person; or

3. When the person has a primary diagnosis of mental retardation or developmental disability, as defined by Section 1408 of Title 10 of the Oklahoma Statutes, the court may commit the person to the Department of Human Services for placement in the Greer Center Facility or other facility suitable to the person's needs.

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

~~E.~~ F. 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.~~ G. 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 2. AMENDATORY 43A O.S. 1991, Section 5-401, as amended by Section 3, Chapter 389, O.S.L. 1992 (43A O.S. Supp. 1992, Section 5-401), is amended to read as follows:

Section 5-401. A. The father, mother, husband, wife, brother, sister, guardian or child, over the age of eighteen (18) years, of a person alleged to be a person requiring treatment, or the parent, father, mother, guardian or person having custody of a minor child, a physician or person in charge of any facility or correctional institution, or any peace officer within the county in which the person alleged to be a person requiring treatment resides or may be found or the district attorney in whose district the person requiring treatment resides or may be found, may petition the district court, upon which is hereby conferred jurisdiction, to determine whether the person is a person requiring treatment and to order the least restrictive appropriate treatment for him. The petition shall contain a statement of the facts upon which the allegation is based and, if known, the names and addresses of any witnesses to the alleged facts. The petition shall be verified and made under penalty of perjury.

B. Upon the filing of a petition, the district court shall determine, based upon clear and convincing evidence, whether there is probable cause to detain the person requiring treatment prior to a hearing on the petition. If the court finds that probable cause does exist, an order may be entered authorizing any peace officer to take that person into custody and to detain such person in a suitable facility prior to the hearing on the petition; provided that said period of temporary detention shall not exceed seventy-two (72) hours, excluding days when the district court is not in

session. Such detention shall be extended to coincide with any order of continuance entered by the court at the first hearing. A certified copy of the order of continuance shall constitute authority for the facility to continue to detain the subject individual during the period of continuance.

C. Upon receiving the petition, the court shall fix a day for the hearing thereof and shall forthwith appoint an attorney and an examining commission. A copy of the petition and notice as hereinafter described shall be served personally at least one (1) day before the examining commission is scheduled to hold its proceedings, and as many additional days as are requested by the person alleged to be a person requiring treatment or his attorney as are reasonable without prejudice to the person. Any request for additional days shall be subject to the discretion of the court, considering the facts and circumstances of each particular case, including cost. The notice shall contain the following information:

1. The definition provided by the Mental Health Law of a mentally ill person and a person requiring treatment;

2. That the court has appointed an examining commission composed of two (2) qualified examiners to examine the mental condition of the person allegedly requiring treatment and execute a certificate of their findings;

3. The time and place of any examination to be conducted by the examining commission, and the hearing on the petition;

4. That, upon request, the hearing on the petition may be conducted as a jury trial and the jury shall be composed of six (6) persons having the qualifications required of jurors in courts of record;

5. That the petitioner and witnesses identified in the petition may offer testimony under oath at the hearing on the petition;

6. That the court has appointed an attorney for the person alleged to be a person requiring treatment who shall represent him until final disposition of the case;

7. That if the person alleged to be a person requiring treatment is indigent, the court shall pay the attorney's fees;

8. That if the person is found at the hearing or at a jury trial to be mentally ill and a person requiring treatment under this act, that the court will take evidence and make findings of fact concerning the person's competency to consent or to refuse the treatment that is ordered, including, but not limited to, the patient's right to refuse psychotropic medications; and

9. That the person alleged to be a person requiring treatment shall be afforded such other rights as are guaranteed by state and federal law and that such rights include a trial by jury, if demanded. The notice shall be served upon the person alleged to be a person requiring treatment, his father, mother, husband, wife, guardian or in their absence someone of the next of kin, of legal age, if any such persons are known to be residing within the county, and upon such of said relatives residing outside of the county, as may be ordered by the court, and also upon the person with whom the person alleged to be a person requiring treatment may reside, or at whose house he may be. The person making such service shall make affidavit of the same and file such notice, with proof of service, with the district court. This notice may be served in any part of the state when so ordered by the court.

D. The attorney appointed by the court shall be a licensed and actively practicing attorney who shall represent the person alleged to be a person requiring treatment until final disposition of the case. The court may appoint a public defender where available. The attorney shall meet and consult with the person within one (1) day of notification of his appointment. The attorney shall immediately, upon meeting with the person alleged to be a person requiring

treatment, present to such person a statement of his rights, including all rights afforded to him by the Oklahoma and United States Constitutions. The court-appointed attorney shall be replaced by another attorney if:

1. The person alleged to be a person requiring treatment prefers the services of an attorney other than the one initially appointed for him;

2. The preferred attorney agrees to accept the responsibility; and

3. The person alleged to be a person requiring treatment or the attorney whom he prefers notifies the court of the preference and the attorney's acceptance of employment.

The preferred attorney shall meet and consult with the person alleged to be a person requiring treatment within one (1) day of his employment. Any request for additional days shall be subject to the discretion of the court, considering the facts and circumstances of each particular case, including cost.

E. The attorney's fees for all services shall be paid by the person alleged to be a person requiring treatment. However, if the person alleged to be a person requiring treatment, or a person empowered pursuant to law to act on behalf of such person, submits an affidavit that such person is indigent, and unable to pay attorney's fees, the attorney's fees shall be paid from the court fund, after a determination by the court that such person is indigent. The amount of such fee shall be set by the court.

F. The district court shall in each case appoint an examining commission composed of two (2) qualified examiners, one of whom may be a licensed clinical psychologist. The qualified examiners shall make a careful personal examination and inquiry into the mental condition of the person alleged to be a person requiring treatment and execute a certificate of their findings. The examining commission appointed by the court shall have the right to conduct an

examination of the mental condition of the person alleged to be a person requiring treatment, either prior to or at the time of the hearing on the petition. Any examination that is conducted prior to the hearing shall be on proper notice to the person and his appointed or selected attorney.

G. The examining commission forms shall be printed or written on eight and one-half inch by eleven inch (8 1/2" x 11") sheets of paper and shall be substantially as follows:

EXAMINER'S CERTIFICATE

We, the undersigned, together and in the presence of each other, have made a personal examination of ....., a person alleged to be a person requiring treatment, and do hereby certify that we did on the ..... day of ....., 19.., make a careful personal examination of the actual condition of the said person and have interrogated ....., the person seeking the commitment of ....., and ....., the witness(es) identified in the petition, and on such examination we find that she/he is/not a person requiring treatment. The facts and circumstances on which we base our opinions are stated in the following report of symptoms and history of case, which is hereby made a part hereof.

We are duly licensed to practice in the State of Oklahoma, are not related to ..... by blood or marriage, and have no interest in her/his estate.

Witness our hands this ..... day of ....., 19..

....., M.D., D.O., Ph.D., Other  
....., M.D., D.O., Ph.D., Other

Subscribed and sworn to before me this .....

day of ....., 19..

.....

Notary Public

REPORT OF SYMPTOMS AND HISTORY OF

CASE BY EXAMINERS

1. GENERAL

Complete name .....

Place of residence .....

Sex ..... Color .....

Age .....

Date of Birth .....

Place of Birth .....

Length of residency in Oklahoma .....

Single, married, widowed, separated, divorced .....

Number of children living .....

Number dead .....

Occupation .....

Date of last employment .....

Education .....

Religion .....

Name, relationship, address, and telephone number of

correspondents: .....

.....

.....

2. HISTORY OF FAMILY

Name of father .....

Birthplace .....

Maiden name of mother .....

Birthplace .....

Name of husband (or maiden name of wife) .....

Birthplace .....

General characteristics of family .....

What relatives have had mental or nervous trouble? .....

3. HISTORY OF PATIENT PREVIOUS TO PRESENT ILLNESS

Describe the general health, development, sickness and accidents prior to the present disorder .....

Personality, school record, and social habits .....

Previous attacks and hospitalization for mental health: .....

Place and date .....

4. HISTORY OF PRESENT ILLNESS

Supposed cause .....

Date of onset and course .....

Abnormal talk .....

Suicidal tendencies .....

Abnormal conduct .....

History of violence .....

Special and unusual symptoms .....

Use of alcohol .....

Use of narcotics .....

Diagnosis, if determined .....

Dangerous? Yes ..... No ..... If Yes, explain basis for opinion .....

State the least restrictive treatment which is appropriate to condition .....

State the least restrictive treatment which is available within the catchment area .....

Is the patient competent to refuse treatment that is ordered? .....

5. NAME AND RELATIONSHIPS OF INFORMANTS

Other data .....

Dated at ....., Oklahoma, this .....day of

....., 19..

....., M.D., D.O., Ph.D., Other

.....

Address

....., M.D., D.O., Ph.D., Other

.....

Address

H. The members of the examining commission making an examination and certifying the condition of the person alleged to be a person requiring treatment shall, regardless of whether or not they find such person mentally ill, be entitled to receive for such services a reasonable sum set by the court, and twenty cents (\$0.20) per mile for travel necessarily performed in going to the place of such examination and such further sum for expenses as the judge of the district court shall allow, said sums to be paid from the local court fund. Any private fees or funds received or recovered in connection with said hearing shall be deposited to the credit of the local court fund.

I. The person alleged to be a person requiring treatment shall have the right to be present at the hearing on the petition or jury trial unless it is made to appear to the court that the presence of the person alleged to be a person requiring treatment makes it impossible to conduct the hearing or trial in a reasonable manner or that his presence would be injurious to his health or well-being. The court may not decide in advance of the hearing, solely on the basis of the certificate of the examining commission, that the person alleged to be a person requiring treatment should not be allowed nor required to appear. It shall be made to appear to the court based upon clear and convincing evidence that alternatives to exclusion were attempted before the court renders his removal for that purpose or determines that his appearance at such hearing would be improper and unsafe.

J. The court, at the hearing on the petition, shall determine by clear and convincing evidence if the person is a person requiring treatment, and the court will take evidence and make findings of fact concerning the person's competency to consent to or refuse the treatment that may be ordered, including, but not limited to, the patient's right to refuse medication. If a jury trial is not demanded, the court may receive as evidence and act upon the affidavits and reports of the examining commission, without further evidence being presented. If the court deems it necessary, or if the person alleged to be a person requiring treatment 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.

K. At the hearing on the petition, when it is conducted as a jury trial, the petitioner and any witness in behalf of the petitioner shall be subject to cross-examination by the attorney for the person alleged to be a person requiring treatment. The person alleged to be a person requiring treatment may also be called as a witness and cross-examined. No statement, admission or confession made by the person alleged to be a person requiring treatment may be used for any purpose except for proceedings under this section. No such statement, admission or confession may be used against such person in any criminal action whether pending at the time the hearing is held or filed against such person at any later time directly or in any manner or form.

L. If any person admitted under this section or any other provision of law is not found at the hearing on the petition to be a person requiring treatment after he is admitted to a facility, he shall be discharged immediately.

M. If any person admitted under this section or any other provision of law is found at the hearing on the petition to be a person requiring treatment, such person shall be delivered to the custody of the Department of Mental Health and Substance Abuse Services for a placement that is suitable to the person's needs, except that a person having a primary diagnosis of mental retardation or developmental disability as defined by Section 1408 of Title 10 of the Oklahoma Statutes may be delivered to the custody of the Department of Human Services for placement in the Greer Center Facility or other facility suitable to the person's needs.

N. The court shall make and keep records of all cases brought before it. No records of proceedings under the Mental Health Law shall be open to public inspection except by order of the court or to employees of the Department of Mental Health and Substance Abuse Services, the person's attorney of record, or persons having a legitimate treatment interest.

O. Bonded abstractors may be deemed to be persons having a legitimate interest for the purpose of having access to records regarding determinations of persons requiring treatment under this section.

SECTION 3. This act shall become effective September 1, 1993.

44-1-5830

CLD