

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2243

By: Williams

AS INTRODUCED

An Act relating to mental health; amending 43A O.S.

1991, Section 5-212, which relates to certification for involuntary treatment; clarifying statutory references; allowing the use of closed-circuit television in involuntary treatment hearings; requiring two-way communication; 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. 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 which broadcasts the image of the person being detained to the court. A closed-circuit television system may not be used under this section unless the system provides for a two-way communication of image and sound between the detained person and the court. 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 2. This act shall become effective September 1, 1994.

44-2-8298

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