

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 2024

By: Boyd (Laura) of the House

and

Cain of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to mental health; establishing an Office of Advocacy and position of Advocate General within the Department of Mental Health and Substance Abuse Services; specifying duties; establishing qualifications for Advocate General; specifying responsibilities; directing the Department to make certain reports to district attorneys and the Attorney General; providing for the establishment and implementation of an Ombudsman Program; specifying duties and responsibilities; providing for certain exclusions from liability for certain ombudsmen; authorizing the Department to contract with certain statewide organizations for certain purposes; amending 43A O.S. 1991, Sections 5-206, as amended by Section 1, Chapter 312, O.S.L. 1993, 5-208 and 5-209 (43A O.S. Supp. 1996, Section 5-206), which relate to emergency detention and protective custody; adding definitions; modifying provisions regarding examination of persons in protective custody and authority for detention; authorizing certain individuals to petition court regarding person requiring treatment; establishing certain rights for persons subject to certain proceedings; providing for appointment and payment of attorney; establishing procedure for certain notices; providing procedures to be followed for prehearing detention of certain persons; providing for certain evaluations; establishing procedure to be followed by court upon filing of certain petitions; amending 43A O.S. 1991, Section 5-407, which relates to review of status of persons involuntarily detained; modifying certain time periods; repealing 43A O.S. 1991, Sections 5-210, 5-211 and 5-212, as amended by Section 2, Chapter 207, O.S.L. 1994 (43A O.S. Supp. 1996, Section 5-212), which relate to emergency detention; repealing 43A O.S. 1991, Sections 5-401, as amended by Section 3, Chapter 389, O.S.L. 1992, and 5-402 (43A O.S. Supp. 1996, Section 5-401), which relate to involuntary commitment procedures; providing for codification; providing for recodification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-206a of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. There is hereby established the Office of Advocacy and the position of Advocate General within the Department of Mental Health and Substance Abuse Services.

B. The Office of Advocacy and the Advocate General shall be under the direct authority and control of the Board of Mental Health and Substance Abuse Services. The purpose of the Advocacy Division shall be to ensure:

1. Uniform application and protection of client rights;
2. Unimpeded access to appropriate services as provided by law;
3. That mental health laws, rules, policies and other mandates related to the rights of mental health clients are observed by facilities operated or certified by, or under contract with, the Department; and
4. Implementation and operation of the Ombudsman Program established by Section 2 of this act.

C. The Advocate General shall be an attorney licensed to practice law in this state and shall be appointed by the Board of Mental Health and Substance Abuse Services. The Advocate General shall report to the Board of Mental Health and Substance Abuse Services, and may only be removed by the Board for cause. The Advocate General shall:

1. Be responsible for the supervision of the Office of Advocacy and the patient advocates assigned to facilities operated by the Department;
2. Have the responsibility and authority to investigate any allegation of violations of clients' rights within facilities operated or certified by, or under contract with, the Department;
3. Administer the Ombudsman Program; and
4. Make recommendations to the Board, the Commissioner, the Department, and other appropriate entities based upon findings of an investigation.

D. The Board shall provide adequate resources for the Advocacy Division to carry out its duties and purposes.

E. The Department shall promptly and immediately report to the appropriate district attorney having jurisdiction any act or omission by persons employed by the Department, perpetrated, committed or suffered or allowed to be perpetrated or committed by such person or persons upon any person in the custody of the Department, wherever housed, when such act or omission, upon conviction, would constitute a criminal offense. Copies of all such reports shall be forwarded to the Attorney General.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-206b of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. There is hereby established an Ombudsman Program within the Office of Advocacy of the Department of Mental Health and Substance Abuse Services. The Ombudsman Program shall be under the direct authority and control of the Board of Mental Health and Substance Abuse Services and shall be administered by the Advocate General.

B. The purpose of the Ombudsman Program shall be to:

1. Identify, investigate and resolve complaints that:

a. are made by, or on behalf of, clients, and

b. relate to action, inaction or decisions of:

(1) providers, or representatives of providers, of mental health and substance abuse, as funds are available,

(2) public agencies, or

(3) health and social service agencies,

that may adversely affect the health, safety, welfare or rights of clients;

2. Provide services to assist clients in protecting their health, safety, welfare and rights;

3. Inform clients about means of obtaining legal services and services offered by providers or agencies;

4. Ensure that clients have regular and timely access to the services provided through the Ombudsman Program;

5. Ensure that clients and complainants receive timely responses from the Office and representatives of the Office regarding complaints;

6. Participate in external advocacy and client organizations;

7. Represent the interests of clients before governmental agencies and seek administrative, legal and other remedies to protect the health, safety, welfare and rights of the clients;

8. a. Analyze, comment on and monitor the development and implementation of federal, state and local laws, rules and other governmental policies and actions that pertain to the health, safety, welfare and rights of clients, with respect to the adequacy of facilities, programs and services in this state,

b. Recommend any changes in such laws, rules, policies and actions as the Office determines to be appropriate, and

c. Facilitate public comment on the laws, rules, policies and actions;

9. a. Promote the development of citizen organizations to participate in the Ombudsman Program, and

b. Provide technical support for the development of state and local client advocacy organizations to protect the well-being and rights of clients;

10. Develop and implement a statewide program for the recruitment and supervision of local volunteer ombudsmen to serve as representatives of the Ombudsman Program; and

11. Carry out such other activities as the Board determines to be appropriate.

C. Initial implementation of the Ombudsman Program shall provide for services to persons who may require or are receiving mental health services. Expansion of the program to include persons requiring or receiving substance abuse or domestic violence services may be phased in over a period of time, subject to availability of funds and other resources for that purpose.

D. For purposes of the Governmental Tort Claims Act, any state, area or local ombudsman shall be deemed to be an employee

of this state and as such shall not be personally liable for any act or omission made within the scope of employment, as such term is defined by the Governmental Tort Claims Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-206c of Title 43A, unless there is created a duplication in numbering, reads as follows:

The Department of Mental Health and Substance Abuse Services shall contract with a statewide consumer organization representing mental health consumers and advocating for families of mental health consumers for the purpose of assisting the Office of Advocacy in the fulfillment of the duties and responsibilities of the Office.

SECTION 4. AMENDATORY 43A O.S. 1991, Section 5-206, as amended by Section 1, Chapter 312, O.S.L. 1993 (43A O.S. Supp. 1996, Section 5-206), is amended to read as follows:

Section 5-206. As used in Sections 5-206 through 5-212 of this title:

1. "Licensed mental health professional" means:

- a. a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology,
- b. a licensed clinical psychologist,
- c. a licensed professional counselor as defined in Section 1902 of Title 59 of the Oklahoma Statutes,
- d. a person licensed as a licensed clinical social worker pursuant to Section 1250 et seq. of Title 59 of the Oklahoma Statutes, ~~or~~
- e. a licensed marriage and family therapist as defined in Section 1925.2 of Title 59 of the Oklahoma Statutes, or
- f. a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions or a qualified examiner as defined in Section 1-103 of this title;

2. "Immediate likelihood of serious harm to self or others"

means:

- a. a substantial risk of physical harm to ~~the person~~ himself oneself as manifested by evidence of serious threats of, or attempts at, suicide or serious other self-infliction of bodily harm, or
- b. a substantial risk of physical harm to ~~either~~ another person or persons as manifested by evidence of homicidal or other violent behavior directed toward another person or persons, or
- c. having placed ~~others~~ another person or persons in a reasonable fear of violent behavior directed towards them or serious physical harm, to them as manifested by serious threats, or
- d. a reasonable certainty that without immediate treatment severe impairment or injury will result to the person alleged to be ~~mentally ill~~ a person requiring treatment as manifested by ~~his~~ the inability of the person to avoid or protect ~~himself~~ self from such impairment or injury;

3. "Evaluation" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or a drug-dependent person by two licensed mental health professionals, at least one of whom is a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology, a licensed clinical psychologist, or a a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions, for the purpose of:

- a. determining if a petition requesting involuntary commitment or treatment is warranted, or
- b. completing a certificate of evaluation pursuant to Section 11 of this act, or
- c. both subparagraphs a and b of this paragraph;

4. "Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent

person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted, by a licensed mental health professional to determine if emergency detention of the person is warranted;

~~4.~~ 5. "Emergency detention" means the detention of a person who appears to be mentally ill, alcohol-dependent, or drug-dependent and a person requiring treatment in a facility approved by the ~~Commission~~ Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination and a determination by a licensed mental health professional that emergency detention is warranted ~~pending the issuance of~~. No person shall be detained in emergency detention more than seventy-two (72) hours except upon a court order authorizing detention beyond a seventy-two-hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by this act; and

~~5.~~ 6. "Protective custody" means the taking into protective custody and detention of a person pursuant to the provisions of Section 5-208 of this title until such time as an emergency examination is completed and a determination is made as to whether or not emergency detention is warranted; and

7. "Prehearing detention" means the court-ordered detention of a person who is alleged to be mentally ill, alcohol-dependent, or drug-dependent in a facility approved by the Commissioner as appropriate for such detention, pending a hearing on a petition requesting involuntary commitment or treatment as provided by Section 12 of this act or Section 9-102 of this title.

SECTION 5. AMENDATORY 43A O.S. 1991, Section 5-208, is amended to read as follows:

Section 5-208. A. A person in protective custody as provided by Section 5-207 of this title shall be examined at the appropriate facility by a licensed mental health professional within twelve (12) hours of being placed in protective custody for the purpose of determining whether emergency detention of the person is warranted.

1. If, upon examination, the licensed mental health professional determines that the person is not a mentally ill person ~~requiring treatment~~, an alcohol-dependent person, or a drug-dependent person requiring treatment or that the condition of the person is such that emergency detention is not warranted, the person shall be returned immediately to the point where such person was taken into protective custody and released.

2. If, upon examination, the licensed mental health professional determines that the person is a mentally ill person ~~requiring treatment~~, an alcohol-dependent person, or a drug-dependent person requiring treatment to a degree that emergency detention is warranted, ~~he~~ the licensed mental health professional shall immediately:

- a. prepare a statement describing the ~~results~~ findings of ~~his~~ the examination and stating the basis for ~~his~~ the determination. The statement shall be substantially in a form prescribed by the Department of Mental Health and Substance Abuse Services~~;~~ and
- b. ~~request the district court of the county in which the person is being held in emergency detention to issue an order authorizing the detention of the person beyond seventy-two (72) hours, if necessary;~~ and
- ~~e.~~ provide for a full examination and evaluation of the person ~~and the preparation of a petition for involuntary treatment or commitment pursuant to the provisions of Section 5-211 of this title, Section 5-401 of this title or Section 9-102 of this title.~~ The petition shall be substantially in the form prescribed by the Department of Mental Health and Substance Abuse Services by two licensed mental health professionals and, if the person appears to be a mentally ill person, the completion of a certificate of evaluation as provided by Section 11 of this act.

B. If a licensed mental health professional, designated to have such responsibility by the administrator of a hospital, or the administrator of a facility designated by the Commissioner of Mental Health and Substance Abuse Services as appropriate for emergency detention believes a voluntary patient to be a mentally ill person ~~requiring treatment~~, an alcohol-dependent person, or a drug-dependent person requiring treatment to a degree that emergency action is necessary, the administrator may detain such patient in emergency detention for a period not to exceed seventy-two (72) hours only on the following conditions:

1. The patient has refused to consent or has withdrawn consent to voluntary treatment;

2. The patient has been examined by a licensed mental health professional who has determined that the person is a mentally ill person ~~requiring treatment~~, an alcohol-dependent person, or a drug-dependent person requiring treatment, the condition of the person is such that emergency detention is warranted, and a statement has been prepared as provided in subsection A of this section; and

~~2.~~ 3. The administrator or his the designee of the administrator shall provide for a full examination and ~~petition~~ required by subsection A of this section evaluation of the patient by two licensed mental health professionals and, if the person appears to be a mentally ill person, the completion of a certificate of evaluation.

C. Whenever it appears that a person detained as provided by this section will require treatment beyond the period of emergency detention and the person has refused to consent to voluntary treatment, a licensed mental health professional conducting an evaluation of the person or the administrator of the facility in which the person is being detained, or the designee of the administrator, shall immediately file a petition with the district court as provided by Section 7 of this act or Section 9-102 of this title, and may request a court order directing prehearing detention when such detention is necessary for the protection of the person or others.

SECTION 6. AMENDATORY 43A O.S. 1991, Section 5-209 is amended to read as follows:

Section 5-209. A. ~~A copy of the statement of the licensed mental health professional and the petition with attached exhibits shall constitute authority for a facility to admit and detain the person in protective custody for a period not to exceed seventy-two (72) hours, excluding days when the district court is not officially in session.~~

~~B.~~ A person may be detained in emergency detention more than seventy-two (72) hours only if the facility in which the person being detained is presented with a copy of an order of the district court authorizing ~~additional~~ further detention. Such order may be entered by the court only after a petition has been filed seeking involuntary commitment or treatment pursuant to the provisions of Section ~~6~~ 7 of this act or Section 9-102 of this title.

~~C.~~ ~~A petition filed pursuant to this act shall be verified and shall contain a statement that there is probable cause to detain the person alleged to be a person requiring treatment, an alcohol-dependent person, or a drug-dependent person for his safety or the safety of others in an appropriate facility for detention, prior to a hearing on the petition. The petition shall be filed on the same day as the date of emergency detention and examination or, if the office of the court clerk is not open for business that day, as soon thereafter as the office of the court clerk is open for business.~~

~~D.~~ B. If a copy of an order for ~~additional~~ further detention is not delivered to the facility by the end of the period of emergency detention, the person alleged to be a mentally ill person ~~requiring treatment~~, an alcohol-dependent person, or a drug-dependent person and a person requiring treatment shall be discharged from the facility in which detained unless said person has applied for voluntary treatment.

~~E.~~ C. The ~~patient~~ person being held in protective custody or emergency detention shall be asked to designate any person whom ~~he~~ such person wishes informed regarding ~~his~~ the detention. If ~~he~~

the person being detained is incapable of making such designation, the administrator of the hospital or facility where the person is being held in protective custody or emergency detention shall notify within twenty-four (24) hours of taking the person into protective custody, other than the person initiating the request for protective custody, the attorney, parent, spouse, guardian, brother, sister, or child who is at least eighteen (18) years of age of the person. If none of the persons designated for notification in this paragraph can be located, the administrator of the facility shall notify the sheriff of the county where the person was taken into protective custody. The sheriff shall notify one of the persons required to be notified as provided in this subsection. Failure of the sheriff to find such person shall within a reasonable time be reported to the administrator of the facility. Such fact shall be made a part of the records of the facility for the person being detained.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-410 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The following persons may petition the district court, upon which is hereby conferred jurisdiction, to determine whether a person is a mentally ill person and a person requiring treatment and to order the least restrictive appropriate treatment for such person:

1. 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;

2. A licensed mental health professional;

3. The administrator of a facility designated by the Commissioner as appropriate for emergency detention or an administrator of a hospital that is approved by the Joint Commission on Accreditation of Hospitals;

4. A person in charge of any correctional institution;

5. Any peace officer within the county in which the person alleged to be a mentally ill person and a person requiring treatment resides or may be found; or

6. The district attorney in whose district the person resides or may be found.

B. 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.

1. The petition shall be verified and made under penalty of perjury.

2. A request for the prehearing detention of the person alleged to be a mentally ill person requiring treatment may be attached to the petition.

3. If the person alleged to be a mentally ill person requiring treatment is being held in emergency detention, a copy of the certificate of evaluation shall be attached to the petition.

C. The inpatient mental health treatment of children shall be pursuant to the provisions of the Inpatient Mental Health Treatment of Children Act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-411 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. A person alleged to be a mentally ill person and a person requiring treatment shall have the following rights:

1. The right to notice, as provided by Section 9 of this act;

2. The right to counsel, including court-appointed counsel, and if the person has no counsel, that the court shall appoint an attorney to represent the person at no cost if the person is an indigent person and cannot afford an attorney;

3. The right to a hearing and the right to a closed hearing, unless the person requests otherwise;

4. Upon request, right to a jury trial. The jury shall be composed of six persons having the qualifications required of jurors in courts of record;

5. The right to be present at the hearing on the petition or jury trial. The person shall be present at the hearing or jury trial unless the court finds that the presence of the person alleged to be a mentally ill person requiring treatment makes it

impossible to conduct the hearing or trial in a reasonable manner or that the presence of the person would be injurious to the health or well-being of such person.

- a. The court shall not decide in advance of the hearing, solely on the basis of the certificate of evaluation, that the person alleged to be a mentally ill person requiring treatment should not be allowed nor required to appear.
- b. Prior to issuing an order excluding the person from the hearing or jury trial, the court shall find, based upon clear and convincing evidence, that alternatives to exclusion of the person were attempted;

6. The right to present and to cross-examine witnesses. The petitioner and witnesses identified in the petition shall offer testimony under oath at the hearing on the petition. When the hearing 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.

B. A person alleged to be or found by a court to be a mentally ill person and a person requiring treatment shall be afforded such other rights as are guaranteed by state and federal law.

C. No statement, admission or confession made by the person alleged to be a mentally ill person requiring treatment shall be used for any purpose except for proceedings under this act. 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.

D. An attorney appointed by the court to represent a person alleged to be a mentally ill person and a person requiring treatment shall be a licensed and actively practicing attorney who

shall represent the person until final disposition of the case. The court may appoint a public defender where available.

1. The attorney appointed by the court shall meet and consult with the person within one (1) day of notification of the appointment. The attorney shall immediately, upon meeting with the person alleged to be a mentally ill person requiring treatment, present to such person a statement of the rights, including all rights afforded to persons alleged to be mentally ill persons requiring treatment by the Oklahoma and the United States Constitutions.

2. The court-appointed attorney shall be replaced by another attorney if:

- a. the person alleged to be a mentally ill person requiring treatment prefers the services of an attorney other than the one initially appointed for him,
- b. the preferred attorney agrees to accept the responsibility, and
- c. the person alleged to be a mentally ill person requiring treatment or the preferred attorney notifies the court of the preference and the attorney's acceptance of employment.

The preferred attorney shall meet and consult with the person within one (1) day of employment or appointment. 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.

4. The attorney fees for all services shall be paid by the person alleged to be a mentally ill 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 fees, the attorney 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.

5. The attorney representing the person alleged to be a mentally ill person requiring treatment shall notify the court of any current and unrevoked advance directive that has been executed by such person pursuant to the Advance Directives for Mental Health Treatment Act and provide a written copy of the advance directive, if available, to the court and a representative of the district attorney's office.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-412 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. Notice of the date, time and place of the hearing on a petition alleging a person to be a mentally ill person and a person requiring treatment shall be delivered to such person at least one (1) day prior to the hearing. Notice shall be personally delivered to the person together with a copy of the petition and, if applicable, copies of the certificate of evaluation, the affidavit of the peace officer, and any order of the court directing prehearing detention or an evaluation of the person.

B. The notice shall contain the following information:

1. The definitions provided by Section 1-103 of this title of a "mentally ill person" and a "person requiring treatment";

2. If applicable, that the court has ordered the evaluation of the person by two licensed mental health professionals, at least one of whom is a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology, a licensed clinical psychologist, or a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions, for the purpose of conducting an evaluation of the person alleged to be a mentally ill person requiring treatment and executing a certificate of evaluation stating their findings, and the time and place of the evaluation;

3. That, upon request, the hearing on the petition may be conducted as a jury trial and the jury shall be composed of six

persons having the qualifications required of jurors in courts of record;

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

5. If applicable, that the court has appointed an attorney for the person alleged to be a mentally ill person requiring treatment who shall represent the person until final disposition of the case and that if the person is indigent, the court shall pay the attorney fees;

6. 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, 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 right of the person to refuse psychotropic medications; and

7. That the person alleged to be a mentally ill person requiring treatment shall be afforded such other rights as are guaranteed by state and federal law.

C. The person delivering the copy of the notice and petition to the person alleged to be a mentally ill person requiring treatment shall, at the time of delivery, explain the content, purpose and effect of the notice and the legal right to judicial review by habeas corpus.

D. 1. A copy of the notice, the petition, and the attachments to the petition, if any, shall also be delivered at least one (1) day prior to the hearing to:

- a. the individual initiating the request for protective custody, emergency detention or prehearing detention,
- b. the attorney or court-appointed counsel of the person, to the district attorney, and to the public defender, if any,
- c. the facility, if any, in which the person is detained in emergency detention,

- d. the Department of Mental Health and Substance Abuse Services, and
- e. a parent, spouse, guardian, brother, sister or child who is at least eighteen (18) years of age of the person alleged to be a mentally ill person requiring treatment and who is not the individual initiating the petition or a request for protective custody, emergency detention or prehearing detention. Notice shall also be delivered to any other person as may be ordered by the court.

2. The notice required by this subsection may be served personally or by certified mail. When notice is served personally, 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.

E. Notice of orders of a court directing an evaluation or prehearing detention of a person alleged to be a mentally ill person and a person requiring treatment shall be delivered in substantially the same manner as provided by subsection A of this section. Notice of a court order directing an evaluation of the person shall be delivered at least one (1) day before the evaluation, and as many additional days as are requested by the person alleged to be a mentally ill person requiring treatment or the attorney of such person 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.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-413 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. When a request for an order of prehearing detention is attached to a petition alleging a person to be a mentally ill person and a person requiring treatment, the district court shall

determine whether there is probable cause to detain the person who is the subject of the petition prior to a hearing on the petition.

1. If the court issues an order for detention, it shall immediately set a date, time, and place for a hearing on the petition.

2. The period of prehearing detention shall not exceed seventy-two (72) hours, excluding weekdays and holidays. Prehearing detention may be extended to coincide with any order of continuance entered by the court.

B. If the court finds that probable cause to detain the person alleged to be a mentally ill person requiring treatment does not exist, the court shall dismiss the request and, if the person is being held in protective custody or emergency detention, order the person released and returned to the point where such person was taken into protective custody.

C. If the court finds that probable cause to detain the person alleged to be a mentally ill person requiring treatment does exist:

1. 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; or

2. If the person is being held in emergency detention, the court may issue an order authorizing the facility to detain the person prior to a hearing on the petition.

A certified copy of an order of prehearing detention shall constitute authority for a facility to detain or to continue to detain the person who is the subject of the order.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-414 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. If a certificate of evaluation is not attached to a petition alleging a person to be a mentally ill person and a person requiring treatment at the time the petition is filed, the court shall order the person who is the subject of the petition to undergo an evaluation by two licensed mental health professionals, Req. No. 7636Page 18

and a certificate of evaluation to be completed and filed with the court prior to the hearing.

1. The evaluation shall be conducted on an outpatient basis unless the court has issued an order for prehearing detention.

2. A copy of all petitions, orders, affidavits, police reports and other relevant documents shall accompany the person to the place where the evaluation is to be conducted.

3. Upon completion of the evaluation, the facility shall transmit a copy of the report of the licensed mental health professionals conducting the evaluation and the certificate of evaluation to the court and to the attorney of record for the person evaluated.

B. The report of the licensed mental health professionals conducting an evaluation pursuant to this section shall include written findings as to whether:

1. The person being evaluated appears to have a demonstrable mental illness and as a result of that mental illness can be expected within the near future to inflict or attempt to inflict serious bodily harm to self or another person if mental health treatment services are not provided, and has engaged in one or more recent overt acts or has made significant recent threats which reasonably support that expectation, and is reasonably likely to benefit from mental health treatment; and

2. Based on the following, inpatient treatment is the least restrictive alternative that meets the needs of the person:

- a. reasonable efforts have been made to provide for the mental health treatment needs of the person through the provision of less restrictive alternatives and the alternatives have failed to meet the treatment needs of the person, or
- b. after a thorough consideration of less restrictive alternatives to inpatient treatment, the condition of the person is such that less restrictive alternatives are unlikely to meet the treatment needs of the person.

C. The certificate of evaluation shall be substantially in the following form and signed by two licensed mental health professionals who have participated in the evaluation of the person. At least one of the licensed mental health professionals shall be a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology, a licensed clinical psychologist, or a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions:

NOTICE OF CERTIFICATION

To the District Court of _____ County,
State of Oklahoma

The authorized agency providing evaluation services in the County

of _____ has evaluated the condition of:

Name _____

Address _____

Age _____

Sex _____

Marital status _____

Religious affiliation _____

We have evaluated the person and make the following findings:

The findings are based on the following:

The above-named person has been informed of this evaluation, and has been advised of, but has not been able or willing to accept referral to, the following services:

We hereby state that a copy of this certificate of evaluation has been delivered to the attorney of the above-named person.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-415 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. Upon receiving a petition alleging a person to be a mentally ill person and a person requiring treatment, the court shall set a day and time for the hearing.

1. If the person alleged to be a mentally ill person requiring treatment does not have an attorney, the court shall immediately appoint an attorney for the person.

2. If a copy of a certificate of evaluation is not attached to the petition at the time it is filed, the court shall immediately order an evaluation of the person as provided by Section 11 of this act.

B. If the court deems it necessary, or if the person alleged to be a mentally ill 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 weekends and holidays, or within as much additional time as is requested by the attorney of such person upon good cause shown.

C. The court, at the hearing on the petition, shall determine by clear and convincing evidence whether the person is a mentally ill person and a person requiring treatment.

1. The court shall 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.

2. If a jury trial is not demanded, the court may receive as evidence and act upon the affidavits of the licensed mental health

professionals who evaluated the person and the certificate of evaluation.

3. When the hearing 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 mentally ill person requiring treatment may also be called as a witness and cross-examined.

D. When, after the hearing, the court determines that the person is not a mentally ill person requiring treatment, the court shall dismiss the petition and, if the person is being detained, order the person to be discharged from detention.

E. When, after the hearing, the court determines the person to be a mentally ill person requiring treatment, the court shall order the person to receive the least restrictive treatment consistent with the treatment needs of the person and the safety of the person and others.

1. The court shall not order hospitalization without a thorough consideration of available treatment alternatives to hospitalization and may direct the submission of evidence as to the least restrictive treatment alternative or may order a precommitment screening examination as provided by Section 5-403 of this title.

2. If the court finds that a program other than hospitalization is appropriate to meet the individual's treatment needs and is sufficient to prevent injury to the individual or to others, the court may order the individual to receive whatever treatment other than hospitalization that is appropriate for a period of ninety (90) days, during which time the court shall continue its jurisdiction over the individual as a mentally ill person requiring treatment.

3. If the court orders the person to be committed for involuntary inpatient treatment, the court shall commit the person to the custody of the Department of Mental Health and Substance Abuse Services for a placement that is suitable to the person's needs or to a private facility willing to accept the person for

treatment. The person shall be discharged from inpatient treatment at such time as the person no longer requires treatment as determined by the administrator of the facility or the designee of the administrator, or as otherwise required by law.

4. The 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 or to a private facility willing to accept the person for treatment.

5. If the person is placed in the custody of the Department, the Department may designate two or more facilities to provide treatment and if the person to be treated or a parent, spouse, guardian, brother, sister or child, who is at least eighteen (18) years of age, of the person, expresses a preference for one such facility, the Department shall attempt, if administratively possible, to comply with the preference.

F. The court shall make and keep records of all cases brought before it.

1. No records of proceedings pursuant to this section 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.

2. 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 13. AMENDATORY 43A O.S. 1991, Section 5-407, is amended to read as follows:

Section 5-407. A. The Department of Mental Health and Substance Abuse Services shall adopt rules, regulations and procedures to ensure that persons involuntarily ~~detained~~ committed for treatment by a court receive review of their involuntary status at least once every ~~twelve (12)~~ three (3) months, and the Department of Mental Health and Substance Abuse Services shall take appropriate action based upon this review.

B. Any person receiving involuntary inpatient treatment, or such person's attorney, may at any time file a written request that the treatment order be reviewed by the committing court, or a court in the county where the person is located. If a review is requested, the court shall hear the matter within thirty (30) days after the request, and the court shall give notice to the person and such person's attorney and the person in charge of the facility of the time and place of the hearing. The hearing shall be to determine if the person can be treated on a less restrictive basis. At the conclusion of the hearing, the court may confirm the order of treatment, modify the order of treatment, discharge the respondent, or enter any appropriate order.

SECTION 14. REPEALER 43A O.S. 1991, Sections 5-210, 5-211, 5-212, as amended by Section 2, Chapter 207, O.S.L. 1994, 5-401, as amended by Section 3, Chapter 389, O.S.L. 1992, and 5-402 (43A O.S. Supp. 1996, Sections 5-212 and 5-401), are hereby repealed.

SECTION 15. RECODIFICATION 43A O.S. 1991, Section 5-403 shall be recodified as Section 5-417 of Title 43A of the Oklahoma Statutes; 43A O.S. 1991, Section 5-404 shall be recodified as Section 5-418 of Title 43A of the Oklahoma Statutes; Section 5-405 shall be recodified as Section 5-416 of Title 43A of the Oklahoma Statutes; Section 5-406 shall be recodified as Section 5-419 of Title 43A of the Oklahoma Statutes; Section 5-407, as amended by Section 13 of this act, shall be recodified as Section 5-420 of Title 43A of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 16. This act shall become effective November 1, 1997.

46-1-7636 CLD