

ENGROSSED HOUSE
BILL NO. 1302

By: Eddins of the House
and
Weedn of the Senate

An Act relating to mental health; amending 43A O.S. 1991, Section 1-109, as amended by Section 41, Chapter 298, O.S.L. 1992 (43A O.S. Supp. 1996, Section 1-109), which relates to confidentiality and privilege; requiring that facility inquire regarding release of information after certain period of time; amending 43A O.S. 1991, Section 5-204, which relates to treatment and medication of person during detention period by Department of Mental Health and Substance Abuse Services; modifying provisions regarding use of seclusion or restraint; providing exception; amending 43A O.S. 1991, Section 5-401, as amended by Section 3, Chapter 389, O.S.L. 1992 (43A O.S. Supp. 1996, Section 5-401), which relates to involuntary commitment procedures; requiring attorney appointed for person subject to involuntary commitment procedure to provide certain information to the court and the district attorney; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 1991, Section 1-109, as amended by Section 41, Chapter 298, O.S.L. 1992 (43A O.S. Supp. 1996, Section 1-109), is amended to read as follows:

Section 1-109. A. All medical records and all communications between physician or psychotherapist and patient are both privileged and confidential. Such information is available only to persons or agencies actively engaged in treatment of the patient or in treatment of a minor child of the patient, or in related administrative work.

1. Except as provided in this section and Section 19 of Title 76 of the Oklahoma Statutes, privileged or confidential information shall not be released to anyone not involved in the treatment programs without a written release by the patient or, if a guardian has been appointed for the patient, the guardian of the patient, or an order from a court of competent jurisdiction. If the patient is a minor child, the written consent of the parent, as defined by the Inpatient Mental Health Treatment of Children Act, or public or private child care agency having legal custody of the child is required. Provided, however, confidential information may be released as provided by Sections ~~1125~~ 7005-1.1 through ~~1125.2~~ 7005-1.3 of Title 10 of the Oklahoma Statutes. After a person has been an inpatient for seventy-two (72) hours, the facility shall inquire, at least once, whether the person wishes to authorize the release of information regarding the inpatient status of the person.

2. Individuals and agencies holding a contract with the Department of Mental Health and Substance Abuse Services to provide mental health or drug or alcohol treatment services and who have signed a qualified service agreement as provided by said contract may transmit records and information as necessary and appropriate for the care and treatment of patients pursuant to rules and

regulations adopted by the Board of Mental Health and Substance Abuse Services.

3. The Board of Mental Health and Substance Abuse Services shall adopt rules and regulations providing for the transmittal of records and information if necessary and appropriate to other public and private agencies which are actively providing services to minor patients, former patients who are minors, or the minor children of adult patients.

B. A person who is or has been a patient of a physician, psychotherapist, mental health institution or facility, a drug or alcohol abuse treatment facility or service, a community mental health service or agency or a community social service agency for the purpose of mental health or drug or alcohol abuse care and treatment shall not be entitled to personal access to the information contained in his psychiatric or psychological records or to copies of said records unless access to said records is consented to by the treating physician or practitioner or is ordered by a court. Said person shall, upon request, be provided with information contained in said records as appropriate as determined by the person in charge of the care and treatment of the patient. Said information shall be provided to the patient in a manner consistent with the best interest of the patient as determined by the person in charge of the care and treatment of the patient.

C. Upon request, a responsible family member of a patient or former patient, the attorney, guardian or conservator of a patient or former patient, is entitled to the following information from the Department, individuals or agencies holding contracts with the Department to provide mental health or drug or alcohol treatment services, and facilities certified by the Department as mental health or drug or alcohol treatment facilities regarding the person who is the subject of the request:

1. Information as to whether or not the person is or was a patient;

2. If the person is receiving inpatient care and treatment, a statement as to the probable duration of said inpatient care;

3. A summary of the diagnosis and prognosis of the person;

4. A listing of the medications the person has received or is receiving, a copy of the treatment plan of the person, and, when the person making the request is a responsible family member, guardian or conservator, any other information necessary in order for the responsible family member to assist in the implementation of the discharge planning required pursuant to Section 7-102 of this title; and

5. As requested, such other information as may be necessary to determine whether or not guardianship or conservatorship proceedings should be initiated.

For the purposes of this subsection, "responsible family member" means the parent, spouse, adult child, adult sibling, or other adult relative who is actively involved in providing care to or monitoring the care of a person who is a current or former patient as verified by the physician, psychologist or other person responsible for the care and treatment of said person. Except in an emergency, as determined by the person verifying the involvement of the responsible family member, the request shall be made in writing.

The person verifying the involvement of the responsible family member shall notify the patient or former patient of the request and, except with regard to a parent as to his or her minor child or in case of an emergency, obtain the consent of the patient prior to the release of the information.

SECTION 2. AMENDATORY 43A O.S. 1991, Section 5-204, is amended to read as follows:

Section 5-204. A. During the detention periods authorized by the Mental Health and Substance Abuse Services Law, Section 1-101 et

seq. of this title, or during the time set forth in the Mental Health and Substance Abuse Services Law for the precommitment screening examination, or while in the custody of the Department of Corrections appropriate treatment and medication, including psychotropic medication, may be administered to a consenting individual.

B. Treatment and medication may be administered to a nonconsenting individual upon the written order of a physician who has personally examined the patient and who finds such medication or treatment is necessary to protect the patient, the facility or others from serious bodily harm, and who so notes in the individual's medication record, with an explanation of the facts leading up to the decision to administer treatment and medication including psychotropic medication.

C. Any physician who administers medication in good faith, under the provision of this section, shall be immune from civil suits for damages that occur from said administration of medication.

~~D. If seclusion or restraint is feasible and would also be effective to avoid such an injury, and the individual expresses a preference for seclusion or restraint instead of medication, it shall be honored if practical~~ Seclusion or restraint may be administered to a nonconsenting individual upon the written order of a physician who has personally examined the patient and who finds that seclusion or restraint is necessary to protect the patient, the facility, or other persons. The physician shall note in the chart of the patient an explanation of the decision to administer seclusion or restraint, including administration of psychotropic medication. This shall not prohibit emergency seclusion or restraint pending notification of a physician.

~~E. It shall be the responsibility of the facility providing psychotropic medication to an individual pursuant to this section to assure that such person is not, without such person's consent, on~~

~~the day preceding or on the day of any court hearing, given any psychotropic medication.~~

F. If the individual is under the influence of psychotropic medication during any court hearing held pursuant to Section 5-401 of this title, the court, and the jury, if any, shall be advised by the district attorney at the beginning of such hearing that said individual is under the influence of psychotropic medication, the purpose of the medication, and the effect which said medication may have on the individual's actions, demeanor and participation at the hearing.

~~G. Subsection D of this section shall have no application to trials or hearings of patients charged with crimes and found incompetent to stand trial, and who are receiving psychotropic drugs or other medication which enable the individual to be able to stand trial.~~

H. F. If an inmate in the custody of the Department of Corrections has been properly assigned and committed to the Special Care Unit at the State Penitentiary the provisions of this section shall apply.

SECTION 3. AMENDATORY 43A O.S. 1991, Section 5-401, as amended by Section 3, Chapter 389, O.S.L. 1992 (43A O.S. Supp. 1996, 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~~ that person. 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~~ attorney 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~~ the person 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 attorney shall be required to notify the court of any current and unrevoked advance directive that has been executed by the person alleged to be a person requiring treatment pursuant to the Advance Directives for Mental Health Treatment Act and to provide a written copy of the advance directive to the court and a representative of the District Attorney's Office, if available. 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~~ the employment of the attorney. 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~~ attorney 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~~ attorney fees, the ~~attorney's~~ 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.

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~~ the appointed or selected attorney for the person.

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~~ the presence of the person would be injurious to ~~his~~ the health or well-being of the person. 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~~ the removal for that purpose or determines that ~~his~~ the 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~~ the person is admitted to a facility, ~~he~~ the person 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.

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 4. This act shall become effective November 1, 1997.

Passed the House of Representatives the 3rd day of March, 1997.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1997.

President of the Senate