

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1304

By: Eddins

AS INTRODUCED

An Act relating to mental health; amending 43A O.S. 1991, Section 5-401, as amended by Section 3, Chapter 389, O.S.L. 1992 (43A O.S. Supp. 1996, 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 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. 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 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 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.

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

46-1-5557 LAC