

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1079

By: Brown

AS INTRODUCED

An Act relating to mental health; amending 43A O.S. 1991, Sections 1-103, as amended by Section 1, Chapter 389, O.S.L. 1992, and 5-206, as last amended by Section 1, Chapter 144, O.S.L. 1998, and Sections 4, 5, 6, 7, 8 and 9, Chapter 387, O.S.L. 1997 (43A O.S. Supp. 1999, Sections 1-103, 5-206, 5-410, 5-411, 5-412, 5-413, 5-414, and 5-415), which relate to involuntary treatment for mental illness and drug and alcohol dependency; modifying definitions; updating statutory references; standardizing language regarding persons who may be determined to be in need of treatment; requiring additional findings to be included in mental health evaluation report; and declaring an emergency.

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

SECTION 1. AMENDATORY 43A O.S. 1991, Section 1-103, as amended by Section 1, Chapter 389, O.S.L. 1992 (43A O.S. Supp. 1999, Section 1-103), is amended to read as follows:

Section 1-103. When used in this title, unless otherwise expressly stated, or unless the context or subject matter otherwise requires:

1. "Department" means the Department of Mental Health and Substance Abuse Services;

2. "Chairman" means chairman of the Board of Mental Health and Substance Abuse Services;

3. "Mentally ill person" means any person afflicted with a substantial disorder of thought, mood, perception, psychological orientation or memory that significantly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life;

4. "Board" means the "Board of Mental Health and Substance Abuse Services" as established by this law;

5. "Commissioner" means the individual selected and appointed by the Board to serve as Commissioner of Mental Health and Substance Abuse Services;

6. "Indigent person" means a person who has not sufficient assets or resources to support himself while mentally ill or drug-dependent or alcohol-dependent and to support members of his family lawfully dependent on him for support;

7. "Facility" means any hospital, school, building, house or retreat, authorized by law to have the care, treatment or custody of the mentally ill or drug-dependent or alcohol-dependent persons including, but not limited to, public or private hospitals, community mental health centers, clinics, satellites or institutions; provided that facility shall not mean a child guidance center operated by the State Department of Health;

8. "Patient" means a person under care or treatment in a facility pursuant to this act, Section 1-101 et seq. of this title, or in an outpatient status;

9. "Care and treatment" means medical care, surgical attendance, nursing and medications, as well as food, clothing and maintenance, furnished a patient;

10. Whenever in this law, or in any other law, or in any rule, order or regulation, made or promulgated pursuant to this law, or to any other law, or in the printed forms prepared for the admission of patients or for statistical reports, the words "insane", "insanity", "lunacy", "mentally sick", "mental disease" or "mental disorder", or any of them, are used, they shall have equal significance to the words "mentally ill";

11. Whenever in this law, or in any other law, or in any rule, order or regulation, made or promulgated pursuant to this act, or any other law, or in the printed forms prepared for the admission of patients or for statistical reports, the terms "certification" of a person, a person "certified" or to "certify" a person by a court of

competent jurisdiction to a facility as provided by this act shall have equal significance to the terms "commitment" of a person, a person "committed" or to "commit" a person;

12. "Qualified examiner" means any doctor of medicine, clinical psychologist or osteopathic physician who is duly licensed to practice his profession by the State Board of Medical Licensure and Supervision, the State Board of Examiners of Psychologists or the Oklahoma Board of Osteopathic Examiners and who is not related by blood or marriage to the person being examined or has any interest in his estate except as modified under the provisions of this title;

13. "Mentally incompetent person" means any person who has been adjudicated mentally or legally incompetent by an appropriate district court;

14. "Person requiring treatment" means either:

- a. a person who has a demonstrable mental illness or is a drug- or alcohol-dependent person and who as a result of that mental illness or dependency can be expected within the near future to intentionally or unintentionally seriously and physically injure himself or another person and who has engaged in one or more recent overt acts or made significant recent threats that substantially support that expectation, or
- b. a person who has a demonstrable mental illness or is a drug- or alcohol-dependent person and who as a result of that mental illness or dependency is unable or unwilling to attend to those of his basic physical needs such as food, clothing or shelter that must be attended to in order for him to avoid serious harm in the near future and who has demonstrated such inability or unwillingness by failing to attend to those basic physical needs in the recent past, or

- c. a person who appears to require inpatient treatment:
- (1) (a) for a previously diagnosed history of schizophrenia, bipolar disorder, or major depression with suicidal intent, or
  - (b) due to the appearance of symptoms of schizophrenia, bipolar disorder, or major depression with suicidal intent, and
  - (2) for whom such treatment is reasonably believed to prevent progressively more debilitating mental impairment.

Person requiring treatment shall not mean a person whose mental processes have simply been weakened or impaired by reason of advanced years, a mentally deficient person as defined in Title 10 of the Oklahoma Statutes, or a person with epilepsy, unless the person also meets the criteria set forth in this paragraph. However, the person may be hospitalized under the voluntary admission provisions of this act if he is deemed clinically suitable and a fit subject for care and treatment by the person in charge of the facility;

15. "Petitioner" means a person who files a petition alleging that an individual is a person requiring treatment;

16. "Person in charge of the facility" means the person in charge of any hospital, school, building, house or retreat, authorized by law to have the care, treatment or custody of ~~the~~ mentally ill a person requiring treatment including, but not limited to, public or private hospitals, community mental health centers, clinics, satellites or institutions; provided that person in charge of the facility shall not mean persons in charge of child guidance centers operated by the Department of Health;

17. "Private hospital or institution" means any general hospital maintaining a neuro-psychiatric unit or ward, or any private hospital or sanitarium for care and treatment of mentally

ill persons, which is not supported by state or federal government, except that the term shall include the Oklahoma Memorial Hospital Neuro-psychiatric Unit. The term shall not include nursing homes or other facilities maintained primarily for the care of aged and infirm persons; and

18. "Individualized treatment plan" means a proposal developed during a patient's stay in a facility, under the provisions of this title, which is specifically tailored to the individual patient's treatment needs. Each plan shall clearly include the following:

- a. a statement of treatment goals or objectives, based upon and related to a clinical evaluation, which can be reasonably achieved within a designated time interval,
- b. treatment methods and procedures to be used to obtain these goals, which methods and procedures are related to each of these goals and which include specific prognosis for achieving each of these goals,
- c. identification of the types of professional personnel who will carry out the treatment procedures, including appropriate medical or other professional involvement by a physician or other health professional properly qualified to fulfill legal requirements mandated under state and federal law,
- d. documentation of patient involvement and, if applicable, the patient's accordance with the treatment plan, and
- e. a statement attesting that the person in charge of the facility or clinical director has made a reasonable effort to meet the plan's individualized treatment goals in the least restrictive environment possible closest to the patient's home community.

SECTION 2. AMENDATORY 43A O.S. 1991, Section 5-206, as last amended by Section 1, Chapter 144, O.S.L. 1998 (43A O.S. Supp. 1999, Section 5-206), is amended to read as follows:

Section 5-206. As used in Sections 5-206 through ~~5-212~~ 5-420 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,
- e. a licensed marital 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 oneself as manifested by evidence of ~~serious~~ threats of or attempts at suicide or other self-infliction of bodily harm, or
- b. a substantial risk of physical harm to another person or persons as manifested by evidence of violent behavior directed toward another person or persons, or

- c. having placed 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~~ substantial risk that without ~~immediate~~ treatment severe impairment or injury will result to the person alleged to be a person requiring treatment as manifested by the inability or unwillingness of the person to avoid or protect 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 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 5-414 of this title, 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;

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 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. No person shall be detained in emergency detention more than seventy-two (72) hours, excluding weekends and holidays, 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;

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 5-415 or 9-102 of this title.

SECTION 3. AMENDATORY Section 4, Chapter 387, O.S.L. 1997 (43A O.S. Supp. 1999, Section 5-410), is amended to read as follows:

Section 5-410. 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, an alcohol-dependent person or a drug-dependent 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 4. AMENDATORY Section 5, Chapter 387, O.S.L. 1997 (43A O.S. Supp. 1999, Section 5-411), is amended to read as follows:

Section 5-411. A. A person alleged to be a mentally ill person, an alcohol-dependent person, or a drug-dependent person and a person requiring treatment shall have the following rights:

1. The right to notice, as provided by Section ~~6~~ 5-412 of this ~~act~~ title;

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.

3. 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.

4. 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 5. AMENDATORY Section 6, Chapter 387, O.S.L. 1997 (43A O.S. Supp. 1999, Section 5-412), is amended to read as follows:

Section 5-412. A. Notice of the date, time and place of the hearing on a petition alleging a person to be a mentally ill person, an alcohol-dependent person, or a drug-dependent 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 6. AMENDATORY Section 7, Chapter 387, O.S.L. 1997 (43A O.S. Supp. 1999, Section 5-413), is amended to read as follows:

Section 5-413. A. When a request for an order of prehearing detention is attached to a petition alleging a person to be a mentally ill person, an alcohol-dependent person, or a drug-

dependent 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 7. AMENDATORY Section 8, Chapter 387, O.S.L. 1997 (43A O.S. Supp. 1999, Section 5-414), is amended to read as follows:

Section 5-414. A. If a certificate of evaluation is not attached to a petition alleging a person to be a mentally ill person, an alcohol-dependent person, or a drug-dependent 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, 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 or is an alcohol-dependent person or a drug-dependent person and who as a result of that mental illness or dependency 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; or as a result of that mental illness or dependency is unable or unwilling to attend to basic physical needs such as food, clothing or shelter that must be

attended to in order to avoid serious harm in the near future and who has demonstrated such inability or unwillingness by failing to attend to those basic physical needs in the recent past; 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 8. AMENDATORY Section 9, Chapter 387, O.S.L. 1997 (43A O.S. Supp. 1999, Section 5-415), is amended to read as follows:

Section 5-415. A. Upon receiving a petition alleging a person to be a mentally ill person, an alcohol-dependent person or a drug-dependent 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 § 5-414 of this ~~act~~ title.

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~~ 5-417 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 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

47-2-2541

RWT

6/12/2015 1:36:54 AM