

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2351

By: Liotta

AS INTRODUCED

An Act relating to mental health; amending 43A O.S. 2001, Sections 5-410 and 5-415, which relate to involuntary commitment procedures; stating that providing false information regarding petition for commitment may constitute perjury; modifying burden of proof; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 2001, 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 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 a~~ person who falsely attests in a petition or who knowingly provides false or incorrect information upon filing a petition that another person is a mentally ill person and is a person requiring treatment, may be found guilty of perjury under Sections 500 and 504 of Title 21 of the Oklahoma Statutes.

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 2. AMENDATORY 43A O.S. 2001, 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 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~~ beyond a reasonable doubt 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 3. This act shall become effective November 1, 2002.

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