

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

SENATE BILL 1578

By: Cain

AS INTRODUCED

An Act relating to mental health; amending 43A O.S. 2003, Sections 1-107, as last amended by Section 3, Chapter 46, O.S.L. 2003, 1-108, 1-109, as last amended by Section 1, Chapter 196, O.S.L. 2003, Section 1, Chapter 187, O.S.L. 2003, Section 8, Chapter 488, O.S.L. 2002, 2-202, as amended by Section 10, Chapter 488, O.S.L. 2002, 3-314.2, 3-424, 4-103.1, 4-107, 5-206, as amended by Section 32, Chapter 488, O.S.L. 2002, and 5-207, as last amended by Section 35, Chapter 46, O.S.L. 2003 (43A O.S. Supp. 2003, Sections 1-107, 1-109, 1-109.1, 2-109, 2-202, 5-206 and 5-207), which relate to the Mental Health Law; clarifying type of two-way communications system; clarifying language; clarifying title; modifying provisions related to disclosure of certain information; providing for patient access to specified information; specifying requirements for specified release to be in valid and providing exceptions to revocation of release; specifying conditions of disclosure; defining term; prohibiting disclosure under certain circumstances; specifying uses and disclosures for which an authorization is not required; defining terms; clarifying language; clarifying statutory reference; specifying permissible actions by the Advocate General and staff of the Office of Consumer Advocacy; modifying types of patient admissions for which the Commissioner or a designee may establish specific hours; expanding powers and duties of the Commissioner of Mental Health and Substance Abuse Services; modifying and providing entities that may bring certain actions in court and providing procedures thereto; providing for rights of certain consumers; subjecting rights to certain rules and providing for restrictions; specifying requirements for imposing a restriction; clarifying position title; modifying certain definition; conditioning transport of certain person to a facility upon bed space availability; providing for codification; repealing 43A O.S. 2001, Section 4-107, which relates to patient privileges; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 2001, Section 1-107, as last amended by Section 3, Chapter 46, O.S.L. 2003 (43A O.S. Supp. 2003, Section 1-107), is amended to read as follows:

Section 1-107. A. Civil actions for involuntary commitment of a person may be brought in any of the following counties:

1. The person's county of residence;
2. The county where the person was first taken into protective custody; or
3. The county in which the person is being held on emergency detention.

B. 1. Hearings in actions for involuntary commitment may be held within the mental health facility in which the person is being detained or is to be committed whenever the judge deems it to be in the best interests of the patient.

2. Such hearings shall be conducted by any judge designated by the presiding judge of the judicial district. Hearings may be held in an area of the facility designated by the executive director and agreed upon by the presiding judge of that judicial district.

C. The court may conduct any nonjury hearing required or authorized pursuant to the provisions of this title for detained or confined persons, at the discretion of the judge, by video teleconferencing after advising the person subject to possible detention or commitment of his or her constitutional rights. If the video teleconferencing hearing is conducted, the image of the detainee or person subject to commitment may be broadcast by closed-circuit television to the judge. A closed-circuit ~~television~~ video system shall provide for two-way communications including image and sound between the detainee and the judge.

D. The provisions for criminal venue as provided otherwise by law shall not be applicable to proceedings encompassed by commitment statutes referred to in this title which are deemed civil in nature.

E. Unless otherwise provided by law, the rules of civil procedure shall apply to all judicial proceedings provided for in this title, including, but not limited to, the rules concerning vacation of orders and appellate review.

SECTION 2. AMENDATORY 43A O.S. 2001, Section 1-108, is amended to read as follows:

Section 1-108. Anyone in custody as a person in need of treatment or a child in need of mental health treatment, pursuant to the provisions of this title, is entitled to a writ of habeas corpus, upon a proper application made by ~~him~~ such person or some relative or friend in ~~his~~ the person's behalf pursuant to the provisions of Sections 1331 through 1355 of Title 12 of the Oklahoma Statutes. Upon the return of such writ, the fact of ~~his~~ the person's mental illness shall be inquired into and determined. Notice of hearing on ~~said~~ the writ must be given to the guardian of such patient, if one has been appointed, to the person who applied for the original commitment and to such other persons as the court may direct. The medical or other history of the patient, as it appears in the institutional record, shall be given in evidence, and the ~~superintendent~~ executive director of the institution wherein such person is held in custody, and any proper person, shall be sworn touching the condition of such person.

The ~~superintendent~~ executive director shall make available for examination by physicians selected by the person seeking the writ, the patient whose freedom is sought by writ of habeas corpus. Any evidence, including evidence adduced in any previous habeas corpus proceedings, touching upon the mental condition of the patient shall be admitted in evidence.

SECTION 3. AMENDATORY 43A O.S. 2001, Section 1-109, as last amended by Section 1, Chapter 196, O.S.L. 2003 (43A O.S. Supp. 2003, Section 1-109), is amended to read as follows:

Section 1-109. A. 1. All mental health and drug or alcohol abuse treatment information, whether or not recorded, and all communications between a physician or psychotherapist and a patient are both privileged and confidential. In addition, the identity of all persons who have received or are receiving mental health or drug or alcohol abuse treatment services shall be considered confidential and privileged.

2. Such information shall only be available to persons actively engaged in the treatment of the patient or in related administrative work. The information available to persons actively engaged in the treatment of the consumer or in related administrative work shall be limited to the minimum amount of information necessary for the person or agency to carry out its function.

3. ~~Such~~ Except as otherwise provided in this section, such information shall not be disclosed to anyone not involved in the treatment of the patient or related administrative work ~~without a valid written release or an order from a court of competent jurisdiction.~~

B. ~~1. The restrictions on disclosure shall not apply to the following:~~

- ~~a. communications to law enforcement officers that are directly related to a commission of a crime by a patient on the premises of a facility or against facility personnel or to a threat to commit such a crime, and that are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, the name and address of that individual, and the last known whereabouts of that individual,~~
- ~~b. reporting under state law of incidents of suspected child abuse and neglect to the appropriate authorities, and~~

~~e. disclosure of patient identifying information to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.~~

~~2. Disclosures under this subsection shall be limited to the minimum information necessary to accomplish the intended purpose of the disclosure.~~

A person who is or has been a patient of a physician, psychotherapist, mental health facility, a drug or alcohol abuse treatment facility or service, other agency for the purpose of mental health or drug or alcohol abuse care and treatment shall be entitled to personal access to his or her mental health or drug or alcohol abuse treatment information, except the following:

1. Information contained in notes recorded in any medium by a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint or family counseling session, and that is separated from the rest of the patient's medical record;

2. Information compiled in reasonable anticipation of or for use in a civil, criminal or administrative action or proceeding;

3. Information that is otherwise privileged or prohibited from disclosure by law;

4. Information the person in charge of the care and treatment of the patient determines to be reasonably likely to endanger the life or physical safety of the patient or another person;

5. Information created or obtained as part of research that includes treatment; provided, the patient consented to the temporary suspension of access while the research is ongoing. The patient's right of access shall resume upon completion of the research;

6. Information requested by an inmate that a correctional institution has determined may jeopardize the health, safety, security, custody or rehabilitation of the inmate or other person; and

7. Information obtained under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

~~C. A person who is or has been a patient of a physician, psychotherapist, mental health facility, a drug or alcohol abuse treatment facility or service, other agency for the purpose of mental health or drug or alcohol abuse care and treatment shall be entitled to personal access to such person's mental health or drug or alcohol abuse treatment information unless such access is reasonably likely to endanger the life or physical safety of the patient or another person as determined by the person in charge of the care and treatment of the patient.~~

~~D. 1. The restrictions on disclosure of mental health or drug or alcohol abuse treatment information shall not restrict the disclosure of patient identifying information related to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death. Any other disclosure regarding a deceased patient shall require either a court order or a written release of an executor, administrator, or personal representative appointed by the court, or if there is no such appointment, by the spouse of the patient or, if none, by any responsible member of the family of the patient.~~

~~2. "Responsible family member" means the parent, adult child, adult sibling, or other adult relative who was actively involved in providing care to or monitoring the care of the deceased patient as verified by the physician, psychologist or other person responsible for the care and treatment of such person.~~

~~E.~~ 1. A valid written release for disclosure of mental health or drug or alcohol abuse treatment information shall have, at a minimum, the following elements:

~~1.~~ ~~The~~

a. the specific name or general designation of the program or person permitted to make the disclosure~~†, 1~~

~~2.~~ ~~The~~

b. the name or title of the individual or the name of the organization to which disclosure is to be made~~†, 1~~

~~3.~~ ~~The~~

c. the name of the patient whose records are to be released~~†, 1~~

~~4.~~ ~~The~~

d. the purpose of the disclosure~~†, 1~~

~~5.~~ ~~A,~~

e. a description of the information to be disclosed~~†, 1~~

~~6.~~ ~~The~~

f. the dated signature of the patient or authorized representative or both when required~~†, 1~~

~~7.~~ ~~A~~

g. a statement of the right of the patient to revoke the release in writing and a description of how the patient may do so~~†, 1~~

~~8.~~ ~~An~~

h. an expiration date, event or condition which, if not revoked before, ~~which~~ shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given~~†, 1~~ and

~~9.~~ ~~If~~

i. if the release is signed by a person authorized to act for a patient, a description of the authority of such person to act.

2. A release is not valid if the document submitted has any of the following defects:

- a. the expiration date has passed or the expiration event or condition is known to have occurred or to exist,
- b. the release has not been filled out completely with respect to an element described in paragraph 1 of this section,
- c. the release is known to have been revoked, or
- d. any material information in the release is known to be false.

3. A revocation of a release as provided in this section shall be in writing and may be made at any time, except when:

- a. information has already been released in reliance thereon,
- b. the authorization was obtained as a condition of obtaining insurance coverage and other law provides the insurer with the right to contest a claim under the policy or the policy itself, or
- c. the release was executed as part of a criminal justice referral.

4. Disclosure regarding a deceased patient shall require either a court order or a written release of an executor, administrator or personal representative appointed by the court, or if there is no such appointment, by the spouse of the patient or, if none, by any responsible member of the family of the patient. As used in this paragraph, "responsible family member" means the parent, adult child, adult sibling or other adult relative who was actively involved in providing care to or monitoring the care of the patient as verified by the physician, psychologist or other person responsible for the care and treatment of such person;

D. Except as otherwise permitted, mental health and alcohol or substance abuse treatment information may not be disclosed without

valid patient authorization or a valid court order issued by a court of competent jurisdiction. For purposes of this section, a subpoena by itself is not sufficient to authorize disclosure of mental health and alcohol or substance abuse treatment information.

E. An authorization shall not be required for the following uses and disclosures:

1. Disclosure by a health care provider of mental health information necessary to carry out such provider's own treatment, payment, or health care operations;

2. Communications to law enforcement officers regarding information directly related to the commission of a crime on the premises of a facility or against facility personnel, or a threat to commit such a crime. Such communications involving persons with substance abuse disorders shall be limited to the circumstances surrounding the incident, patient status, name and address of the patient and patient's last known whereabouts;

3. A review preparatory to research, research on decedents information or research conducted when a waiver of authorization has been approved by either an institutional review board or privacy board;

4. Communications pursuant to a business associate agreement, qualified service organization agreement or a qualified service organization/business associate agreement. As used in this paragraph:

a. "business associate agreement" means a written signed agreement between a health care provider and an outside entity which performs or assists in the performance of a function or activity involving the use or disclosure of individually identifiable health information on behalf of the health care provider,

b. "qualified service organization agreement" means a written, signed agreement between a health care

provider and an outside entity which provides services to the health care provider's consumers that are different from the services provided by the health care provider, that allows the health care provider to communicate consumer information necessary for the outside entity to provide services to the health care provider's consumers without the need for an authorization signed by a consumer and in which the outside entity acknowledges that in receiving, storing, processing or otherwise dealing with any consumer information from the health care provider it is fully bound by the provisions of 42 C.F.R., Part 2 and, if necessary, will resist any efforts in judicial proceedings to obtain access to consumer information, except as permitted by 42 C.F.R., Part 2,

c. "qualified service organization/business agreement"
means a written, signed agreement between a health care provider and an outside entity which provides services to the health care provider's consumers that are different from the services provided by the health care provider, that allows the health care provider to communicate consumer information necessary for the outside entity to provide services to the health care provider's consumers without the need for an authorization signed by a consumer, and in which the outside entity acknowledges that in receiving, storing, processing or otherwise dealing with any consumer information from the health care provider it is fully bound by the provisions 42 C.F.R., Part 2 and, if necessary, will resist any efforts in judicial proceedings to obtain access to consumer information, except as permitted by 42 C.F.R., Part 2. The

agreement must also contain elements required by federal privacy regulations in 45 C.F.R., Parts 160 & 164;

5. Reporting under state law incidents of suspected child abuse or neglect to the appropriate authorities; provided, however, for disclosures involving an individual with a substance abuse disorder, this exception does not allow for follow-up communications;

6. Disclosure of patient-identifying information to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention;

7. Communications necessary for audit and evaluation activities;

8. When a program or facility director determines that an adult person with a substance abuse disorder has a medical condition which prevents the person from "knowing or effective action on his or her own behalf", the program or facility director may authorize disclosures for the sole purpose of obtaining payment for services. If the person has been adjudicated incompetent, the facility must seek permission to disclose information for payment from the legal guardian;

9. Reporting of such information as otherwise required by law; provided, however, such disclosure may not identify the person directly or indirectly as a person with a substance abuse disorder;

10. Communications to coroners, medical examiners and funeral directors for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law and as necessary to carry out their duties; provided, however, such disclosure may not identify the person directly or indirectly as a person with a substance abuse disorder;

11. Communications to organ procurement organizations or other entities engaged in procurement, banking, or transplantation of cadaveric organs, eyes or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation; provided, however, such disclosure may not identify the person directly or indirectly as a person with a substance abuse disorder; and

12. When failure to disclose the information presents a serious threat to the health and safety of a person or the public; provided, however, such disclosure may not identify the person directly or indirectly as a person with a substance abuse disorder.

SECTION 4. AMENDATORY Section 1, Chapter 187, O.S.L. 2003 (43A O.S. Supp. 2003, Section 1-109.1), is amended to read as follows:

Section 1-109.1 A. ~~A person~~ Every adult having a mental illness as defined in Section 1-103 of ~~Title 43A of the Oklahoma Statutes~~ this title who is under the care of a licensed mental health professional shall be informed by the licensed mental health professional or the mental health treatment facility that the patient has the right to designate a family member or other concerned individual as a treatment advocate. The individual so designated shall act at all times in the best interests of the patient. The patient may change or revoke the designation of a treatment advocate at any time and for any reason. The treatment advocate may participate in the treatment planning and discharge planning of the patient to the extent consented to by the patient and as permitted by law.

B. The Board of Mental Health and Substance Abuse Services shall promulgate rules for all facilities certified by the Department of Mental Health and Substance Abuse Services as to the design, contents, and maintenance of a treatment advocate consent form. The contents of the consent form, at a minimum, shall include a statement indicating that the treatment advocate understands that

all mental health treatment information is confidential and that the treatment advocate agrees to maintain confidentiality.

C. This section shall not apply to inmates of the Oklahoma Department of Corrections.

SECTION 5. AMENDATORY Section 8, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2003, Section 2-109), is amended to read as follows:

Section 2-109. A. The Board of Mental Health and Substance Abuse Services is authorized and directed to establish the Office of Consumer Advocacy within the Department of Mental Health and Substance Abuse Services and to employ such personnel as may be necessary to carry out the purposes of Section 2-108 of ~~Title 43A of the Oklahoma Statutes~~ this title.

1. The chief administrative officer of the Office of Consumer Advocacy shall be the Advocate General, who shall be an attorney admitted to practice in the State of Oklahoma with a minimum of three (3) years experience. The Advocate General shall report to the Board and be supervised by the Board, and may be dismissed only for cause.

2. The Advocate General shall have the following powers and duties:

- a. to serve as an advocate, but not as an attorney, for individuals receiving services from facilities operated by, subject to certification by or under contract with the Department, and, if an individual needs legal counsel, advise the individual of the right to seek counsel and refer the individual to counsel, if necessary,
- b. to supervise personnel assigned to the Office of Consumer Advocacy,

- c. to monitor and review grievance procedures in facilities operated by, subject to certification by or under contract with the Department,
- d. to investigate unresolved grievances and allegation of abuse, neglect and improper treatment of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department,
- e. to access facilities operated by, subject to certification by or under contract with the Department and the records of such facilities. Reasonable access shall be granted for the purposes of conducting investigations of abuse, neglect and improper treatment, and performing other activities as necessary to monitor care and treatment provided by such facilities,
- f. to access the records of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department. Records that are confidential under state and federal law shall be maintained as confidential and not be redisclosed by the Advocate General,
- g. to submit a report of the results of investigations of abuse to the appropriate district attorney and, if the individual is a juvenile in the custody of a state agency, submit a report to that state agency,
- h. to make recommendations to the Commissioner of Mental Health and Substance Abuse Services and provide regular or special reports regarding investigations and unresolved grievances to the Commissioner and the Board, and
- i. to perform such other duties as assigned by the Board.

B. The Advocate General and the staff of the Office of Consumer Advocacy shall not act as ~~an attorney~~ attorneys on behalf of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department, except that they shall have the authority to file habeas corpus actions on behalf of such individuals and appear on their behalf in civil commitment and criminal post-commitment proceedings, and also appear on behalf of Department consumers in proceedings for writs of mandamus.

C. Except as otherwise specifically provided in this section and as otherwise provided by state or federal laws, the information, records, materials and reports related to investigations by the Office of Consumer Advocacy are confidential and contain privileged information. Accordingly, such records, materials and reports shall not be open to public inspection nor their contents disclosed, nor shall a subpoena or subpoena duces tecum purporting to compel disclosure of such information be valid.

1. An order of the court authorizing the inspection, release or disclosure of information, records, materials and reports related to investigations by the Office of Consumer Advocacy shall be entered by a court only after a review of the records and a determination, with due regard for the confidentiality of the information and records and the privilege of the persons identified in the records, that a compelling reason exists, any applicable privilege has been waived and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest.

2. This section shall not be construed as prohibiting the Department or the Office of Consumer Advocacy from summarizing the outcome of an investigation, stating the allegation and finding. The summary may be provided to the person suspected of abuse, neglect or improper treatment, the person subject to alleged abuse, neglect or improper treatment, the person who reported an

allegation, and the administrator of a facility certified by or under contract with the Department at which the alleged abuse, neglect or improper treatment occurred.

SECTION 6. AMENDATORY 43A O.S. 2001, Section 2-202, as amended by Section 10, Chapter 488, O.S.L. 2003 (43A O.S. Supp. 2003, Section 2-202), is amended to read as follows:

Section 2-202. Except as herein provided, the Commissioner of Mental Health and Substance Abuse Services shall have charge of the administration of the Department of Mental Health and Substance Abuse Services as directed by the Board of Mental Health and Substance Abuse Services and shall be charged with the duty of carrying out the provisions of the Mental Health Law. The Commissioner may appoint necessary personnel to carry on the work of the Department, prescribe their titles and duties, and fix their compensation. The Commissioner may prescribe policies for the operation of the Department. In addition, the Commissioner shall have the following powers and duties:

1. To appoint, with the consent of the Board, an executive director of each facility within the Department, and fix the qualifications, duties and compensation of the executive directors; to counsel with the various executive directors about facility needs and budget requests; and to prepare and submit for appropriate legislative action budget requests sufficient to carry on the functions of the Department. These budget requests shall be submitted to the Board for its recommendations before being submitted for legislative action;

2. To develop, institute and administer such administrative and professional policies as may be necessary to guarantee effective, efficient and uniform operation of the Department and its facilities;

3. To prescribe uniform reports to be made by the executive directors of the facilities and designate forms to be used;

4. After conference with the executive director of each facility, determine the number of employees to be appointed and fix their respective titles, salaries, and wages which shall be as uniform as possible for comparable service;

5. To aid, assist and cooperate with the State Department of Health, institutions of higher learning, public schools, and others interested in public education regarding the issue of mental hygiene in the establishment of a sound mental health program in the State of Oklahoma;

6. To visit each facility in the Department at least once each calendar year. During such visits, the Commissioner shall have access to any or all facilities and records and shall have the privilege of interviewing all personnel and patients within the facility. The purpose of such visits shall be:

- a. to review and evaluate the professional and administrative activity of such facilities,
- b. to ensure compliance with medical and administrative policies and procedures established by the Department,
- c. to modify and revise existing operating procedure to improve operational effectiveness,
- d. to institute new policies and procedures to effect improvement and economy of overall operation, and
- e. to coordinate the activities of each facility with the overall operation of the Department;

7. To authorize other members of the Department to visit the facilities in the Department. Such persons shall have the same power to inspect the facility and its records and to interview personnel and patients as the Commissioner;

8. To designate the type of patient that will be cared for at each facility and designate hospital or community mental health center districts for the purpose of determining to which of the facilities within the Department or community mental health centers

persons committed from each county shall initially be sent. These designations may be changed from time to time. The Commissioner or a designee of the Commissioner may establish specific hours for ~~nonemergency~~ patient admissions at each facility. The Commissioner or a designee of the Commissioner may delay ~~nonemergency~~ inpatient admissions when such admissions would cause facilities to exceed their authorized capacity. Patients may be transferred from one facility to another within the Department on the authority of the Commissioner as provided for in the Mental Health Law. Permanent transfer of a patient may be made when it is apparent that the patient's general welfare, care, and treatment can be more effectively provided at another facility, provided the parents or guardian are notified as soon as possible of the transfer. Temporary transfer of a patient may be made in order that a patient may have the advantage of special services not available at the facility of such patient's present residence. Requests for transfer shall be initiated by the executive director of the facility in which the patient resides. Sufficient supporting information from the patient's records shall be submitted by the executive director to the Commissioner to warrant a decision as to the advisability of the transfer;

9. To call meetings of the executive directors of the facilities in the Department, and act as chair of such meetings, to discuss common problems in order to obtain uniformity and bring about coordination of the facilities for the maximum service to the state. Such called meetings may or may not be held jointly with the Board;

10. To be the chair of a Board of Psychiatric Examiners to review the case of any patient, and to examine any patient when the executive director of any facility concludes that a patient within such facility is subject to discharge but such executive director is unwilling to discharge the patient as provided in the Mental Health

Law. The Board of Psychiatric Examiners shall be composed of the Commissioner and two members selected by the Board. Such members shall be selected from persons who are qualified examiners according to the Mental Health Law. The Commissioner may designate a third qualified examiner to act as chair when circumstances warrant and when the Commissioner deems it necessary;

11. To keep a list of all nonresidents admitted to a facility within the Department and to make every effort possible to make arrangements with other states so that mentally ill persons who are being cared for at public expense in any facility in this state and who are citizens or residents of such other states may be transferred at the expense of this state to similar facilities in such other states. The Commissioner shall not prevail upon relatives or friends of such mentally ill person or any other person to defray such expenses. Mentally ill persons who are being cared for at public expense in hospitals for mentally ill or facilities of other states, other than persons who have been transferred from penal institutions and the terms of whose sentences to such penal institutions shall not have expired, and who are citizens or residents of this state, may be transferred at the expense of such other states to similar facilities in this state. Removal of a nonresident to the nonresident's state may be authorized by the Commissioner and all expenses of such transfer shall be taken from the Travel Fund of the facility if the transfer is to be at public expense. Patients returned to this state pursuant to these provisions shall be delivered directly to the hospital designated by the Commissioner and shall be admitted in accordance with these provisions;

12. To prescribe the official forms of any and all papers not specifically described in the Mental Health Law including those to be used in ordering a person to a facility within the Department, except that when a person is ordered to a facility by a court, the

order to hospitalize or admit such person may be on such form as the court deems proper;

13. To utilize the services of employees of the Department of Central Services, the State Department of Health, and the Department of Human Services when authorized by the director or commissioner thereof. When employees of those agencies are used, the Commissioner of Mental Health and Substance Abuse Services may authorize payment of their traveling expenses as provided by law;

14. To make contracts and agreements with other departments of this state to carry out these provisions;

15. To make a written report annually to the Governor concerning the administration of the Department and submit copies thereof to members of the Legislature. Such report shall be presented one (1) month prior to the convening of any regular session of the Legislature and shall include:

- a. specific information regarding the number of patients admitted, treated, and discharged,
- b. the methods of treatment used and an appraisal of the success thereof,
- c. the financial condition and needs of each facility in the Department,
- d. any long-range plans or recommendations for the utilization and improvement of facilities, equipment, and personnel and for the care and treatment of patients,
- e. any recommendations requiring legislation, and
- f. major findings, in summarized form, obtained by visits made pursuant to the provisions of paragraph 6 of this section;

16. To designate as peace officers qualified personnel in the fire and safety officer, security officer and correctional officer job classifications. The authority of employees so designated shall

be limited to maintaining custody of patients in facilities, maintaining security or performing functions similar to those performed by correctional officers or other security personnel for Department of Corrections inmates housed in mental health facilities, preventing attempted escapes, and pursuing and returning court committed patients and Department of Corrections inmates who have escaped from Department facilities. The powers and duties of such peace officers may be exercised for the purpose of maintaining custody of any patient being transported within the state and outside the State of Oklahoma pursuant to the authority of the Interstate Compact on Mental Health. To become qualified for designation as a peace officer pursuant to this section, an employee shall meet the training and screening requirements of the Department of Corrections pursuant to subparagraphs a through g of paragraph 2 of subsection A of Section 510 of Title 57 of the Oklahoma Statutes and be of good moral character; ~~and~~

17. To establish a Forensics Review Board to annually review the case of every patient ordered to the custody of the Department through a "not guilty by reason of insanity" verdict. The Forensics Review Board shall be composed of three (3) licensed mental health professionals, at least one of whom is licensed as a Doctor of Medicine, a Doctor of Osteopathy, or a licensed clinical psychologist, who shall be selected by the Commissioner; and

18. Any other power necessary to implement the provisions of the Mental Health Law.

SECTION 7. AMENDATORY 43A O.S. 2001, Section 3-314.2, is amended to read as follows:

Section 3-314.2 A. ~~It shall be the duty of the~~ The Attorney General, the Department of Mental Health and Substance Abuse Services and any district attorney, ~~at their discretion, upon the request of the Department of Mental Health and Substance Abuse Services to~~ may bring an action for an injunction against any

domestic violence program or sexual assault program found to be in violation of the provisions of Section ~~4 of this act~~ 3-314.1 of this title or of any order or determination of the Department.

B. In any action for an injunction brought pursuant to this section, any findings of the Department, after hearing and due notice, shall be prima facie evidence of the facts found therein.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-315.2a of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The Attorney General, the Department of Mental Health and Substance Abuse Services or the district attorney of the appropriate district court may bring an action in a court of competent jurisdiction for an injunction against any substance abuse facility believed to be in violation of the Oklahoma Alcohol and Drug Act or any order or determination of the Department.

B. In any action for an injunction brought pursuant to this section, any findings of the Department, after hearing and due process, shall be prima facie evidence of the facts found therein.

C. The district court for the county where the facility is located has jurisdiction to determine the action, to grant the necessary injunctive relief and to award attorney's fees to the prevailing party.

SECTION 9. AMENDATORY 43A O.S. 2001, Section 3-424, is amended to read as follows:

Section 3-424. A. ~~Subject to reasonable rules regarding hours of visitation which the administrator in charge of the approved treatment facility may adopt, patients in the approved treatment facility shall be granted opportunities for adequate consultation with their attorneys, and for continuing contact with family and friends consistent with an effective treatment program.~~

~~B. Neither mail nor any other communication to or from a patient admitted to an approved treatment facility under the~~

~~provisions of this act may be intercepted, read, or censored. The administrator of the approved treatment facility may adopt reasonable rules regarding the use of telephones by patients~~ the restrictions imposed by subsection B of this section, a consumer in an inpatient or residential mental health facility has the right to:

1. Receive a reasonable number of visitors at reasonable times;
2. Reasonable access to make and receive telephone calls;
3. Communicate by uncensored and sealed mail; and
4. Writing materials and reasonable amounts of postage if unable to procure the same.

B. The rights provided in subsection A of this section are subject to the general rules of the facility and may be restricted by the treatment team ultimately responsible for the consumer's treatment to the extent that the restriction is necessary to the consumer's welfare, to protect another person, or to the security of the facility; provided, however, the right to communicate with legal counsel, a treatment advocate, or the Department may not be denied.

C. If a restriction is imposed under this section, the reasons for the restriction and the duration of the restriction shall be documented in the consumer's clinical record. The treatment team shall inform the consumer, the treatment advocate, and, if appropriate, the consumer's parent or guardian of the clinical reasons for the restriction and the duration of the restriction.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-453.1 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The Attorney General, the Department of Mental Health and Substance Abuse Services, or the district attorney of the appropriate district court may bring an action in a court of competent jurisdiction for an injunction against any individual for operating an alcohol and drug substance course without appropriate certification by the Department of Mental Health and Substance Abuse

Services or for a violation of any other or determination of the Department.

B. In any action for an injunction brought pursuant to this section, any findings of the Department, after hearing and due process, shall be prima facie evidence of the facts found therein.

C. The district court for the county where the facility is located has jurisdiction to determine the action, to grant the necessary injunctive relief and to award attorney's fees to the prevailing party.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-460.1 of Title 43a, unless there is created a duplication in numbering, reads as follows:

A. The Attorney General, the Department of Mental Health and Substance Abuse Services, or the district attorney of the appropriate district court may bring an action in a court of competent jurisdiction for an injunction against any agency or individual for performing alcohol and drug assessments without appropriate certification by the Department of Mental Health and Substance Abuse Services or for a violation of any order or determination of the Department.

B. In any action for an injunction brought pursuant to this section, any findings of the Department, after hearing and due process, shall be prima facie evidence of the facts found therein.

C. The district court for the county where the facility is located has jurisdiction to determine the action, to grant the necessary injunctive relief and to award attorney's fees to the prevailing party.

SECTION 12. AMENDATORY 43A O.S. 2001, Section 4-103.1, is amended to read as follows:

Section 4-103.1 The ~~superintendent~~ executive director of any institution within the Department of Mental Health and Substance Abuse Services shall have custody and control of a patient within

the institution during the period of time the patient is detained for observation or treatment or both, and shall be responsible for the care and treatment of the patient during the time the patient remains in the institution.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-107a of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. Subject to the restrictions imposed by subsection B of this section, a consumer in an inpatient or residential mental health facility has the right to:

1. Receive a reasonable number of visitors at reasonable times;
2. Reasonable access to make and receive telephone calls;
3. Communicate by uncensored and sealed mail; and
4. Writing materials and reasonable amounts of postage if unable to procure the same.

B. The rights provided in subsection A of this section are subject to the general rules of the facility and may be restricted by the treatment team ultimately responsible for the consumer's treatment to the extent that the restriction is necessary to the consumer's welfare, to protect another person or the security of the facility; provided, however, the right to communicate with legal counsel, treatment advocate, and the department may not be denied.

C. If a restriction is imposed under this section, the reasons for the restriction and the duration of the restriction shall be documented in the consumer's clinical record. The treatment team shall inform the consumer, the treatment advocate, and, if appropriate, the consumer's parent or guardian of the clinical reasons for the restriction and the duration of the restriction.

SECTION 14. AMENDATORY 43A O.S. 2001, Section 5-206, as amended by Section 32, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2003, Section 5-206), is amended to read as follows:

Section 5-206. As used in Sections 5-206 through 5-209 of this title:

1. "Evaluation" means the examination of a person who appears to have a mental illness or be alcohol- or drug-dependent by two licensed mental health professionals, at least one of whom is a psychiatrist who is a diplomat 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;

2. "Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or a 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 at a facility approved by the Commissioner of Mental Health and Substance Abuse Services, or a designee, as appropriate for such examination to determine if emergency detention of the person is warranted;

3. "Emergency detention" means the detention of a person who appears to be 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 that emergency detention is warranted for a period not to exceed 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;

4. "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

5. "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 15. AMENDATORY 43A O.S. 2001, Section 5-207, as last amended by Section 35, Chapter 46, O.S.L. 2003 (43A O.S. Supp. 2003, Section 5-207), is amended to read as follows:

Section 5-207. A. Any person who appears to be or states that such person is mentally ill, alcohol-dependent, or drug-dependent to a degree that immediate emergency action is necessary may be taken into protective custody and detained as provided pursuant to the provisions of this section. Nothing in this section shall be construed as being in lieu of prosecution under state or local statutes or ordinances relating to public intoxication offenses.

B. Any peace officer who reasonably believes that a person is a person requiring treatment as defined in Section 1-103 of this title shall take the person into protective custody. The officer shall make every reasonable effort to take the person into custody in the least conspicuous manner.

C. The officer shall prepare a written affidavit indicating the basis for the officer's belief that the person is a person requiring treatment and the circumstances under which the officer took the person into protective custody. The officer shall give a copy of

the statement to the person or the person's attorney upon the request of either. If the officer does not make the determination to take an individual into protective custody on the basis of the officer's personal observation, the officer shall not be required to prepare a written affidavit. However, the person stating to be mentally ill, alcohol-dependent, or drug-dependent or the person upon whose statement the officer relies shall sign a written statement indicating the basis for such person's belief that the person is a person requiring treatment. Any false statement given to the officer by the person upon whose statement the officer relies shall be a misdemeanor and subject to the sanctions of Title 21 of the Oklahoma Statutes.

D. The officer shall immediately transport the person to the nearest facility designated by the Commissioner of Mental Health and Substance Abuse Services as an appropriate facility for emergency examinations. If, subsequent to an emergency examination, it is determined that emergency detention is warranted, the officer shall transport the person to the nearest facility, designated by the Commissioner as appropriate for such detention, that has bed space available.

E. The parent, brother or sister who is eighteen (18) years of age or older, child who is eighteen (18) years of age or older, or guardian of the person, or a person who appears to be or states that such person is mentally ill, alcohol-dependent, or drug-dependent to a degree that emergency action is necessary may request the administrator of a facility designated by the Commissioner as an appropriate facility for an emergency examination to conduct an emergency examination to determine whether the condition of the person is such that emergency detention is warranted and, if emergency detention is warranted, to detain the person as provided in Section 5-206 of this ~~act~~ title.

SECTION 16. REPEALER 43A O.S. 2001, Section 4-107, is hereby repealed.

SECTION 17. This act shall become effective November 1, 2004.

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