

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 1240

By: Martin (Steve)

6 COMMITTEE SUBSTITUTE

7 An Act relating to firearms; directing court clerks
8 to forward commitment orders to certain entities;
9 directing court clerks to provide certain notice;
10 authorizing petition for relief; requiring service of
11 petition; directing courts to consider certain
12 evidence; providing hearing procedures; directing
13 court clerks to forward orders to certain entities;
14 amending 43A O.S. 2011, Section 5-415, which relates
15 to procedures for involuntary commitment hearings;
16 providing exception to certain records requirement;
17 providing for codification; and providing an
18 effective date.

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

20 SECTION 1. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1290.27 of Title 21, unless
22 there is created a duplication in numbering, reads as follows:

23 A. When a court orders a commitment or makes a finding or
24 adjudication under the laws of this state by which a person becomes
subject to the provisions of Section 922(d)(4) and (g)(4) of Title
18 of the United States Code, the clerk of the court shall forward a
certified copy of the commitment order to the Federal Bureau of
Investigation or its successor agency for the sole purpose of

1 inclusion in the National Instant Criminal Background Check system
2 database and to the Oklahoma State Bureau of Investigation. The
3 clerk of the court shall also notify the person of the prohibitions
4 contained within the provisions of Section 922(d)(4) and (g)(4) of
5 Title 18 of the United States Code. If the person does not have a
6 handgun license, the Oklahoma State Bureau of Investigation shall
7 destroy the information within three (3) days of receiving such
8 information.

9 B. A person who is subject to the disabilities of Section
10 922(d)(4) and (g)(4) of Title 18 of the United States Code or of
11 paragraphs 3 and 4 of subsection A of Section 1290.11 of Title 21 of
12 the Oklahoma Statutes because of an adjudication or commitment that
13 occurred under the laws of this state may petition the court in
14 which such adjudication or commitment proceedings occurred or the
15 district court of the county in which the person currently resides
16 to remove all such disabilities. Not less than thirty (30) days
17 prior to any hearing on the matter, a copy of the petition for
18 relief shall be served upon the district attorney for that county.

19 C. The court shall receive and consider evidence in a closed
20 hearing, including evidence offered by the petitioner, concerning:

21 1. The circumstances regarding the firearm disabilities from
22 which relief is sought;

23 2. The mental health and criminal history records of the
24 petitioner, if any;

1 3. The reputation of the petitioner, developed at a minimum
2 through character witness statements, testimony, or other character
3 evidence; and

4 4. Changes in the condition or circumstances of the petitioner
5 since the original adjudication or commitment relevant to the relief
6 sought.

7 The court shall grant the petition for relief if it finds by a
8 preponderance of the evidence that the petitioner will not be likely
9 to act in a manner dangerous to public safety and that granting the
10 relief will not be contrary to the interests of the public. A
11 record shall be kept of the proceedings, but it shall remain
12 confidential and be disclosed only to a court or the parties in the
13 event of an appeal. No records of proceedings pursuant to this
14 subsection shall be open to public inspection except by order of the
15 court or to the person's attorney of record. The petitioner may
16 appeal a denial of the requested relief, and review on appeal shall
17 be de novo.

18 D. The clerk of the court shall promptly forward to the Federal
19 Bureau of Investigation or its successor agency for the sole purpose
20 of inclusion in the National Instant Criminal Background Check
21 system database and to the Oklahoma State Bureau of Investigation a
22 certified copy of the order granting relief under this section. If
23 the person does not have a handgun license, the Oklahoma State
24

1 Bureau of Investigation shall destroy the information within three
2 (3) days of receiving such information.

3 E. A person may petition for relief under this section not more
4 than once every two (2) years and, in the case of a person who was
5 committed to a mental institution, not before the person has been
6 discharged from such commitment.

7 SECTION 2. AMENDATORY 43A O.S. 2011, Section 5-415, is
8 amended to read as follows:

9 Section 5-415. A. Upon receiving a petition alleging a person
10 to be a person requiring treatment, the court shall set a day and
11 time for the hearing.

12 1. If the person alleged to be a person requiring treatment
13 does not have an attorney, the court shall immediately appoint an
14 attorney for the person.

15 2. If a copy of a mental health evaluation is not attached to
16 the petition at the time it is filed, the court shall immediately
17 order a mental health evaluation of the person as provided by
18 Section 5-414 of this title.

19 B. If the court deems it necessary, or if the person alleged to
20 be a person requiring treatment demands, the court shall schedule
21 the hearing on the petition as a jury trial to be held within one
22 hundred twenty (120) hours or five (5) days of the demand, excluding
23 weekends and holidays, or within as much additional time as is
24 requested by the attorney of such person upon good cause shown.

1 C. The court, at the hearing on the petition, shall determine
2 by clear and convincing evidence whether the person is a person
3 requiring treatment.

4 1. The court shall take evidence and make findings of fact
5 concerning the person's competency to consent to or refuse the
6 treatment that may be ordered, including, but not limited to, the
7 consumer's right to refuse medication.

8 2. If a jury trial is not demanded, the court may receive as
9 evidence and act upon the affidavits of the licensed mental health
10 professionals who evaluated the person and the mental health
11 evaluation.

12 3. When the hearing is conducted as a jury trial, the
13 petitioner and any witness in behalf of the petitioner shall be
14 subject to cross-examination by the attorney for the person alleged
15 to be a person requiring treatment. The person alleged to be a
16 person requiring treatment may also be called as a witness and
17 cross-examined.

18 D. After the hearing, when the court determines that the person
19 is not a person requiring treatment, the court shall dismiss the
20 petition and, if the person is being detained, order the person to
21 be discharged from detention.

22 E. After the hearing, when the court determines the person to
23 be a person requiring treatment, the court shall order the person to
24 receive the least restrictive treatment consistent with the

1 treatment needs of the person and the safety of the person and
2 others.

3 1. The court shall not order hospitalization without a thorough
4 consideration of available treatment alternatives to hospitalization
5 and may direct the submission of evidence as to the least
6 restrictive treatment alternative or may order a mental health
7 examination.

8 2. If the court finds that a program other than hospitalization
9 is appropriate to meet the treatment needs of the individual and is
10 sufficient to prevent injury to the individual or to others, the
11 court may order the individual to receive whatever treatment other
12 than hospitalization that is appropriate for a period set by the
13 court, during which time the court shall continue its jurisdiction
14 over the individual as a person requiring treatment.

15 3. If the court orders the person to be committed for
16 involuntary inpatient treatment, the court shall commit the person
17 to the custody of the Department of Mental Health and Substance
18 Abuse Services for a placement that is suitable to the person's
19 needs or to a private facility willing to accept the person for
20 treatment.

21 4. The person shall be delivered to the custody of the
22 Department of Mental Health and Substance Abuse Services for a
23 placement that is suitable to the person's needs or to a private
24 facility willing to accept the person for treatment.

1 5. If the person is placed in the custody of the Department,
2 the Department may designate two or more facilities to provide
3 treatment and if the person to be treated or a parent, spouse,
4 guardian, brother, sister or child, who is at least eighteen (18)
5 years of age, of the person, expresses a preference for one such
6 facility, the Department shall attempt, if administratively
7 possible, to comply with the preference.

8 6. The person shall be discharged from inpatient treatment at
9 such time as the person no longer requires treatment as determined
10 by the executive director of the facility or the designee of the
11 executive director, or as otherwise required by law.

12 F. The court shall make and keep records of all cases brought
13 before it.

14 1. ~~No~~ Except as provided in Section 1 of this act, no records
15 of proceedings pursuant to this section shall be open to public
16 inspection except by order of the court or to employees of the
17 Department of Mental Health and Substance Abuse Services, the
18 person's attorney of record, or persons having a legitimate
19 treatment interest.

20 2. Bonded abstractors may be deemed to be persons having a
21 legitimate interest for the purpose of having access to records
22 regarding determinations of persons requiring treatment under this
23 section.

24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

SECTION 3. This act shall become effective November 1, 2013.

54-1-6954 GRS 02/14/13