

1 ENGROSSED SENATE AMENDMENT  
TO  
2 ENGROSSED HOUSE  
BILL NO. 1697

By: Denney, Shelton,  
Sherrer and Hoskin  
of the House

and

Griffin and David of the  
Senate

[ mental health - permitting court to order assisted  
outpatient treatment - effective date ]

12 AUTHOR: Add the following Senate Coauthor: Pittman  
Add the following House Coauthor: McDaniel (Jeannie)

14 AMENDMENT NO. 1. Page 1, strike the (stricken?) title, enacting  
clause and entire bill and insert

16 An Act relating to mental health; providing short  
17 title; creating the Labor Commissioner Mark Costello  
18 Act; amending 43A O.S. 2011, Section 1-103, as last  
19 amended by Section 1, Chapter 161, O.S.L. 2015 (43A  
20 O.S. Supp. 2015, Section 1-103), which relates to  
21 definitions; expanding certain definitions to  
22 include certain persons; providing definitions;  
23 amending 43A O.S. 2011, Sections 1-106, 1-107, 1-  
24 108, and 5-417, as amended by Section 3, Chapter 3,  
O.S.L. 2013 (43A O.S. Supp. 2015, Section 5-417),  
which relate to procedures for persons requiring  
treatment; expanding scope to include assisted  
outpatient treatment; amending 43A O.S. 2011,  
Section 3-325, which relates to contracts for  
services; clarifying language; amending 43A O.S.  
2011, Section 5-410, as last amended by Section 1,

1 Chapter 217, O.S.L. 2013 (43A O.S. Supp. 2015,  
2 Section 5-410), which relates to petitions for  
3 treatment; requiring certain petitions be filed by  
4 certain personnel; amending 43A O.S. 2011, Section  
5 5-416, which relates to alternatives to  
6 hospitalization; permitting consideration of  
7 assisted outpatient treatment under certain  
8 circumstances; requiring submission of certain  
9 proposal to court; requiring certain notice;  
10 permitting certain delays; requiring submission of  
11 proposal by certain date; directing distribution of  
12 treatment plans; requiring collection of certain  
13 information; prohibiting certain court order without  
14 testimony from petitioner; providing exceptions;  
15 providing guidelines for certain procedures;  
16 permitting court order for assisted outpatient  
17 treatment; permitting certain provisions in court  
18 orders; requiring service of certain documents to  
19 certain persons; specifying duration of certain  
20 orders; permitting certain petitions; permitting  
21 treatment extensions under certain circumstances;  
22 limiting duration of certain extensions; permitting  
23 certain petitions from patients or guardians;  
24 requiring certain petitions to modify treatment  
plans; providing guidelines for certain petitions;  
permitting protective custody for certain persons  
under certain circumstances; specifying grounds for  
failures or refusals to comply; amending 43A O.S.  
2011, Section 5-419, as amended by Section 6,  
Chapter 217, O.S.L. 2013 (43A O.S. Supp. 2015,  
Section 5-419), which relates to court orders for  
treatment; permitting orders for assisted outpatient  
treatment under certain circumstances; providing for  
noncodification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be  
codified in the Oklahoma Statutes reads as follows:

1 This act shall be known and may be cited as the "Labor  
2 Commissioner Mark Costello Act".

3 SECTION 2. AMENDATORY 43A O.S. 2011, Section 1-103, as  
4 last amended by Section 1, Chapter 161, O.S.L. 2015 (43A O.S. Supp.  
5 2015, Section 1-103), is amended to read as follows:

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

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

11 2. "Chair" means the chair of the Board of Mental Health and  
12 Substance Abuse Services;

13 3. "Mental illness" means a substantial disorder of thought,  
14 mood, perception, psychological orientation or memory that  
15 significantly impairs judgment, behavior, capacity to recognize  
16 reality or ability to meet the ordinary demands of life;

17 4. "Board" means the "Board of Mental Health and Substance  
18 Abuse Services" as established by the Mental Health Law;

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

22 6. "Indigent person" means a person who has not sufficient  
23 assets or resources to support the person and to support members of  
24

1 the family of the person lawfully dependent on the person for  
2 support;

3 7. "Facility" means any hospital, school, building, house or  
4 retreat, authorized by law to have the care, treatment or custody of  
5 an individual with mental illness, or drug or alcohol dependency,  
6 gambling addiction, eating disorders, an opioid substitution  
7 treatment program, including, but not limited to, public or private  
8 hospitals, community mental health centers, clinics, satellites or  
9 facilities; provided, that facility shall not mean a child guidance  
10 center operated by the State Department of Health;

11 8. "Consumer" means a person under care or treatment in a  
12 facility pursuant to the Mental Health Law, or in an outpatient  
13 status;

14 9. "Care and treatment" means medical care and behavioral  
15 health services, as well as food, clothing, and maintenance,  
16 furnished to a person;

17 10. Whenever in this law or in any other law, or in any rule or  
18 order made or promulgated pursuant to this law or to any other law,  
19 or in the printed forms prepared for the admission of consumers or  
20 for statistical reports, the words "insane", "insanity", "lunacy",  
21 "mentally sick", "mental disease" or "mental disorder" are used,  
22 such terms shall have equal significance to the words "mental  
23 illness";

24 11. "Licensed mental health professional" means:

- 1 a. a psychiatrist who is a diplomate of the American  
2 Board of Psychiatry and Neurology,
- 3 b. a psychiatrist who is a diplomate of the American  
4 Osteopathic Board of Neurology and Psychiatry,
- 5 c. a physician licensed pursuant to the Oklahoma  
6 Allopathic Medical and Surgical Licensure and  
7 Supervision Act or the Oklahoma Osteopathic Medicine  
8 Act,
- 9 ~~e.~~ d. a clinical psychologist who is duly licensed to  
10 practice by the State Board of Examiners of  
11 Psychologists,
- 12 ~~d.~~ e. a professional counselor licensed pursuant to the  
13 Licensed Professional Counselors Act,
- 14 ~~e.~~ f. a person licensed as a clinical social worker pursuant  
15 to the provisions of the Social Worker's Licensing  
16 Act,
- 17 ~~f.~~ g. a licensed marital and family therapist as defined in  
18 the Marital and Family Therapist Licensure Act,
- 19 ~~g.~~ h. a licensed behavioral practitioner as defined in the  
20 Licensed Behavioral Practitioner Act,
- 21 ~~h.~~ i. an advanced practice nurse as defined in the Oklahoma  
22 Nursing Practice Act,
- 23 ~~i.~~ j. a physician's assistant who is licensed in good  
24 standing in this state, or

1        ~~j.~~ k.    a licensed drug and alcohol counselor/mental health  
2                    ("LADC/MH") as defined in the Licensed Alcohol and  
3                    Drug Counselors Act;

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

7        13.    a.    "Person requiring treatment" means a person who  
8                    because of his or her mental illness or drug or  
9                    alcohol dependency:

10            (1)    poses a substantial risk of immediate physical  
11                    harm to self as manifested by evidence or serious  
12                    threats of or attempts at suicide or other  
13                    significant self-inflicted bodily harm,

14            (2)    poses a substantial risk of immediate physical  
15                    harm to another person or persons as manifested  
16                    by evidence of violent behavior directed toward  
17                    another person or persons,

18            (3)    has placed another person or persons in a  
19                    reasonable fear of violent behavior directed  
20                    towards such person or persons or serious  
21                    physical harm to them as manifested by serious  
22                    and immediate threats,

23            (4)    is in a condition of severe deterioration such  
24                    that, without immediate intervention, there

1 exists a substantial risk that severe impairment  
2 or injury will result to the person, or  
3 (5) poses a substantial risk of immediate serious  
4 physical injury to self or death as manifested by  
5 evidence that the person is unable to provide for  
6 and is not providing for his or her basic  
7 physical needs.

8 b. The mental health or substance abuse history of the  
9 person may be used as part of the evidence to  
10 determine whether the person is a person requiring  
11 treatment or an assisted outpatient. The mental  
12 health or substance abuse history of the person shall  
13 not be the sole basis for this determination.

14 c. Unless a person also meets the criteria established in  
15 subparagraph a or b of this paragraph, person  
16 requiring treatment or an assisted outpatient shall  
17 not mean:

18 (1) a person whose mental processes have been  
19 weakened or impaired by reason of advanced years,  
20 dementia, or Alzheimer's disease,

21 (2) a mentally retarded or developmentally disabled  
22 person as defined in Title 10 of the Oklahoma  
23 Statutes,

24 (3) a person with seizure disorder,

- 1 (4) a person with a traumatic brain injury, or  
2 (5) a person who is homeless.

3 d. A person who meets the criteria established in this  
4 section, but who is medically unstable, or the  
5 facility holding the person is unable to treat the  
6 additional medical conditions of that person should be  
7 discharged and transported in accordance with Section  
8 1-110 of this title;

9 14. "Petitioner" means a person who files a petition alleging  
10 that an individual is a person requiring treatment or an assisted  
11 outpatient;

12 15. "Executive director" means the person in charge of a  
13 facility as defined in this section;

14 16. "Private hospital or facility" means any general hospital  
15 maintaining a neuro-psychiatric unit or ward, or any private  
16 hospital or facility for care and treatment of a person having a  
17 mental illness, which is not supported by the state or federal  
18 government. The term "private hospital" or "facility" shall not  
19 include nursing homes or other facilities maintained primarily for  
20 the care of elderly and disabled persons;

21 17. "Individualized treatment plan" means a proposal developed  
22 during the stay of an individual in a facility, under the provisions  
23 of this title, which is specifically tailored to the treatment needs  
24 of the individual. Each plan shall clearly include the following:



- 1 a. a statement of treatment goals or objectives, based  
2 upon and related to a clinical evaluation, which can  
3 be reasonably achieved within a designated time  
4 interval,
- 5 b. treatment methods and procedures to be used to obtain  
6 these goals, which methods and procedures are related  
7 to each of these goals and which include specific  
8 prognosis for achieving each of these goals,
- 9 c. identification of the types of professional personnel  
10 who will carry out the treatment procedures, including  
11 appropriate medical or other professional involvement  
12 by a physician or other health professional properly  
13 qualified to fulfill legal requirements mandated under  
14 state and federal law,
- 15 d. documentation of involvement by the individual  
16 receiving treatment and, if applicable, the accordance  
17 of the individual with the treatment plan, and
- 18 e. a statement attesting that the executive director of  
19 the facility or clinical director has made a  
20 reasonable effort to meet the plan's individualized  
21 treatment goals in the least restrictive environment  
22 possible closest to the home community of the  
23 individual;
- 24

1 18. "Telemedicine" means the practice of health care delivery,  
2 diagnosis, consultation, evaluation, treatment, transfer of medical  
3 data, or exchange of medical education information by means of  
4 audio, video, or data communications. Telemedicine uses audio and  
5 video multimedia telecommunication equipment which permits two-way  
6 real-time communication between a health care practitioner and a  
7 patient who are not in the same physical location. Telemedicine  
8 shall not include consultation provided by telephone or facsimile  
9 machine; ~~and~~

10 19. "Recovery and recovery support" means nonclinical services  
11 that assist individuals and families to recover from alcohol or drug  
12 problems. They include social support, linkage to and coordination  
13 among allied service providers, including but not limited to  
14 transportation to and from treatment or employment, employment  
15 services and job training, case management and individual services  
16 coordination, life skills education, relapse prevention, housing  
17 assistance, child care, and substance abuse education;

18 20. "Assisted outpatient" means a person who:  
19 a. is eighteen (18) years of age or older,  
20 b. is either currently under the care of a facility  
21 certified by the Department of Mental Health and  
22 Substance Abuse Services as a Community Mental Health  
23 Center, or is being discharged from the custody of the  
24 Oklahoma Department of Corrections,

1        c. is suffering from a mental illness,  
2        d. is unlikely to survive safely in the community without  
3        supervision, based on a clinical determination,  
4        e. has a history of lack of compliance with treatment for  
5        mental illness that has:

6            (1) prior to the filing of a petition, at least twice  
7            within the last thirty-six (36) months been a  
8            significant factor in necessitating  
9            hospitalization or treatment in a hospital or  
10           residential facility, or receipt of services in a  
11           forensic or other mental health unit of a  
12           correctional facility, or

13           (2) prior to the filing of the petition, resulted in  
14           one or more acts of serious violent behavior  
15           toward self or others or threats of, or attempts  
16           at, serious physical harm to self or others  
17           within the last twenty-four (24) months,

18        (f) is, as a result of his or her mental illness, unlikely  
19        to voluntarily participate in outpatient treatment  
20        that would enable him or her to live safely in the  
21        community,

22        (g) in view of his or her treatment history and current  
23        behavior, is in need of assisted outpatient treatment  
24        in order to prevent a relapse or deterioration which

1           would be likely to result in serious harm to the  
2           person or persons as defined in this section, and  
3           (h) is likely to benefit from assisted outpatient  
4           treatment; and

5           21. "Assisted outpatient treatment" means outpatient services  
6           which have been ordered by the court pursuant to a treatment plan  
7           approved by the court to treat an assisted outpatient's mental  
8           illness and to assist the person in living and functioning in the  
9           community, or to attempt to prevent a relapse or deterioration that  
10           may reasonably be predicted to result in suicide or the need for  
11           hospitalization.

12           SECTION 3.           AMENDATORY           43A O.S. 2011, Section 1-106, is  
13           amended to read as follows:

14           Section 1-106. The district attorneys of this state shall  
15           represent the people of Oklahoma in all court proceedings provided  
16           for in the Mental Health Law in which the State of Oklahoma  
17           including any facility operated by the Department of Mental Health  
18           and Substance Abuse Services is the petitioner for involuntary  
19           commitment or assisted outpatient treatment.

20           SECTION 4.           AMENDATORY           43A O.S. 2011, Section 1-107, is  
21           amended to read as follows:

22           Section 1-107. A. Civil actions for involuntary commitment or  
23           assisted outpatient treatment of a person may be brought in any of  
24           the following counties:

1 1. The person's county of residence;

2 2. The county where the person was first taken into protective  
3 custody; or

4 3. The county in which the person is being held on emergency  
5 detention.

6 B. If a civil action for involuntary commitment or assisted  
7 outpatient treatment can be brought in more than one county pursuant  
8 to the provisions of subsection A of this section, the action may be  
9 filed in any of such counties. No court shall refuse any case  
10 solely because the action may have been brought in another county.

11 C. 1. Hearings in actions for involuntary commitment or  
12 assisted outpatient treatment may be held within the mental health  
13 facility in which the person is being detained or is to be committed  
14 whenever the judge deems it to be in the best interests of the  
15 consumer.

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

20 D. The court may conduct any nonjury hearing required or  
21 authorized pursuant to the provisions of this title for detained or  
22 confined persons, at the discretion of the judge, by video  
23 teleconferencing after advising the person subject to possible  
24 detention or commitment of his or her constitutional rights. If the

1 video teleconferencing hearing is conducted, the image of the  
2 detainee or person subject to commitment may be broadcast by secure  
3 video to the judge. A secure video system shall provide for two-way  
4 communications including image and sound between the detainee and the  
5 judge.

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

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

13 SECTION 5. AMENDATORY 43A O.S. 2011, Section 1-108, is  
14 amended to read as follows:

15 Section 1-108. A. Anyone in custody as a person in need of  
16 treatment, assisted outpatient or a minor in need of mental health  
17 treatment, pursuant to the provisions of this title, is entitled to  
18 a writ of habeas corpus, upon a proper application made by such  
19 person or some relative or friend in the person's behalf pursuant to  
20 the provisions of Sections 1331 through 1355 of Title 12 of the  
21 Oklahoma Statutes.

22 B. Upon the return of a writ of habeas corpus, whether the  
23 person is a person requiring treatment or an assisted outpatient as  
24 defined by Section 1-103 of this title or whether the minor is a

1 minor requiring treatment as defined by Section 5-502 of this title  
2 shall be inquired into and determined.

3 C. Notice of hearing on the writ must be given to the guardian  
4 of the consumer, if one has been appointed, to the person who  
5 applied for the original commitment and to such other persons as the  
6 court may direct.

7 D. The medical or other history of the consumer, as it appears  
8 in the facility record, shall be given in evidence, and the  
9 executive director of the facility wherein the consumer is held in  
10 custody shall testify as to the condition of the consumer.

11 E. The executive director shall make available for examination  
12 by physicians selected by the person seeking the writ, the consumer  
13 whose freedom is sought by writ of habeas corpus.

14 F. Any evidence, including evidence adduced in any previous  
15 habeas corpus proceedings, touching upon the mental condition of the  
16 consumer shall be admitted in evidence.

17 SECTION 6. AMENDATORY 43A O.S. 2011, Section 3-325, is  
18 amended to read as follows:

19 Section 3-325. A. The Department of Mental Health and  
20 Substance Abuse Services is hereby authorized to contract with  
21 public and private entities it certifies, as required by law, for  
22 the purpose of providing treatment, evaluation, prevention and other  
23 services related to the duties of the Department set forth in this  
24 title.

1 B. The Department of Mental Health and Substance Abuse Services  
2 shall not enter into a contract with any of the following programs  
3 unless such program has been certified by the Department pursuant to  
4 the provisions of this title:

- 5 1. Community mental health centers;
- 6 2. Community residential mental health programs;
- 7 3. Programs of assertive community treatment;
- 8 4. Eating disorder treatment programs;
- 9 5. Gambling addiction treatment programs;
- 10 6. Programs providing alcohol or drug abuse treatment services  
11 as set forth under the Oklahoma Alcohol and Drug Abuse Services Act;
- 12 7. Community-based structured crisis centers; and
- 13 8. Mental health facilities.

14 SECTION 7. AMENDATORY 43A O.S. 2011, Section 5-410, as  
15 last amended by Section 1, Chapter 217, O.S.L. 2013 (43A O.S. Supp.  
16 2015, Section 5-410), is amended to read as follows:

17 Section 5-410. A. The following persons may file or request  
18 the district attorney to file a petition with the district court,  
19 upon which is hereby conferred jurisdiction, to determine whether an  
20 individual is a person requiring treatment, and to order the least  
21 restrictive appropriate treatment for the person:

- 22 1. A treatment advocate as defined in Section 1-109.1 of this  
23 title;



1        2. The father, mother, husband, wife, grandparent, brother,  
2 sister, guardian or child, over the age of eighteen (18) years, of  
3 an individual alleged to be a person requiring treatment;

4        3. A licensed mental health professional;

5        4. A person in charge of any correctional institution;

6        5. Any peace officer within the county in which the individual  
7 alleged to be a person requiring treatment resides or may be found;  
8 or

9        6. The district attorney in whose district the person resides  
10 or may be found.

11        B. The petition shall contain a statement of the facts upon  
12 which the allegation is based and, if known, the names and addresses  
13 of any witnesses to the alleged facts.

14        1. The petition shall be verified and made under penalty of  
15 perjury.

16        2. A request for the prehearing detention of the individual  
17 alleged to be a person requiring treatment may be attached to the  
18 petition.

19        3. If the individual alleged to be a person requiring treatment  
20 is being held in emergency detention, a copy of the mental health  
21 evaluation shall be attached to the petition.

22        C. Petitions filed to determine if an individual should be  
23 ordered to assisted outpatient treatment as defined by Section 1-103  
24 of this title shall only be filed by a licensed mental health

1 professional employed by the Department of Mental Health and  
2 Substance Abuse Services or employed by a community mental health  
3 center certified by the Department pursuant to Section 3-306.1 of  
4 this title.

5 D. The inpatient mental health treatment of minors shall be  
6 pursuant to the provisions of the Inpatient Mental Health and  
7 Substance Abuse Treatment of Minors Act.

8 SECTION 8. AMENDATORY 43A O.S. 2011, Section 5-416, is  
9 amended to read as follows:

10 Section 5-416. A. The court, in considering a commitment  
11 petition filed under Section 5-410 ~~or Section 9-102~~ of this title,  
12 shall not order hospitalization without a thorough consideration of  
13 available treatment alternatives to hospitalization, or without  
14 addressing the competency of the consumer to consent to or refuse  
15 the treatment that is ordered including, but not limited to, the  
16 rights of the consumer:

- 17 1. To be heard concerning the treatment of the consumer; and
- 18 2. To refuse medications.

19 B. 1. If the court, in considering a commitment petition filed  
20 under Section 5-410 ~~or Section 9-102~~ of this title, finds that a  
21 program other than hospitalization, including an assisted outpatient  
22 treatment program, is adequate to meet the treatment needs of the  
23 individual and is sufficient to prevent injury to the individual or  
24 to others, the court may order the individual to receive whatever

1 treatment other than hospitalization is appropriate for a period set  
2 by the court; provided, the court may only order assisted outpatient  
3 treatment if the individual meets the criteria set forth in Section  
4 1-103 of this title and in subsection F of this section. During  
5 this time the court:

6 a. shall have continuing jurisdiction over the individual  
7 as a person requiring treatment or an assisted  
8 outpatient, and

9 b. shall periodically, no less often than annually,  
10 review the treatment needs of the individual and  
11 determine whether or not to continue, discontinue, or  
12 modify the treatment.

13 2. If at any time it comes to the attention of the court from a  
14 person competent to file or request the filing of a petition,  
15 pursuant to subsection A of Section 5-410 of this title, that the  
16 individual ordered to undergo a program of alternative treatment to  
17 hospitalization is not complying with the order or that the  
18 alternative treatment program has not been sufficient to prevent  
19 harm or injury which the individual may be inflicting upon himself  
20 or others, the court may order the person to show cause why the  
21 court should not:

22 a. implement other alternatives to hospitalization,  
23 modify or rescind the original order or direct the  
24 individual to undergo another program of alternative

1 treatment, if necessary and appropriate, based on  
2 written findings of the court, or

3 b. enter an order of admission pursuant to the provisions  
4 of this title, directing that the person be committed  
5 to inpatient treatment and, if the individual refuses  
6 to comply with this order of inpatient treatment, the  
7 court may direct a peace officer to take the  
8 individual into protective custody and transport the  
9 person to a public or private facility designated by  
10 the court.

11 3. The court shall give notice to the person ordered to show  
12 cause and hold the hearing within seventy-two (72) hours of the  
13 notice. The person ordered to undergo a program of alternative  
14 treatment shall not be detained in emergency detention pending the  
15 show cause hearing unless, prior to the emergency detention, the  
16 person has undergone an initial examination and a determination is  
17 made that emergency detention is warranted.

18 4. If an order of alternative treatment will expire without  
19 further review by the court and it is believed that the individual  
20 continues to require treatment, a person competent to file or  
21 request the filing of a petition, pursuant to subsection A of  
22 Section 5-410 of this title, may file or request the district  
23 attorney file either an application for an extension of the court's  
24 previous order or an entirely new petition for a determination that

1 the individual is a person requiring treatment or an assisted  
2 outpatient.

3 5. A hearing on the application or petition filed pursuant to  
4 paragraph 4 of this subsection shall be held within ten (10) days  
5 after the application or petition is filed, unless the court extends  
6 the time for good cause. In setting the matter for hearing, the  
7 court shall consider whether or not the prior orders of the court  
8 will expire during the pendency of the hearing and shall make  
9 appropriate orders to protect the interests of the individual who is  
10 the subject of the hearing.

11 C. Prior to ordering the inpatient treatment of an individual,  
12 the court shall inquire into the adequacy of treatment to be  
13 provided to the individual by the facility, and inpatient treatment  
14 shall not be ordered unless the facility in which the individual is  
15 to be treated can provide such person with treatment which is  
16 adequate and appropriate to such person's condition.

17 D. Nothing in this section shall prohibit the Department of  
18 Mental Health and Substance Abuse Services or the facility or  
19 program providing the alternative treatment from discharging a  
20 person admitted pursuant to this section, at a time prior to the  
21 expiration of the period of alternative treatment, or any extension  
22 thereof. The facility or program providing the alternative  
23 treatment shall file a report with the court outlining the  
24

1 disposition of each person admitted pursuant to this section within  
2 forty-eight (48) hours after discharge.

3 E. Notice of any proceedings pursuant to this section shall be  
4 given to the person, the person's guardian, the person's attorney,  
5 and the person filing the petition or application.

6 F. If the petition alleges the person to be an assisted  
7 outpatient as provided in Section 7 of this act, the court shall not  
8 order assisted outpatient treatment unless the petitioning licensed  
9 mental health professional develops and provides to the court a  
10 proposed written treatment plan. All service providers included in  
11 the treatment plan shall be notified regarding their inclusion in  
12 the written treatment plan. Where deemed advisable, the court may  
13 make a finding that a person is an assisted outpatient and delay the  
14 treatment order until such time as the treatment plan is provided to  
15 the court. Such plan shall be provided to the court no later than  
16 the date set by the court pursuant to subsection J of this section.

17 G. The licensed mental health professional who develops the  
18 written treatment plan shall provide the following persons with an  
19 opportunity to actively participate in the development of such plan:

- 20 1. The assisted outpatient;
- 21 2. The treating physician, if any;
- 22 3. The treatment advocate as defined in Section 1-109.1 of this  
23 title, if any; and

24

1       4. An individual significant to the assisted outpatient,  
2 including any relative, close friend or individual otherwise  
3 concerned with the welfare of the assisted outpatient, upon the  
4 request of the assisted outpatient.

5       H. The licensed mental health professional shall make a  
6 reasonable effort to gather relevant information for the development  
7 of the treatment plan from a member of the assisted outpatient's  
8 family or significant other. If the assisted outpatient has  
9 executed an advance directive for mental health treatment, the  
10 physician shall consider any directions included in such advance  
11 directive for mental health treatment in developing the written  
12 treatment plan.

13       I. The court shall not order assisted outpatient treatment  
14 unless the petitioner testifies to explain the proposed written  
15 treatment plan; provided, the parties may stipulate upon mutual  
16 consent that the petitioner need not testify. The petitioner shall  
17 state facts which establish that such treatment is the least  
18 restrictive alternative. If the assisted outpatient has executed an  
19 advance directive for mental health treatment, the licensed mental  
20 health professional shall state the consideration given to any  
21 directions included in such advance directive for mental health  
22 treatment in developing the written treatment plan. Such testimony  
23 shall be given on the date set by the court pursuant to subsection J  
24 of this section.

1 J. If the court has yet to be provided with a written treatment  
2 plan at the time of the hearing in which the court finds a person to  
3 be an assisted outpatient, the court shall order such treatment plan  
4 and testimony no later than the third day, excluding Saturdays,  
5 Sundays and holidays, immediately following the date of such hearing  
6 and order; provided, the parties may stipulate upon mutual consent  
7 that such testimony need not be provided. Upon receiving such plan  
8 and any required testimony, the court may order assisted outpatient  
9 treatment as provided in this section.

10 K. A court may order the patient to self-administer  
11 psychotropic drugs or accept the administration of such drugs by  
12 authorized personnel as part of an assisted outpatient treatment  
13 program. Such order may specify the type and dosage range of such  
14 psychotropic drugs and such order shall be effective for the  
15 duration of such assisted outpatient treatment.

16 L. A copy of any court order for assisted outpatient treatment  
17 shall be served personally, or by mail, facsimile or electronic  
18 means, upon the assisted outpatient, the assisted outpatient  
19 treatment program and all others entitled to notice under the  
20 provisions of subsection D of Section 5-412 of this title.

21 M. The initial order for assisted outpatient treatment shall be  
22 for a period of one (1) year. Within thirty (30) days prior to the  
23 expiration of the order, a licensed mental health professional  
24 employed by the Department of Mental Health and Substance Abuse



1 Services or employed by a community mental health center certified  
2 by the Department pursuant to Section 3-306.1 of this title may file  
3 a petition to extend the order of outpatient treatment. Notice  
4 shall be given in accordance with Section 5-412 of this title. The  
5 court shall hear the petition, review the treatment plan and  
6 determine if the assisted outpatient continues to meet the criteria  
7 for assisted outpatient treatment and such treatment is the least  
8 restrictive alternative. If the court finds the assisted outpatient  
9 treatment should continue, it will make such an order extending the  
10 assisted treatment an additional year and order the treatment plan  
11 updated as necessary. Subsequent extensions of the order may be  
12 obtained in the same manner. If the court's disposition of the  
13 motion does not occur prior to the expiration date of the current  
14 order, the current order shall remain in effect for up to thirty  
15 (30) additional days until such disposition.

16 N. In addition to any other right or remedy available by law  
17 with respect to the order for assisted outpatient treatment, the  
18 assisted outpatient or anyone acting on the assisted outpatient's  
19 behalf may petition the court on notice to every facility providing  
20 treatment pursuant to the assisted outpatient treatment order to  
21 stay, vacate or modify the order.

22 O. Facilities providing treatment pursuant to the assisted  
23 outpatient treatment order shall petition the court for approval  
24 before instituting a proposed material change in the assisted

1 outpatient treatment plan, unless such change is authorized by the  
2 order of the court. Such petition shall be filed on notice to the  
3 assisted outpatient, any treatment advocate designated by the  
4 assisted outpatient pursuant to this title, any attorney  
5 representing the assisted outpatient, and any guardian appointed by  
6 the court to represent the assisted outpatient. Not later than five  
7 (5) days after receiving such petition, excluding Saturdays, Sundays  
8 and holidays, the court shall hold a hearing on the petition;  
9 provided, that if the assisted outpatient informs the court that he  
10 or she agrees to the proposed material change, the court may approve  
11 such change without a hearing. Nonmaterial changes may be  
12 instituted to the assisted outpatient treatment plan without court  
13 approval. For the purposes of this subsection, a material change is  
14 an addition or deletion of a category of services to or from a  
15 current assisted outpatient treatment plan or any deviation, without  
16 the assisted outpatient's consent, from the terms of a current order  
17 relating to the administration of psychotropic drugs.

18 P. Where, in the clinical judgment of a licensed mental health  
19 professional:

20 1. The assisted outpatient has failed or refused to comply with  
21 the assisted outpatient treatment;

22 2. Efforts were made to solicit compliance; and

23 3. Such assisted outpatient appears to be a person requiring  
24 treatment,

1 the licensed mental health professional may cause the assisted  
2 outpatient to be taken into protective custody pursuant to the  
3 provisions of Sections 5-206 through 5-209 of this title or may  
4 refer or initiate proceedings pursuant to Sections 5-410 through 5-  
5 415 of this title for involuntary commitment to a hospital, or may  
6 return the assisted outpatient to a facility providing treatment  
7 pursuant to the assisted outpatient treatment plan to determine if  
8 the assisted outpatient will comply with the treatment plan.

9 Failure or refusal to comply with assisted outpatient treatment  
10 shall include, but not be limited to, a substantial failure to take  
11 medication, to submit to blood testing or urinalysis where such is  
12 part of the treatment plan, failure of such tests or failure to  
13 receive treatment for alcohol or substance abuse if such is part of  
14 the treatment plan.

15 Q. Failure to comply with an order of assisted outpatient  
16 treatment shall not be grounds for involuntary civil commitment or a  
17 finding of contempt of court.

18 SECTION 9. AMENDATORY 43A O.S. 2011, Section 5-417, as  
19 amended by Section 3, Chapter 3, O.S.L. 2013 (43A O.S. Supp. 2015,  
20 Section 5-417), is amended to read as follows:

21 Section 5-417. A precommitment examination ordered by the court  
22 shall include, but is not limited to:

- 23 1. A physical evaluation;
- 24 2. A mental evaluation;

1 3. A social history;

2 4. A study of the individual's family and community situation;

3 5. A list of available forms of care and treatment which may  
4 serve as an alternative to admission to a hospital;

5 6. Powers of attorney or advance health care directives, if  
6 any; and

7 7. A recommendation as to the least restrictive placement  
8 suitable to the person's needs, as identified by this section,  
9 should the individual be ordered to undergo treatment by the court.  
10 Programs other than hospitalization to be considered shall include,  
11 but not be limited to, outpatient clinics, assisted outpatient  
12 treatment where available, extended care facilities, nursing homes,  
13 sheltered care arrangements, home care and homemaker services, and  
14 other treatment programs or suitable arrangements.

15 SECTION 10. AMENDATORY 43A O.S. 2011, Section 5-419, as  
16 amended by Section 6, Chapter 217, O.S.L. 2013 (43A O.S. Supp. 2015,  
17 Section 5-419), is amended to read as follows:

18 Section 5-419. A. The court may modify an order for  
19 involuntary inpatient commitment and order alternative treatment  
20 pursuant to the provisions of this section upon request of the  
21 person committed or the administrator of a facility to which a  
22 person has been involuntarily committed for inpatient treatment.

23 The court shall give notice to the person affected thereby and to  
24 each individual required to receive notice pursuant to Section 5-412

1 of this title, to appear within five (5) regular court days, or as  
2 many other days as the court may grant, and show cause why the  
3 modification shall not be made. The notice shall contain the  
4 following information:

5 1. The individual ordered to undergo a program of alternative  
6 treatment to hospitalization is not complying with the previous  
7 order, or that the alternative treatment program has not been  
8 sufficient to prevent harm or injury to the person or others, or the  
9 person committed for inpatient care and treatment is eligible for  
10 discharge and that an evaluation conducted prior to discharge  
11 determined that an order for alternative treatment is necessary in  
12 order to prevent impairment or injury to the person;

13 2. A statement of the facts upon which the alleged change of  
14 condition is based and a copy of any written findings entered by the  
15 court;

16 3. Notice of the time and place of the show cause hearing;

17 4. Notice of the types of modifications that the court can make  
18 pursuant to this hearing;

19 5. The witnesses who shall testify or offer evidence for the  
20 modification which are known to the court;

21 6. That the individual has the right to an attorney, and that  
22 if the individual cannot afford an attorney, one will be provided;  
23 and

24

1       7. That the individual has the right to cross-examine  
2 witnesses, and to call witnesses in such person's own defense.

3       B. The court may only order assisted outpatient treatment as  
4 defined by Section 1-103 of this title if the person meets the  
5 conditions for assisted outpatient treatment provided by this title.

6       SECTION 11. This act shall become effective November 1, 2016.

7       Passed the Senate the 15th day of March, 2016.

8

9

\_\_\_\_\_  
Presiding Officer of the Senate

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11       Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
12 2016.

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Presiding Officer of the House  
of Representatives

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1 ENGROSSED HOUSE  
2 BILL NO. 1697

By: Denney, Shelton, Sherrer  
and Hoskin of the House

3 and

4 Griffin of the Senate

5  
6  
7 [ mental health - permitting court to order assisted  
8 outpatient treatment - effective date ]  
9

10  
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. AMENDATORY 43A O.S. 2011, Section 1-103, as  
13 last amended by Section 1, Chapter 213, O.S.L. 2013 (43A O.S. Supp.  
14 2014, Section 1-103), is amended to read as follows:

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

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

20 2. "Chair" means the chair of the Board of Mental Health and  
21 Substance Abuse Services;

22 3. "Mental illness" means a substantial disorder of thought,  
23 mood, perception, psychological orientation or memory that  
24

1 significantly impairs judgment, behavior, capacity to recognize  
2 reality or ability to meet the ordinary demands of life;

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

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

8 6. "Indigent person" means a person who has not sufficient  
9 assets or resources to support the person and to support members of  
10 the family of the person lawfully dependent on the person for  
11 support;

12 7. "Facility" means any hospital, school, building, house or  
13 retreat, authorized by law to have the care, treatment or custody of  
14 an individual with mental illness, or drug or alcohol dependency,  
15 gambling addiction, eating disorders, an opioid substitution  
16 treatment program, including, but not limited to, public or private  
17 hospitals, community mental health centers, clinics, satellites or  
18 facilities; provided, that facility shall not mean a child guidance  
19 center operated by the State Department of Health;

20 8. "Consumer" means a person under care or treatment in a  
21 facility pursuant to the Mental Health Law, or in an outpatient  
22 status;

23

24



1 9. "Care and treatment" means medical care and behavioral  
2 health services, as well as food, clothing and maintenance,  
3 furnished to a person;

4 10. Whenever in this law or in any other law, or in any rule or  
5 order made or promulgated pursuant to this law or to any other law,  
6 or in the printed forms prepared for the admission of consumers or  
7 for statistical reports, the words "insane", "insanity", "lunacy",  
8 "mentally sick", "mental disease" or "mental disorder" are used,  
9 such terms shall have equal significance to the words "mental  
10 illness";

11 11. "Licensed mental health professional" means:

- 12 a. a psychiatrist who is a diplomate of the American  
13 Board of Psychiatry and Neurology,  
14 b. a psychiatrist who is a diplomate of the American  
15 Osteopathic Board of Neurology and Psychiatry,  
16 c. a physician licensed pursuant to the Oklahoma  
17 Allopathic Medical and Surgical Licensure and  
18 Supervision Act or the Oklahoma Osteopathic Medicine  
19 Act,  
20 ~~e.~~ d. a clinical psychologist who is duly licensed to  
21 practice by the State Board of Examiners of  
22 Psychologists,  
23 ~~d.~~ e. a professional counselor licensed pursuant to the  
24 Licensed Professional Counselors Act,

1       ~~e.~~ f.     a person licensed as a clinical social worker pursuant  
2                   to the provisions of the Social Worker's Licensing  
3                   Act,

4       ~~f.~~ g.     a licensed marital and family therapist as defined in  
5                   the Marital and Family Therapist Licensure Act,

6       ~~g.~~ h.     a licensed behavioral practitioner as defined in the  
7                   Licensed Behavioral Practitioner Act,

8       ~~h.~~ i.     an advanced practice nurse as defined in the Oklahoma  
9                   Nursing Practice Act specializing in mental health,

10      ~~i.~~ j.     a physician's assistant who is licensed in good  
11                   standing in this state and has received specific  
12                   training for and is experienced in performing mental  
13                   health therapeutic, diagnostic, or counseling  
14                   functions, or

15      ~~j.~~ k.     a licensed drug and alcohol counselor/mental health  
16                   ("LADC/MH") as defined in the Licensed Alcohol and  
17                   Drug Counselors Act;

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

21      13.    a.    "Person requiring treatment" means a person who  
22              because of his or her mental illness or drug or  
23              alcohol dependency:

- 1 (1) poses a substantial risk of immediate physical  
2 harm to self as manifested by evidence or serious  
3 threats of or attempts at suicide or other  
4 significant self-inflicted bodily harm,
- 5 (2) poses a substantial risk of immediate physical  
6 harm to another person or persons as manifested  
7 by evidence of violent behavior directed toward  
8 another person or persons,
- 9 (3) has placed another person or persons in a  
10 reasonable fear of violent behavior directed  
11 towards such person or persons or serious  
12 physical harm to them as manifested by serious  
13 and immediate threats,
- 14 (4) is in a condition of severe deterioration such  
15 that, without immediate intervention, there  
16 exists a substantial risk that severe impairment  
17 or injury will result to the person, or
- 18 (5) poses a substantial risk of immediate serious  
19 physical injury to self or death as manifested by  
20 evidence that the person is unable to provide for  
21 and is not providing for his or her basic  
22 physical needs.

23 b. "Assisted outpatient" means a person who:

- 24 (1) is eighteen (18) years of age or older,

1           (2) is suffering from a mental illness,

2           (3) is unlikely to survive safely in the community  
3           without supervision, based on a clinical  
4           determination,

5           (4) has a history of lack of compliance with  
6           treatment for mental illness that has:

7           (a) prior to the filing of a petition, at least  
8           twice within the last thirty-six (36) months  
9           been a significant factor in necessitating  
10           hospitalization or treatment in a hospital  
11           or residential facility, or receipt of  
12           services in a forensic or other mental  
13           health unit of a correctional facility, or

14           (b) prior to the filing of the petition,  
15           resulted in one or more acts of serious  
16           violent behavior toward self or others or  
17           threats of, or attempts at, serious physical  
18           harm to self or others within the last  
19           twenty-four (24) months,

20           (5) is, as a result of his or her mental illness,  
21           unlikely to voluntarily participate in outpatient  
22           treatment that would enable him or her to live  
23           safely in the community,

1           (6) in view of his or her treatment history and  
2           current behavior, is in need of assisted  
3           outpatient treatment in order to prevent a  
4           relapse or deterioration which would be likely to  
5           result in serious harm to the person or persons  
6           as defined in this section, and  
7           (7) is likely to benefit from assisted outpatient  
8           treatment.

9           c. The mental health or substance abuse history of the  
10           person may be used as part of the evidence to  
11           determine whether the person is a person requiring  
12           treatment or an assisted outpatient. The mental  
13           health or substance abuse history of the person shall  
14           not be the sole basis for this determination.

15           ~~e.~~ d. Unless a person also meets the criteria established in  
16           subparagraph a or b of this paragraph, person  
17           requiring treatment or an assisted outpatient shall  
18           not mean:

19           (1) a person whose mental processes have been  
20           weakened or impaired by reason of advanced years,  
21           dementia, or Alzheimer's disease,

22           (2) a mentally retarded or developmentally disabled  
23           person as defined in Title 10 of the Oklahoma  
24           Statutes,

- 1 (3) a person with seizure disorder,  
2 (4) a person with a traumatic brain injury, or  
3 (5) a person who is homeless.

4 ~~d.~~ e. A person who meets the criteria established in this  
5 section, but who is medically unstable, or the  
6 facility holding the person is unable to treat the  
7 additional medical conditions of that person should be  
8 discharged and transported in accordance with Section  
9 1-110 of this title;

10 14. "Petitioner" means a person who files a petition alleging  
11 that an individual is a person requiring treatment or an assisted  
12 outpatient;

13 15. "Executive director" means the person in charge of a  
14 facility as defined in this section;

15 16. "Private hospital or facility" means any general hospital  
16 maintaining a neuro-psychiatric unit or ward, or any private  
17 hospital or facility for care and treatment of a person having a  
18 mental illness, which is not supported by the state or federal  
19 government. The term "private hospital" or "facility" shall not  
20 include nursing homes or other facilities maintained primarily for  
21 the care of elderly and disabled persons;

22 17. "Individualized treatment plan" means a proposal developed  
23 during the stay of an individual in a facility, under the provisions  
24

1 of this title, which is specifically tailored to the treatment needs  
2 of the individual. Each plan shall clearly include the following:

- 3 a. a statement of treatment goals or objectives, based  
4 upon and related to a clinical evaluation, which can  
5 be reasonably achieved within a designated time  
6 interval,
- 7 b. treatment methods and procedures to be used to obtain  
8 these goals, which methods and procedures are related  
9 to each of these goals and which include specific  
10 prognosis for achieving each of these goals,
- 11 c. identification of the types of professional personnel  
12 who will carry out the treatment procedures, including  
13 appropriate medical or other professional involvement  
14 by a physician or other health professional properly  
15 qualified to fulfill legal requirements mandated under  
16 state and federal law,
- 17 d. documentation of involvement by the individual  
18 receiving treatment and, if applicable, the accordence  
19 of the individual with the treatment plan, and
- 20 e. a statement attesting that the executive director of  
21 the facility or clinical director has made a  
22 reasonable effort to meet the plan's individualized  
23 treatment goals in the least restrictive environment

24

1 possible closest to the home community of the  
2 individual;

3 18. "Telemedicine" means the practice of health care delivery,  
4 diagnosis, consultation, evaluation, treatment, transfer of medical  
5 data, or exchange of medical education information by means of  
6 audio, video, or data communications. Telemedicine uses audio and  
7 video multimedia telecommunication equipment which permits two-way  
8 real-time communication between a health care practitioner and a  
9 patient who are not in the same physical location. Telemedicine  
10 shall not include consultation provided by telephone or facsimile  
11 machine; ~~and~~

12 19. "Recovery and recovery support" means nonclinical services  
13 that assist individuals and families to recover from alcohol or drug  
14 problems. They include social support, linkage to and coordination  
15 among allied service providers, including but not limited to  
16 transportation to and from treatment or employment, employment  
17 services and job training, case management and individual services  
18 coordination, life skills education, relapse prevention, housing  
19 assistance, child care, and substance abuse education;

20 20. "Assisted outpatient program" means a system to arrange for  
21 and coordinate the provision of assisted outpatient treatment, to  
22 monitor treatment compliance by assisted outpatients, to evaluate  
23 the condition or needs of assisted outpatients, to take appropriate  
24



1 steps to address the needs of such individuals and to ensure  
2 compliance with court orders; and

3 21. "Assisted outpatient treatment" means outpatient services  
4 which have been ordered by the court pursuant to a treatment plan  
5 approved by the court to treat an assisted outpatient's mental  
6 illness and to assist the person in living and functioning in the  
7 community, or to attempt to prevent a relapse or deterioration that  
8 may reasonably be predicted to result in suicide or the need for  
9 hospitalization.

10 SECTION 2. AMENDATORY 43A O.S. 2011, Section 1-106, is  
11 amended to read as follows:

12 Section 1-106. The district attorneys of this state shall  
13 represent the people of Oklahoma in all court proceedings provided  
14 for in the Mental Health Law in which the State of Oklahoma  
15 including any facility operated by the Department of Mental Health  
16 and Substance Abuse Services is the petitioner for involuntary  
17 commitment or assisted outpatient treatment.

18 SECTION 3. AMENDATORY 43A O.S. 2011, Section 1-107, is  
19 amended to read as follows:

20 Section 1-107. A. Civil actions for involuntary commitment or  
21 assisted outpatient treatment of a person may be brought in any of  
22 the following counties:

23 1. The person's county of residence;

24

1           2. The county where the person was first taken into protective  
2 custody; or

3           3. The county in which the person is being held on emergency  
4 detention.

5           B. If a civil action for involuntary commitment or assisted  
6 outpatient treatment can be brought in more than one county pursuant  
7 to the provisions of subsection A of this section, the action may be  
8 filed in any of such counties. No court shall refuse any case  
9 solely because the action may have been brought in another county.

10          C. 1. Hearings in actions for involuntary commitment or  
11 assisted outpatient treatment may be held within the mental health  
12 facility in which the person is being detained or is to be committed  
13 whenever the judge deems it to be in the best interests of the  
14 consumer.

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

19          D. The court may conduct any nonjury hearing required or  
20 authorized pursuant to the provisions of this title for detained or  
21 confined persons, at the discretion of the judge, by video  
22 teleconferencing after advising the person subject to possible  
23 detention or commitment of his or her constitutional rights. If the  
24 video teleconferencing hearing is conducted, the image of the

1 detainee or person subject to commitment may be broadcast by secure  
2 video to the judge. A secure video system shall provide for two-way  
3 communications including image and sound between the detainee and the  
4 judge.

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

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

12 SECTION 4. AMENDATORY 43A O.S. 2011, Section 1-108, is  
13 amended to read as follows:

14 Section 1-108. A. Anyone in custody as a person in need of  
15 treatment, assisted outpatient or a minor in need of mental health  
16 treatment, pursuant to the provisions of this title, is entitled to  
17 a writ of habeas corpus, upon a proper application made by such  
18 person or some relative or friend in the person's behalf pursuant to  
19 the provisions of Sections 1331 through 1355 of Title 12 of the  
20 Oklahoma Statutes.

21 B. Upon the return of a writ of habeas corpus, whether the  
22 person is a person requiring treatment or an assisted outpatient as  
23 defined by Section 1-103 of this title or whether the minor is a  
24

1 minor requiring treatment as defined by Section 5-502 of this title  
2 shall be inquired into and determined.

3 C. Notice of hearing on the writ must be given to the guardian  
4 of the consumer, if one has been appointed, to the person who  
5 applied for the original commitment and to such other persons as the  
6 court may direct.

7 D. The medical or other history of the consumer, as it appears  
8 in the facility record, shall be given in evidence, and the  
9 executive director of the facility wherein the consumer is held in  
10 custody shall testify as to the condition of the consumer.

11 E. The executive director shall make available for examination  
12 by physicians selected by the person seeking the writ, the consumer  
13 whose freedom is sought by writ of habeas corpus.

14 F. Any evidence, including evidence adduced in any previous  
15 habeas corpus proceedings, touching upon the mental condition of the  
16 consumer shall be admitted in evidence.

17 SECTION 5. AMENDATORY 43A O.S. 2011, Section 3-325, is  
18 amended to read as follows:

19 Section 3-325. A. The Department of Mental Health and  
20 Substance Abuse Services is hereby authorized to contract with  
21 public and private entities it certifies, as required by law, for  
22 the purpose of providing treatment, evaluation, prevention and other  
23 services related to the duties of the Department set forth in this  
24 title.

1 B. The Department of Mental Health and Substance Abuse Services  
2 shall not enter into a contract with any of the following programs  
3 unless such program has been certified by the Department pursuant to  
4 the provisions of this title:

- 5 1. Community mental health centers;
- 6 2. Community residential mental health programs;
- 7 3. Programs of assertive community treatment;
- 8 4. Eating disorder treatment programs;
- 9 5. Gambling addiction treatment programs;
- 10 6. Programs providing alcohol or drug abuse treatment services  
11 as set forth under the Oklahoma Alcohol and Drug Abuse Services Act;
- 12 7. Community-based structured crisis centers; ~~and~~
- 13 8. Mental health facilities; and
- 14 9. Assisted outpatient treatment programs.

15 SECTION 6. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 5-410.1 of Title 43A, unless  
17 there is created a duplication in numbering, reads as follows:

18 The procedures, protections and orders for alleging and  
19 determining whether a person is an assisted outpatient, including  
20 petition, rights, notice, prehearing detention, mental health  
21 evaluation and hearings, shall be the same as those for a person  
22 requiring treatment provided in Section 5-410 et seq. of Title 43A  
23 of the Oklahoma Statutes. Assisted outpatient programs shall be  
24

1 ordered as provided in Section 5-416 of Title 43A of the Oklahoma  
2 Statutes.

3 SECTION 7. AMENDATORY 43A O.S. 2011, Section 5-416, is  
4 amended to read as follows:

5 Section 5-416. A. The court, in considering a commitment  
6 petition filed under Section 5-410 ~~or Section 9-102~~ of this title,  
7 shall not order hospitalization without a thorough consideration of  
8 available treatment alternatives to hospitalization, or without  
9 addressing the competency of the consumer to consent to or refuse  
10 the treatment that is ordered including, but not limited to, the  
11 rights of the consumer:

- 12 1. To be heard concerning the treatment of the consumer; and
- 13 2. To refuse medications.

14 B. 1. If the court, in considering a commitment petition filed  
15 under Section 5-410 ~~or Section 9-102~~ of this title, finds that a  
16 program other than hospitalization, including an assisted outpatient  
17 treatment program, is adequate to meet the treatment needs of the  
18 individual and is sufficient to prevent injury to the individual or  
19 to others, the court may order the individual to receive whatever  
20 treatment other than hospitalization is appropriate for a period set  
21 by the court. During this time the court:

- 22 a. shall have continuing jurisdiction over the individual  
23 as a person requiring treatment or an assisted  
24 outpatient, and

1           b.    shall periodically, no less often than annually,  
2                    review the treatment needs of the individual and  
3                    determine whether or not to continue, discontinue, or  
4                    modify the treatment.

5           2.    If at any time it comes to the attention of the court from a  
6 person competent to file or request the filing of a petition,  
7 pursuant to subsection A of Section 5-410 of this title, that the  
8 individual ordered to undergo a program of alternative treatment to  
9 hospitalization is not complying with the order or that the  
10 alternative treatment program has not been sufficient to prevent  
11 harm or injury which the individual may be inflicting upon himself  
12 or others, the court may order the person to show cause why the  
13 court should not:

14           a.    implement other alternatives to hospitalization,  
15                    modify or rescind the original order or direct the  
16                    individual to undergo another program of alternative  
17                    treatment, if necessary and appropriate, based on  
18                    written findings of the court, or

19           b.    enter an order of admission pursuant to the provisions  
20                    of this title, directing that the person be committed  
21                    to inpatient treatment and, if the individual refuses  
22                    to comply with this order of inpatient treatment, the  
23                    court may direct a peace officer to take the  
24                    individual into protective custody and transport the

1 person to a public or private facility designated by  
2 the court.

3 3. The court shall give notice to the person ordered to show  
4 cause and hold the hearing within seventy-two (72) hours of the  
5 notice. The person ordered to undergo a program of alternative  
6 treatment shall not be detained in emergency detention pending the  
7 show cause hearing unless, prior to the emergency detention, the  
8 person has undergone an initial examination and a determination is  
9 made that emergency detention is warranted.

10 4. If an order of alternative treatment will expire without  
11 further review by the court and it is believed that the individual  
12 continues to require treatment, a person competent to file or  
13 request the filing of a petition, pursuant to subsection A of  
14 Section 5-410 of this title, may file or request the district  
15 attorney file either an application for an extension of the court's  
16 previous order or an entirely new petition for a determination that  
17 the individual is a person requiring treatment or an assisted  
18 outpatient.

19 5. A hearing on the application or petition filed pursuant to  
20 paragraph 4 of this subsection shall be held within ten (10) days  
21 after the application or petition is filed, unless the court extends  
22 the time for good cause. In setting the matter for hearing, the  
23 court shall consider whether or not the prior orders of the court  
24 will expire during the pendency of the hearing and shall make



1 appropriate orders to protect the interests of the individual who is  
2 the subject of the hearing.

3 C. Prior to ordering the inpatient treatment of an individual,  
4 the court shall inquire into the adequacy of treatment to be  
5 provided to the individual by the facility, and inpatient treatment  
6 shall not be ordered unless the facility in which the individual is  
7 to be treated can provide such person with treatment which is  
8 adequate and appropriate to such person's condition.

9 D. Nothing in this section shall prohibit the Department of  
10 Mental Health and Substance Abuse Services or the facility or  
11 program providing the alternative treatment from discharging a  
12 person admitted pursuant to this section, at a time prior to the  
13 expiration of the period of alternative treatment, or any extension  
14 thereof. The facility or program providing the alternative  
15 treatment shall file a report with the court outlining the  
16 disposition of each person admitted pursuant to this section within  
17 forty-eight (48) hours after discharge.

18 E. Notice of any proceedings pursuant to this section shall be  
19 given to the person, the person's guardian, the person's attorney,  
20 and the person filing the petition or application.

21 F. If the petition alleges the person to be an assisted  
22 outpatient as provided in Section 6 of this act, the court shall not  
23 order assisted outpatient treatment unless a licensed mental health  
24 professional, in consultation with an assisted outpatient treatment

1 program, develops and provides to the court a proposed written  
2 treatment plan. All service providers included in the treatment  
3 plan shall be notified regarding their inclusion in the written  
4 treatment plan. Where deemed advisable, the court may make a  
5 finding that a person is an assisted outpatient and delay the  
6 treatment order until such time as the treatment plan is provided to  
7 the court. Such plan shall be provided to the court no later than  
8 the date set by the court pursuant to subsection J of this section.

9 G. The licensed mental health professional who develops the  
10 written treatment plan shall provide the following persons with an  
11 opportunity to actively participate in the development of such plan:

- 12 1. The assisted outpatient;
- 13 2. The treating physician, if any;
- 14 3. The treatment advocate as defined in Section 1-109.1 of this  
15 title, if any; and
- 16 4. An individual significant to the assisted outpatient,  
17 including any relative, close friend or individual otherwise  
18 concerned with the welfare of the assisted outpatient, upon the  
19 request of the assisted outpatient.

20 H. The licensed mental health professional shall make a  
21 reasonable effort to gather relevant information for the development  
22 of the treatment plan from a member of the assisted outpatient's  
23 family or significant other. If the assisted outpatient has  
24 executed an advance directive for mental health treatment, the

1 physician shall consider any directions included in such advance  
2 directive for mental health treatment in developing the written  
3 treatment plan.

4 I. The court shall not order assisted outpatient treatment  
5 unless a licensed mental health professional testifies to explain  
6 the proposed written treatment plan; provided, the parties may  
7 stipulate upon mutual consent that such licensed mental health  
8 professional need not testify. Such licensed mental health  
9 professional shall state facts which establish that such treatment  
10 is the least restrictive alternative. If the assisted outpatient  
11 has executed an advance directive for mental health treatment, the  
12 licensed mental health professional shall state the consideration  
13 given to any directions included in such advance directive for  
14 mental health treatment in developing the written treatment plan.  
15 Such testimony shall be given on the date set by the court pursuant  
16 to subsection J of this section.

17 J. If the court has yet to be provided with a written treatment  
18 plan at the time of the hearing in which the court finds a person to  
19 be an assisted outpatient, the court shall order such treatment plan  
20 and testimony no later than the third day, excluding Saturdays,  
21 Sundays and holidays, immediately following the date of such hearing  
22 and order; provided, the parties may stipulate upon mutual consent  
23 that such testimony need not be provided. Upon receiving such plan  
24

1 and any required testimony, the court may order assisted outpatient  
2 treatment as provided in this section.

3 K. A court may order the patient to self-administer  
4 psychotropic drugs or accept the administration of such drugs by  
5 authorized personnel as part of an assisted outpatient treatment  
6 program. Such order may specify the type and dosage range of such  
7 psychotropic drugs and such order shall be effective for the  
8 duration of such assisted outpatient treatment.

9 L. A copy of any court order for assisted outpatient treatment  
10 shall be served personally, or by mail, facsimile or electronic  
11 means, upon the assisted outpatient, the assisted outpatient  
12 treatment program and all others entitled to notice under the  
13 provisions of subsection D of Section 5-412 of this title.

14 M. The initial order for assisted outpatient treatment shall be  
15 for a period of one (1) year. Within thirty (30) days prior to the  
16 expiration of the order, any person listed in Section 5-410 of this  
17 title as a person who may file a petition may petition to extend the  
18 order of outpatient treatment. Notice shall be given in accordance  
19 with Section 5-412 of this title. The court shall hear the  
20 petition, review the treatment plan and determine if the assisted  
21 outpatient continues to meet the criteria for assisted outpatient  
22 treatment and such treatment is the least restrictive alternative.  
23 If the court finds the assisted outpatient treatment should continue  
24 it will make such an order extending the assisted treatment an

1 additional year and order the treatment plan updated as necessary.  
2 Subsequent extensions of the order may be obtained in the same  
3 manner. If the court's disposition of the motion does not occur  
4 prior to the expiration date of the current order, the current order  
5 shall remain in effect for up to thirty (30) additional days until  
6 such disposition.

7 N. In addition to any other right or remedy available by law  
8 with respect to the order for assisted outpatient treatment, the  
9 assisted outpatient or anyone acting on the assisted outpatient's  
10 behalf may petition the court on notice to the assisted outpatient  
11 treatment program, the original petitioner and all others entitled  
12 to notice under Section 5-412 of this title to stay, vacate or  
13 modify the order.

14 O. The assisted outpatient treatment program shall petition the  
15 court for approval before instituting a proposed material change in  
16 the assisted outpatient treatment plan, unless such change is  
17 authorized by the order of the court. Such petition shall be filed  
18 on notice to all parties entitled to notice under Section 5-412 of  
19 this title. Not later than five (5) days after receiving such  
20 petition, excluding Saturdays, Sundays and holidays, the court shall  
21 hold a hearing on the petition; provided, that if the assisted  
22 outpatient informs the court that he or she agrees to the proposed  
23 material change, the court may approve such change without a  
24 hearing. Nonmaterial changes may be instituted by the assisted

1 outpatient program without court approval. For the purposes of this  
2 subsection, a material change is an addition or deletion of a  
3 category of services to or from a current assisted outpatient  
4 treatment plan or any deviation, without the assisted outpatient's  
5 consent, from the terms of a current order relating to the  
6 administration of psychotropic drugs.

7 P. Where, in the clinical judgment of a licensed mental health  
8 professional:

9 1. The assisted outpatient has failed or refused to comply with  
10 the assisted outpatient treatment;

11 2. Efforts were made to solicit compliance; and

12 3. Such assisted outpatient appears to be a person requiring  
13 treatment,

14 the licensed mental health professional may cause the assisted  
15 outpatient to be taken into protective custody pursuant to the  
16 provisions of Sections 5-206 through 5-209 of this title or may  
17 refer or initiate proceedings pursuant to Sections 5-410 through 5-  
18 415 of this title for involuntary commitment to a hospital.

19 Failure or refusal to comply with assisted outpatient treatment  
20 shall include, but not be limited to, a substantial failure to take  
21 medication, to submit to blood testing or urinalysis where such is  
22 part of the treatment plan, failure of such tests or failure to  
23 receive treatment for alcohol or substance abuse if such is part of  
24 the treatment plan.

1 Q. Failure to comply with an order of assisted outpatient  
2 treatment shall not be grounds for involuntary civil commitment or a  
3 finding of contempt of court.

4 R. The Board of Mental Health and Substance Abuse Services  
5 shall promulgate rules and standards for certification of facilities  
6 or organizations that desire to be certified as an assisted  
7 outpatient treatment program to provide categories of outpatient  
8 services which have been ordered by the court for assisted  
9 outpatients. Such treatment may include case management services or  
10 assertive community treatment team services to provide care  
11 coordination and may also include, but not be limited to, any of the  
12 following categories of services:

13 1. Medication;

14 2. Medication or symptom management training or education;

15 3. Periodic blood tests or urinalysis to determine compliance  
16 with prescribed medications;

17 4. Individual or group therapy;

18 5. Day or partial day programming activities;

19 6. Educational and vocational training or activities;

20 7. Appointment of a representative payee or other financial  
21 management services;

22 8. Alcohol or substance abuse treatment and counseling and  
23 periodic or random tests for the presence of alcohol or illegal  
24 drugs for persons with a history of alcohol or substance abuse;

1        9. Supervision of living arrangements; and

2        10. Any other services, clinical or nonclinical, prescribed to  
3 treat the person's mental illness and to assist the person in living  
4 and functioning in the community, or to attempt to prevent a relapse  
5 or deterioration that may reasonably be predicted to result in  
6 suicide or the need for hospitalization.

7        SECTION 8.        AMENDATORY        43A O.S. 2011, Section 5-417, as  
8 amended by Section 3, Chapter 3, O.S.L. 2013 (43A O.S. Supp. 2014,  
9 Section 5-417), is amended to read as follows:

10        Section 5-417. A precommitment examination ordered by the court  
11 shall include, but is not limited to:

- 12        1. A physical evaluation;
- 13        2. A mental evaluation;
- 14        3. A social history;
- 15        4. A study of the individual's family and community situation;
- 16        5. A list of available forms of care and treatment which may  
17 serve as an alternative to admission to a hospital;
- 18        6. Powers of attorney or advance health care directives, if  
19 any; and
- 20        7. A recommendation as to the least restrictive placement  
21 suitable to the person's needs, as identified by this section,  
22 should the individual be ordered to undergo treatment by the court.  
23 Programs other than hospitalization to be considered shall include,  
24 but not be limited to, outpatient clinics, assisted outpatient



1 treatment where available, extended care facilities, nursing homes,  
2 sheltered care arrangements, home care and homemaker services, and  
3 other treatment programs or suitable arrangements.

4 SECTION 9. This act shall become effective November 1, 2016.

5 Passed the House of Representatives the 11th day of March, 2015.

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\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

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Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2015.

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Presiding Officer of the Senate

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