

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 SENATE BILL 1845

By: Treat

6 AS INTRODUCED

7 An Act relating to firearm disabilities; directing
8 court clerks to forward commitment orders to certain
9 entities; directing court clerks to provide certain
10 notice; authorizing petition for relief; requiring
11 service of petition; directing courts to consider
12 certain evidence; providing hearing procedures;
13 directing court clerks to forward orders to certain
14 entities; amending 43A O.S. 2011, Section 5-415, as
15 last amended by Section 5, Chapter 217, O.S.L. 2013
16 (43A O.S. Supp. 2013, Section 5-415), which relates
17 to hearing and records; conforming language;
18 providing for codification; and providing an
19 effective date.

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

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

24 A. When a court orders a commitment or makes a finding or
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

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

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

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

22 1. The circumstances regarding the firearm disabilities from
23 which relief is sought;
24

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

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

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

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

20 D. The clerk of the court shall promptly forward to the Federal
21 Bureau of Investigation or its successor agency for the sole purpose
22 of inclusion in the National Instant Criminal Background Check
23 system database and to the Oklahoma State Bureau of Investigation a
24 certified copy of the order granting relief under this section. If

1 the person does not have a handgun license, the Oklahoma State
2 Bureau of Investigation shall destroy the information within three
3 (3) days of receiving such information.

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

8 SECTION 2. AMENDATORY 43A O.S. 2011, Section 5-415, as
9 last amended by Section 5, Chapter 217, O.S.L. 2013 (43A O.S. Supp.
10 2013, Section 5-415), is amended to read as follows:

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

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

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

21 B. If the court deems it necessary, or if the person alleged to
22 be a person requiring treatment demands, the court shall schedule
23 the hearing on the petition as a jury trial to be held within one
24 hundred twenty (120) hours or five (5) days of the demand, excluding

1 weekends and holidays, or within as much additional time as is
2 requested by the attorney of such person upon good cause shown.

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

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

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

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

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

24

1 E. After the hearing, when the court determines the person to
2 be a person requiring treatment, the court shall order the person to
3 receive the least restrictive treatment consistent with the
4 treatment needs of the person and the safety of the person and
5 others.

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

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

18 3. If the court orders the person to be committed for
19 involuntary inpatient treatment, the court shall commit the person
20 to the custody of the Department of Mental Health and Substance
21 Abuse Services for a placement that is suitable to the person's
22 needs or to a private facility willing to accept the person for
23 treatment.
24

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

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

12 6. The person shall be discharged from inpatient treatment at
13 such time as the person no longer requires treatment as determined
14 by the executive director of the facility or the designee of the
15 executive director, or as otherwise required by law.

16 F. The court shall make and keep records of all cases brought
17 before it.

18 1. ~~No~~ Except as provided in Section 1 of this act, no records
19 of proceedings pursuant to this section shall be open to public
20 inspection except by order of the court or to employees of the
21 Department of Mental Health and Substance Abuse Services, the
22 person's attorney of record, the person's treatment advocate as
23 defined pursuant to Section 1-109.1 of this title, if any, a person
24 having a valid power of attorney with health care decision-making

1 authority, a person having valid guardianship with health care
2 decision-making authority, a person having an advance health care
3 directive, a person having an attorney-in-fact as designated in a
4 valid mental health advance directive or persons having a legitimate
5 treatment interest, unless specifically indicated otherwise by the
6 instrument or court order. The documents shall not identify the
7 alleged person requiring treatment directly or indirectly as a
8 person with a substance abuse disorder.

9 2. Bonded abstractors may be deemed to be persons having a
10 legitimate interest for the purpose of having access to records
11 regarding determinations of persons requiring treatment under this
12 section.

13 SECTION 3. This act shall become effective November 1, 2014.

14
15 54-2-2435 TEK 1/16/2014 3:13:36 PM
16
17
18
19
20
21
22
23
24