SENATE FLOOR VERSION
February 22, 2016
AS AMENDED

ENGROSSED HOUSE
BILL NO. 1697

By: Denney, Shelton, Sherrer, Hoskin and McDaniel (Jeannie) of the House

and

Griffin and David of the Senate

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. "Licensed mental health professional" means:

a. a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology,

b. a psychiatrist who is a diplomate of the American Osteopathic Board of Neurology and Psychiatry,

c. a physician licensed pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act or the Oklahoma Osteopathic Medicine Act,

~~c.~~ d. a clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists,

~~d.~~ e. a professional counselor licensed pursuant to the Licensed Professional Counselors Act,

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

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

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

~~h.~~ i. an advanced practice nurse as defined in the Oklahoma Nursing Practice Act,

~~i.~~ j. a physician's assistant who is licensed in good standing in this state, or

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

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

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

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

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

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

(4) is in a condition of severe deterioration such that, without immediate intervention, there exists a substantial risk that severe impairment or injury will result to the person, or

(5) poses a substantial risk of immediate serious physical injury to self or death as manifested by evidence that the person is unable to provide for and is not providing for his or her basic physical needs.

b. "Assisted outpatient" means a person who:

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

(2) is suffering from a mental illness,

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

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

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

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

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

(6) in view of his or her treatment history and current behavior, is in need of assisted outpatient treatment in order to prevent a relapse or deterioration which would be likely to

result in serious harm to the person or persons as defined in this section, and

(7) is likely to benefit from assisted outpatient treatment.

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

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

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

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

(3) a person with seizure disorder,

(4) a person with a traumatic brain injury, or

(5) a person who is homeless.

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

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

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

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

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

a. a statement of treatment goals or objectives, based upon and related to a clinical evaluation, which can

be reasonably achieved within a designated time interval,

b. treatment methods and procedures to be used to obtain these goals, which methods and procedures are related to each of these goals and which include specific prognosis for achieving each of these goals,

c. identification of the types of professional personnel who will carry out the treatment procedures, including appropriate medical or other professional involvement by a physician or other health professional properly qualified to fulfill legal requirements mandated under state and federal law,

d. documentation of involvement by the individual receiving treatment and, if applicable, the accordance of the individual with the treatment plan, and

e. a statement attesting that the executive director of the facility or clinical director has made a reasonable effort to meet the plan's individualized treatment goals in the least restrictive environment possible closest to the home community of the individual;

18. "Telemedicine" means the practice of health care delivery, diagnosis, consultation, evaluation, treatment, transfer of medical data, or exchange of medical education information by means of

audio, video, or data communications. Telemedicine uses audio and video multimedia telecommunication equipment which permits two-way real-time communication between a health care practitioner and a patient who are not in the same physical location. Telemedicine shall not include consultation provided by telephone or facsimile machine; ~~and~~

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

20. "Assisted outpatient program" means a system to arrange for and coordinate the provision of assisted outpatient treatment, to monitor treatment compliance by assisted outpatients, to evaluate the condition or needs of assisted outpatients, to take appropriate steps to address the needs of such individuals and to ensure compliance with court orders; and

21. "Assisted outpatient treatment" means outpatient services which have been ordered by the court pursuant to a treatment plan approved by the court to treat an assisted outpatient's mental illness and to assist the person in living and functioning in the

community, or to attempt to prevent a relapse or deterioration that may reasonably be predicted to result in suicide or the need for hospitalization.

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

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

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

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

1. The person's county of residence;

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

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

B. If a civil action for involuntary commitment or assisted outpatient treatment can be brought in more than one county pursuant to the provisions of subsection A of this section, the action may be

filed in any of such counties. No court shall refuse any case solely because the action may have been brought in another county.

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

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

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

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

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

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

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

B. Upon the return of a writ of habeas corpus, whether the person is a person requiring treatment or an assisted outpatient as defined by Section 1-103 of this title or whether the minor is a minor requiring treatment as defined by Section 5-502 of this title shall be inquired into and determined.

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

D. The medical or other history of the consumer, as it appears in the facility record, shall be given in evidence, and the

executive director of the facility wherein the consumer is held in custody shall testify as to the condition of the consumer.

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

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

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

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

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

1. Community mental health centers;

2. Community residential mental health programs;

3. Programs of assertive community treatment;

4. Eating disorder treatment programs;

5. Gambling addiction treatment programs;

6. Programs providing alcohol or drug abuse treatment services as set forth under the Oklahoma Alcohol and Drug Abuse Services Act;

7. Community-based structured crisis centers; ~~and~~

8. Mental health facilities; and

9. Assisted outpatient treatment programs.

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

The procedures, protections and orders for alleging and determining whether a person is an assisted outpatient, including petition, rights, notice, prehearing detention, mental health evaluation and hearings, shall be the same as those for a person requiring treatment provided in Section 5-410 et seq. of Title 43A of the Oklahoma Statutes. Assisted outpatient programs shall be ordered as provided in Section 5-416 of Title 43A of the Oklahoma Statutes.

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

Section 5-416. A. The court, in considering a commitment petition filed under Section 5-410 ~~or Section 9-102~~ of this title, shall not order hospitalization without a thorough consideration of available treatment alternatives to hospitalization, or without addressing the competency of the consumer to consent to or refuse

the treatment that is ordered including, but not limited to, the rights of the consumer:

1. To be heard concerning the treatment of the consumer; and

2. To refuse medications.

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

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

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

2. If at any time it comes to the attention of the court from a person competent to file or request the filing of a petition, pursuant to subsection A of Section 5-410 of this title, that the individual ordered to undergo a program of alternative treatment to hospitalization is not complying with the order or that the

alternative treatment program has not been sufficient to prevent harm or injury which the individual may be inflicting upon himself or others, the court may order the person to show cause why the court should not:

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

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

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

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

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

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

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

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

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

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

1. The assisted outpatient;

2. The treating physician, if any;

3. The treatment advocate as defined in Section 1-109.1 of this title, if any; and

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

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

I. The court shall not order assisted outpatient treatment unless a licensed mental health professional testifies to explain the proposed written treatment plan; provided, the parties may stipulate upon mutual consent that such licensed mental health professional need not testify. Such licensed mental health

professional shall state facts which establish that such treatment is the least restrictive alternative. If the assisted outpatient has executed an advance directive for mental health treatment, the licensed mental health professional shall state the consideration given to any directions included in such advance directive for mental health treatment in developing the written treatment plan. Such testimony shall be given on the date set by the court pursuant to subsection J of this section.

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

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

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

M. The initial order for assisted outpatient treatment shall be for a period of one (1) year. Within thirty (30) days prior to the expiration of the order, any person listed in Section 5-410 of this title as a person who may file a petition may petition to extend the order of outpatient treatment. Notice shall be given in accordance with Section 5-412 of this title. The court shall hear the petition, review the treatment plan and determine if the assisted outpatient continues to meet the criteria for assisted outpatient treatment and such treatment is the least restrictive alternative. If the court finds the assisted outpatient treatment should continue it will make such an order extending the assisted treatment an additional year and order the treatment plan updated as necessary. Subsequent extensions of the order may be obtained in the same manner. If the court's disposition of the motion does not occur prior to the expiration date of the current order, the current order shall remain in effect for up to thirty (30) additional days until such disposition.

N. In addition to any other right or remedy available by law with respect to the order for assisted outpatient treatment, the

assisted outpatient or anyone acting on the assisted outpatient's behalf may petition the court on notice to the assisted outpatient treatment program, the original petitioner and all others entitled to notice under Section 5-412 of this title to stay, vacate or modify the order.

O. The assisted outpatient treatment program shall petition the court for approval before instituting a proposed material change in the assisted outpatient treatment plan, unless such change is authorized by the order of the court. Such petition shall be filed on notice to all parties entitled to notice under Section 5-412 of this title. Not later than five (5) days after receiving such petition, excluding Saturdays, Sundays and holidays, the court shall hold a hearing on the petition; provided, that if the assisted outpatient informs the court that he or she agrees to the proposed material change, the court may approve such change without a hearing. Nonmaterial changes may be instituted by the assisted outpatient program without court approval. For the purposes of this subsection, a material change is an addition or deletion of a category of services to or from a current assisted outpatient treatment plan or any deviation, without the assisted outpatient's consent, from the terms of a current order relating to the administration of psychotropic drugs.

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

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

2. Efforts were made to solicit compliance; and

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

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

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

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

R. The Board of Mental Health and Substance Abuse Services shall promulgate rules and standards for certification of facilities or organizations that desire to be certified as an assisted outpatient treatment program to provide categories of outpatient services which have been ordered by the court for assisted

outpatients. Such treatment may include case management services or assertive community treatment team services to provide care coordination and may also include, but not be limited to, any of the following categories of services:

1. Medication;

2. Medication or symptom management training or education;

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

4. Individual or group therapy;

5. Day or partial day programming activities;

6. Educational and vocational training or activities;

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

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

9. Supervision of living arrangements; and

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

SECTION 8. AMENDATORY 43A O.S. 2011, Section 5-417, as amended by Section 3, Chapter 3, O.S.L. 2013 (43A O.S. Supp. 2015, Section 5-417), is amended to read as follows:

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

1. A physical evaluation;

2. A mental evaluation;

3. A social history;

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

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

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

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

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

COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
February 22, 2016 - DO PASS AS AMENDED