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February 18, 2021

SENATE BILL NO. 87

By: Haste of the Senate

and

Bush of the House

An Act relating to mental health diversion by law enforcement; amending 43A O.S. 2011, Section 3-428, which relates to intoxicated persons in public places; modifying language; modifying allowable facilities; allowing certain program establishment; directing certain authorization; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 2011, Section 3-428, is amended to read as follows:

Section 3-428. A. An intoxicated person in a public place, ~~as~~
~~defined in Section 8 of Title 37 of the Oklahoma Statutes,~~ who
appears to be in need of help, if the person consents to the offered
help, may be assisted to:

1. His or her home;
2. An alternative facility pursuant to the provisions of this section; or

1 3. An approved treatment or evaluation facility by a peace
2 officer or an emergency service patrol.

3 B. 1. A person who appears to be intoxicated, and as a result
4 of such intoxication is unconscious in a public place or reasonably
5 appears to be in danger of harming himself or herself or others, may
6 be taken into protective custody by a peace officer or an emergency
7 service patrol and immediately brought to an approved treatment
8 facility for medical or nonmedical detoxification.

9 2. The peace officer or the emergency service patrol, in
10 detaining the person and taking the person to an approved treatment
11 facility, is taking the person into protective custody and shall
12 make every reasonable effort to protect the person's health and
13 safety.

14 3. In taking the person into protective custody, the detaining
15 officer may take reasonable steps for self-protection. No record
16 shall be made which indicates that the person has been arrested or
17 charged with a crime.

18 C. 1. If the Department of Mental Health and Substance Abuse
19 Services, or the governing body of any municipality, has approved a
20 program alternative to statutory or municipal requirements of
21 prosecution and imprisonment of such person, until the capacity to
22 accommodate intoxicated persons has been exceeded in the facility
23 wherein such alternative program is located, the arresting officer
24 and other public officials involved in an arrest pursuant to this

1 section shall utilize such alternative treatment program upon the
2 voluntary approval of the intoxicated person and the receiving
3 facility rather than proceed under the statutory or municipal laws
4 pertaining to prosecution and imprisonment of intoxicated persons.

5 2. A facility in which the program is located may make
6 application to the Department of Mental Health and Substance Abuse
7 Services for approval, but no such program or facility wherein such
8 program is located shall claim or advertise to be a certified
9 treatment facility unless duly certified as such by the Department
10 of Mental Health and Substance Abuse Services.

11 3. All facilities acquiring the approval of an alternative
12 program shall establish their own capacity for the number of persons
13 to be accommodated in the program.

14 4. It shall be the duty of the State Department of Health to
15 investigate all complaints concerning general sanitation made in the
16 form of a sworn affidavit against such municipally approved
17 alternative facilities.

18 5. In the event the complaints are found to be true, the State
19 Commissioner of Health shall have the power to order improvements or
20 closure.

21 D. A person who is brought to an alternative facility or an
22 approved treatment facility may be admitted as a consumer by the
23 administrator in charge of the facility or referred to another
24 treatment facility.

1 E. 1. A person may not be detained at the approved treatment
2 facility when the person either is no longer unconscious, or no
3 longer appears likely to be of harm to self or others.

4 2. If the person remains unconscious or likely to harm himself
5 or herself or others, the person may be detained for no more than
6 twelve (12) hours, excluding weekends and legal holidays, after
7 admission unless a petition for an order directing the commitment of
8 the person to an approved treatment facility has been filed
9 according to the Mental Health Law provisions and procedures for
10 commitment. The person may consent to remain in the facility as
11 long as the administrator or physician in charge believes
12 appropriate.

13 F. If a person is admitted to an approved treatment facility
14 under this section, the person may notify relatives of the admission
15 or another person may, with the consent of the admittee, notify
16 relatives of the admission.

17 G. 1. A person in possession of a controlled dangerous
18 substance, as defined in Section 2-101 of Title 63 of the Oklahoma
19 Statutes, or in possession of drug paraphernalia, as defined in
20 Section 2-405 of Title 63 of the Oklahoma Statutes, who appears to
21 be in need of help, and if the person consents to the offered help,
22 in lieu of arrest, may be taken to:

23 a. an approved drug treatment center,

24 b. an approved center for substance abuse evaluation, or

1 c. some other facility, as defined in paragraph 1 of
2 subsection C of this section, by a law enforcement
3 officer.

4 2. Any creation of a program as provided in this subsection
5 shall be subject to the authority of the appropriate county,
6 municipal or tribal governing body and any of its subsidiaries. The
7 Department of Mental Health and Substance Abuse Services has the
8 authority to approve or disapprove individual treatment centers as
9 described in this subsection.

10 3. The creation of any program as provided in this subsection
11 must be created with the advice and consent of the county's district
12 attorney and must be approved annually by the county's district
13 attorney.

14 SECTION 2. This act shall become effective November 1, 2021.

15 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
16 February 18, 2021 - DO PASS