An Act

ENROLLED SENATE
BILL NO. 369

By: Ivester of the Senate

and

Sherrer and Hoskin of the House

An Act relating to records of persons requiring treatment; amending 43A O.S. 2011, Sections 5-414, 5-415, 5-417 and 5-418, which relate to mental health evaluations and precommitment examinations; requiring inclusion of certain documents with certain person; authorizing inspection of certain records by certain persons; requiring inclusion of certain documents in certain examination; requiring certain findings to be provided to certain person; and providing an effective date.

SUBJECT: Records of persons requiring treatment.

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

SECTION 1. AMENDATORY 43A O.S. 2011, Section 5-414, is amended to read as follows:

Section 5-414. A. If a mental health evaluation is not attached to a petition alleging a person to be a person requiring treatment at the time the petition is filed, the court shall order the person who is the subject of the petition to undergo a mental health evaluation by two licensed mental health professionals, and a mental health evaluation to be completed and filed with the court prior to the hearing.

1. The mental health evaluation shall be conducted on an outpatient basis unless the court has issued an order for prehearing detention.

2. A copy of all petitions, orders, affidavits, powers of attorney, advance health care directives, police reports and other relevant documents shall accompany the person to the place where the mental health evaluation is to be conducted.

3. Upon completion of the mental health evaluation, the facility shall transmit a copy of the evaluation prepared by the licensed mental health professionals to the court and to the attorney of record for the person evaluated.

B. The report of the licensed mental health professionals conducting the mental health evaluation pursuant to this section shall include written findings as to whether:

1. The person being evaluated appears to be a person requiring treatment as defined in this title, and is reasonably likely to benefit from mental health or substance abuse treatment; and

2. Based on the following, inpatient treatment is the least restrictive alternative that meets the needs of the person:

a. reasonable efforts have been made to provide for the mental health or substance abuse treatment needs of the person through the provision of less restrictive alternatives and the alternatives have failed to meet the treatment needs of the person, or

b. after a thorough consideration of less restrictive alternatives to inpatient treatment, the condition of the person is such that less restrictive alternatives are unlikely to meet the treatment needs of the person.

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

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

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

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

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

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

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

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

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

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

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

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

2. If the court finds that a program other than hospitalization is appropriate 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 that is appropriate for a period set by the court, during which time the court shall continue its jurisdiction over the individual as a person requiring treatment.

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

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

5. If the person is placed in the custody of the Department, the Department may designate two or more facilities to provide treatment and if the person to be treated or a parent, spouse, guardian, brother, sister or child, who is at least eighteen (18) years of age, of the person, expresses a preference for one such

facility, the Department shall attempt, if administratively possible, to comply with the preference.

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

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

1. No records of proceedings pursuant to this section shall be open to public inspection except by order of the court or to employees of the Department of Mental Health and Substance Abuse Services, the person's attorney of record, the person's treatment advocate as defined pursuant to Section 1-109.1 of this title, if any, or persons having a legitimate treatment interest.

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

SECTION 3. AMENDATORY 43A O.S. 2011, 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; ~~and~~

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, extended care facilities, nursing homes, sheltered care arrangements, home care and homemaker services, and other treatment programs or suitable arrangements.

SECTION 4. AMENDATORY 43A O.S. 2011, Section 5-418, is amended to read as follows:

Section 5-418. In addition to the notice requirements contained in the Mental Health Law, each person ordered to undergo a precommitment screening examination shall receive:

1. A copy of the order requiring the person to undergo the examination; and

2. A written statement explaining what the examination will cover.

If the individual is unable to read or understand the written materials, every effort will be made to explain them in a language such person understands, and a copy of the examination findings shall be provided to the court, ~~and~~ to the person's attorney of record, if known, and the person's treatment advocate as defined pursuant to Section 1-109.1 of this title, if any, upon completion.

SECTION 5. This act shall become effective November 1, 2013.

Passed the Senate the 28th day of February, 2013.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of March, 2013.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 27th

day of March, 20 13, at 3:09 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 2nd

day of April, 20 13, at 3:26 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 2nd

day of April, 20 13, at 4:07 o'clock P. M.

By: