An Act

ENROLLED SENATE
BILL NO. 581

By: Ivester of the Senate

and

Sherrer and Hoskin of the House

An Act relating to proceedings for persons requiring treatment; amending 43A O.S. 2011, Sections 5-410, as amended by Section 1, Chapter 21, O.S.L. 2012, 5-412, 5-413, 5-414 and 5-415, as amended by Sections 1 and 2 of Engrossed Senate Bill No. 369 of the 1st Session of the 54th Oklahoma Legislature, and 5-419 (43A O.S. Supp. 2012, Section 5-410), which relate to petition, notice and prehearing detention; deleting persons who may file certain petition; updating statutory reference; modifying notice requirements; providing for certain documents and records; and providing an effective date.

SUBJECT: Proceedings for persons requiring treatment

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

SECTION 1. AMENDATORY 43A O.S. 2011, Section 5-410, as amended by Section 1, Chapter 21, O.S.L. 2012 (43A O.S. Supp. 2012, Section 5-410), is amended to read as follows:

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

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

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

3. A licensed mental health professional;

4. ~~The executive director of a facility designated by the Commissioner of Mental Health and Substance Abuse Services as appropriate for emergency detention;~~

~~5. An administrator of a hospital that is approved by the Joint Commission on Accreditation of Healthcare Organizations; provided, however, in any involuntary commitment procedure in which a hospital is the petitioner pursuant to the provisions of this section, the hospital may participate in such hearing without retaining their own legal counsel if the hospital provides as a witness a mental health therapist or a licensed mental health professional;~~

~~6.~~ A person in charge of any correctional institution;

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

~~8.~~ 6. The district attorney in whose district the person resides or may be found.

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

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

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

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

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

SECTION 2. AMENDATORY 43A O.S. 2011, Section 5-412, is amended to read as follows:

Section 5-412. A. Notice of the date, time and place of the hearing on a petition alleging a person to be a person requiring treatment shall be delivered to such person at least one (1) day prior to the hearing. Notice shall be personally delivered to the person together with a copy of the petition and copies of the mental health evaluation and any order of the court directing prehearing detention.

B. The notice shall contain the following information:

1. The definitions provided by Section 1-103 of this title of a "mental illness" and a "person requiring treatment";

2. If applicable, that the court has ordered the mental health evaluation of the person by two licensed mental health professionals, at least one of whom is a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology, a licensed clinical psychologist, or a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions, for the purpose of conducting an evaluation of the person alleged to be a person requiring treatment stating their findings, and the time and place of the evaluation;

3. That, upon request, the hearing on the petition may be conducted as a jury trial and the jury shall be composed of six persons having the qualifications required of jurors in courts of record;

4. That the petitioner and witnesses identified in the petition may offer testimony under oath at the hearing on the petition;

5. If applicable, that the court has appointed an attorney for the person alleged to be a person requiring treatment who shall represent the person until final disposition of the case and that if the person is indigent, the court shall pay the attorney fees;

6. That, if the person is found at the hearing or at a jury trial to be a person requiring treatment under ~~this act~~ Section 5-410 et seq. of this title, the court will take evidence and make findings of fact concerning the person's competency to consent or to refuse the treatment that is ordered, including, but not limited to, the right of the person to refuse psychotropic medications; and

7. That the person alleged to be a person requiring treatment shall be afforded such other rights as are guaranteed by state and federal law.

C. The person delivering the copy of the notice and petition to the person alleged to be a person requiring treatment shall, at the time of delivery, explain the content, purpose and effect of the notice and the legal right to judicial review by habeas corpus.

D. 1. A copy of the notice, the petition, and the attachments to the petition shall also be delivered at least one (1) day prior to the hearing to:

a. the individual initiating the request for protective custody, emergency detention, involuntary commitment or prehearing detention,

b. the attorney or court-appointed counsel of the person, to the district attorney, and to the public defender, if any,

c. the facility, if any, in which the person is detained in emergency detention, ~~and~~

d. if any exist and if one is known, the treatment advocate as defined pursuant to Section 1-109.1 of this title, a person having a valid power of attorney with health care decision-making authority, a person having a valid guardianship with health care decision-

making authority, a person having an advance health care directive, or a person having an attorney-in-fact as designated in a valid mental health advance directive, unless specifically indicated otherwise by the instrument or court order. The documents shall not identify the alleged person requiring treatment directly or indirectly as a person with a substance abuse disorder, and

e. if the designations or orders listed in subparagraph d of this paragraph do not exist or are not known, then a parent, spouse, guardian, brother, sister or child who is at least eighteen (18) years of age of the person alleged to be a person requiring treatment and who is not the individual initiating the petition or a request for protective custody, emergency detention, involuntary commitment or prehearing detention. The documents shall not identify the alleged person requiring treatment directly or indirectly as a person with a substance abuse disorder. Notice shall also be delivered to any other person as may be ordered by the court.

2. The notice required by this subsection may be served personally or by certified mail. When notice is served personally, the person making such service shall make affidavit of the same and file such notice, with proof of service, with the district court. This notice may be served in any part of the state when so ordered by the court.

E. Notice of orders of a court directing a mental health evaluation or prehearing detention of a person alleged to be a person requiring treatment shall be delivered in substantially the same manner as provided by subsection A of this section. Notice of a court order directing a mental health evaluation of the person shall be delivered at least one (1) day before the evaluation, and as many additional days as are requested by the person alleged to be a person requiring treatment or the attorney of such person as are reasonable without prejudice to the person. Any request for additional days shall be subject to the discretion of the court, considering the facts and circumstances of each particular case.

SECTION 3. AMENDATORY 43A O.S. 2011, Section 5-413, is amended to read as follows:

Section 5-413. A. When a request for an order of prehearing detention is attached to a petition alleging a person to have a mental illness and to be a person requiring treatment, the district court shall determine whether there is probable cause to detain the person who is the subject of the petition prior to a hearing on the petition.

1. If the court issues an order for detention, it shall immediately set a date, time, and place for a hearing on the petition, and shall issue notice to each individual required to receive notice pursuant to Section 5-412 of this title.

2. The period of prehearing detention shall not exceed seventy-two (72) hours, excluding the weekends and holidays, except upon a court order authorizing detention beyond a seventy-two-hour period or pending the hearing on a petition requesting involuntary commitment or treatment. Prehearing detention may be extended to coincide with any order of continuance entered by the court.

B. If the court finds that probable cause to detain the person alleged to have a mental illness and to be a person requiring treatment does not exist, the court shall dismiss the request and, if the person is being held in protective custody or emergency detention, order the person released and returned to the point where such person was taken into protective custody.

C. If the court finds that probable cause to detain the person alleged to have a mental illness and to be a person requiring treatment does exist:

1. An order may be entered authorizing any peace officer to take that person into custody and to detain such person in a suitable facility prior to the hearing on the petition; or

2. If the person is being held in emergency detention, the court may issue an order authorizing the facility to detain the person prior to a hearing on the petition.

A certified copy of an order of prehearing detention shall constitute authority for a facility to detain or to continue to detain the person who is the subject of the order.

SECTION 4. AMENDATORY 43A O.S. 2011, Section 5-414, as amended by Section 1 of Enrolled Senate Bill No. 369 of the 1st Session of the 54th Oklahoma Legislature, 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, <u>treatment advocate designations, mental health advance directives, guardianships,</u> 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 5. AMENDATORY 43A O.S. 2011, Section 5-415, as amended by Section 2 of Enrolled Senate Bill No. 369 of the 1st Session of the 54th Oklahoma Legislature, 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, a person having a valid power of attorney with health care decision-making authority, a person having valid guardianship with health care decision-making authority, a person having an advance health care directive, a person having an attorney-in-fact as designated in a valid mental health advance directive or persons

having a legitimate treatment interest, unless specifically indicated otherwise by the instrument or court order. The documents shall not identify the alleged person requiring treatment directly or indirectly as a person with a substance abuse disorder.

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 6. AMENDATORY 43A O.S. 2011, Section 5-419, is amended to read as follows:

Section 5-419. The court may modify an order for involuntary inpatient commitment and order alternative treatment pursuant to the provisions of this section upon request of the person committed or the administrator of a facility to which a person has been involuntarily committed for inpatient treatment. The court shall give notice to the person affected thereby and to each individual required to receive notice pursuant to Section 5-412 of this title, to appear within five (5) regular court days, or as many other days as the court may grant, and show cause why the modification shall not be made. The notice shall contain the following information:

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

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

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

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

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

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

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

SECTION 7. This act shall become effective November 1, 2013.

Passed the Senate the 1st day of May, 2013.

Eddie Fields
Presiding Officer of the Senate

Passed the House of Representatives the 17th day of April, 2013.

Mike Jackson
Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 2nd day of April, 20 13, at 10:10 o'clock A M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 7th day of May, 20 13, at 2:31 o'clock P M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 7th day of May, 20 13, at 2:58 o'clock P. M.

By: Chris Travers