

STATE OF OKLAHOMA
DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

EMERGENCY DETENTION AND CIVIL COMMITMENT MANUAL



2007

This manual is intended to convey information of interest to law enforcement officials, prosecutors and other lawyers, mental health professionals and others who are involved in protective custody, emergency detention and civil commitment of individuals with a mental illness or who are drug- or alcohol-dependent. Although prepared by professionals, this manual should not be used as a substitute for legal advice in specific situations. Those using this manual should seek appropriate legal advice for interpretation of the information contained herein. This manual should not be considered legal advice or a legal opinion.

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INTRODUCTION

The purpose of the Oklahoma Mental Health Law is to provide for the humane care and treatment of persons who have a mental illness or are drug- or alcohol-dependent.¹ On occasion, this function entails confining persons and providing treatment on an involuntary basis.

The involuntary admission process typically involves protective custody, emergency detention and court commitment, all of which are explored herein. This manual is limited to civil mental health proceedings. It does not address commitment of persons in connection with criminal justice proceedings. Although the primary focus is civil proceedings related to individuals with a mental illness, it does touch on drug and alcohol related proceedings.

A flowchart depicting the typical emergency detention and commitment process for adults is located in Appendix D. A list identifying the typical steps in this process is located at Appendix E.

The primary sources for civil commitment laws are statutes passed by the Oklahoma Legislature² and case law, including particularly constitutional law as applied by the courts to mental health proceedings. The Supreme Court has held the state has a right to intervene in the life of an individual who is mentally ill (or chemically dependent) premised on the state's police powers if there is proof the individual is dangerous to self or others.³ The state also has a legitimate interest under its *parens patriae*⁴ powers to provide care to individuals who, due to a mental illness, are unable to care for themselves.⁵ Conversely, individuals have a constitutional right to procedural due process protections in conjunction with the denial of life, liberty and property.⁶

Involuntarily confining a person who is mentally ill or addicted to drugs or alcohol for treatment involves a significant loss of liberty. In fact, the Court has held that the loss of liberty produced through involuntary commitment entails more than just loss of freedom; it may also engender adverse social consequences.⁷ Therefore, individuals have a fundamental constitutional right not to be involuntarily committed until a judicial hearing has taken place and findings have been made that the person meets criteria and poses a danger to himself or others.

¹ 43A O.S. § 1-102.

² The applicable statutes as well as applicable regulations adopted by the Board of Mental Health and Substance Abuse Services are provided in this manual at Appendix A.

³ *Addington v. Texas*, 441 U.S. 418, 426 (1979).

⁴ Literally means "parent of the country" and refers to the traditional role of the state as the sovereign and guardian of persons under a legal disability.

⁵ *Id.*

⁶ *U.S. CONST. amend V and XIV.*

⁷ *Vitek v. Jones*, 445 U.S. 480, 492 (1980). The stigma associated with mental illness "... leads (the public) to avoid living, socializing, or working with, renting to, or employing people with mental disorders" *Report on mental illness* by U.S. Surgeon General.

As declared by the Legislature in statute, it is the public policy of the State of Oklahoma to assure adequate treatment of persons with a mental illness and for drug or alcohol abuse, to set standards for determination of dangerousness, to allow for the least restrictive treatment, and “to provide orderly and reliable procedures for commitment of persons alleged to be in need of treatment consistent with due process of law.”⁸ It is the responsibility of law enforcement, mental health professionals and the judicial system to ensure individuals subject to action under the Mental Health Law are afforded their constitutional and statutory rights.

EMERGENCY DETENTION & COMMITMENT OF ADULTS

An adult with a mental illness or one who is alcohol- or drug-dependent to a degree requiring inpatient care, and who is not confined in any jail or correctional facility due to criminal charges or a conviction, may be admitted or confined in a facility operated by the Department of Mental Health and Substance Abuse Services or a private facility on an emergency basis, on voluntary application or on an involuntary court commitment.⁹ Persons confined to a jail or correctional facility due to criminal charges may be committed and confined only pursuant to Oklahoma’s criminal commitment statutes¹⁰ for treatment until competent.¹¹ Individuals with criminal charges who are not in jail (*i.e.* out on bail) may be admitted on an emergency detention or involuntary commitment basis as long as the public or private facility in which the person is confined takes steps to assure the protection of the other residents and the public.¹²

Inpatient Criteria

Under Title 43A of Oklahoma Statutes, only an individual who meets the definition of a “**person requiring treatment**” is subject to emergency detention or civil involuntary commitment.¹³ For an individual to be considered a “person requiring treatment,” he or she must: 1) be mentally ill or alcohol or drug dependent; and 2) pose a risk of harm to self or others as a result of that mental illness or drug or alcohol dependency.¹⁴

“**Mental illness**” is defined by statute as 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.”¹⁵

⁸ 43A O.S. § 1-104.

⁹ 43A O.S. § 5-101.

¹⁰ See 22 O.S. §§ 1175.1 *et seq.*

¹¹ *Id.*

¹² 43A O.S. § 5-101(B).

¹³ 43A O.S. §§ 5-208, 5-415

¹⁴ See 43A O.S. § 1-103(13). It should be noted that up until November 1, 2006, Oklahoma also had a separate procedure to commit drug- or alcohol- dependent persons. See 43A O.S. § 9-102 (West Supp. 2005). However, because this was seen as duplicative, individuals who are drug- or alcohol-dependent are now involuntarily committed as a “person requiring treatment,” (*i.e.* a risk of harm to self or others as a result of the dependency).

¹⁵ 43A O.S. § 1-103(3).

Department of Mental Health and Substance Abuse Services regulations specify what qualifies as “substantial” and “significant” for purposes of needing inpatient treatment in a state-operated facility.¹⁶ For the purposes of placing an individual into emergency detention or involuntary commitment, it is important to realize that not everything included in the *Diagnostic and Statistical Manual of Disorders – Fourth Edition* (DSM-IV) qualifies as a mental illness under this statute. For example, the DSM-IV includes mental retardation, sleep walking disorder, and nicotine dependence. Arguably, these cause an individual to be “dangerous to self or others,” but they will not result in involuntary commitment.

Alcohol and substance dependency for emergency detention and involuntary commitment purposes requires more than one time use. An “**alcohol-dependent person**” is defined as someone who uses alcoholic beverages to such an extent that it impairs the health, family life, or occupation of the person and compromises the health and safety of the community.¹⁷ A “**drug-dependent person**” means a person who is using a controlled substance as presently defined in Section 102 of the Federal Controlled Substances Act and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled substance on an intermittent or continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.¹⁸

Dangerousness Requirement

Mental illness or substance dependency alone does not justify confining someone against his or her will.¹⁹ A finding of **dangerousness** is a constitutional prerequisite to involuntary civil commitment of a person.²⁰ There is no constitutional basis for involuntarily confining persons with a mental illness “if they are dangerous to no one and can live safely in freedom.”²¹ In other words, a person has a right to be mentally ill. Individuals cannot be locked up to help them or improve their standard of living.²² In Oklahoma, the dangerousness prerequisite is met by a required finding that the person with a mental illness or drug or alcohol dependence is a “risk of harm to self or others.”

¹⁶ See OKLA. ADMIN. CODE 450:30-9-3.

¹⁷ 43A O.S. § 3-403(2).

¹⁸ 43A O.S. § 3-403(3).

¹⁹ *O'Connor v. Donaldson*, 422 U.S. 563, 575 (1975).

²⁰ *Lessard v. Schmidt*, 349 F. Supp. (E.D. Wis. 1972), vacated and remanded, 414 U.S. 473, on remand, 379 F. Supp. 1376 (E.D. Wis. 1974), vacated and remanded, 421 U.S. 957 (1975), reinstated 413 F. Supp. 1318 (E.D. Wis. 1976).

²¹ *Id.* at 576.

²² *Id.* at 575.

A person is considered to be a “**risk of harm to self or others**” if one of the following criteria is met:

- a. 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;
- b. 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;
- c. having 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;
- d. there exists a substantial risk that without immediate intervention severe impairment or injury will result to the person alleged to be a person requiring treatment, or
- e. a substantial risk of immediate serious physical injury to self, or immediate death, as manifested by evidence that the person is unable to provide for and is not providing for the basic physical needs of the person and that appropriate provision for those needs cannot be made immediately available in the community.²³

It is important to note that homelessness alone is not enough to have a person place in emergency detention or involuntarily confined. He or she must also meet the criteria established above as a “risk of harm to self or others” as the result of a mental illness or alcohol or drug dependency.²⁴

INDIVIDUALS NOT SUBJECT TO DETENTION AND COMMITMENT

The definition of “person requiring treatment” **specifically excludes** certain individuals. Specifically, unless a person also meets the criteria for “a person requiring treatment” as found in Section 1-103(13)(a), a person requiring treatment shall not mean: 1) a person whose mental processes are weakened or impaired due to advanced years; 2) a mentally retarded or developmentally disabled person; 3) a person with seizure disorder; or 4) a person with a traumatic brain injury.²⁵ Thus, individuals who are

²³ 43A O.S. § 1-103(18).

²⁴ *Id.*

²⁵ *See* 43A O.S. § 1-103(13)(b).

mentally retarded **and not also** mentally ill cannot be admitted for emergency detention or involuntary commitment even if they are dangerous.²⁶

In addition, the risk of harm must be caused by the mental illness or substance dependency. Accordingly, unless a person is dangerous as a result of a mental illness or drug or alcohol dependency, he or she cannot be committed. Dangerousness as a result of a developmental disability or a brain injury does not constitute a basis for emergency detention or commitment in Oklahoma. Unlike many states, Oklahoma does not have involuntary commitment of developmentally disabled individuals who are dangerous. There is simply no procedure in statute for involuntarily confining a developmentally disabled person. Thus, to do so would violate such a person's rights.

However, this does not mean that if an individual is presented to a facility with symptoms of mental retardation or other developmental disability a mental health evaluation should not occur. Everyone who is presented for emergency detention should receive an assessment to determine whether he or she meets inpatient criteria. **A person who is both developmentally disabled and mentally ill or alcohol or drug dependent can be committed if he or she is also dangerous as a result of the mental illness or chemical dependency.**

TRANSPORTATION

The Mental Health Law requires **law enforcement** to transport throughout all phases of the involuntary admission process. According to 43A O.S. § 1-110, peace officers are responsible for transporting individuals to and from designated facilities for examination, emergency detention and inpatient services. The primary purpose behind this provision is safety. By definition, individuals placed in emergency detention are dangerous, and law enforcement officials are better trained and equipped to deal with the transporting of dangerous individuals.

While the statute is clear that law enforcement is responsible for providing transportation during the emergency detention/civil commitment process, a question often arose as to which law enforcement agency should provide the transport. This sometimes resulted in situations where city and county agencies would argue over jurisdictional issues and refuse to provide the transport, stating that it was the other agency's responsibility and, in the process, leaving the individual in limbo.

Legislation was recently enacted to help clarify this confusion. Effective November 1, 2005, if an individual that appears to meet inpatient criteria is found within a municipality's jurisdiction, that municipality's law enforcement agency will be responsible for transportation.²⁷ If, however, the person is found outside of a municipality's jurisdiction, the county sheriff of the county where the individual is found

²⁶ There are not only statutory constraints against involuntarily confining individuals who are not mentally ill in psychiatric hospitals, but constitutional ones as well. See, e.g., *Foucha v. Louisiana*, 504 U.S. 71, 77 (1992).

²⁷ 43A O.S. § 1-110.

will be responsible for transportation.²⁸ In addition, the law enforcement agency responsible for initiating the transportation of an individual is responsible for the transportation of the individual throughout the process (e.g., to the examination site, to the place of the emergency detention, to the facility for inpatient services, etc.).

The issue of “where the individual is found” sometimes creates confusion for law enforcement and mental health staff. Essentially, this term means the location where law enforcement first comes into contact with the individual. The easiest situation involves a call for law enforcement to take an individual into protective custody. In this situation, wherever the person is located when law enforcement initially takes the person into custody is where the person is “found” for the purposes of this statute.

However, often times the emergency detention process is not initiated by law enforcement. For example, the individual may be taken from a rural area by a family member or other private individual to a nearby city hospital and the hospital staff then determines that the individual meets inpatient criteria. In this instance, the city’s police department is responsible for transportation as the person will be considered to have been found by law enforcement within the municipality.

The statute specifically provides that if the person is medically stable, an officer who takes a person into protective custody must immediately transport the person to the nearest **emergency examination facility** designated by the Commissioner of Mental Health and Substance Abuse Services. After the examination, if emergency detention is warranted, the officer shall transport the individual to the nearest facility designated by the Commissioner for such detention.²⁹ If emergency detention is not warranted, the officer must transport the person back to where the officer took the person into protective custody or to the person’s residence.³⁰ If the person’s home or residence is a group or nursing home, it may not refuse the return of the individual.

If a person must go to court outside the facility where he is being detained, it is appropriate for law enforcement to transport to the hearing because, as stated in the petition, the person is allegedly dangerous. After the commitment hearing, the court can order the law enforcement officials to transport the individual to a facility if the person is committed or home if the person is not committed.

Law enforcement is entitled to reimbursement from the Department of Mental Health and Substance Abuse Services pursuant to the Oklahoma Travel Reimbursement Act for transportation associated with examination, admission, transfer, discharge, medical treatment, court appearance, emergency detention and protective custody.³¹ A

²⁸ Note, this statute does not prohibit law enforcement agencies from entering into agreements to otherwise fulfill transportation obligations. 43A O.S. § 1-110 (F).

²⁹ See 43A O.S. § 5-207(D). A list of facilities designated by the DMHSAS Commissioner for initial assessments and detention is included in Appendix C. Also included in Appendix C are applications for facilities to complete and send to DMHSAS Provider Certification should they wish to be designated as an emergency examination or emergency detention facility.

³⁰ 43A O.S. § 5-208.

³¹ 43A O.S. § 1-110.

question was raised recently as to whether this statute authorized law enforcement to reimbursement for the officer's time as well as for mileage. The question was presented to the Attorney General's Office, which determined that ODMHSAS is not authorized to reimburse law enforcement beyond mileage.³²

PROTECTIVE CUSTODY AND INITIAL ASSESSMENTS

Protective Custody

A peace officer or law enforcement official has authority to take a person into "protective custody" if the officer reasonably believes the person is a person requiring treatment and immediate emergency action is necessary.³³ **Protective custody** is defined as detaining a person by law enforcement until such time as an emergency examination is conducted to determine if emergency detention is warranted.³⁴

If a law enforcement official determines protective custody is necessary based upon the officer's own observations, the officer must sign a written statement setting forth the basis for the officer's belief that the person is a person requiring treatment and also the circumstances under which the officer took the person into protective custody.³⁵ The officer must give a copy of the statement to the person or the person's attorney if requested.

The officer does not have to sign a statement if the officer did not base the decision to take a person into protective custody on personal observation. However, the individual upon whose information the officer relied to determine the appropriateness of protective custody must sign a third party statement indicating the basis for such person's belief the individual to be taken into protective custody is a person requiring treatment.³⁶ It is a misdemeanor to provide false information to a police officer in order to have a person taken into protective custody.³⁷ If neither the law enforcement officer nor the third party signs a statement, law enforcement cannot take the person into protective custody.

The person being held in protective custody or emergency detention shall be asked to designate any person whom such person wishes informed regarding the detention.³⁸ If the person being held in protective custody is incapable of making such designation, the law enforcement officer holding the person in protective custody shall, within twenty-four (24) hours of taking the person into protective custody, notify either

³² The Attorney General's Opinion stated that DMHSAS is not authorized to pay for officer's time related the transportation, but left open the possibility that the officer in some circumstances may be entitled to reimbursement for meals and lodging. *See* A.G. Opinion No. 06-029.

³³ 43A O.S. § 5-207.

³⁴ 43A O.S. § 5-206 (4).

³⁵ A "Peace Officer's Statement" form is included in Appendix B as form B-1.

³⁶ A "Third Party Statement" form is included in Appendix B as form B-2.

³⁷ 43A O.S. § 5-207.

³⁸ 43A O.S. § 5-209(C).

the attorney, parent, spouse, guardian, brother, sister, or child who is at least eighteen (18) years of age of the person. However, this notification must be to a person other than the person who initiated the request for protective custody. The failure to find and notify such a person within a reasonable time must be reported to the administrator of the facility where the person is detained, and made a part of the person's record.³⁹

Initial Assessment

A licensed mental health professional ("LMHP") must conduct an **initial assessment**⁴⁰ of an adult person in protective custody within 12 hours of the time law enforcement takes the person into protective custody to determine whether emergency detention is warranted.⁴¹ An authorized family member who is eighteen (18) years of age or older, or guardian of a person or the person himself may also request an LMHP to conduct an emergency examination.⁴²

The following people are **licensed mental health professionals**⁴³ for purposes of the adult mental health law:

1. a psychiatrist who is a diplomat of the American Board of Psychiatry and Neurology;
2. a licensed physician who has received specific training for and is experienced in performing mental health therapeutic, diagnostic or counseling functions;
3. a licensed clinical psychologist;
4. a licensed professional counselor;
5. a licensed clinical social worker;
6. a licensed marital and family therapist;
7. a licensed behavioral practitioner; or
8. an advanced practice nurse specializing in mental health.

If, after the examination, the LMHP determines the person is not a person requiring treatment, the person is to be returned immediately to the place where the person was taken into protective custody or to the person's residence.⁴⁴ If after the examination the LMHP determines the person is a person requiring treatment and emergency detention is required, the LMHP must prepare an **LMHP statement** describing the findings of the examination and stating the basis for the determination.⁴⁵

The LMHP statement must be completed before emergency detention is allowed.

³⁹ *Id.*

⁴⁰ The initial assessment used to be called an **emergency examination**. It refers to the initial examination or assessment of the individual to determine whether the individual meets inpatient criteria. See 43A O.S. § 5-206(2).

⁴¹ 43A O.S. § 5-208(A).

⁴² 43A O.S. § 5-207(E).

⁴³ See 43A O.S. § 1-103(11).

⁴⁴ 43A O.S. § 5-208(A)(2).

⁴⁵ *Id.* A Licensed Mental Health Professional Statement form is included in Appendix B as form B-3.

EMERGENCY DETENTION

Emergency detention is the confinement of a person who appears to be a person requiring treatment for a period not to exceed seventy-two (72) hours, excluding weekends and holidays.⁴⁶ By definition, emergency detention involves confining a person against his or her will before he or she has had an opportunity for a hearing. This confinement is based on the decision of an individual who is not a judge, but is an LMHP.⁴⁷ Accordingly, emergency detention should be initiated only when there is no acceptable alternative for a person who has a mental illness or is drug- or alcohol-dependent and needing treatment. The emergency detention process is designed to ensure an individual receives appropriate treatment while protecting the individual or other persons from dangers resulting from the mental illness or substance abuse.

Although emergency detention generally begins after a person is taken into protective custody, emergency detention may also occur following an emergency examination at the request of the person's family. In addition, emergency detention may occur when the person in charge of a hospital or facility believes that a voluntary patient is a person requiring treatment and the person has refused to consent or withdraws consent to treatment and an LMHP determines the person meets criteria and prepares a statement.⁴⁸

Upon entry into detention, the person has the right to contact a relative, a friend or an attorney.⁴⁹ In addition, an individual receiving care from a licensed mental health provider may designate a family member or other concerned individual to serve as individual's "treatment advocate."⁵⁰ The treatment advocate is entitled to participate in the treatment and discharge planning of the patient to the extent consented to by the patient and as permitted by law.⁵¹

During emergency detention, a **mental health evaluation** of the person must be conducted by two LMHPs. Reasonable efforts must be taken to determine if the person has an advance directive for mental health treatment.⁵² In addition, upon entry into detention, the person has the right to contact a relative, a friend or an attorney.⁵³

If both LMHPs determine the person does not need treatment beyond the 72-hour emergency detention period, the person is to be returned to the place where the person

⁴⁶ As discussed below, the detention may continue past the seventy-two (72) hour period upon a court order authorizing detention beyond a seventy-two-hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by this act. 43A O.S. § 5-206(3).

⁴⁷ The 72-hour emergency detention period is sometimes inaccurately referred to as an emergency order of detention. However, a court "order" is not involved at all.

⁴⁸ 43A O.S. § 5-208(B).

⁴⁹ 43A O.S. § 5-201.

⁵⁰ 43A O.S. § 1-109.1(A)(1).

⁵¹ 43A O.S. § -109(A)(4).

⁵² 43A O.S. § 5-208(A)(4)(b).

⁵³ 43A O.S. § 5-201.

was taken into protective custody, the person's residence, or an alternative facility.⁵⁴ If the home or residence is a group or nursing home, it cannot refuse the return of the individual.⁵⁵

If the two LMHPs determine the person has a mental illness and is a person requiring treatment, a petition for involuntary commitment must be filed if the person refuses to consent to voluntary treatment.⁵⁶ If only one of the LMHPs believes the person needs to be committed, that LMHP can file a petition. At that time, the court will either order another evaluation or have a hearing on the petition.

If the hearing on the petition is not held before the end of the 72-hour emergency detention period, the person must be discharged, unless an order directing prehearing detention is obtained before the 72-hour emergency detention period ends.⁵⁷ Without an order authorizing further detention, continued confinement of the person in such a case would violate his or her constitutional right to liberty.

Protective custody and emergency detention should be utilized as temporary measures for the speedy processing of emergency situations, and with the objective of preventing conduct constituting a real and present danger to the individual or other persons. These measures must not be used merely as a convenience to the parties involved in a particular situation.

PETITION FOR INVOLUNTARY COMMITMENT OF AN ADULT WITH A MENTAL ILLNESS

Involuntary hospitalization is initiated by filing a **petition** in state district court. This mechanism begins a formal court proceeding in which an individual alleged to have a mental illness and be "a person requiring treatment" is given due process. For a person to be involuntarily hospitalized, other than on a temporary emergency basis, a petition must be filed, a hearing held, and an order entered. Due process includes, but is not limited to, the right to notice, the right to counsel, the right to a jury trial, the right to present and cross-examine witnesses, and the right to challenge detention through a habeas corpus action.

The procedure for court commitment of a person who has a mental illness to a state-operated facility is addressed in sections 5-410 through 5-419 of Title 43A. The procedure for admission, treatment and commitment at a private facility is set forth in sections 8-101 through 8-108. The commitment procedure is essentially the same except there are certain requirements regarding the physician who will be the attending physician at the private facility.

⁵⁴ 43A O.S. §§ 5-206, 5-207, 5-208, 5-209.

⁵⁵ 43A O.S. § 5-208(A)(2).

⁵⁶ 43A O.S. § 5-208(D).

⁵⁷ 43A O.S. §§ 5-208 & 5-209.

Although the filing of a petition for involuntary commitment generally is preceded by emergency detention of the person, that is not always the case. If a person is held in emergency detention and has refused to consent to voluntary treatment, the director of the facility or the designee must file a petition or request the district attorney to file a petition if the person needs treatment beyond the 72 hour emergency detention period, or else release the individual. Other persons who may file a petition for involuntary commitment besides the facility director or district attorney include:

1. The father, mother, husband, wife, brother, sister, guardian or child, over the age of eighteen (18) years, of an individual alleged to have a mental illness and to be a person requiring treatment;
2. A licensed mental health professional;
3. The executive director of a facility designated by the Commissioner of Mental Health and Substance Abuse Services as appropriate for emergency detention or an administrator of a hospital that is approved by the Joint Commission on Accreditation of Healthcare Organizations;
4. A person in charge of any correctional institution; and
5. Any peace officer within the county in which the individual alleged to have a mental illness and to be a person requiring treatment resides or may be found.⁵⁸

A petition for court commitment must state the facts upon which the allegations of mental illness or substance dependency and dangerousness are based.⁵⁹ The petitioner, who is the individual signing the petition, must swear under oath to the accuracy of the petition.⁶⁰ If a director or an LMHP at a state-operated facility files the petition, the district attorneys of the state shall represent the State as the petitioner in commitment proceedings.⁶¹

Civil involuntary commitment actions can be filed in either the county where the subject of the petition resides or in the county where the person is found or being held on emergency detention. The actual hearing or trial can be held at the mental health facility where a person is being detained if the judge deems it appropriate.⁶²

The hearing, at the discretion of the judge, may be by video teleconferencing after advising the person of his or her constitutional rights. If the video teleconferencing hearing is conducted, the image of the person may be broadcast by secure video to the judge, and shall provide for two-way communications between the judge and detainee.⁶³

⁵⁸ See 43A O.S. § 5-410.

⁵⁹ 43A O.S. § 5-410(B).

⁶⁰ A copy of a sample Petition is included in Appendix B as form B-5.

⁶¹ 43A O.S. § 1-106.

⁶² 43A O.S. § 1-107.

⁶³ *Id.*

MENTAL HEALTH EVALUATION

After the individual has been placed in emergency detention, two LMHPs must perform an evaluation of a person subject to a petition for involuntary commitment.⁶⁴ At least one of the LMHPs performing the evaluation must be a psychiatrist, a psychologist, or a physician with specific mental health training.⁶⁵ After the evaluation, the LMHPs must prepare a **mental health evaluation** report⁶⁶ and attach it to the petition when it is filed with the court. If the mental health evaluation is not attached to the petition, the court must order a mental health evaluation report be completed and filed with the court.⁶⁷

The report must include the following findings: 1) whether the person has a mental illness and is a person requiring treatment, 2) whether the person is reasonably likely to benefit from mental health treatment, and 3) whether inpatient treatment is the least restrictive alternative based on either the failure of efforts to provide less restrictive alternatives or a determination that less restrictive alternatives are unlikely to meet the treatment needs of the person.⁶⁸ Upon completion, the report must be submitted to the court and the attorney for the person subject to the petition.

It is important that LMHPs are vigilant about the truthfulness and accuracy of the mental health evaluation. It is a crime for a physician to falsely certify to the mental illness or drug or alcohol dependency of a person, to provide a false certificate as the result of negligence, or to sign a certificate for pecuniary reward other than the professional fee usually paid for such service.⁶⁹ It is also a crime to “unlawfully or maliciously” order or admit a person to a facility for treatment of mental illness or drug or alcohol dependency.⁷⁰ Accordingly, an LMHP should never state a person has a mental illness and meets the definition of a person requiring treatment simply because the person may be dangerous or because the person has no place to go. Other agencies and law enforcement officials are equipped to handle individuals who are dangerous for other reasons.

PREHEARING DETENTION REQUESTS

As previously discussed, a person may be held for only 72 hours, excluding weekends or holidays, without an order from a court authorizing additional confinement. Thus, if a person is in emergency detention and the court sets the hearing after the expiration of the 72-hour period, the person must be released pending the hearing unless the detaining facility has requested and received an order for prehearing detention. To avoid the potential problem of having to release an individual who is still dangerous to

⁶⁴ If an involuntary commitment is sought without the person being placed in emergency detention, the evaluation by two LMHPs must be done on an outpatient basis and should be conducted before the hearing.

⁶⁵ See 43A O.S. § 5-206(1).

⁶⁶ A Mental Health Evaluation is included in Appendix B as form B-4.

⁶⁷ See 43A O.S. § 5-414(A).

⁶⁸ A copy of the Mental Health Evaluation is in Appendix B as form B-4.

⁶⁹ 43A O.S. § 5-104.

⁷⁰ 43A O.S. § 5-103.

self or others, it is generally appropriate to request an order from the court authorizing **prehearing detention** when filing the petition for involuntary commitment.⁷¹

When a request for prehearing detention is made, the district court must determine if there is probable cause to detain the person who is the subject of the petition until a hearing on the issue of involuntary commitment.⁷² This determination is generally based upon the court's review of the report of evaluation and certification. If the court determines there is no probable cause to detain a person until the hearing on the petition, the court shall deny the request for prehearing detention and order the person released and returned to the place where such person was taken into protective custody.⁷³

If the court determines probable cause exists to detain the person who is the subject of the petition for involuntary commitment, the court shall issue an **order for prehearing detention** and immediately set a date, time and place for a hearing on the petition.⁷⁴ The person requesting the prehearing detention must provide a copy of the order authorizing the prehearing detention to the facility authorized to detain the person who is the subject of the petition.⁷⁵

If the person is not in protective custody or emergency detention, the court can issue an order authorizing any peace officer to take the person into custody and detain the person in a suitable facility prior to the hearing on the petition.⁷⁶

RIGHTS REGARDING NOTICE AND THE HEARING

At a minimum, due process requires notice and a hearing to deprive a person of his liberty interest.

Upon the filing of a petition for involuntary commitment, the court shall set the matter for hearing.⁷⁷ The person subject to the petition must receive notice of the date, time and place of the hearing at least one day before the hearing.⁷⁸ At that time, the person must also receive a copy of the petition, the mental health evaluation, the peace officer's statement if any, and any prehearing detention order or order for evaluation.⁷⁹ Others who must also get a copy of the notice and petition include the attorney for the person subject to the petition, the person who initiated the request the emergency detention, and the facility in which the person is detained.⁸⁰

⁷¹ A copy of a Request for Prehearing Detention form is attached in Appendix B, form B-6.

⁷² 43A O.S. §§ 5-209 & 5-413.

⁷³ 43A O.S. § 5-413.

⁷⁴ An Order for Prehearing Detention form is included in Appendix B as form B-7.

⁷⁵ 43A O.S. §§ 5-209, 5-413.

⁷⁶ 43A O.S. § 5-413.

⁷⁷ 43A O.S. § 5-415.

⁷⁸ 43A O.S. § 5-412 (A).

⁷⁹ *Id.* and 43A O.S. § 5-412 (D)(1).

⁸⁰ 43A O.S. § 5-412(D)(1)(a).

The notice of hearing must contain several items, including: 1) the definitions of “mental illness” and “person requiring treatment;” 2) notification of the individual’s right to have a jury trial and right to present witnesses; 3) a statement that the court has appointed an attorney to represent the person; and 4) a statement that if a decision to commit is made, the court will take evidence regarding the person’s competency to refuse medications. The person delivering the notice and petition must explain the documents to the subject of the petition, as well as the subject’s right to habeas corpus relief.

The attorney appointed to represent a person subject to an involuntary commitment petition must meet and consult with the person within one day of notification of the appointment. The attorney must present the person with a statement of his rights.⁸¹

If the person requests, the court must schedule the hearing on the petition as a jury trial, which must be held within 72 hours (excluding weekends and holidays) of the demand.⁸² If a jury trial is not demanded, the court may receive evidence and act upon statements of LMHPs who conducted the mental health.⁸³

The individual who is the subject of the petition has a right to a closed hearing that is not open to the public, and a qualified right to be present at the hearing. The person has a right to present and cross-examine witnesses. The person may be called as a witness, but no admissions can be used against him or her except for purposes of the mental health proceeding.⁸⁴

ORDER

When the hearing on the petition for involuntary commitment concludes, the judge must enter an **order** stating the judge’s ruling in the case. If the judge determines the person is not a person requiring treatment, the judge will issue an order dismissing the petition for involuntary commitment and, if the person is in protective custody or emergency detention, order the person discharged.⁸⁵

If the judge determines the person has a mental illness and is a person requiring treatment, the judge must order the **least restrictive treatment** necessary that is consistent with the person’s treatment needs, as well as the safety of the person and others. Hospitalization is not the first option, but is the last resort. A court cannot order hospitalization unless the court determines by clear and convincing evidence the person is a person requiring treatment and less restrictive treatment is not appropriate for the person’s needs and the health and safety of the individual or others.⁸⁶

⁸¹ 43A O.S. § 5-411(D)(1).

⁸² 43A O.S. § 5-415(B).

⁸³ 43A O.S. § 5-415(C)(2).

⁸⁴ 43A O.S. §§ 5-411.

⁸⁵ 43A O.S. § 5-415.

⁸⁶ 43A O.S. §§ 5-415 & 5-416.

Alternative Commitment

If the court determines treatment other than hospitalization is appropriate to meet the person's treatment needs and is sufficient to prevent injury to the person or others, the court shall order the appropriate treatment for an appropriate period of time as determined by the court.⁸⁷ These orders give the court the flexibility to tailor the treatment ordered to meet the individual's specific treatment needs (*e.g.*, take prescribed medications and keep scheduled appointments at community mental health center). The order should indicate the court has continuing jurisdiction over the person during the treatment period and require the court to periodically review the individual's treatment needs to determine whether to continue, discontinue or modify the treatment.⁸⁸

The order cannot provide for hospitalization of the person in the event the person fails to comply with the order for treatment.⁸⁹ The court must set a show cause hearing, give notice to the person subject to the order, and hold a hearing within 72 hours. Detention pending the show cause hearing is inappropriate without an emergency examination and a determination by an LMHP that detention is warranted, *i.e.* the person is a danger to himself or others.⁹⁰

Inpatient Commitment

If the court determines hospitalization is appropriate, the court must **order** the person into the custody of the Department of Mental Health and Substance Abuse Services or a private facility willing to accept the person for treatment. An order requiring the person to be placed at a particular state-operated facility is not appropriate because the Department must have the discretion to place the person in the facility most appropriate for the person's needs.

A court must only order inpatient treatment if the person will benefit from treatment. Again, commitment must not be used merely for convenience or only for protection of the public. "[I]npatient 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."⁹¹ If the court decides that inpatient treatment is the least restrictive environment necessary for the individual, it must then determine whether the person is competent to refuse medications, and if not, the court may issue an order authorizing the treatment facility to administer medication without consent.⁹²

⁸⁷ This is commonly referred to as an "Outpatient Court Commitment."

⁸⁸ 43A O.S. § 5-416(B).

⁸⁹ *Lewis v. Donahue*, 437 F. Supp. 112 (W.D. Okla. 1977) (revocation of outpatient status without notice or opportunity to be heard prior to hospitalization violates the due process rights of the person allegedly in need of treatment).

⁹⁰ 43A O.S. § 5-416(B)(3).

⁹¹ 43A O.S. § 5-416(C). A sample **Order for Alternative Treatment** and **Order for Involuntary Commitment** are included in Appendix B as forms 10 and 11 respectively.

⁹² 43A O.S. § 5-416(A).

Because there are so many variables in each case, the district attorney, defense counsel for the person allegedly requiring treatment or the judge should revise the order to meet the specific needs of the individual who is the subject of the order.

Before a facility can accept an involuntarily committed person, the facility must have the commitment order.⁹³ A person must not be admitted without the proper forms. The procedural requirements for emergency detention and involuntary commitment must be strictly followed. Failure to follow the mandated procedural steps is error that will result in reversal of a commitment order.⁹⁴

COMPETENCY, MEDICATION AND SECLUSION & RESTRAINT

Although a person may have a mental illness and be admitted to a facility because he or she is dangerous, the person is presumed to be legally and mentally competent. “No person admitted to any facility shall be considered or presumed to be mentally or legally incompetent except those persons who have been determined to be mentally or legally incompetent in separate and independent proceedings of an appropriate district court.”⁹⁵

Additionally, individuals have a qualified right to refuse treatment, whether medical or psychiatric. Individuals also have a constitutional and statutory right to the least restrictive treatment.

Legally competent adults involuntarily committed to a state-operated mental health facility have a right to decide whether they wish to be treated with anti-psychotic medications.⁹⁶ Unless an emergency exists, individuals subject to involuntary commitment have a right to refuse medications. Accordingly, the court must specifically address the patient’s competency to consent to or refuse treatment and make a specific finding of whether the individual has the right to refuse medication during involuntary hospitalization.⁹⁷

Moreover, the use of psychotropic medications during the emergency detention period is very limited.⁹⁸ Of course, a mental health facility can give treatment and medications to a consenting adult during this period. However, treatment and medications can only be given to a non-consenting individual “upon the written order of a physician who has personally examined the patient and who finds such medication or treatment is necessary to protect the patient, the facility or others from serious bodily harm.”⁹⁹ The physician must also note this information in the patient’s record along with an explanation of the facts leading up to the decision to give the medication to the non-consenting adult.

⁹³ 43A O.S. § 5-102.

⁹⁴ *In the Matter of D.B.W.*, 616 P.2D 1149 (1980).

⁹⁵ 43A O.S. § 1-105.

⁹⁶ *In re the Mental Health of KKB*, 609 P.2d 747, 750 (Okla. 1980).

⁹⁷ 43A O.S. § 5-416(A).

⁹⁸ 43A O.S. § 5-204.

⁹⁹ 43A O.S. § 5-204(B).

Because individuals have a right to liberty and the least restrictive treatment, they also must be free from seclusion and restraint unless it is essential for protection of the individual or others.¹⁰⁰ Restraints, both physical and chemical, cannot be used as discipline or due to inadequate resources.

During the detention period, “[s]eclusion or restraint may be administered to a nonconsenting individual upon the written order of a physician who has personally examined the patient and who finds that seclusion or restraint is necessary to protect the patient, the facility, or other persons.”¹⁰¹ The physician must explain his or her decision in the patient’s chart. However, emergency seclusion or restraint is permitted pending notification of a physician.

TRANSFERS

As noted, involuntary commitment is a significant loss of liberty and must be accompanied by due process. It is clear this liberty interest also is triggered by a transfer from a lower level of security to higher one.¹⁰² Specifically, courts have found involuntarily committed patients have the right to due process prior to a transfer from a non-secure mental health facility to a secure facility, or from less restrictive treatment to more restrictive treatment.¹⁰³

Transfer of court-committed patients from a private hospital to a state-operated facility is authorized and a procedure set forth in statute.¹⁰⁴ The request must be made to the executive director of the state-operated facility serving the county of residence of the patient. The private facility must forward the documents relating to the commitment and an abstract of the clinical history.

Although the transfer is statutorily authorized, the patient must receive due process if the transfer will result in more restrictive treatment. The most efficient way to accomplish this would be to file a motion to modify the commitment order and allow the court to conduct a hearing.

Not only do procedural due process protections apply to inter-hospital transfers, but they have been found to apply to intra-hospital or facility transfers. If a court committed patient is transferred to a more secure section, the hospital should have procedures in place that reasonably assure the decision is correct, such as an independent psychiatric examination, and that give the patient an opportunity to object to the determination of placement.¹⁰⁵

¹⁰⁰ *Eckerhart v. Hensley*, 475 F. Supp. 908 (W.D. Mo. 1979).

¹⁰¹ 43A O.S. § 5-204(D).

¹⁰² *Vitek v. Jones*, 445 U.S. 480 (1980).

¹⁰³ *Eubanks v. Clarke*, 434 F. Supp. 1002 (E.D. Pa. 1977).

¹⁰⁴ 43A O.S. § 8-108.

¹⁰⁵ *Williams v. Robinson*, 432 F.2d 637, 640-41 (D.C. Cir. 1970).

DISCHARGE

The goal of any involuntary inpatient commitment is not simply to prevent the person requiring treatment from harming himself or others. The goal is to provide treatment to enable the person to return to the community and live a productive life in a free society. As such, the ultimate goal for any person involuntarily committed to inpatient treatment is **discharge**.

At a minimum, state-operated facilities must review the status of involuntarily committed persons at least once every three (3) months. If, based on the review, the facility determines discharge is required but an order for alternative treatment is necessary, the facility must request a modification of the commitment order to an order for alternative treatment.¹⁰⁶ Additionally, any person committed has a right to request the court to review the treatment order to determine if less restrictive treatment is appropriate.

Once a person is discharged the person cannot be returned to involuntary inpatient status without the filing of a new petition for involuntary commitment. If after discharge it is believed a person is dangerous to self or others and needs involuntary emergency treatment, a facility must follow the procedures for protective custody or emergency detention.

Discharge Criteria

Once the reason for involuntary commitment no longer exists the person must be discharged.¹⁰⁷ Therefore, a facility operated by the Department of Mental Health and Substance Abuse Services providing inpatient treatment to a person must discharge the person when he or she is **no longer a danger to self or others and is capable of surviving safely in freedom alone or with the help of other state agencies, private entities, or willing and responsible family members or friends.**¹⁰⁸

The facility must make reasonable efforts to arrange for appropriate placement and necessary services for the patient.¹⁰⁹ However, even if the person has no place to live and no job, the person must be released if he or she is no longer dangerous. It is unconstitutional to continue to detain a person who is dangerous to no one. Mental illness alone cannot justify confining a person against his or her will.¹¹⁰ Nonetheless, if the person meets criteria for a voluntary admission and requests voluntary admission, the facility can continue to treat the person.

¹⁰⁶ 43A O.S. §§ 5-416, 5-419

¹⁰⁷ *O'Connor v. Donaldson*, 422 U.S. 563 (1975).

¹⁰⁸ 43A O.S. § 7-101.

¹⁰⁹ 43A O.S. § 7-104.

¹¹⁰ *O'Connor*, 422 U.S. at 575.

If the person is inpatient because of an involuntary commitment order, the discharging facility must notify the committing court of the discharge within 48 hours after discharge.¹¹¹ This notice will allow the court to close its file.

If inpatient treatment is no longer required, but it is believed that alternative or less restrictive treatment is necessary and the person will not voluntarily agree to such alternative treatment, the director of the inpatient facility where the person is located can request the court modify the order of involuntary commitment to provide for alternative treatment.¹¹²

Discharge Planning and Assistance

A facility treating a person voluntarily or involuntarily must provide the person with discharge planning and assistance, which shall include return of the person's possessions, and transportation assistance.¹¹³

Before a person is discharged from a state-operated facility or an agency contracting with the Department of Mental Health and Substance Abuse Services, a **discharge plan** must be completed.¹¹⁴ The discharge plan must include housing information and planning for outpatient treatment if appropriate. Once the discharge plan is discussed with the patient, the person explaining the plan to the individual who is being discharged must sign the plan. The patient should then sign the discharge plan in the presence of a family member or other person interested in the welfare of the discharging patient.¹¹⁵ However, the facility must keep in mind confidentiality concerns at all times during the discharge process.¹¹⁶ The facility discharging a person must provide medication sufficient to last the person until his or her follow-up appointment, and provide the person with a copy of the discharge plan.¹¹⁷

If the patient is homeless, the discharging facility must make a reasonable effort to arrange for appropriate placement and, if necessary, contact public and voluntary agencies for assistance.¹¹⁸ A state-operated facility also must ensure the person has suitable clothing and transportation expenses.¹¹⁹

¹¹¹ 43A O.S. § 7-101(F).

¹¹² 43A O.S. § 7-102(D).

¹¹³ 43A O.S. § 7-102(A).

¹¹⁴ 43A O.S. § 7-102(B).

¹¹⁵ See 43A O.S. § 7-102 and OKLA. ADMIN. CODE 450:17-7-12.

¹¹⁶ See 43A O.S. § 1-109, 42 C.F.R., Part 2, and 45 C.F.R., Parts 160 and 164.

¹¹⁷ 43A O.S. § 7-102.

¹¹⁸ 43A O.S. § 7-104.

¹¹⁹ 43A O.S. § 7-103

Convalescent Leave

If necessary to determine whether a patient is ready for discharge, the facility can grant **convalescent leave** to the patient. Convalescent leave is not appropriate if it is clear the patient is a danger to self or others.¹²⁰

A facility which grants convalescent leave to a patient is not required to ensure he or she returns to the facility. If the patient does return from convalescent leave, he or she is returning as a voluntary patient. If the person does not return from convalescent leave to a state-operated facility within 12 months, the facility must discharge the patient.¹²¹ A person who is committed to a private hospital must be discharged from the hospital if the person does not return from convalescent leave within six (6) months.¹²² As stated, the court must be notified of the discharge.

If during the convalescent leave it appears the person requires continued inpatient treatment and he will not voluntarily return to the facility, the judge may order the return of the patient only after conducting a hearing to determine if the client is a person requiring treatment. The court must give the patient notice of the hearing. The court cannot order the person to return to inpatient status unless clear and convincing evidence exists that inpatient treatment is necessary.¹²³

INPATIENT MENTAL HEALTH AND SUBSTANCE ABUSE TREATMENT FOR CHILDREN

A minor may be admitted to inpatient mental health treatment on a voluntary or involuntary basis only if the minor meets the definition of a “**minor in need of treatment.**” A “minor in need of treatment” means a minor who either has:

1. A demonstrable mental illness or who is drug or alcohol dependent and as a result of that mental illness or dependency can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person, and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation; or
2. A demonstrable mental illness or is alcohol or drug dependent of sufficient severity to cause substantial impairment or disability in at least two of the following major areas of functioning in the life of the child:
 - a. family relations,
 - b. school performance,
 - c. social interactions,

¹²⁰ 43A O.S. § 7-101.

¹²¹ *Id.*

¹²² 43A O.S. § 8-101.

¹²³ 43A O.S. § 7-101. *See also Lewis v. Donahue*, 437 F. Supp. 112 (W.D. Okla. 1977)(cancellation of convalescent leave and return to hospitalization without a hearing violates a person’s due process rights).

- d. ability to perform independently the basic tasks of personal hygiene, hydration, and nutrition, or
- e. self protection.¹²⁴

The determination regarding the minor’s ability to independently perform the basic tasks described in sub-part “d” above must be based upon the age of the minor and reasonable and appropriate expectation of the abilities of a minor of such age to perform said tasks.¹²⁵

A “minor in need treatment” does not mean a minor afflicted with epilepsy, a developmental disability, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs or who is truant or sexually active unless the minor also meets the criteria for a minor in need of treatment.¹²⁶

VOLUNTARY ADMISSION FOR MINORS

A minor may be admitted upon the request of a parent to a mental health or substance abuse facility willing to accept the minor **as long as it is determined that the minor meets inpatient criteria.**¹²⁷ The consent of the minor is not necessary.¹²⁸

For the purposes of this Act,¹²⁹ a parent is defined as:

1. the biological or adoptive parent who has legal custody of the minor, or has visitation rights;¹³⁰
2. a person judicially appointed as a legal guardian of the minor; or
3. a relative within the third degree of consanguinity who exercises the rights and responsibilities of legal custody by delegation from a parent, as provided by law.

Additionally, any peace officer who reasonably believes that a minor is “a minor in need of treatment” and immediate emergency action is necessary, may take the minor into protective custody and transport the minor to a mental health or substance abuse

¹²⁴ 43A O.S. § 5-502(2).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ 43A O.S. § 5-505.1 and 43A §5-506. It is important to note that a parent’s consent is not enough to admit a child for inpatient treatment. It must also be determined by a licensed mental health professional. See *Parham v. J.R.*, 442 U.S. 584 (1979). An application for Voluntary Admission of a Minor form is included in Appendix F as form F-1.

¹²⁸ Previously, a minor sixteen (16) or seventeen (17) years of age had the ability to revoke his or her parent’s consent and demand a hearing before a judge or jury. However, this right was removed during the 2004 legislative session.

¹²⁹ “Inpatient Mental Health and Substance Abuse Treatment Act,” 43A O.S. §§ 5-501 *et seq.*

¹³⁰ The definition of “parent” was recently expanded to include non-custodial parents who had visitation rights. This expansion was as the result of situations where a child needed immediate mental health treatment, but authorities were unable to locate the custodial parent.

treatment facility for evaluation.¹³¹ The officer must prepare a statement articulating the basis for the belief the minor is a “minor in need of treatment” and the emergency circumstances that warranted placing the minor in protective custody.¹³² If an officer is relying upon information from a third party to take a minor into protective custody, the officer must get a 3rd party statement from that person detailing the basis for the belief the minor is a “minor in need of treatment.”¹³³

Following the request for an initial assessment of the parent or a request from law enforcement, an “**initial assessment**”¹³⁴ must be conducted by a licensed mental health professional.¹³⁵ An initial assessment is a review of current or recent behaviors and symptoms to determine whether an admission for inpatient treatment or evaluation is the least restrictive level of care necessary. The initial assessment may occur on either an inpatient or outpatient basis. If the licensed mental health professional determines and states in writing that there is cause to believe that the minor is a “minor in need of treatment,” then the minor shall be detained in emergency detention for a period not to exceed five (5) days excluding weekends and holidays, and a “**mental health evaluation**” is then conducted.

The mental health evaluation must also be conducted by a licensed mental health professional. The minor may only be admitted for inpatient care if the licensed mental health professional states in writing that the minor is a minor in need of treatment and:

1. the minor appears to have a mental illness or alcohol or drug dependency serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment,
2. the minor is provided with a clinically appropriate explanation of the nature and purpose of the treatment, and
3. based upon the following, inpatient treatment is determined to be the least restrictive alternative that meets the needs of the minor:
 - a. reasonable efforts have been made to provide for the treatment needs of the minor through the provision of less restrictive alternatives, and such alternatives have failed to meet the treatment needs of the minor, or

¹³¹ 43A §5-505.1 (B). A Request for Initial Assessment form is included in Appendix F as form F-1. This form can be used whenever a state agency having custody of the minor or a law enforcement officer requests that the minor be admitted for inpatient treatment. Please note, that law enforcement does not need to complete this form – a Peace Officer’s Statement form or 3rd Party Statement will suffice.

¹³² A “Peace Officer’s Statement” form is included in Appendix B as form B-1.

¹³³ A “Third Party Statement” form is included in Appendix B as form B-2.

¹³⁴ This was formerly known as a “medical necessity review.” The term was changed to make children’s mental health law more consistent with adult emergency detention language. An Initial Assessment form is included in Appendix F as form F-4.

¹³⁵ The definition of a “licensed mental health professional” under the Inpatient Mental Health and Substance Abuse Treatment Act is the same as for adults. Cf. 43A O.S. § 5-502(8) and 43A O.S. § 1-103(11).

- b. after thorough consideration of less restrictive alternatives to inpatient treatment, the condition of the minor is such that less restrictive alternatives are unlikely to meet the treatment needs of the minor.¹³⁶

A copy of the written findings of the evaluation must be provided to the consenting parent and the parent must be given the opportunity to discuss the findings with the licensed mental health professional conducting the evaluation. The determinations and written statements of the evaluation are made a part of the minor's medical record upon admission.

VOLUNTARY ADMISSION FOR MINORS AGE SIXTEEN AND OLDER

Minors who are sixteen (16) years of age or older were recently given the right to consent to voluntarily admit themselves for inpatient mental health or substance abuse treatment.¹³⁷ A mental health or substance abuse facility may admit a minor sixteen (16) years of age or older for inpatient evaluation or treatment so long as the minor is clinically eligible for admission.¹³⁸ The minor must complete an application for admission,¹³⁹ and then an initial assessment must be completed.

INVOLUNTARY ADMISSION

Involuntary admissions are generally sought when: 1) a parent who originally applied for inpatient treatment of a minor later revokes his or her consent; 2) when a minor who is sixteen (16) years of age or older revokes consent for inpatient treatment **and** a parent or guardian refuses consent for inpatient treatment; or 3) when a minor presents at a facility and appears to need inpatient treatment, but the minor cannot or will not consent and a parent cannot be located to give consent.¹⁴⁰ In such cases, a child may first be detained on an emergency basis for up to five (5) days, excluding weekends or holidays, until a court determines whether inpatient treatment is necessary.¹⁴¹

Once the minor is detained, he or she is evaluated by a licensed mental health professional to determine whether the minor is a minor in need of treatment. If the licensed mental health professional determines the minor is not a minor in need of treatment, the minor must be immediately discharged. If the licensed mental health professional determines that the minor is a minor in need of treatment, the licensed mental health professional must submit a report to the District Attorney within forty-eight

¹³⁶ 43A O.S. §5-503 (B). A mental health evaluation for minors form is included in Appendix F as form F-5. This form was formerly known as a "licensed mental health professional's statement," but was changed to make children's mental health law more consistent with adult emergency detention language.

¹³⁷ 43A §5-503 (A). The Legislature gave sixteen and seventeen year olds the ability to consent to mental health treatment without parental consent because this right already existed for substance abuse treatment.

¹³⁸ See 43A O.S. § 5-506.

¹³⁹ An application for 16 or 17 year old minors is included in Appendix F as Form F-2.

¹⁴⁰ See 43A O.S. §§ 5-506 and 5-507.

¹⁴¹ *Id.*

(48) hours, excluding weekends or holidays, of the detention or revocation of consent.¹⁴²
The report must include findings as to whether:

1. the minor appears to be a minor in need of treatment and is reasonably likely to benefit from the treatment,
2. the minor is provided with a clinically appropriate explanation of the nature and purpose of the treatment, and
3. based upon the following, inpatient treatment is determined to be the least restrictive alternative that meets the needs of the minor:
 - a. reasonable efforts have been made to provide for the treatment needs of the minor through the provision of less restrictive alternatives, and such alternatives have failed to meet the treatment needs of the minor, or
 - b. after thorough consideration of less restrictive alternatives to inpatient treatment, the condition of the minor is such that less restrictive alternatives are unlikely to meet the treatment needs of the minor.¹⁴³

The District Attorney then has three (3) days to file a petition alleging that the minor is a minor in need of treatment. If the District Attorney declines to file a petition, the minor must be discharged to the custody of his or her parent or to the agency having custody of the minor. If the District Attorney files the petition, the petition must set forth the following:

1. the facts which bring the minor within the purview of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act,
2. the name, age and residence of the minor,
3. the names and residences of the minor's parents,
4. if applicable, the name and residence of the minor's legal guardian,
5. the name and residence of the person or persons having custody or control of the minor,
6. the name and residence of the nearest known relative, if no parent or guardian can be found,
7. the relief requested, and
8. an endorsement of witnesses intended to be called.¹⁴⁴

A report of the licensed mental health professional should also be attached to the petition. If the minor has been admitted to a facility, the facility must make sure that a proposed individual treatment plan for the minor is prepared and submitted to the court at least twenty-four (24) hours prior to the time set for the hearing.

¹⁴² 43A O.S. §§ 5-506(B) and 5-507(C).

¹⁴³ A Mental Health Evaluation of a Minor is included in Appendix F as form F-5.

¹⁴⁴ 43A O.S. § 5-509(C)(2). A sample petition alleging a minor to be a minor in need of treatment is included in Appendix F as form F-6.

After the petition is filed, the court will appoint an attorney to represent the minor if the minor is not represented by counsel. The attorney appointed must consult with the minor at least twenty-four (24) hours prior to the date set for hearing the petition. In addition, the court may also appoint a guardian *ad litem* as provided by Section 7003-3.7 of Title 10 of the Oklahoma Statutes.

The court will also set a date for a hearing on the petition. The hearing date cannot be less than one (1) day, or more than three (3) days, excluding weekends and legal holidays, from the date the petition was filed. However, the attorney for the minor may request that the date of the hearing be extended once for up to an additional three (3) days, excluding weekends and holidays. If the date of the hearing is more than five (5) days after the minor was detained on an emergency basis, the court may enter a prehearing detention order authorizing the facility to hold the minor until the hearing date.¹⁴⁵

The court must ensure that notice of the date, time, place and purpose of the hearing is given to the petitioner, the minor, the parent, parents or legal guardian of the minor, and the person in charge of the mental health or substance abuse treatment facility detaining the minor. If the minor is a ward of the court, or is in the custody of the Department of Human Services or the Office of Juvenile Affairs, notice must also be given to a public or private child care agency having legal custody of the minor, if any, or to the person at the Department of Human Services, the Office of Juvenile Affairs or the applicable juvenile bureau responsible for the supervision of the case. Notice must be given at least twenty-four (24) hours prior to the date set for the hearing in such manner as directed by the court.

Hearings

Hearings are closed to the public unless otherwise ordered by the judge.¹⁴⁶ However, persons having a direct interest in the case will be admitted. The minor has a right to remain silent during the hearings.¹⁴⁷ No statement, admission or confession made by the minor may be used against the minor for any purpose except for proceedings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

The decision to determine a minor to be a minor in need of treatment must be based on sworn testimony and the minor must have the opportunity for cross-examination unless the facts are stipulated. Where the facts are stipulated, the judge must ascertain from the minor if the minor agrees with the stipulation and understands the consequences of stipulating the facts. The minor has the right to demand a trial by jury, which will consist of six (6) persons.

¹⁴⁵ 43A O.S. §5-506 (C)(2). A sample Order Setting Hearing & Directing Prehearing Detention is included in Appendix F as form F-7.

¹⁴⁶ 43A O.S. § 5-511.

¹⁴⁷ *Id.*

The court cannot commit a minor to a facility for inpatient treatment unless the court determines by clear and convincing evidence the following:

1. The minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or another person if services are not provided, and the minor has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation; or
2. That all reasonable efforts have been made to provide for the treatment needs of the minor through the provision of less restrictive alternatives to inpatient treatment and that such alternatives have failed to meet the treatment needs of the minor; or
3. After a thorough consideration of less restrictive alternatives to inpatient treatment, that the condition of the minor is such that less restrictive alternatives are unlikely to meet the treatment needs of the minor; and
4. There are no comparably effective services available to the minor that are less physically intrusive or restrictive.¹⁴⁸

If the court finds that the minor is not a minor in need of treatment the court shall dismiss the case and require that the minor be discharged. If the court determines that the minor is a minor in need of treatment, but does not require inpatient treatment, the court may order treatment or services through a less restrictive alternative to inpatient mental health or substance abuse treatment. This may include ordering the minor to take medication as prescribed by a physician and, upon a finding that it is in the best interests of the minor, the court may order the parents or other adult persons living in the home of the minor to comply with reasonable conditions relating to the treatment of the minor.¹⁴⁹

If the court finds that the minor is a minor in need of treatment and requires inpatient treatment in a mental health or substance abuse treatment facility, the court will order the commitment of the minor to a mental health or substance abuse treatment facility for up to thirty (30) days. The court will also order the custodian of the minor to make arrangements for the admission of the minor to a public or private mental health or substance abuse treatment facility appropriate for the inpatient care and treatment of minors which is willing to admit the minor for treatment.¹⁵⁰

The court will further set the matter for review not more than thirty (30) days from the date of commitment and shall continue to review the matter at intervals of not more than thirty (30) days until the minor is discharged from inpatient treatment.¹⁵¹ The facility must submit a report regarding the minor's progress and treatment, and also make

¹⁴⁸ 43A O.S. § 5-512.

¹⁴⁹ 43A O.S. § 5-512(D)(2).

¹⁵⁰ A sample Order for Inpatient Treatment is included in Appendix F as form F-8.

¹⁵¹ 43A O.S. § 5-512(E).

recommendations as to whether the minor needs inpatient care at least three (3) days prior to the review hearing.¹⁵²

Individualized treatment plan – Discharge plan

Within ten (10) days after the admission of a minor for inpatient treatment, the person in charge of the facility in which the minor is being treated shall ensure that an individualized treatment plan has been prepared by the person responsible for the treatment of the minor.¹⁵³ The minor shall be involved in the preparation of the treatment plan to the maximum extent consistent with the ability of the minor to understand and participate. The parent or legal custodian¹⁵⁴ of the minor shall be involved to the maximum extent consistent with the treatment needs of the minor.

The minor shall be discharged from the facility when the minor no longer meets the admission or commitment criteria, as determined by appropriate medical staff review after such persons have examined the minor and reviewed reports submitted by facility staff familiar with the condition of the minor. If not previously discharged, a minor committed by a court for inpatient treatment shall be discharged upon the expiration of a court order committing the minor for inpatient treatment or an order of the court directing the discharge of the minor.

Prior to the discharge of the minor from inpatient treatment, a discharge plan for the minor shall be prepared and explained to the minor and the parent or legal custodian of the minor, or, if the minor is in the custody or under the supervision of the Department of Human Services, a juvenile bureau or the Office of Juvenile Affairs, a designated representative of the agency. The plan shall include, but not be limited to:

1. The services required by the minor in the community to meet the minor's needs for treatment, education, housing and physical care and safety;
2. Identification of the public or private agencies that will be involved in providing treatment and support to the minor;
3. Information regarding medication which should be prescribed to the minor; and
4. An appointment for follow-up outpatient treatment and medication management.

¹⁵² 43A O.S. § 5-512(F).

¹⁵³ 43A O.S. § 5-513.

¹⁵⁴ If the minor is in the custody of the Department of Human Services or the Office of Juvenile Affairs, the designated representative of the applicable agency.

APPENDIX A

Statutes and Regulations

§ 1-102. Purpose

A. The purpose of the Mental Health Law is to provide for the humane care and treatment of persons who:

1. Are mentally ill; or
2. Require treatment for drug or alcohol abuse

B. All such residents of this state are entitled to care and treatment in accordance with the appropriate standard of care.

§ 1-103. Definitions

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 this 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 the mentally ill or drug-dependent or alcohol-dependent persons 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 physician licensed pursuant to Section 480 et seq. or Section 620 et seq. of Title 59 of the Oklahoma Statutes who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions,

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

d. a professional counselor licensed pursuant to Section 1901 et seq. of Title 59 of the Oklahoma Statutes,

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

f. a licensed marital and family therapist as defined in Section 1925.1 et seq. of Title 59 of the Oklahoma Statutes,

g. a licensed behavioral practitioner as defined in Section 1930 et seq. of Title 59 of the Oklahoma Statutes, or

h. an advanced practice nurse as defined in Section 567.1 et seq. of Title 59 of the Oklahoma Statutes specializing in mental health;

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:

(1) a person who because of a mental illness of the person represents a risk of harm to self or others, or

(2) a person who is a drug- or alcohol-dependent person and who as a result of dependency represents a risk of harm to self or others.

b. Unless a person also meets the criteria established in subparagraph a of this paragraph, person requiring treatment shall not mean:

(1) a person whose mental processes have been weakened or impaired by reason of advanced years,

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

(3) a person with seizure disorder, or

(4) a person with a traumatic brain injury;

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

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 accordence 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; and

18. "Risk of harm to self or others" means:

a. 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,

b. 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,

c. having 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,

d. there exists a substantial risk that without immediate intervention severe impairment or injury will result to the person alleged to be a person requiring treatment, or

e. a substantial risk of immediate serious physical injury to self, or immediate death, as manifested by evidence that the person is unable to provide for and is not providing for the basic physical needs of the person and that appropriate provision for those needs cannot be made immediately available in the community.

Unless a person also meets the criteria established in subparagraphs a, b, c, d, or e of this paragraph, "risk of

harm to self or others" does not mean a person who is homeless.

§ 1-104. Public Policy

The Oklahoma Legislature hereby declares that the public policy of this state is to assure adequate treatment of persons alleged to be in need of mental health treatment or treatment for drug or alcohol abuse, to establish behavioral standards for determination of dangerousness of persons in need of such treatment, to allow for the use of the least restrictive alternative in the determination of the method of treatment, to provide orderly and reliable procedures for commitment of persons alleged to be in need of treatment consistent with due process of law, and to protect the rights of consumers hospitalized pursuant to law.

§ 1-105. Mental or legal incompetence - Presumptions

No person admitted to any facility shall be considered or presumed to be mentally or legally incompetent except those persons who have been determined to be mentally or legally incompetent in separate and independent proceedings of an appropriate district court.

§ 1-106. District attorney to represent state in proceedings for involuntary admissions

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.

§ 1-107. Venue of hearing – Video teleconferencing

A. Civil actions for involuntary commitment 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 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 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.

§ 1-109.1. Designation of family member as treatment advocate – Treatment advocate consent form

A. 1. Every adult having a mental illness as defined in Section 1-103 of this title who is under the care of a licensed mental health professional shall be informed by the licensed mental health professional or the mental health treatment facility that the consumer has the right to designate a family member or other concerned individual as a treatment advocate.

2. The individual designated as a treatment advocate shall act at all times in the best interests of the consumer.

3. The patient may change or revoke the designation of a treatment advocate at any time and for any reason.

4. The treatment advocate may participate in the treatment planning and discharge planning of the consumer to the extent consented to by the consumer and as permitted by law.

B. 1. The Board of Mental Health and Substance Abuse Services shall promulgate rules for all facilities certified by the Department of Mental Health and Substance Abuse Services as

to the design, contents, and maintenance of a treatment advocate consent form.

2. The contents of the consent form, at a minimum, shall include a statement indicating that the treatment advocate understands that all mental health treatment information is confidential and that the treatment advocate agrees to maintain confidentiality.

C. This section shall not apply to inmates of the Oklahoma Department of Corrections.

§ 1-110. Reimbursement of sheriffs' and peace officers' expenses in transporting person for mental health services

A. Sheriffs and peace officers shall be responsible for transporting individuals to and from designated sites or facilities for the purpose of examination, emergency detention, protective custody and inpatient services.

B. A municipal law enforcement agency shall be responsible for any individual found within such municipality's jurisdiction. The county sheriff shall be responsible for any individual found outside of a municipality's jurisdiction, but within the county.

C. The law enforcement agency transporting an individual to and from designated sites or facilities pursuant to the provisions of this section shall maintain responsibility for the transportation of such individual pending completion of the examination, emergency detention, protective custody and inpatient services.

D. Sheriffs and peace officers shall be entitled to reimbursement from the Department of Mental Health and Substance Abuse Services for transportation services associated with

minors or adults requiring examination, emergency detention, protective custody and inpatient services.

E. Any transportation provided by a sheriff or deputy sheriff or a peace officer on behalf of any county, city, town or municipality of this state, to or from any facility for the purpose of examination, admission, interfacility transfer, medical treatment or court appearance shall be reimbursed in accordance with the provisions of the State Travel Reimbursement Act.

F. Nothing in this section shall prohibit a law enforcement agency from entering into a lawful agreement with any other law enforcement agency to fulfill the requirements established by this section.

§ 3-402. Public policy – Purpose

It is hereby declared to be the public policy of this state to recognize alcoholism and drug abuse as illnesses and public health problems affecting the health, safety, morals, economy and general welfare of the state; to recognize alcoholism and drug abuse as illnesses subject to medical treatment and other therapeutic intervention and abatement; and to recognize that the sufferer of alcoholism and drug abuse is entitled to treatment and rehabilitation. The purpose of this act is to establish means whereby the appropriate resources of this state may be most fully and effectively focused upon the problems of alcoholism and drug abuse and utilized in implementing programs for the control and treatment of these illnesses.

§ 3-403. Definitions

As used in the Oklahoma Alcohol and Drug Abuse Services Act:

1. "Approved treatment facility" means any facility which:

a. offers either inpatient, intermediate or outpatient treatment to any person suffering from alcohol or drug abuse, or alcohol- or drug-related problems, and

b. is certified by the Board of Mental Health and Substance Abuse Services;

2. An "alcohol-dependent person" is one who uses alcoholic beverages to such an extent that it impairs the health, family life, or occupation of the person and compromises the health and safety of the community;

3. A "drug-dependent person" means a person who is using a controlled substance as presently defined in Section 102 of the Federal Controlled Substances Act and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled substance on an intermittent or continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence;

4. "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as the direct result of the consumption of alcohol or drugs;

5. "Medical detoxification" means diagnostic and treatment services performed by licensed facilities for acute alcohol intoxication, delirium tremens and physical and neurological complications resulting from acute intoxication. Medical detoxification includes the services of a physician and attendant medical personnel including nurses, interns and emergency room personnel, the administration of a medical examination and a medical history, the use of an emergency room

and emergency medical equipment if warranted, a general diet of three meals each day, the administration of appropriate laboratory tests, and supervision by properly trained personnel until the person is no longer medically incapacitated by the effects of alcohol;

6. "Nonmedical detoxification" means detoxification services for intoxicated clients with no apparent physical or neurological symptoms requiring medical treatment as a result of their intoxication. Nonmedical detoxification includes providing a bed, oral administration of fluids, three meals a day and the taking of the client's temperature, blood pressure and pulse at least once every six (6) hours for the duration of the client's stay in the nonmedical detoxification service;

7. "Inpatient treatment" means the process of providing residential diagnostic and treatment services on a scheduled basis;

8. "Intermediate care" means an organized therapeutic environment in which a client may receive diagnostic services, counseling, vocational rehabilitation and/or work therapy while benefiting from the support which a full or partial residential setting can provide. Intermediate care should provide a transition between the inpatient detoxification facility and reintegration into community life. Intermediate care must include provision for a bed, three meals a day and medical support if needed;

9. "Transitional living facility" and "halfway house" means an approved treatment facility which offers or provides temporary residential accommodations, meals, supervision at all times residents are in the facility or on facility premises, and services,

including counseling, short-term supportive care, case management, mental health services or treatment services;

10. "Short-term supportive care" means a service rendered to any person residing in a halfway house or transitional living facility which is sufficient to assist the person to meet or achieve an adequate level of daily living and to learn or develop adequate daily living skills. Daily living skills shall include, but not be limited to, resident participation in meal preparation and routine housekeeping and laundry tasks. Short-term supportive assistance includes, but is not limited to, assistance in the preparation of meals, housekeeping, laundry tasks and personal hygiene. Short-term supportive assistance shall not include medical services or personal care as defined in Section 1-820 of Title 63 of the Oklahoma Statutes; and

11. "Treatment" means the broad range of emergency, inpatient, intermediate and outpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling, which may be extended to alcohol-dependent, intoxicated and drug-dependent persons.

§ 4-106. Mechanical restraints – Record of use

Mechanical restraints shall not be applied to a consumer unless it is determined by a physician to be required by the medical needs of the consumer. No mechanical restraint shall be continued for longer than is absolutely necessary under the circumstances. Every use of a mechanical restraint, the reasons and length of time, shall be

made a part of the clinical record of the consumer under the signature of the physician.

§ 5-101. Procedures for admission to state institution, psychiatric hospital or private institution

A. Any person who has a mental illness or is alcohol- or drug-dependent to a degree which warrants inpatient treatment or care, and who is not in confinement in any jail or correctional facility on a criminal charge or conviction and who has no criminal charges pending against him or her, may be admitted to and confined in a facility within the Department of Mental Health and Substance Abuse Services, a state psychiatric hospital, or a licensed private institution by compliance with any one of the following procedures:

1. Emergency admission;
2. On voluntary application; or
3. On involuntary court commitment.

B. Any person who has a mental illness or is alcohol- or drug-dependent to a degree which warrants inpatient treatment or care and who has criminal charges pending against him or her but is not confined in any jail or correctional facility may be admitted to a facility within the Department or a licensed private institution pursuant to the provisions of subsection A of this section; provided, the facility or hospital shall be authorized to take such reasonable steps as necessary to assure the protection of the public, the residents of the facility or hospital and the person including, but not limited to, segregation and private facilities. Provided further, treatment received pursuant to this subsection shall not constitute a defense in any criminal proceeding except as otherwise provided by Title 22 of the Oklahoma Statutes.

C. 1. Any person confined pursuant to a criminal charge shall only be admitted to and confined pursuant to a court order issued in compliance with the provisions of Section 1175.6 of Title 22 of the Oklahoma Statutes.

2. No person shall be deprived of his or her liberty on the grounds that such person is, or is supposed to have, a mental illness or is in need of mental health treatment, except in accordance with the provisions of the Mental Health Law.

§ 5-101. Procedures for admission to state institution, psychiatric hospital or private institution

A. Any person who has a mental illness or is alcohol- or drug-dependent to a degree which warrants inpatient treatment or care, and who is not in confinement in any jail or correctional facility on a criminal charge or conviction and who has no criminal charges pending against him or her, may be admitted to and confined in a facility within the Department of Mental Health and Substance Abuse Services, a state psychiatric hospital, or a licensed private institution by compliance with any one of the following procedures:

1. Emergency admission;
2. On voluntary application; or
3. On involuntary court commitment.

B. Any person who has a mental illness or is alcohol- or drug-dependent to a degree which warrants inpatient treatment or care and who has criminal charges pending against him or her but is not confined in any jail or correctional facility may be admitted to a facility within the Department or a licensed private institution pursuant to the provisions of subsection A of this section; provided, the facility or hospital shall be authorized to take such

reasonable steps as necessary to assure the protection of the public, the residents of the facility or hospital and the person including, but not limited to, segregation and private facilities. Provided further, treatment received pursuant to this subsection shall not constitute a defense in any criminal proceeding except as otherwise provided by Title 22 of the Oklahoma Statutes.

C. 1. Any person confined pursuant to a criminal charge shall only be admitted to and confined pursuant to a court order issued in compliance with the provisions of Section 1175.6 of Title 22 of the Oklahoma Statutes.

2. No person shall be deprived of his or her liberty on the grounds that such person is, or is supposed to have, a mental illness or is in need of mental health treatment, except in accordance with the provisions of the Mental Health Law.

§ 5-102. Official forms required – Order as sufficient authority and protection

No person shall be accepted into any facility without the use of the properly executed official forms. The properly executed order to hospitalize or the order of admission shall be full and sufficient authority and protection to the executive director or the person acting as such in the absence of the executive director for receiving and detaining in the hospital the person named on the form.

§ 5-103. Unlawful or malicious confinement in institution

Any person who shall knowingly contrive or conspire to have ordered or admitted any person to an institution for the mentally ill or a facility for the treatment of alcohol-dependent or drug-dependent persons, unlawfully or

maliciously shall be guilty of a misdemeanor, and upon conviction, shall be fined not to exceed One Thousand Dollars (\$1,000.00) or confined in jail not to exceed one (1) year, or both such fine and imprisonment.

§ 5-104. Physicians – false certificate, etc.

Any person who falsely certifies to the mental illness, alcohol dependency, or drug dependency of any person, or whose false certificates as to mental illness, alcohol dependency, or drug dependency of any person is proved to be the result of negligence or deficient professional skill, or who signs such a certificate for pecuniary reward, or promise thereof, or other consideration of value or operating to his or her advantage, other than the professional fee usually paid for such service, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by payment of a fine not to exceed One Thousand Dollars (\$1,000.00), or imprisonment in the county jail not to exceed one (1) year, or both such fine and imprisonment.

§ 5-201. Rights of detained persons upon entry into facility

All facilities wherein persons are detained for any purpose under the provisions of this act shall allow such detained person the right to contact a relative, close friend or attorney immediately upon entry into such place of detention.

§ 5-202. Confinement of persons allegedly or adjudged mentally ill, alcohol-dependent or drug-dependent

When any person alleged in any court to be mentally ill, alcohol-dependent, or drug-dependent, or shall

have been adjudged to be mentally ill, alcohol-dependent, or drug-dependent and shall be in the legal custody of the county sheriff as prescribed by law, if such person has not been charged with commission of a crime, the said county sheriff is hereby authorized to confine such person in a place other than the county jail to be selected by said county sheriff and to transport such person to the place selected; provided that such confinement shall be in a place and manner so as to prevent such confined person from in any way endangering himself or any other person. The county is hereby directed to expend such funds as may be necessary to provide for such confinement outside the county jail. Specific authority is hereby granted the county sheriff and the county commissioners to enter into a contract with a nursing home or facility as a place of detention. Other departments and agencies of the state may not interfere with nor deter, in any manner, this right to contract.

§ 5-203. Conveying females to institution – Female assistants – County expense – Transfer to another institution

A. Upon receiving an order from a district court to convey a mentally ill, alcohol-dependent, or drug-dependent female to a facility, the sheriff of such county shall procure a suitable female to assist in conveying the female to the facility if the sheriff or deputy who will be conveying the female is male.

B. If a female attendant is not available, a male sheriff or male deputy may convey the mentally ill, alcohol-dependent or drug-dependent female without a female attendant if the sheriff or deputy conveying the female notifies the dispatcher of the specific mileage

from the collection point to the destination point, the time of departure and the estimated time of arrival.

C. The sheriff may procure assistance, and certify the same to the county clerk as a part of the expense of the conveyance. No bill for the expense of such conveyance shall be allowed by the commissioners of any county unless it is accompanied by a certificate of the executive director of the facility, showing that the person has been duly conveyed to the facility by, or accompanied by a female attendant or as otherwise authorized by this section.

D. Whenever a female consumer is transferred from one facility to another within the Department of Mental Health and Substance Abuse Services or from a facility within the Department to another facility of like nature elsewhere, the female must be accompanied by a female employee of the Department or a suitable relative of the female consumer.

§ 5-204. Treatment and medication during pre-screening detention – Liability – Seclusion or restraint

A. 1. Appropriate treatment and medication, including psychotropic medication, may be administered to a consenting individual:

1. During the detention periods authorized by the Mental Health Law;

2. During the time set forth in the Mental Health Law for the precommitment screening examination; or

3. While in the custody of the Department of Corrections.

B. Treatment and medication may be administered to a nonconsenting individual upon the written order of the physician who:

1. Has personally examined the consumer;

2. Finds the medication or treatment is necessary to protect the consumer, the facility or others from serious bodily harm; and

3. Notes in the medication record of the consumer, with an explanation of the facts leading up to the decision to administer treatment and medication including psychotropic medication.

C. Any physician who orders medication in good faith and any employee of the facility who administers medication in good faith pursuant to the written order of a physician, under the provision of this section, shall be immune from civil suits for damages that occur from the administration of medication.

D. Seclusion or restraint may be administered to a nonconsenting individual upon the written order of a physician who:

1. Personally examined the consumer; and

2. Finds that seclusion or restraint is necessary to protect the consumer, the facility, or other persons. The physician shall note in the chart of the consumer an explanation of the decision to administer seclusion or restraint, including administration of psychotropic medication. This shall not prohibit emergency seclusion or restraint pending notification of a physician.

E. If the consumer is under the influence of psychotropic medication during any court hearing held pursuant to Section 5-401 of this title, the court, and the jury, if any, shall be advised by the district attorney at the beginning of the hearing that:

1. The consumer is under the influence of psychotropic medication;

2. The purpose of the medication; and

3. The effect which such medication may have on the actions, demeanor and participation of the consumer at the hearing.

F. If an inmate in the custody of the Department of Corrections has been properly assigned and committed to the Special Care Unit at the State Penitentiary the provisions of this section shall apply.

§ 5-206. Definitions

As used in Sections 5-206 through 5-209 of this title:

1. "Mental health evaluation" means the examination of a person who appears to have a mental illness or be alcohol- or drug-dependent by two licensed mental health professionals, at least one of whom is a psychiatrist who is a diplomat 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:

a. determining if a petition requesting involuntary commitment or treatment is warranted, or

b. completing a certificate of evaluation pursuant to Section 5-414 of this title, or

c. both subparagraphs a and b of this paragraph;

2. "Initial assessment (medical necessity review)" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or a drug-dependent person and a person requiring treatment, whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional at a facility approved by the

Commissioner of Mental Health and Substance Abuse Services, or a designee, as appropriate for such examination to determine if emergency detention of the person is warranted;

3. "Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination and a determination that emergency detention is warranted for a period not to exceed seventy-two (72) hours, excluding 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 as provided by this act;

4. "Protective custody" means the taking into protective custody and detention of a person pursuant to the provisions of Section 5-208 of this title until such time as an emergency examination is completed and a determination is made as to whether or not emergency detention is warranted; and

5. "Prehearing detention" means the court-ordered detention of a person who is alleged to be mentally ill, alcohol-dependent, or drug-dependent in a facility approved by the Commissioner as appropriate for such detention, pending a hearing on a petition requesting involuntary commitment or treatment as provided by Section 5-415 or 9-102 of this title.

§ 5-207. Protective custody of persons appearing to be mentally ill, alcohol-dependent or drug-dependent – Affidavits – Emergency examination – Request by persons other than peace officer

A. Any person who appears to be or states that such person is mentally ill, alcohol-dependent, or drug-dependent to a degree that immediate emergency action is necessary may be taken into protective custody and detained as provided pursuant to the provisions of this section. Nothing in this section shall be construed as being in lieu of prosecution under state or local statutes or ordinances relating to public intoxication offenses.

B. Any peace officer who reasonably believes that a person is a person requiring treatment as defined in Section 1-103 of this title shall take the person into protective custody. The officer shall make every reasonable effort to take the person into custody in the least conspicuous manner.

C. The officer shall prepare a written statement indicating the basis for the officer's belief that the person is a person requiring treatment and the circumstances under which the officer took the person into protective custody. The officer shall give a copy of the statement to the person or the person's attorney upon the request of either. If the officer does not make the determination to take an individual into protective custody on the basis of the officer's personal observation, the officer shall not be required to prepare a written statement. However, the person stating to be mentally ill, alcohol-dependent, or drug-dependent or the person upon whose statement the officer relies shall sign a written statement indicating the basis for such person's belief that the

person is a person requiring treatment. Any false statement given to the officer by the person upon whose statement the officer relies shall be a misdemeanor and subject to the sanctions of Title 21 of the Oklahoma Statutes.

D. If the person is medically stable, the officer shall immediately transport the person to the nearest facility designated by the Commissioner of Mental Health and Substance Abuse Services as an appropriate facility for an initial assessment. If, subsequent to an initial assessment, it is determined that emergency detention is warranted, the officer shall transport the person to the nearest facility, designated by the Commissioner as appropriate for such detention, that has bed space available. If it is determined by the facility director or designee that the person is not medically stable, the officer shall transport the person to the nearest hospital or other appropriate treatment facility.

E. The parent, brother or sister who is eighteen (18) years of age or older, child who is eighteen (18) years of age or older, or guardian of the person, or a person who appears to be or states that such person is mentally ill, alcohol-dependent, or drug-dependent to a degree that emergency action is necessary may request the administrator of a facility designated by the Commissioner as an appropriate facility for an initial assessment to conduct an initial assessment to determine whether the condition of the person is such that emergency detention is warranted and, if emergency detention is warranted, to detain the person as provided in Section 5-206 of this title.

§ 5-208. Examination of person in protective custody – Authority for detention – Petition for order of involuntary treatment

A. 1. A consumer in protective custody as provided by Section 5-207 of this title shall be subject to an initial assessment at the appropriate facility by a licensed mental health professional within twelve (12) hours of being placed in protective custody for the purpose of determining whether emergency detention of the consumer is warranted.

2. If, upon examination, the licensed mental health professional determines that the consumer is not a person requiring treatment or that the condition of the consumer is such that emergency detention is not warranted, the consumer shall either be returned by an officer immediately to the point where the consumer was taken into protective custody and released or taken to the home or residence of such consumer or to an alternative facility. If the home or residence of the consumer is a nursing home or group home, such home shall not refuse the return of the consumer to his or her residence.

3. If, upon examination, the licensed mental health professional determines that the consumer is a person requiring treatment to a degree that emergency detention is warranted, the licensed mental health professional shall immediately prepare a statement describing the findings of the examination and stating the basis for the determination, and the consumer shall be detained in emergency detention for a period not to exceed seventy-two (72) hours, excluding weekends and holidays, except upon a court order authorizing detention pending a hearing on a petition requesting involuntary commitment or treatment.

4. During the emergency detention period:

a. a mental health evaluation of the consumer shall be conducted by two licensed mental health professionals and, if the consumer appears to have a mental illness or be alcohol- or drug-dependent and be a consumer requiring treatment, and

b. reasonable efforts shall be made to determine whether the consumer has a current and unrevoked advance directive executed pursuant to the Advance Directives for Mental Health Treatment Act.

B. If a licensed mental health professional, designated to have the responsibility by the executive director or person in charge of a hospital, or the executive director or person in charge of a facility designated by the Commissioner of Mental Health and Substance Abuse Services as appropriate for emergency detention believes a voluntary consumer to be a person requiring treatment to a degree that emergency action is necessary, the hospital or facility may detain such consumer in emergency detention for a period not to exceed seventy-two (72) hours, excluding weekends and holidays, only on the following conditions:

1. The consumer has refused to consent or has withdrawn consent to voluntary treatment;

2. The consumer has been examined by a licensed mental health professional who has determined that the consumer is a person requiring treatment, the condition of the consumer is such that emergency detention is warranted, and a statement has been prepared as provided in subsection A of this section; and

3. The executive director or person in charge or the designee shall provide for a mental health evaluation of the

consumer by two licensed mental health professionals.

C. Whenever it appears that a consumer detained pursuant to the provisions of this section is no longer a person requiring treatment and will not require treatment beyond the period of detention, the consumer shall be discharged and returned by an officer to the point where he or she was taken into protective custody, or if the consumer had not been in protective custody, the consumer shall be taken to the home or residence of the consumer or to an alternative facility. If the home or residence of the consumer is a nursing home or group home, it shall not refuse the return of the consumer to his or her residence.

D. Whenever it appears that a person detained as provided by this section will require treatment beyond the period of emergency detention and the person has refused to consent to voluntary treatment, a licensed mental health professional conducting an evaluation of the person or the executive director of the facility in which the person is being detained, or the designee of the executive director, shall immediately file a petition or request the district attorney to file a petition with the district court as provided by Section 5-410 of this title or Section 9-102 of this title, and may request a court order directing prehearing detention when such detention is necessary for the protection of the person or others.

§ 5-209. Additional period of detention – Petition – Order – Notification of interested parties of detention

A. A person may be detained in emergency detention more than seventy-two (72) hours, excluding weekends and

holidays, only if the facility in which the person being detained is presented with a copy of an order of the district court authorizing further detention. Such order may be entered by the court only after a petition has been filed seeking involuntary commitment or treatment pursuant to the provisions of Section 5-410 or 9-102 of this title.

B. If a copy of an order for further detention is not delivered to the facility by the end of the period of emergency detention, the person alleged to be a mentally ill person, an alcohol-dependent person, or a drug-dependent person and a person requiring treatment shall be discharged from the facility in which detained unless said person has applied for voluntary treatment.

C. The person being held in protective custody or emergency detention shall be asked to designate any person whom such person wishes informed regarding the detention. If the person being held in protective custody is incapable of making such designation, the peace officer holding the person in protective custody shall notify within twenty-four (24) hours of taking the person into protective custody, other than the person initiating the request for protective custody, the attorney, parent, spouse, guardian, brother, sister, or child who is at least eighteen (18) years of age of the person. Failure of the sheriff to find such person shall within a reasonable time be reported to the administrator of the facility. Such fact shall be made a part of the records of the facility for the person being detained.

§ 5-301. Short title

Sections 5-301 through 5-311 of the Mental Health Law shall be known and may be cited as the "Mental Hospital Voluntary Admission Procedures Act".

§ 5-301.1. Definition of “person”

As used in the Mental Hospital Voluntary Admission Procedures Act, "person" shall include a person found by the court to be a partially incapacitated person, over whom a limited guardian has been appointed, where the court has specifically found in its dispositional order, that the person possesses the capacity to voluntarily admit himself to a state hospital.

§ 5-302. Informal patient – Admittance

A. Any person may be admitted to a state mental hospital or state-operated community mental health center on a voluntary basis as an informal consumer when there are available accommodations and in the judgment of the person in charge of the facility or a designee such person may require treatment therein. Such person may be admitted as an informal consumer without making formal or written application therefor and any such informal consumer shall be free to leave such facility on any day between the hours of 9:00 a.m. and 5:00 p.m. and at such other times as the person in charge of the facility may determine.

B. No person shall be admitted as an informal consumer pursuant to the provisions of this section to any state mental hospital or state-operated community mental health center unless the person in charge of the facility or a designee has informed such consumer in writing of the following:

1. The rules and procedures of the facility relating to the discharge of informal consumers;

2. The legal rights of an informal consumer receiving treatment from the facility; and

3. The types of treatment which are available to the informal consumer at the facility.

§ 5-303. Refusal to admit informal patient – Liability

The state and its agents do not have a legal duty to admit a person as an informal consumer, and refusal to admit a person as an informal consumer, if made in good faith, shall not give rise to a cause of action by anyone damaged as a result of such refusal.

§ 5-304. Voluntary admission to state and private institutions – Cost of care and treatment – Bond

A. The Board of Mental Health and Substance Abuse Services shall promulgate rules for the reception and retention of voluntary consumers by state facilities.

B. The executive director in charge of any state facility or licensed private hospital for care and treatment of the mentally ill may at his or her discretion receive and retain therein as a consumer:

1. Any person eighteen (18) years of age or over, suitable for care and treatment, who voluntarily makes written application;

2. Any person, suitable for care and treatment at least sixteen (16) years but not over eighteen (18) years of age, with the consent of such person's parent or guardian.

C. A person received at any facility pursuant to this section shall not be detained for a period exceeding seventy-two (72) hours, excluding weekends and holidays, from and inclusive of the date of notice in writing of his intention or desire to leave such hospital or facility.

D. The form for voluntary application shall be printed or written on eight and one-half-inch by eleven-inch

paper and shall be substantially as follows:

Mental Health Law Form 19.
VOLUNTARY APPLICATION
FOR ADMISSION TO THE
EXECUTIVE DIRECTOR OF THE
FACILITY AT _____

Application is hereby made for my admission to the above named facility within the Department of Mental Health and Substance Abuse Services as a voluntary consumer under the provisions of the Oklahoma Mental Health Law.

Dated this ____ day of ____, 20__.
____ Applicant
____ Address

Subscribed and sworn to before me this ____ day of ____, 20__.

Notary Public

E. The applicant, or someone on behalf of the applicant, must pay a bond for the cost of care and treatment or pay such cost each month in advance, unless it is determined that the applicant is a poor or indigent person as provided in this title.

§ 5-305. Application for voluntary admission

Any person desiring and needing psychiatric treatment in a state facility for the mentally ill as a voluntary consumer may present a written application to the judge of the district court:

1. Of the county in which the person resides; or

2. Of the county in which a state hospital for the mentally ill is located. The application may be in substantially the following form:

IN THE DISTRICT COURT OF

COUNTY, OKLAHOMA
In the Matter of the Mental Health of

No. _____
on the Mental Health Consumer Docket
APPLICATION FOR
VOLUNTARY ADMISSION TO
MENTAL FACILITY

I declare that my name is ____, that I am ____ years of age, and that I reside in ____ County, Oklahoma, my permanent residence address being as follows:

I have obtained medical advice concerning my condition, and I desire to be admitted to the ____ State Facility at ____, Oklahoma, as a voluntary consumer under the provisions of the Mental Hospital Voluntary Admission Procedures Act. I understand that if admitted to this facility I may be detained in this facility until the executive director of this facility concludes that it is proper for me to be released, not exceeding, however, a period of seventy-two (72) hours after I give written notification to the executive director or a designee of my desire to leave the facility.

I declare that the names and addresses of my close relatives are as follows:

Father: _____
Mother: _____
Spouse: _____
Adult Children: _____
Other: _____

Dated this ____ day of ____, 20__.

(Signature)

§ 5-306. Certificate of physician

The application described in Section 5-305 of this title shall be accompanied by a certificate in duplicate signed by a licensed doctor of medicine or

osteopathic physician who is duly licensed to practice his such profession by the Oklahoma State Board of Medical Licensure and Supervision or the Oklahoma Board of Osteopathic Examiners, who is not related by blood or marriage to the person being examined, and who has no interest in the estate of the person being examined. This certificate may be substantially in the following form:

CERTIFICATE OF PHYSICIAN

I do hereby certify that on the ____ day of ____, 20__, I examined ____ and I am of the opinion that the person has a mental illness, and for his/her own welfare ought to be admitted to ____ at ____, Oklahoma, as a consumer therein.

I further certify that I have explained to this person that if he/she is admitted to a facility for the mentally ill as a voluntary consumer, the medical staff may find it necessary or desirable to give a course of treatment requiring an extended period of time, and that it is not the legislative policy of the state to authorize the expenditure of public funds for the commencement of an expensive treatment unless the consumer desires to continue that treatment for the length of time that the attending physicians believe is likely to give adequate benefit to the consumer; and I have also explained that it may become necessary to give treatment which may temporarily weaken the system of the consumer so that it would be injurious to his/her health to release him/her immediately upon his/her request; and that therefore the executive director or designee of the facility has authority under the law to detain the consumer in the hospital for as long as seventy-two (72) hours after the consumer gives written notice to the executive director of his/her desire to leave the hospital pursuant to Section 5-

208 of Title 43A of the Oklahoma Statutes.

I further certify that in my opinion this person has sufficient mental capacity to and does understand and comprehend the matters set out in the preceding paragraph.

I do further certify that I am a licensed doctor of medicine duly licensed as such by the Oklahoma State Board of Medical Licensure and Supervision (or that I am an osteopathic physician duly licensed as such by the Oklahoma Board of Osteopathic Examiners) and that I am not related by blood or marriage to the person being examined and that I have no interest in the estate of the person being examined.

(Signature of doctor of medicine or osteopathic physician)

§ 5-307. Questioning of applicant by judge of the district court – Order

When the applicant appears in person before the judge of the district court and presents the application and the certificate of the examining doctor of medicine or osteopathic physician, the judge of the district court shall fully question the applicant. If the judge of the district court is satisfied that the applicant fully understands the nature of the application and the consequences which the law will impose in the event applicant is admitted to the hospital as a consumer and that the application is voluntarily made, the judge of the district court shall forthwith make an order authorizing the executive director of the appropriate State Hospital for the mentally ill to admit the applicant as a consumer.

§ 5-308. Order authorizing admission

The order of the judge of the district court authorizing the admission of an applicant as a voluntary consumer pursuant to the provisions of the Mental Hospital Voluntary Admission Procedures Act may be in substantially the following form:

IN THE COUNTY COURT OF _____
COUNTY, OKLAHOMA

In the Matter of the Mental Health of _____ No. _____ on the Mental Health Consumer _____
Docket

ORDER AUTHORIZING
ADMISSION TO MENTAL
HOSPITAL
OF VOLUNTARY CONSUMER

Now on this ____ day of ____, 20 __, the above named ____ having appeared before me as county judge of this county and state, with his/her application to be admitted as a voluntary consumer to the ____ Hospital, a state hospital for the mentally ill located at ____, together with a certificate signed by ____, a doctor of medicine or osteopathic physician, with offices at ____, Oklahoma, such certificate being in the form provided by the Mental Hospital Voluntary Admission Procedures Act.

And it appearing to me that the consumer fully understands the nature of the application and the consequences which the law will impose in the event the applicant is admitted to a mental hospital as a consumer therein, and that the application is voluntarily made.

It is therefore ORDERED that the ____ should be and he/she is hereby ORDERED to be admitted to the ____ State Hospital at ____, Oklahoma, and a certified copy of this order shall be sufficient authority for the executive director of such facility to detain the

consumer in accordance with the provisions of the Mental Hospital Voluntary Admission Procedures Act.

The Sheriff of ____ County, Oklahoma, is authorized and directed, on the request of the consumer herein named, to cause the consumer to be transmitted to ____ State Hospital at ____, Oklahoma, and to deliver to the executive director of such hospital one certified copy of this order and to make return as provided by law.

Judge of the District Court

§ 5-309. Detention against will prohibited – Notice of desire to be discharged

No consumer admitted to a state mental hospital under the provisions of the Mental Hospital Voluntary Admission Procedures Act shall be detained in a mental hospital against the will of the person more than seventy-two (72) hours, excluding weekends and holidays, after the consumer gives notice in writing to the executive director of the facility of the desire of the consumer to be discharged from the facility. The executive director of the facility may designate one or more employees of the facility to receive a notification provided by this section with the same effect as if delivered to the executive director personally.

§ 5-310. Mental health law provisions applicable

Unless otherwise provided by law, the provisions of the Mental Health Law shall be applicable to consumers admitted to state mental hospitals under the provisions of the Mental Hospital Voluntary Admission Procedures Act.

§ 5-311. Procedure as cumulative

The admission procedure prescribed by the Mental Hospital Voluntary Admission Procedures Act shall be cumulative to the procedures prescribed by other provisions of law. Nothing herein shall affect the admission procedures prescribed by other provisions of law.

§ 5-410. Petition regarding person requiring treatment

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

2. A licensed mental health professional;

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

4. 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;

5. A person in charge of any correctional institution;

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

7. 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 Treatment of Minors Act.

§ 5-411. Rights of mentally ill

A. An individual alleged to be a person requiring treatment shall have the following rights:

1. The right to notice, as provided by Section 5-412 of this title;

2. The right to counsel, including court-appointed counsel, and if the person has no counsel, that the court shall appoint an attorney to represent the person at no cost if the person is an indigent person and cannot afford an attorney;

3. The right to a hearing and the right to a closed hearing, unless the person requests otherwise;

4. Upon request, right to a jury trial. The jury shall be composed of six

persons having the qualifications required of jurors in courts of record;

5. The right to be present at the hearing on the petition or jury trial. The person shall be present at the hearing or jury trial unless the court finds that the presence of the person alleged to be a person requiring treatment makes it impossible to conduct the hearing or trial in a reasonable manner or that the presence of the person would be injurious to the health or well-being of such person.

a. The court shall not decide in advance of the hearing, solely on the basis of the mental health evaluation, that the person alleged to be a person requiring treatment should not be allowed nor required to appear.

b. Prior to issuing an order excluding the person from the hearing or jury trial, the court shall find, based upon clear and convincing evidence, that alternatives to exclusion of the person were attempted;

6. The right to present and to cross-examine witnesses. The petitioner and witnesses identified in the petition shall offer testimony under oath at the hearing on the petition. 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.

B. An individual alleged to be or found by a court to be a person requiring treatment shall be afforded such other rights as are guaranteed by state and federal law.

C. No statement, admission or confession made by the person alleged to be a person requiring treatment shall be used for any purpose except for

proceedings under this act. No such statement, admission or confession may be used against such person in any criminal action whether pending at the time the hearing is held or filed against such person at any later time directly or in any manner or form.

D. An attorney appointed by the court to represent a person alleged to be a person requiring treatment shall be a licensed and actively practicing attorney who shall represent the person until final disposition of the case. The court may appoint a public defender where available.

1. The attorney appointed by the court shall meet and consult with the person within one (1) day of notification of the appointment. The attorney shall immediately, upon meeting with the person alleged to be a person requiring treatment, present to such person a statement of the rights, including all rights afforded to persons alleged to be a person requiring treatment by the Oklahoma and the United States Constitutions.

2. The court-appointed attorney shall be replaced by another attorney if:

a. the person alleged to be a person requiring treatment prefers the services of an attorney other than the one initially appointed for the person,

b. the preferred attorney agrees to accept the responsibility, and

c. the person alleged to be a person requiring treatment or the preferred attorney notifies the court of the preference and the attorney's acceptance of employment.

The preferred attorney shall meet and consult with the person within one (1) day of employment or appointment. Any request for additional days shall be subject to the discretion of the court,

considering the facts and circumstances of each particular case, including cost.

3. The attorney fees for all services shall be paid by the person alleged to be a person requiring treatment. However, if the person alleged to be a person requiring treatment, or a person empowered pursuant to law to act on behalf of such person, submits an affidavit that such person is indigent and unable to pay attorney fees, the attorney fees shall be paid from the court fund, after a determination by the court that such person is indigent. The amount of such fee shall be set by the court.

4. The attorney representing the person alleged to be a person requiring treatment shall notify the court of any current and unrevoked advance directive that has been executed by such person pursuant to the Advance Directives for Mental Health Treatment Act and provide a written copy of the advance directive, if available, to the court and a representative of the district attorney's office.

§ 5-412. Notice of hearing

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, 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,

d. the Department of Mental Health and Substance Abuse Services, and

e. 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. 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.

§ 5-413. Prehearing detention

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.

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.

§ 5-414. Evaluations

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, statements, 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.

§ 5-415. Hearing and order

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 seventy-two (72) hours 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 statements 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, 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.

§5-416. Alternatives to hospitalization – Patient rights – Expiration of orders – Notice – Application

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 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, 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.

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.

§ 5-417. Precommitment examination – Matters included

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. 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.

§ 5-418. Precommitment screening examination – Copy of order to be provided examinee – Explanation of examination

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, upon completion.

§ 5-419. Modification orders – Notice – Contents of notice

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 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 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.

§ 5-420. Review of status of persons involuntarily committed for treatment

A. The Board of Mental Health and Substance Abuse Services shall adopt rules and procedures to ensure that persons involuntarily committed for treatment by a court receive review of their involuntary status at least once every three (3) months, and the Department of Mental Health and Substance Abuse Services shall take appropriate action based upon this review.

B. Any person receiving involuntary inpatient treatment, or such person's attorney, may at any time file a written request that the treatment order be reviewed by the committing court, or a court in the county where the person is located. If a review is requested, the court shall hear the matter within thirty (30) days after the request, and the court shall give notice to the person and such person's attorney and the person in charge of the facility of the time and place of the hearing. The hearing shall be to determine if the person can be treated on a less restrictive basis. At the conclusion of the hearing, the court may confirm the order of treatment, modify the order of treatment, discharge the respondent, or enter any appropriate order.

§ 5-501. Short title

A. Sections 5-501 through 5-513 of this title shall be known and may be cited as the "Inpatient Mental Health and Substance Abuse Treatment of Minors Act".

B. The Oklahoma Legislature hereby declares that the public policy of this state is to:

1. Assure adequate treatment of minors needing mental health treatment or treatment for drug or alcohol abuse;

2. Establish behavioral standards for determination of dangerousness of persons in need of such treatment;

3. Require the use of the least restrictive alternative in the determination of the method of treatment;

4. Provide orderly and reliable procedures for admission or commitment of minors alleged to be in need of inpatient mental health treatment or treatment for drug or alcohol abuse consistent with due process of law; and

5. Protect the rights of consumers hospitalized pursuant to law.

C. It is the intent of the Legislature that:

1. Mental health and substance abuse treatment services shall be provided in the manner most likely to preserve, support and strengthen the family of the minor and to assist the minor and the family of the minor;

2. Minors needing mental health services or substance abuse treatment shall, to the maximum extent possible, receive those services on an outpatient basis; and

3. Inpatient evaluation and treatment services shall be utilized only as necessary to preserve the health or safety of the minor or for the protection of others in the case of a minor who, as a result of a demonstrable mental illness or

drug or alcohol dependence, can be expected to intentionally or unintentionally seriously and physically injure another person.

D. A minor may be admitted for inpatient mental health or substance abuse treatment only pursuant to the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

§ 5-502. Definitions

As used in the Inpatient Mental Health and Substance Abuse Treatment of Minors Act:

1. "Minor" means any person under eighteen (18) years of age;

2. "Minor in need of treatment" means a minor:

a. who has a demonstrable mental illness or who is drug or alcohol dependent and as a result of that mental illness or dependency can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person, and who has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation, or

b. who has a demonstrable mental illness or is drug or alcohol dependent of sufficient severity to cause substantial impairment or disability in at least two of the following major areas of functioning in the life of the minor:

(1) family relations,

(2) school performance,

(3) social interactions,

(4) ability to perform independently the basic tasks of personal hygiene, hydration and nutrition, or

(5) self-protection.

A determination regarding the ability of the minor to perform independently such basic tasks shall be based upon the

age of the minor and the reasonable and appropriate expectation of the abilities of a minor of such age to perform such tasks.

The term "minor in need of treatment" shall not mean a minor afflicted with epilepsy, a developmental disability, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs or who is truant or sexually active unless the minor also meets the criteria for a minor in need of treatment pursuant to subparagraph a or b of this paragraph;

3. "Consent" means the voluntary, express, and informed agreement to treatment in a mental health facility by a minor sixteen (16) years of age or older or by a parent of the minor;

4. "Individualized treatment plan" means a specific plan for the care and treatment of an individual minor who requires inpatient mental health treatment. The plan shall be developed with maximum involvement of the family of the minor, consistent with the desire of the minor for confidentiality and with the treatment needs of the minor, and shall clearly include the following:

a. a statement of the presenting problems of the minor, short- and long-term treatment goals and the estimated date of discharge. The short- and long-term goals shall be based upon a clinical evaluation and shall include specific behavioral and emotional goals against which the success of treatment can be measured,

b. treatment methods and procedures to be used to achieve these goals, which methods and procedures are related to each of these goals and which include, but are not limited to, specific prognosis for achieving each of these goals,

c. identification of the types of professional personnel who will carry out the treatment procedures including, but not limited to, appropriate licensed mental health professionals, education professionals, and other health or social service professionals, and

d. documentation of the involvement of the minor or the parent of the minor or legal custodian in the development of the treatment plan and whether all persons have consented to such plan;

5. "Inpatient treatment" means treatment services offered or provided for a continuous period of more than twenty-four (24) hours in residence after admission to a mental health or substance abuse treatment facility for the purpose of observation, evaluation or treatment;

6. "Least restrictive alternative" means the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit to the minor, or to protect the minor or others from physical injury;

7. "Less restrictive alternative to inpatient treatment" means and includes, but is not limited to, outpatient counseling services, including services provided in the home of the minor and which may be referred to as "home-based services", day treatment or day hospitalization services, respite care, or foster care or group home care, as defined by Title 10 of the Oklahoma Statutes, through a program established and specifically designed to meet the needs of minors in need of mental health treatment, or a combination thereof;

8. "Licensed mental health professional" means a person who is not related by blood or marriage to the

person being examined or does not have any interest in the estate of the person being examined, and who is:

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

b. a physician licensed pursuant to Chapter 11 or Chapter 14 of Title 59 of the Oklahoma Statutes who has received specific training for and is experienced in, performing mental health therapeutic, diagnostic, or counseling functions,

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

d. a professional counselor licensed pursuant to Chapter 44 of Title 59 of the Oklahoma Statutes,

e. a person licensed as a clinical social worker pursuant to the provisions of the Licensed Social Workers Act,

f. a licensed marital and family therapist as defined in Chapter 44A of Title 59 of the Oklahoma Statutes,

g. a licensed behavioral practitioner as defined in Chapter 44B of Title 59 of the Oklahoma Statutes, or

h. an advanced practice nurse, as defined in Chapter 12 of Title 59 of the Oklahoma Statutes, specializing in mental health.

For the purposes of this paragraph, "licensed" means that the person holds a current, valid license issued in accordance with the laws of this state;

9. "Mental health evaluation" means an examination or evaluation of a minor for the purpose of making a determination whether, in the opinion of the licensed mental health professional making the evaluation, the minor is a minor in need of treatment and, if so, is in need of inpatient treatment and for the purpose of preparing reports or making recommendations for the most

appropriate and least restrictive treatment for the minor;

10. "Mental health facility" means a public or private hospital or related institution as defined by Section 1-701 of Title 63 of the Oklahoma Statutes offering or providing inpatient mental health services, a public or private facility accredited as an inpatient or residential psychiatric facility by the Joint Commission on Accreditation of Healthcare Organizations, or a facility operated by the Department of Mental Health and Substance Abuse Services and designated by the Commissioner of the Department of Mental Health and Substance Abuse Services as appropriate for the inpatient evaluation or treatment of minors;

11. "Mental illness" means a substantial disorder of the child's thought, mood, perception, psychological orientation or memory that demonstrably and significantly impairs judgment, behavior or capacity to recognize reality or to meet the ordinary demands of life. "Mental illness" may include substance abuse, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior;

12. "Parent" means:

- a. a biological or adoptive parent who has legal custody of the minor or has visitation rights, or
- b. a person judicially appointed as a legal guardian of the minor, or
- c. a relative within the third degree of consanguinity who exercises the rights and responsibilities of legal

custody by delegation from a parent, as provided by law;

13. "Person responsible for the supervision of the case" means:

a. when the minor is in the legal custody of a private child care agency, the Department of Human Services or the Office of Juvenile Affairs, the caseworker or other person designated by the agency to supervise the case, or

b. when the minor is a ward of the court and under the court-ordered supervision of the Department of Human Services, the Office of Juvenile Affairs or a statutorily constituted juvenile bureau, the person designated by the Department of Human Services, the Office of Juvenile Affairs or juvenile bureau to supervise the case;

14. "Initial assessment (medical necessity review)" means the examination of current and recent behaviors and symptoms of a minor who appears to be mentally ill, alcohol-dependent, or drug-dependent and a minor requiring treatment, whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional at a facility approved by the Commissioner of Mental Health and Substance Abuse Services, or a designee, as appropriate for such examination to determine if emergency detention of the minor is warranted, and whether admission for inpatient mental illness or drug- or alcohol-dependence treatment or evaluation constitutes the least restrictive level of care necessary;

15. "Ward of the court" means a minor adjudicated to be a deprived child, a child in need of supervision, or a delinquent child;

16. "Treatment" means any planned intervention intended to improve the functioning of a minor in those areas

which show impairment as a result of mental illness or drug or alcohol dependence; and

17. "Prehearing detention order" means a court order that authorizes a facility to detain a minor pending a hearing on a petition to determine whether the minor is a minor in need of treatment.

§ 5-503. Petition alleging child to be in need or mental health or substance abuse treatment – Application to district attorney

A. A parent of a minor or a minor sixteen (16) years of age or older may consent to the voluntary admission of the minor for inpatient mental health or substance abuse treatment.

B. Upon the application of a minor sixteen (16) years of age or older or a parent of a minor, a mental health or substance abuse facility may admit the minor for inpatient evaluation or treatment if the person in charge of the facility, or a designee, determines the minor to be clinically eligible for such admission, and:

1. After an initial assessment, a licensed mental health professional determines and states in writing that there is reasonable cause to believe that the minor may be a minor in need of treatment and that an evaluation is necessary to properly determine the condition and treatment needs of the minor, if any; and

2. After an outpatient or inpatient mental health evaluation, a licensed mental health professional determines and states in writing that in the opinion of the professional, the minor is a minor in need of treatment and:

a. the minor appears to have a mental illness or drug or alcohol dependence serious enough to warrant inpatient

treatment and is reasonably likely to benefit from the treatment, and

b. based upon the following, inpatient treatment is determined to be the least restrictive alternative that meets the needs of the minor:

(1) reasonable efforts have been made to provide for the treatment needs of the minor through the provision of less restrictive alternatives and such alternatives have failed to meet the treatment needs of the minor, or

(2) after a thorough consideration of less restrictive alternatives to inpatient treatment, the condition of the minor is such that less restrictive alternatives are unlikely to meet the treatment needs of the minor, and

c. the minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment.

The consenting parent shall have the opportunity to discuss the findings with a person involved in the treatment of the minor.

C. The determinations and written statements of a licensed mental health professional made pursuant to this section shall, upon the admission of the minor for inpatient evaluation or treatment, be made a part of the medical record of the minor.

D. Inpatient treatment of a minor admitted under this section may not continue unless continued inpatient treatment has been authorized by appropriate hospital medical personnel, based upon their written findings that the criteria set forth in subsection B of this section continue to be met, after such persons have examined the minor and interviewed the consenting parent and reviewed reports submitted by members of the facility staff familiar with the condition of the minor. This finding is

subject to the review provisions contained in Section 5-512 of this title.

E. A mental health or substance abuse treatment facility may request that the district attorney file a petition alleging a minor to be a minor in need of treatment and require inpatient treatment when the parent consenting to the admission of a minor or when the minor age sixteen (16) years or older who had previously consented to admission revokes such consent and the person in charge of the facility, or a designee, determines that the condition of the minor is such that the minor should remain in the facility. If the district attorney refuses to file a petition, the district attorney must immediately notify the requesting facility, in writing, of the refusal to file.

F. A minor who is in the legal custody of the Department of Human Services or the Office of Juvenile Affairs, or who is a ward of a court may be admitted to a hospital or other facility for inpatient mental health or substance abuse treatment only pursuant to the provisions of Section 5-507 of this title.

1. A public or private child care agency having legal custody of a minor may request the district attorney to file a petition alleging the minor to be a minor in need of treatment and to require inpatient treatment.

2. Nothing in the Inpatient Mental Health and Substance Abuse Treatment of Minors Act shall be interpreted to prohibit or preclude the provision of outpatient treatment or services including, but not limited to, outpatient evaluation, counseling, educational, rehabilitative or other mental health and substance abuse services to the minor, as necessary and appropriate, in the absence of a specific court order for such services.

G. 1. An order of a court committing a minor to a facility for inpatient mental health or substance abuse evaluation or treatment shall not, by itself, relieve a parent of the obligation to provide for the support of the minor nor of liability for the cost of treatment provided to the minor.

2. Nothing in the Inpatient Mental Health and Substance Abuse Treatment of Minors Act shall be interpreted to:

a. limit the authority of the court to order a parent to make support payments or to make payments or reimbursements for medical care or treatment, including mental health care or treatment, to the person, institution, or agency having custody of the minor or providing the treatment, or

b. abrogate the right of the minor to any benefits provided through public funds for which the minor is otherwise eligible.

3. An order committing a minor to a facility for inpatient mental health or substance abuse treatment shall not by itself serve to preclude a subsequent adjudication which finds the minor to be delinquent, in need of supervision or deprived nor shall it cause the vacation of any such order of adjudication previously entered.

H. If the parent who consented to the admission of a minor under this section revokes such consent at any time, the minor shall be discharged within forty-eight (48) hours unless the district attorney is requested to file a petition alleging the minor to be a minor in need of treatment and to require inpatient treatment in accordance with the provisions of this title. If the district attorney refuses to file a petition, the district attorney must immediately notify the requesting facility, in writing, of the refusal to file.

I. If a minor sixteen (16) years of age or older who consented to treatment subsequently revokes their consent at any time, the minor shall be discharged within forty-eight (48) hours unless the district attorney is requested to file a petition alleging the minor to be a minor in need of treatment and to require inpatient treatment in accordance with the provisions of this title or the parent of the minor subsequently consents to the treatment of the minor. If the district attorney refuses to file a petition, the district attorney must immediately notify the requesting facility, in writing, of the refusal to file.

§ 5-504. Jurisdiction over child allegedly in need of mental health or substance abuse treatment – Venue – Powers of court

A. Upon the filing of a petition alleging that a minor is a minor in need of treatment and requires inpatient mental health or substance abuse treatment, or upon the assumption of custody of an alleged deprived child pursuant to the provisions of Section 7003-2.1 of Title 10 of the Oklahoma Statutes, or when a minor is the ward of the court, the judge of the district court having juvenile docket responsibility shall have jurisdiction of any minor who is or is alleged to be a minor in need of treatment and of the parent or legal custodian of the minor, regardless of where the parent or legal custodian is found. When jurisdiction has been obtained over a minor who is or is alleged to be in need of treatment, such jurisdiction may be retained until the minor is discharged from treatment ordered by the court. For the convenience of the parties and in the interest of justice, a proceeding under the Inpatient Mental Health and

Substance Abuse Treatment of Minors Act may be transferred to the district court in any other county.

1. The venue for legal proceedings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act shall be:

a. the county where the minor resides,

b. when the minor is in the custody of a public or private child care agency, the county in which the minor resides at the time legal proceedings are initiated, or

c. the county of original jurisdiction.

2. The district court in which a petition is filed or the district court in which custody has been assumed pursuant to the provisions of Section 7003-2.1 of Title 10 of the Oklahoma Statutes may retain jurisdiction of a minor in need of treatment in such proceeding even if the minor is subject to the jurisdiction of another district court within the state. Any orders made by the court in which the petition is filed shall control over prior orders in regard to the minor.

3. The district court in which a petition is filed which alleges that a minor is a minor in need of treatment may issue any temporary order or grant any interlocutory relief authorized by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act even if another district court within the state has jurisdiction of the minor or has jurisdiction to determine the custody or support of the minor.

4. If the district court in which a petition is filed pursuant to either paragraph 2 or 3 of this subsection sustains the petition, the district court shall have the jurisdiction to make a final determination on the petition or to transfer the proceedings to a court

having prior jurisdiction over the minor. Where the other proceeding is pending in the same judicial district in which the petition is filed, the chief judge of the judicial district shall determine which judge shall try the issues when the judges to whom the cases have been assigned are unable to agree on the procedure that should be followed.

B. Unless otherwise specifically provided by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act and Title 43A of the Oklahoma Statutes, the rules of civil procedure shall apply to all legal proceedings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

§ 5-505. Repealed

§ 5-505.1. Protective custody and detention – Mentally ill, alcohol-dependent or drug-dependent minor

A. Any minor who appears to be mentally ill, alcohol-dependent, or drug-dependent to a degree that immediate emergency action is necessary may be taken into protective custody and detained pursuant to the provisions of this section.

B. Any peace officer who reasonably believes that a minor is a minor in need of treatment as defined in Section 5-502 of this title shall take the minor into protective custody and shall transport the minor to a mental health or substance abuse treatment facility for evaluation. Peace officers providing such transportation services shall be entitled to reimbursement pursuant to Section 1-110 of this title.

C. The officer shall prepare a written statement indicating the basis for the belief of the officer that the minor is a minor in need of treatment and the

circumstances under which the officer took the person into protective custody. The officer shall give a copy of the statement to the parent of the minor or the attorney of the minor upon the request of either. If the officer does not make the determination to take an individual into protective custody on the basis of the personal observation of the officer, the officer shall not be required to prepare a written statement. However, the person upon whose statement the officer relies shall sign a third-party statement indicating the basis for such belief of the person that the minor is a minor in need of treatment. Any false statement given to the officer by the person upon whose statement the officer relies shall be a misdemeanor and subject to the sanctions of Title 21 of the Oklahoma Statutes.

D. A minor in protective custody shall be subject to an initial assessment at the appropriate facility by a licensed mental health professional for the purpose of determining whether emergency detention is warranted.

1. If the licensed mental health professional determines that the minor is not a minor in need of treatment or that the condition of the minor is such that emergency detention is not warranted, the minor shall be returned immediately to the point where the minor was taken into protective custody and released or the minor may be taken to the home or residence of the minor or to an alternative facility.

2. If the licensed mental health professional determines that the minor is a minor in need of treatment to a degree that emergency detention is warranted, the minor shall be detained in emergency detention for a period not to exceed five (5) days, excluding weekends and holidays. The detention may exceed five

(5) days, excluding weekends and holidays, upon a court order authorizing detention pending a hearing on a petition requesting involuntary commitment or treatment.

E. If a licensed mental health professional designated to have such responsibility by the executive director of a hospital, or the administrator of a facility designated by the Commissioner of Mental Health and Substance Abuse Services as appropriate for emergency detention believes a minor to be a minor requiring treatment to a degree that emergency action is necessary, the administrator may detain such minor in emergency detention for a period not to exceed five (5) days, excluding weekends and holidays, only on the following conditions:

1. The minor sixteen (16) years of age or older or parent of the minor has refused to consent or has withdrawn consent to voluntary treatment;

2. The minor has been examined by a licensed mental health professional who has determined that the minor is a minor in need of treatment, the condition of the minor is such that emergency detention is warranted, and a mental health evaluation has been prepared as provided in Section 5-508 of this title; and

3. The administrator or the designee of the administrator shall provide for an initial assessment of the minor by a licensed mental health professional.

F. Whenever it appears that a person detained as provided by this section will require treatment beyond the period of emergency detention and the minor sixteen (16) years of age or older or parent of the minor has refused to consent to voluntary treatment, a licensed mental health professional conducting an initial assessment of the

minor or the administrator of the facility in which the minor is being detained, or the designee of the administrator, shall immediately file a petition or request the district attorney to file a petition with the district court as provided by Section 5-509 of this title, and may request a court order directing prehearing detention when detention is necessary for the protection of the person or others. If the district attorney refuses to file a petition, the district attorney must immediately notify the requesting facility, in writing, of the refusal to file.

§ 5-506. Admission of child 16 years or older who objects to admission

A. Any parent, guardian, or law enforcement officer may request the administrator of a facility or designee to conduct an initial assessment of a minor to determine whether the minor is a minor requiring treatment.

B. Following an initial assessment, a minor may be admitted or detained on an emergency basis in a mental health or substance abuse treatment facility that is willing to admit or detain the minor for a period not to exceed five (5) days from the time of admission or detention, excluding weekends and legal holidays. The admission or detention for an emergency basis may only exceed five (5) days, excluding weekends or holidays, if the facility receives a prehearing detention order authorizing detention pending a hearing on a petition to determine whether the minor is a minor in need of treatment and to require inpatient treatment.

C. 1. A minor admitted or detained pursuant to this section shall be evaluated by a licensed mental health professional to determine whether the minor is a minor in need of treatment.

a. If the licensed mental health professional determines that the minor is a minor in need of treatment, the licensed mental health professional shall submit the mental health evaluation to the district attorney within forty-eight (48) hours, excluding weekends or holidays, of admission, detention, or revocation of the consent of the minor sixteen (16) years of age or older or to the parent.

b. If the licensed mental health professional determines that the minor is not a minor in need of treatment, the minor shall immediately be discharged.

2. Upon admission or detention of a minor pursuant to this section, the person requesting the petition shall immediately notify the district attorney. The district attorney shall file a petition as provided in Section 5-509 of this title within three (3) days of receipt of the report and shall request a prehearing detention order from the court authorizing further detention of the child in the facility pending a hearing on a petition alleging the minor to be a minor in need of treatment and to require inpatient treatment and further order of the court. If the district attorney refuses to file a petition, the district attorney must immediately notify the requesting facility, in writing, of the refusal to file.

a. If the court finds probable cause exists that the minor is a minor in need of treatment, the court shall issue a prehearing detention order authorizing the facility to detain the minor until the hearing on the petition and to immediately set a date and time for a hearing on the petition. A certified copy of the prehearing detention order shall constitute authority for a facility to detain or continue to detain the minor who is the subject of the order.

b. If the court does not find probable cause exists that the minor is a minor in need of treatment, the court shall dismiss the petition and request for a prehearing detention order and order the release of the minor to the minor's parent.

§ 5-507. Admission of child who is ward of court – Admission of child who is taken into protective custody – Admission on emergency psychiatric basis – Mental health evaluation

A. No minor who is taken into custody pursuant to Section 7003-2.1 of Title 10 of the Oklahoma Statutes as an alleged deprived child, or who has been adjudicated a ward of the court shall be admitted to a hospital or mental health or substance abuse treatment facility:

1. On an emergency basis except as provided by this section;

2. For inpatient treatment except upon a commitment order of the court pursuant to the provisions of subsection D of this section and after a finding that the minor requires such services as provided by Section 5-512 of this title.

B. After an initial assessment and a determination that a minor is a minor in need of treatment, the minor may be admitted to a hospital or mental health or substance abuse treatment facility on an emergency basis for a period not to exceed five (5) days from the time of admission, excluding weekends and holidays. On the next business day following admission, notice of such admission shall be given by the person responsible for the supervision of the case, as applicable, to the minor's attorney, Court Appointed Special Advocate (CASA) or guardian ad litem, the court and district attorney.

C. A minor admitted on an emergency basis pursuant to this section shall be evaluated and the mental health

evaluation submitted to the district attorney within forty-eight (48) hours of admission, excluding weekends and holidays. The mental health evaluation shall be performed by a licensed mental health professional at the facility.

D. If after an inpatient or outpatient mental health evaluation it appears that the minor may require inpatient treatment, the district attorney shall file a petition as provided by Section 5-509 of this title within three (3) days after receiving the mental health evaluation requesting an order committing the minor to a facility for inpatient treatment. After the filing of a petition and upon issuance of a prehearing detention order, the minor may be detained in the facility for no longer than necessary for a hearing on the petition as provided by Section 5-510 of this title or further order of the court.

E. Nothing in this section shall be interpreted to preclude or prohibit a parent having physical custody of a minor who is a ward of the court from arranging for an emergency admission of the minor. In such cases, the parent shall immediately notify the person responsible for the supervision of the case of the admission.

§ 5-508. Mental health evaluation report

A. The mental health evaluation of a licensed mental health professional prepared pursuant to Section 5-506 or 5-507 of this title shall include written findings as to whether:

1. The minor appears to be a minor in need of treatment and is reasonably likely to benefit from treatment;

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

a. reasonable efforts have been made to provide for the treatment needs of the minor through the provision of less restrictive alternatives and such alternatives have failed to meet the treatment needs of the minor, or

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

3. The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment.

B. Any mental health evaluation of a minor alleged to be a minor in need of treatment that recommends that the minor be found to be eligible for inpatient mental health or substance abuse treatment shall be signed by the licensed mental health professional examining the minor.

C. The parents, all public agencies, and all providers or programs which have treated or are treating the minor shall cooperate with the person conducting a mental health evaluation for the purpose of providing the mental health evaluation to a district attorney or to a district court and shall promptly deliver, as otherwise provided by law, all records related to the treatment or education of the minor.

§ 5-509. Filing of petition – Contents – Proposed individual treatment plan

A. A petition alleging a minor to be a minor in need of treatment shall be filed by a district attorney and may be filed by a district attorney only after receipt and review of the mental health evaluation conducted by a licensed mental health professional stating that in the opinion of the professional the minor has a demonstrable mental illness or is drug or

alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person if services are not provided, and upon the request of:

1. A parent, a public or private child care agency having legal custody of the minor, or a mental health or substance abuse treatment facility; or

2. When the minor is a ward of the court, the Department of Human Services, the Office of Juvenile Affairs or juvenile bureau having supervision of the case or by the parent of the minor with the consent of the applicable agency, or juvenile bureau having supervision of the case.

B. If after receipt and review of the mental health evaluation conducted by a licensed mental health professional:

1. The district attorney declines to file a petition, the district attorney must immediately notify the requesting facility, in writing, of the refusal to file. Then the minor shall be discharged to the custody of the consenting parent or public or private agency having custody of the minor; or

2. The petition is filed, a copy of the mental health evaluation conducted by the licensed mental health professional shall be attached to the petition and notice shall be given as provided by Section 5-510 of this title.

C. 1. The proceeding shall be entitled "In the matter of _____, a minor alleged to be in need of inpatient mental health or substance abuse treatment".

2. The petition shall allege that the minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or

attempt to inflict serious bodily harm to himself or herself, or another person if services are not provided and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation and shall be verified and may be based upon information and belief. The petition shall set forth:

a. with particularity the facts which bring the minor within the purview of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act,

b. the name, age and residence of the minor,

c. the names and residences of the parents of the minor,

d. the name and residence of the legal guardian of the minor, if one,

e. the name and residence of the person or persons having custody or control of the minor,

f. the name and residence of the nearest known relative, if no parent or guardian can be found,

g. the relief requested, and

h. an endorsement of witnesses intended to be called by the petitioner.

D. Upon the filing of a petition pursuant to this section, if the minor has been admitted to a facility, the facility shall ensure that a proposed individual treatment plan for the minor is prepared and submitted to the court at least twenty-four (24) hours prior to the time set for the hearing.

§ 5-510. Notice of hearing on petition – Appointment of attorney – Independent mental health evaluation

A. Upon the filing of a petition alleging a minor to be a minor in need of treatment, the court shall:

1. Appoint an attorney to represent the minor if the minor is not represented

by counsel. An attorney so appointed shall consult with the minor at least twenty-four (24) hours prior to the date set for hearing the petition. In addition, the court may appoint a guardian ad litem as provided by Section 7003-3.7 of Title 10 of the Oklahoma Statutes;

2. Enter any prehearing detention orders as may be necessary;

3. Set a date for a hearing on the petition. The date shall not be less than one (1) day, or more than three (3) days, excluding weekends and legal holidays, from the date of the filing of the petition. Upon the request of the attorney for the minor, the date of the hearing may be extended once for up to an additional three (3) days, excluding weekends and holidays; and

4. Cause notice of the date, time, place and purpose of the hearing to be given to the petitioner, the minor, the parent(s) or legal custodian of the minor and the person in charge of the mental health or substance abuse treatment facility. If the minor is a ward of the court, or is in the custody of the Department of Human Services or the Office of Juvenile Affairs, notice shall also be given to a public or private child care agency having legal custody of the minor, if any, or to the person at the Department of Human Services, the Office of Juvenile Affairs or the applicable juvenile bureau responsible for the supervision of the case. The notice shall be given at least twenty-four (24) hours prior to the date set for the hearing and shall be given in such manner as directed by the court.

§ 5-511. Hearings – Right to trial by jury

A. Hearings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act shall be private

unless specifically ordered by the judge to be conducted in public, but persons having a direct interest in the case shall be admitted. Stenographic notes or other transcript of the hearings shall be kept as in other cases, but they shall not be open to inspection except by order of the court or as otherwise provided by Title 10 of the Oklahoma Statutes for court records relating to children.

B. The minor may remain silent as a matter of right in hearings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act and shall be so advised. No statement, admission or confession made by the minor alleged to be a minor in need of treatment shall be used against the minor for any purpose except for proceedings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

C. A decision determining a minor to be a minor in need of treatment must be based on sworn testimony and the minor must have the opportunity for cross-examination unless the facts are stipulated. Where the facts are stipulated, the judge must ascertain from the minor if the minor agrees with the stipulation and understands the consequences of stipulating the facts.

D. In hearings to determine whether a minor is a minor in need of treatment, the minor shall have the right to demand a trial by jury, which shall be granted as in other cases, unless waived, or the judge on his or her own motion may call a jury to try any such case. Such jury shall consist of six persons.

1. If a jury trial is not demanded, the court may receive as evidence and act upon the evaluation or report of the licensed mental health professional who evaluated the minor;

2. When the hearing is conducted as a jury trial, any witness on behalf of the district attorney shall be subject to cross-examination by the attorney for the minor alleged to be a minor requiring treatment.

§ 5-512. Commitment to mental health facility – Prerequisites – Review of commitment

A. At the hearing the court shall determine whether by clear and convincing evidence:

1. The minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself, or another person if services are not provided, and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation; and

2. The minor is a minor in need of treatment proposed in the individualized treatment plan and is likely to benefit from such treatment.

B. After a hearing, the court shall order the minor to receive the least restrictive care and treatment appropriate for the treatment needs of the minor until such time as the care and treatment are no longer necessary.

C. The court shall not commit a minor to a facility for inpatient treatment unless the court determines:

1. The minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or drug or alcohol dependence can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself, or another person if services are not provided, and

has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation; or

2. That all reasonable efforts have been made to provide for the treatment needs of the minor through the provision of less restrictive alternatives to inpatient treatment and that such alternatives have failed to meet the treatment needs of the minor; or

3. After a thorough consideration of less restrictive alternatives to inpatient treatment, that the condition of the minor is such that less restrictive alternatives are unlikely to meet the treatment needs of the minor; and

4. There are no comparably effective services available to the minor that are less physically intrusive or restrictive.

D. Whenever, after a hearing, the court finds that the minor:

1. Is not a minor in need of treatment the court shall dismiss the case; or

2. Is a minor in need of treatment but does not require inpatient treatment, the court may order treatment or services through a less restrictive alternative to inpatient mental health or substance abuse treatment, which may include ordering the minor to take medication as prescribed by a physician and, upon a finding that it is in the best interests of the minor, the court may order the parents or other adult persons living in the home of the minor to comply with reasonable conditions relating to the treatment of the minor.

E. Whenever, after a hearing, the court finds that the minor is a minor in need of treatment and requires inpatient treatment in a mental health or substance abuse treatment facility, the court shall order the commitment of the minor to a mental health or substance abuse treatment facility until the minor is no

longer a "minor in need of treatment" as determined by medical staff, subject to the review provisions contained in this section, and:

1. When the minor is in the custody of a parent or legal guardian, order the parent or legal guardian to make arrangements for the admission of the minor to a public or private mental health or substance abuse treatment facility appropriate for the inpatient care and treatment of minors which is willing to admit the minor for treatment; and

2. When the minor is in the custody of the Department of Human Services or the Office of Juvenile Affairs, order the Department or Office, as applicable, to make arrangements for the placement of the minor in a public or private mental health or substance abuse treatment facility appropriate for the inpatient treatment needs of the minor.

F. Whenever the court commits a minor to a mental health or substance abuse treatment facility for inpatient treatment pursuant to this section, the court shall set the matter for review and shall review the matter not more than thirty (30) days from the date of commitment and shall continue to review the matter at intervals of not more than thirty (30) days until the minor is discharged from inpatient treatment. Not less than three (3) days prior to the review hearing, the mental health or substance abuse treatment facility shall submit a report regarding the minor's progress and treatment and make a recommendation as to whether the minor needs inpatient care and the reasons therefor.

§ 5-513. Individualized treatment plan – Discharge plan

A. Within ten (10) days after the admission of a minor for inpatient

treatment, the person in charge of the facility in which the minor is being treated shall ensure that an individualized treatment plan has been prepared by the person responsible for the treatment of the minor. The minor shall be involved in the preparation of the treatment plan to the maximum extent consistent with the ability of the minor to understand and participate. The parent or legal custodian of the minor or, if the minor is in the custody of the Department of Human Services or the Office of Juvenile Affairs, the designated representative of the applicable agency, shall be involved to the maximum extent consistent with the treatment needs of the minor.

B. The facility shall discharge the minor when appropriate facility medical staff determine the minor no longer meets the admission or commitment criteria. If not previously discharged, a minor committed by a court for inpatient treatment shall be discharged upon the expiration of a court order committing the minor for inpatient treatment or an order of the court directing the discharge of the minor.

C. Prior to the discharge of the minor from inpatient treatment, a discharge plan for the minor shall be prepared and explained to the minor and the parent or the person responsible for the supervision of the case. The plan shall include, but not be limited to:

1. The services required by the minor in the community to meet the needs of the minor for treatment, education, housing and physical care and safety;

2. Identification of the public or private agencies that will be involved in providing treatment and support to the minor;

3. Information regarding medication which should be prescribed to the minor; and

4. An appointment for follow-up outpatient treatment and medication management.

§ 7-101. Discharge or permission to leave facility – Convalescent leave – Outpatient status – Visiting status – Notification of discharge – Expense of returning to facility – Procedure for return

A. The person in charge of a facility within the Department of Mental Health and Substance Abuse Services shall discharge a consumer or permit the consumer to leave the facility as provided in this section.

B. The person in charge shall discharge a consumer:

1. Who is no longer a risk to self or others as defined in Section 1-103 of this title;

2. Who is capable of surviving safely in freedom alone or with the help of other state agencies, private entities, or willing and responsible family members or friends; provided, however, nothing in this section or Section 7-102 of this title shall be construed as requiring any state agency or private entity to provide services except as voluntarily agreed to by the agency and consumer; and

3. For whom a discharge plan has been developed pursuant to the provisions of Section 7-102 of this title.

C. The person in charge may grant a convalescent leave or visiting status to a consumer in accordance with policies prescribed by the Commissioner. The facility granting a convalescent leave or visiting status to a consumer has no responsibility in returning the consumer to the facility should such become necessary. A convalescent leave or

visiting status may be granted rather than a discharge when the complete recovery of the consumer can be determined only by permitting the consumer to leave the facility. The person in charge shall discharge a consumer who has not returned to the facility within twelve (12) months from the time a convalescent leave or visiting status was granted. Any return from convalescent leave or visiting status must be on a voluntary basis.

D. In accordance with policies prescribed by the Commissioner, a person in charge may transfer a consumer to an outpatient or other nonhospital status when, in the opinion of the person in charge, such transfer will not be detrimental to the public welfare or injurious to the consumer and the necessary treatment may be continued on that basis; provided however, that before transferring the consumer, the person in charge shall ensure that appropriate financial resources and appropriate services are available to receive and care for such consumer after such transfer.

E. The person in charge of the facility shall notify the court that committed the consumer that the consumer has been discharged. Such notification shall be within forty-eight (48) hours after the actual discharge.

F. The expense of returning a consumer from convalescent leave, outpatient status or visiting status shall be that of:

1. The party removing the consumer from the facility; or

2. The Department. When it becomes necessary for the consumer to be returned from the county where the consumer happens to be, the Department shall reimburse the county pursuant to

the provisions of the State Travel Reimbursement Act.

G. In the event authorization is necessary to accomplish the return of the consumer to the facility, such authority is hereby vested in the judge of the district court in the county where the consumer is located. Upon receipt of notice that the consumer needs to be returned to the facility, the judge shall cause the consumer to be brought before the court by issuance of a citation directed to the consumer to appear and show cause why the consumer should not be returned to the facility. The judge shall, if clear and convincing evidence is presented by testimony under oath that the consumer should be returned to the facility, enter an order returning the consumer. If there is a lack of clear and convincing evidence showing the necessity of such return, the consumer shall immediately be released. Law enforcement officers are authorized to take into custody, detain and transport a consumer pursuant to a citation or an order of the judge of the district court.

H. An attending physician of any consumer admitted to a private facility may discharge a consumer or permit the consumer to leave the facility subject to the same provisions applicable to the discharge or release of a consumer by the person in charge of a state facility.

§ 7-102. Discharge planning and assistance

A. Any person detained or voluntarily or involuntarily committed for treatment pursuant to the provisions of the Mental Health Law shall be provided with discharge planning and assistance by the facility where detained or treated. Discharge planning and assistance shall include, but not be limited to, the following:

1. Return of all personal possessions to the person, upon discharge, except contraband considered illegal; and

2. Transportation assistance.

B. 1. A discharge plan shall be completed for every person to be discharged from a facility operated by the Department of Mental Health and Substance Abuse Services or an agency which provides services pursuant to a contract with the Department.

2. Discharge planning and the discharge plan shall include, but not be limited to:

a. housing information and referral, a location, approved by the Department, where the consumer will reside, provided, the Department shall give preference to discharge to an appropriate verifiable address, and, as necessary, placement assistance pursuant to Section 7-104 of this title,

b. planning for outpatient treatment, as appropriate, including but not limited to assignment of a case manager, an initial appointment for outpatient services and a treatment plan. Sufficient medication to enable the person to be discharged to continue the course of medication prescribed for such person until such appointment shall be provided to the person being discharged at the time of discharge, and

c. provision of the information in the discharge plan required by this subsection to the consumer in writing after such information has been fully explained to the person being discharged. The plan shall be signed by the person being discharged and by the person explaining the plan upon completion of a verbal explanation of such plan and shall be signed in the presence of a family member of the person being discharged, or other person interested in the welfare of the person

being discharged. The original copy of the plan shall become a part of the official discharge papers of the consumer and shall be kept in the permanent files of the consumer. A copy of the signed discharge plan shall be furnished the person being discharged.

C. The person designated by the Department may provide a family member of the person being discharged, or other person interested in the welfare of the person being discharged, with information related to the discharge plan as necessary, appropriate and in compliance with confidentiality requirements to enable said family member or other person to assist with the implementation of and compliance with the treatment plan.

D. If a determination is made that an order for alternative treatment is necessary, the executive director or person in charge of the facility in which the person is receiving inpatient treatment shall:

1. File or request the filing of a petition as provided by Section 5-410 or 9-102 of this title requesting the order; or
2. Request the court to modify an existing order for involuntary commitment as provided by Section 5-419 of this title.

§ 7-103. Clothing and expenses of released patients

No consumer shall be discharged or granted convalescent leave status from a

state hospital without suitable clothing adapted to the season in which the consumer is discharged or granted convalescent leave status; and if it cannot be otherwise obtained, the business manager of the facility shall, upon the order of the executive director, furnish the same, and reasonable transportation costs and money not to exceed Twenty-five Dollars (\$25.00), to defray the expenses of the consumer until the consumer can reach relatives or friends, or find employment to earn a subsistence.

§ 7-104. Placement of homeless patients

A. In the case of a consumer who has substantially impaired ability to provide adequate self care or custody and who has no home or relatives or friends able and willing to care for the consumer, the executive director prior to discharge from the facility shall make a reasonable effort to arrange an appropriate placement and necessary services for the consumer.

B. When necessary, the executive director shall refer to other public or voluntary agencies for assistance; provided, nothing in this section or Section 7-102 of this title shall be construed as restricting the right of an adult consumer, when such consumer has not been found by a court to be incompetent, to determine the placement or residence of such consumer upon discharge from a facility.

APPENDIX B

Forms For Adult ED and Civil Commitment Process

IN RE: THE PROTECTIVE CUSTODY OF:

PEACE OFFICER'S STATEMENT FOR PROTECTIVE CUSTODY

I, the undersigned peace officer, declare: That I am a peace officer with the _____, County of _____, State of Oklahoma.

That on the _____ day of _____ 20____, I observed (name) _____

at (location) _____ in _____ County, Oklahoma,

and that at _____ o'clock ____m. this person was taken into protective custody.

That the reason for taking this person into protective custody is based on the following facts and circumstances (describe activity or incident personally observed by officer which formed the basis for the officer's opinion and action):

That upon such basis, I have a reasonable belief that this person is a person requiring treatment to a degree that immediate emergency action is necessary and should be held in protective custody, as provided by the Mental Health Law of the State of Oklahoma.

Name (please print)

Signature of Peace Officer

Identity of Law Enforcement Agency

IN RE: THE PROTECTIVE CUSTODY OF:

THIRD PARTY STATEMENT

I, _____ the undersigned being _____ years of age, declare: That
on the _____ day of _____ 20____, I observed (name) _____

_____ at (location) _____ in _____ County, Oklahoma,
and that at _____ o'clock ____ m.

Statement of observation (describe activity or incident personally observed):

That upon such basis, I have a reasonable belief that this person has a mental illness or is alcohol- or drug-dependent to a degree that immediate emergency action is necessary.

I, the undersigned attest to the above statement to be factual and true to the best of my knowledge and that I will testify to the above in court.

Any false statement given to the officer by the person upon whose statement of the officer relies shall be a misdemeanor and subject to the sanctions of Title 21 of the Oklahoma State Statute.

Name (please print)

Signature

Address

Past History:

Provisional Diagnosis (if any):

Treatment Recommendations:

I have made a personal examination of _____, an individual alleged to be a person requiring treatment, and do hereby find that this person is _____ is not _____ as a result of alcohol/drug dependency or mental illness a risk of harm to himself or others as evidenced by above information. The above named person has been informed of this evaluation and is unable or unwilling to accept treatment on a voluntary basis. Located at _____, Oklahoma, this _____ day of _____, _____

L.M.H.P.
License: _____
Address: _____

“Risk of harm to self or others” means:

- a. 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,
- b. 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,
- c. having 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,
- d. there exists a substantial risk that without immediate intervention severe impairment or injury will result to the person alleged to be a person requiring treatment, or
- e. a substantial risk of immediate serious physical injury to self, or immediate death, as manifested by evidence that the person is unable to provide for and is not providing for the basic physical needs of the person and that appropriate provision for those needs cannot be made immediately available in the community.

Unless a person also meets the criteria established in subparagraphs a, b, c, d, or e of this paragraph, "risk of harm to self or others" does not mean a person who is homeless.

MENTAL HEALTH EVALUATION

To the District Court of _____ County, State of Oklahoma

The authorized agency providing evaluation services in the County of _____ has evaluated the condition of:

Name _____
Address _____
Age _____
Sex _____
Marital Status _____

We have evaluated the person and find that this person is _____ is not _____ a person requiring treatment as defined by 43A O.S. § 1-103 (13). This finding is based on the following:

The findings are based on the following:

"Person requiring treatment" means:

- (1) a person who because of a mental illness of the person represents a risk of harm to self or others, or
- (2) a person who is a drug- or alcohol-dependent person and who as a result of dependency represents a risk of harm to self or others.

Unless a person also meets the criteria established in subparagraph a of this paragraph, person requiring treatment shall not mean:

- (1) a person whose mental processes have been weakened or impaired by reason of advanced years,
- (2) a mentally retarded or developmentally disabled person as defined in Title 10 of the Oklahoma Statutes,
- (3) a person with seizure disorder, or
- (4) a person with a traumatic brain injury;

The above named person has been informed of this evaluation and has been advised of, but has not been able or willing to accept referral to, the following services:

Based upon our findings, we have determined that inpatient treatment is the least restrictive alternative that meets the needs of the person due to the following:

_____. Reasonable efforts have been made to provide for the mental health 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

_____. 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.

Name and credentials of LMHP (please print)

Signature of LMHP

Date

Name and credentials of LMHP (please print)

Signature of LMHP

Date

“Risk of harm to self or others” means:

- a. 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,
- b. 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,
- c. having 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,
- d. there exists a substantial risk that without immediate intervention severe impairment or injury will result to the person alleged to be a person requiring treatment, or
- e. a substantial risk of immediate serious physical injury to self, or immediate death, as manifested by evidence that the person is unable to provide for and is not providing for the basic physical needs of the person and that appropriate provision for those needs cannot be made immediately available in the community.

Unless a person also meets the criteria established in subparagraphs a, b, c, d, or e of this paragraph, “risk of harm to self or others” does not mean a person who is homeless.

(Note: A copy of the Mental Health Evaluation must be attached to the Petition for Involuntary Commitment and a copy of the Mental Health Evaluation must be provided to the attorney for the person subject to the evaluation.)

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

IN RE _____)
Respondent) Case No. _____
)

PETITION FOR INVOLUNTARY COMMITMENT

Pursuant to 43A O.S. § 5-410, _____ (district attorney, LMHP, administrator of facility, adult family member, etc.) alleges and states:

1. Respondent has a mental illness and is a person requiring treatment as defined in 43A O.S. § 1-103(13).
2. Respondent is a risk of harm to self or others based on _____
_____.
3. Respondent is likely to benefit from mental health treatment.
4. Inpatient treatment is the least restrictive alternative for Respondent based on failure of efforts to provide less restrictive alternatives or a determination that less restrictive alternatives are unlikely to meet the treatment needs of Respondent.
5. The facility at which Respondent will be treated can provide Respondent with adequate and appropriate treatment.
6. Respondent (is/is not) competent to consent to or refuse treatment, including medications.
7. Respondent is being held in emergency detention, and a copy of the Certificate of Evaluation conducted by two licensed mental health professionals is attached to this Petition.
8. An order directing prehearing detention is necessary for the protection of Respondent or others, and a Request for Prehearing Detention is submitted with this Petition.

9. The names and addresses of any witnesses to the alleged facts are as follows:

Petitioner respectfully requests the court set this matter for an immediate hearing and, after the hearing, find that Respondent is a person requiring treatment and order Respondent involuntarily committed to hospitalization or the least restrictive treatment necessary.

(Petitioner's signature)

(Petitioner's printed name)

(Title or relationship of Petitioner)

(Petitioner's address and telephone number)

STATE OF OKLAHOMA)
) ss.
COUNTY OF _____)

I, the undersigned, being duly sworn, state that I have read the foregoing Petition, that I am familiar with the contents thereof, and that the allegations set for the therein are true and correct.

Petitioner's signature

Subscribed and sworn to before me this ____ day of _____ 2002.

NOTARY PUBLIC

My Commission No. _____ Expires: _____

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

IN RE: _____)
_____)
_____)
RESPONDENT

CASE NO. _____

REQUEST FOR PREHEARING DETENTION

A petition for involuntary commitment has filed against _____
("Respondent"). The petition alleges Respondent is a person requiring treatment as defined by
Oklahoma Mental Health Law. Because, as alleged in the petition for involuntary commitment,
Respondent is a risk of harm to self or others, an order directing prehearing detention of
Respondent until such time as this court conducts a hearing on the petition is necessary for the
protection of Respondent or others.

It is therefore requested this Court enter an order directing prehearing detention of the
Respondent at _____ (identify the facility) until the hearing on
the petition for involuntary commitment.

PETITIONER,

Signature

Name (Please print)

Address

Phone Number

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

IN RE: _____)
_____)
_____)

CASE NO. _____

RESPONDENT

**ORDER SETTING HEARING
AND DIRECTING PREHEARING DETENTION**

A Petition in proper form has been filed alleging that Respondent, _____, is a *person requiring treatment*, and requesting this court enter an order for treatment.

It is the opinion of the court there is probable cause to detain Respondent for the protection of Respondent or others until a hearing on the Petition in this matter.

IT IS THEREFORE ORDERED that the hearing on the Petition shall be held on the ____ day of _____ 2____ at __:__ .m. at the following location: _____.

IT IS FURTHER ORDERED that Respondent shall be detained at _____ (identity of the facility), or in some other suitable place and, if necessary, the Sheriff of this County is ordered to take Respondent into custody and transport Respondent to said detention facility until said Petition can be heard and determined by the court.

IT IS FURTHER ORDERED that a copy of this Order and the Petition for Involuntary Commitment with attachments be delivered by the Court Clerk to the District Attorney and the Public Defender of this County.

IT IS FURTHER ORDERED that the Sheriff of this county transport Respondent to and from this court for said hearing if necessary

Signed this _____ day of _____ 2_____.

JUDGE OF THE DISTRICT COURT

**DESIGNATION OF PERSON TO RECEIVE
PETITION FOR INVOLUNTARY DETENTION**

RE: _____

Person Designated (can be no one)

Mailing Address

City, State, Zip

Area Code + Phone Number

As specified by O.S. 43A § 5-209(C), clients are requested to designate a person whom they wish informed regarding their detention, which may be but is not limited to, one of the following: parent, spouse, guardian, brother, sister, or child who is at least eighteen (18) years of age.

Signature of client

Date

Signature of witness if client refuses to
Designate a person

Date

- a. "Person requiring treatment" means :
- (1) a person who because of a mental illness of the person represents a risk of harm to self or others,
 - (2) a person who is a drug- or alcohol-dependent person and who as a result of dependency represents a risk of harm to self or others, or
 - (3) a person who appears to require inpatient treatment:
 - (a) (i) for a previously diagnosed history of schizophrenia, bipolar disorder, or major depression with suicidal intent, or
 - (ii) due to the appearance of symptoms of schizophrenia, bipolar disorder, or major depression with suicidal intent, and
 - (b) for whom such treatment is reasonably believed will prevent progressively more debilitating mental impairment.
- b. Person requiring treatment shall not mean:
- (1) a person whose mental processes have been weakened or impaired by reason of advanced years,
 - (2) a mentally retarded person as defined in Title 10 of the Oklahoma Statutes,
 - (3) a person with seizure disorder, or
 - (4) a person with a traumatic brain injury,
- unless the person also meets the criteria set forth in subparagraph a of this paragraph.

Unless a Certificate of Evaluation has been attached to the Petition, the Court has ordered the evaluation 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 and executing a Certificate of Evaluation stating their findings, and the evaluation will be on _____ day of _____ 20____ at the facility where you are detained.

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.

The petitioner and witnesses identified in the Petition may offer testimony under oath at the hearing on the Petition.

The Court may appoint an attorney who shall represent you until final disposition of the case and that if you are indigent, the court shall pay the attorney fees.

If you are found at the hearing or at a jury trial to have a mental illness and be a person requiring treatment, the Court will take evidence and make findings of fact concerning your competency to consent to or to refuse the treatment that is ordered, including but not limited to, the right to refuse psychotropic medications.

You shall be afforded such other rights as are guaranteed by state and federal law, to include, but not limited to, the right to be present at the hearing (unless the judge orders otherwise) and the right to petition for habeas corpus.

I, _____, certify the above was presented to, explained and a copy given to the person alleged to be a person requiring treatment, on the _____ day of _____ 20____.

Signature

IT IS FURTHER ORDERED that the County Sheriff is authorized to transport Respondent to the treating facility, _____ with full power and authority for that purpose.

Signed this ____ day of _____ 20____.

JUDGE OF THE DISTRICT COURT

5. If at any time during the period of outpatient treatment period it comes to the attention of the court from a person competent to file a petition set forth in 43A O.S. § 5-410, that the respondent is not complying with the order or that the alternative treatment program has not been sufficient to prevent harm or injury to Respondent or others, the court may order Respondent to show cause why the court shall not modify this order as permitted by 43A O.S. § 5-416.
6. If Respondent is currently in emergency detention, Respondent is hereby discharged from the detaining facility.

Signed this ____ day of _____ 2 ____.

JUDGE OF THE DISTRICT COURT

APPENDIX C

Facilities

DESIGNATED EMERGENCY EXAMINATION/DETENTION FACILITIES
October 5, 2006

FACILITY	EXAMINATION and/or DETENTION	COUNTY	SERVICE AREA
Arbuckle Memorial Hospital Adria Shell, Director 2011 W. Broadway Sulphur, OK 73086 (580) 622-2161/fax 622-3763	Examination Detention	Murray	7
Bill Willis CMHC Margaret Bradford, Ex. Director 1400 S. Hensley Drive Tahlequah, OK 74464 (918) 207-3000/fax 207-3064	Examination	Cherokee (main facility)	21
Bill Willis CMHC Margaret Bradford, Ex. Director 716 S. 2 nd Street Stilwell, OK 74960 (918) 696-6212/fax 696-6213	Examination	Adair	21
Bill Willis CMHC Margaret Bradford, Ex. Director 101 N. Wheeler Sallisaw, OK 74955 (918) 775-5513/fax 775-5526	Examination	Sequoyah	21
Bill Willis CMHC Margaret Bradford, Ex. Director 217 E. Church Street Wagoner, OK 74467 (918) 485-4040/fax 485-2776	Examination	Wagoner	21
Carl Albert CMHC Roger Jones, Exec. Director P.O. Box 579 1100 E. Monroe McAlester, OK 74502-0579 (918) 426-1000/fax 426-6760	Examination Detention	Pittsburg	6
Central Oklahoma CMHC Director P.O. Box 400 909 E. Alameda Norman, OK 73070-0400 (405) 360-5100/fax 573-3958	Examination	Cleveland	15
Comanche County Memorial Hospital/Silver Linings Kim Holland, Director 3401 W. Gore Blvd. Lawton, OK 73505 (580) 250-6650/fax 250-6655	Examination Detention <u>Geropsychiatric only</u>	Comanche	8

FACILITY	EXAMINATION and/or DETENTION	COUNTY	SERVICE AREA
Cushing Regional Hospital/ Transitions Unit Ron Cackler, Director P.O. Box 1409 1027 E. Cherry Cushing, OK 74023 (918) 225-2915/fax 225-1475	Examination Detention <u>Geropsychiatric only</u>	Payne	11
Edwin Fair CMHC Geoffery Cowan, Ex. Director 1500 N. Sixth Street Ponca City, OK 74601-2801 (580) 762-7561/fax 762-2576	Examination	Kay	11
Grady Memorial Hospital E. Michael Nunamaker, Dir. 2220 Iowa Chickasha, OK 73018 (405) 779-2150/fax 779-2413	Examination	Grady	17
Grand Lake MHC Charles Danley, Ex. Director P.O. Box 1346 17599 S. Highway 88 Claremore, OK 74018 (918) 342-9530/fax 342-9533	Detention	Craig, Delaware, Mayes, Nowata, Ottawa, Rogers, Washington	1
Great Plains Regional Medical Center Robert Henderson, M.D., Dir. P.O. Box 2339 1705 W. Second Street Elk City, OK 73648-2339 (580) 225-2511/fax 821-5536	Examination Detention <u>Geropsychiatric only</u>	Beckham	9
Green Country BHS Dean Williams, Ex. Director 619 N. Main Street Muskogee, OK 74401 (918) 682-8407/fax 682-0976	Examination	Muskogee	16
Green Country BHS Dean Williams, Ex. Director 2719 E. Shawnee Muskogee, OK 74403 (918) 687-1039/fax 683-9484	Examination Detention	Muskogee	16
Griffin Memorial Hospital Don Bowen, Ex. Director P.O. Box 151 900 E. Main Norman, OK 73070-0151 (405) 3231-4880/fax 321-4514	Examination Detention	Cleveland	15

FACILITY	EXAMINATION and/or DETENTION	COUNTY	SERVICE AREA
Henryetta Medical Center Dee Renshaw, CEO P.O. Box 1269 Henryetta, OK 74437 (918) 652-2594/fax 650-0437	Examination Detention	Okmulgee	13
High Pointe Hospital Johnny Smith, Director 6505 N.E. 50 th Oklahoma City, OK 73141 (405) 419-1500/fax 424-0329	Examination Detention	Oklahoma	14, 18-19
Holdenville General Hospital Walter Topp, III, CEO 100 McDougal Drive Holdenville, OK 74848 (405) 379-4206/fax 379-4224	Examination	Hughes	6
Integrus Baptist Medical Center Lillian Perryman, Director 3300 N.W. Expressway Oklahoma City, OK 73112 (405) 949-3011/fax 951-2237	Examination	Oklahoma	14, 18-19
Integrus Bass Baptist Health Center James Hutchison, Director 600 S. Monroe Enid, OK 73701 (580) 233-2300/fax 233-8922	Examination Detention	Garfield	10
Integrus Bass Meadowlake James Hutchison, Director 2216 S. Van Buren Enid, OK 73701 (580) 234-2220/fax 233-8922	Examination Detention	Garfield	10
Integrus Southwest Medical Center Lillian Perryman, Director 4401 S. Western Oklahoma City, OK 73109 (405) 636-7000/fax 636-7702	Examination	Oklahoma	14, 18-19
Jim Taliaferro CMHC Jim Regan, Exec. Director 602 S.W. 38 th Street Lawton, OK 73505 (580) 248-5780/fax 248-3610	Examination Detention	Comanche	8

FACILITY	EXAMINATION and/or DETENTION	COUNTY	SERVICE AREA
Laureate Psychiatric Clinic and Hospital John Robson, Exec. Dir. 6655 S. Yale Ave. Tulsa, OK 74136 (918) 481-4000/fax 481-4063	Examination	Tulsa	3 & 5
Mental Health Services of Southern Oklahoma, Inc. Randy Warren, Interim Ex. Dir. P.O. Box 1965 111 E. 12 th Street Ada, OK 74820 (580) 436-5539/fax 436-2690	Examination	Pontotoc	7
Mental Health Services of Southern Oklahoma, Inc. Randy Warren, Interim Ex. Dir. P.O. Box 189 2530 S. Commerce, Bldg. B Ardmore, OK 73402 (580) 223-5636/fax 226-6727	Examination	Carter	7
Mental Health Services of Southern Oklahoma, Inc. Randy Warren, Interim Ex. Dir. 1001 W. Main Durant, OK 74701 (580) 924-7330/fax 924-2739	Examination	Bryan	7
Mercy Health Center Terri Round, Director 4300 W. Memorial Road Oklahoma City, OK 73120 (405) 936-5443/fax 936-5058	Examination	Oklahoma	14, 18-19
Midwest Regional Medical Center Kathy Holland, Director 2825 Parklawn Drive Midwest City, OK 73110 (405) 610-8275/fax 610-1874	Examination Detention	Oklahoma	14, 18-19
Northwest Center for Behavioral Health Steve Norwood, Exec. Director Robin Diefenbach, Satellite Coordinator 604 Choctaw Street Alva, OK 73717 (580) 327-1112/fax 327-3067	Examination	Woods	10

FACILITY	EXAMINATION and/or DETENTION	COUNTY	SERVICE AREA
Northwest Center for Behavioral Health Steve Norwood, Exec. Director Diana Henderson, Satellite Coordinator 702 N. Grand Enid, OK 73702 (580) 254-3791/fax 237-7711	Examination	Garfield	10
Northwest Center for Behavioral Health Steve Norwood, Exec. Director Robin Diefenbach, Satellite Coordinator 1425 N. Main Street Fairview, OK 73737 (580) 227-2088/fax 227-2349	Examination	Major	10
Northwest Center for Behavioral Health Steve Norwood, Exec. Director Lois Jantz, Director, Inpatient Services P.O. Box 1 Fort Supply, OK 73841 (580) 766-2311/fax 766-2017	Examination Detention	Woodward	10
Northwest Center for Behavioral Health Steve Norwood, Exec. Director Rebecca Draper, Satellite Coordinator 1923 S. Division Guthrie, OK 73942 (405) 282-1830/fax 282-1861	Examination	Logan	10
Northwest Center for Behavioral Health Steve Norwood, Exec. Director Bill Meads, Satellite Coord. 1007 N.E. 4 th Street Guymon, OK 73942 (580) 338-5851/fax 338-6022	Examination	Texas	10

FACILITY	EXAMINATION and/or DETENTION	COUNTY	SERVICE AREA
Northwest Center for Behavioral Health Steve Norwood, Exec. Director Rebecca Draper, Satellite Coordinator 124 E. Sheridan, Room 200 Kingfisher, OK 73750 (405) 375-6377/fax 375-6367	Examination	Kingfisher	10
Northwest Center for Behavioral Health Steve Norwood, Exec. Director Jimmie Fraley, Satellite Coord. 1222 Tenth Street, Suite 211 Woodward, OK 73801 (580) 256-8615/fax 256-8463	Examination	Woodward	10
Oklahoma County Crisis Intervention Center Pete Reed, Exec. Director P.O. Box 53277 1200 N.E. 13 th Street Okla. City, OK 73152-3277 (405) 271-6800/fax 271-3554	Examination Detention	Oklahoma	14, 18-19
OU Medical Center Joyce Doyle, Director 1200 Everett Drive Oklahoma City, OK 73104 (405) 271-5007/fax 271-1951	Examination Detention	Oklahoma	14, 18-19
Okmulgee Memorial Hospital A. Michelle Blank, Director 1401 Morris Drive Okmulgee, OK 74447 (918) 758-3308/fax 758-3311	Examination Detention <u>Geropsychiatric only</u>	Okmulgee	13
Parkside, Inc. Debra Moore, Director 1620 E. 12 th Tulsa, OK 74120 (918) 582-2131/fax 588-8822	Examination Detention	Tulsa	3 & 5
Red Rock BHS Allyn Friedman, Exec. Director 4400 N. Lincoln Blvd. Oklahoma City, OK 73105 (405) 424-7711/fax 425-0343	Examination	Oklahoma (main office)	14, 18-19

FACILITY	EXAMINATION and/or DETENTION	COUNTY	SERVICE AREA
Red Rock BHS Allyn Friedman, Exec. Director 70-100 N. 31 st Street Clinton, OK 73601 (580) 323-6021/fax 323-9375	Examination Detention	Beckham, Blaine, Custer, Greer, Kiowa, Roger Mills, Washita	9
Red Rock BHS Allyn Friedman, Exec. Director 204 W. Main Watonga, OK 73772 (580) 623-7199/fax 623-7188	Examination	Blaine	9
Red Rock BHS Allyn Friedman, Exec. Director 3080 W. 3 rd Elk City, OK 73644 (580) 225-5136/fax 225-5138	Examination	Beckham	9
Red Rock BHS Allyn Friedman, Exec. Director 1204 Manvel Chandler, OK 73834 (405) 258-3040/fax 258-3163	Examination	Lincoln	14, 18-19
Red Rock BHS Allyn Friedman, Exec. Director 126 N. Bell Shawnee, OK 74801 (405) 275-7100/fax 275-7105	Examination	Pottawatomie	14, 18-19
Red Rock BHS Allyn Friedman, Exec. Director 2401 N.W. 39 th Street Oklahoma City, OK 73112 (405) 524-6500/fax 425-0343	Examination	Oklahoma	14, 18-19
Red Rock BHS Allyn Friedman, Exec. Director 6128 E. 38 th St., Suite 305 Tulsa, OK 74135 (918) 599-7404/fax 584-2530	Examination	Tulsa	3 & 5
Red Rock BHS Allyn Friedman, Exec. Director 1501 W. Commerce Yukon, OK 73099 (405) 354-1927	Examination	Canadian	17

FACILITY	EXAMINATION and/or DETENTION	COUNTY	SERVICE AREA
Red Rock BHS Allyn Friedman, Exec. Director 200 N. Choctaw El Reno, OK 73036 (405) 262-6662	Examination	Canadian	17
Red Rock BHS Allyn Friedman, Exec. Director 804 W. Choctaw Chickasha, OK 73018 (405) 222-0622	Examination	Grady	17
Rolling Hills Hospital Ms. Darnell Powell 1000 Rolling Hills Lane Ada, OK 74820 (580) 436-3600/fax 436-3958	Detention	Pontotoc	7
Shadow Mountain Behavioral Health Systems Sharon Worsham, CEO 6262 S. Sheridan Rd. Tulsa, OK 74133 (918) 492-8200/fax 492-2849	Examination Detention	Tulsa	3 & 5
Shadow Mountain Behavioral Health Systems Sharon Worsham, CEO 1027 E. 66 th Place Tulsa, OK 74136 (918) 492-8200/fax 492-2849	Examination Detention	Tulsa	3 & 5
Southwestern Behavioral Health Center Doug Lashley, Director 1602 S.W. 82 nd Street Lawton, OK 73505 (580) 536-0077/fax 510-2725	Examination Detention	Comanche	8
St. Anthony Hospital Tammy Powell, VP of BH 1000 N. Lee Oklahoma City, OK 73101 (405) 272-7275	Examination Detention	Oklahoma	14, 18-19
St. Anthony Hospital Tammy Powell, VP of BH St. Michael Campus 2129 S.W. 59 th Street Oklahoma City, OK 73119 (405) 680-2009/fax 680-2892	Examination Detention	Oklahoma	14, 18-19

FACILITY	EXAMINATION and/or DETENTION	COUNTY	SERVICE AREA
Stroud Regional Medical Center Beverly Ash, Director P. O. Box 530 2308 Highway 66 W. Stroud, OK 74079 (918) 968-3571/fax 968-4814	Examination Detention	Lincoln	14
Tulsa Center for Behavioral Health Edna Meziere, Exec. Director 2323 S. Harvard Tulsa, OK 74114 (918) 293-2140/fax 745-2429	Examination Detention	Tulsa	3 & 5
Tulsa Regional Medical Center James Hutchison, Division Dir. 744 W. 9 th St. Tulsa, OK 74127 (918) 599-5807/fax 599-5859	Examination Detention	Tulsa	3 & 5
Wagoner Community Hospital John Crawford, CEO 1200 W. Cherokee Wagoner, OK 74467 (918) 485-1200/fax 485-1205	Examination Detention	Wagoner	21

p:\docs\audit\doc\EOD\ED list (revised 10-06)

REQUEST FOR APPROVAL AS AN EMERGENCY EXAMINATION FACILITY

A. _____
(Name of Organization) (Director)

B. _____
(Address)

(County)

C. The applicant organization is the following type of facility (check one):

- _____ Hospital licensed by the Oklahoma State Department of Health;
- _____ Community Mental Health Center certified by the ODMHSAS Board;
- _____ Community-based Structured Crisis Center certified by the ODMHSAS Board;
- _____ Facility operated by ODMHSAS; or
- _____ Hospital accredited by JCAHO, CARF or AOA.

D. Addresses, including counties, for all sites/satellite locations providing services. _____

E. Phone Number _____ Fax Number _____

F. Contact person _____

G. As an authorized representative of the applicant organization, I verify the organization has the ability to conduct emergency examinations as defined in 43A O.S. §5-206(4) and has one or more Licensed Mental Health Professionals capable of performing the functions set forth in 43A O.S. §§5-207 and 5-208.

(Date)

(Signature of Authorized Program Official)

REQUEST FOR APPROVAL AS AN EMERGENCY DETENTION FACILITY

A. _____
(Name of Organization) (Director)

B. _____
(Address)

(County)

C. The applicant organization is the following type of facility (check one):

- _____ Hospital licensed by the Oklahoma State Department of Health;
- _____ Community Mental Health Center certified by the ODMHSAS Board;
- _____ Community-based Structured Crisis Center certified by the ODMHSAS Board;
- _____ Facility operated by ODMHSAS; or
- _____ Hospital accredited by JCAHO, CARF or AOA.

D. Addresses, including counties, for all sites/satellite locations providing services. _____

E. Phone Number _____ Fax Number _____

F. Contact person _____

G. As an authorized representative of the applicant organization, I verify the organization has the ability to conduct emergency detentions as defined in 43A O.S. §5-206(5) and comply with 43A O.S. §§5-208 and 5-209.

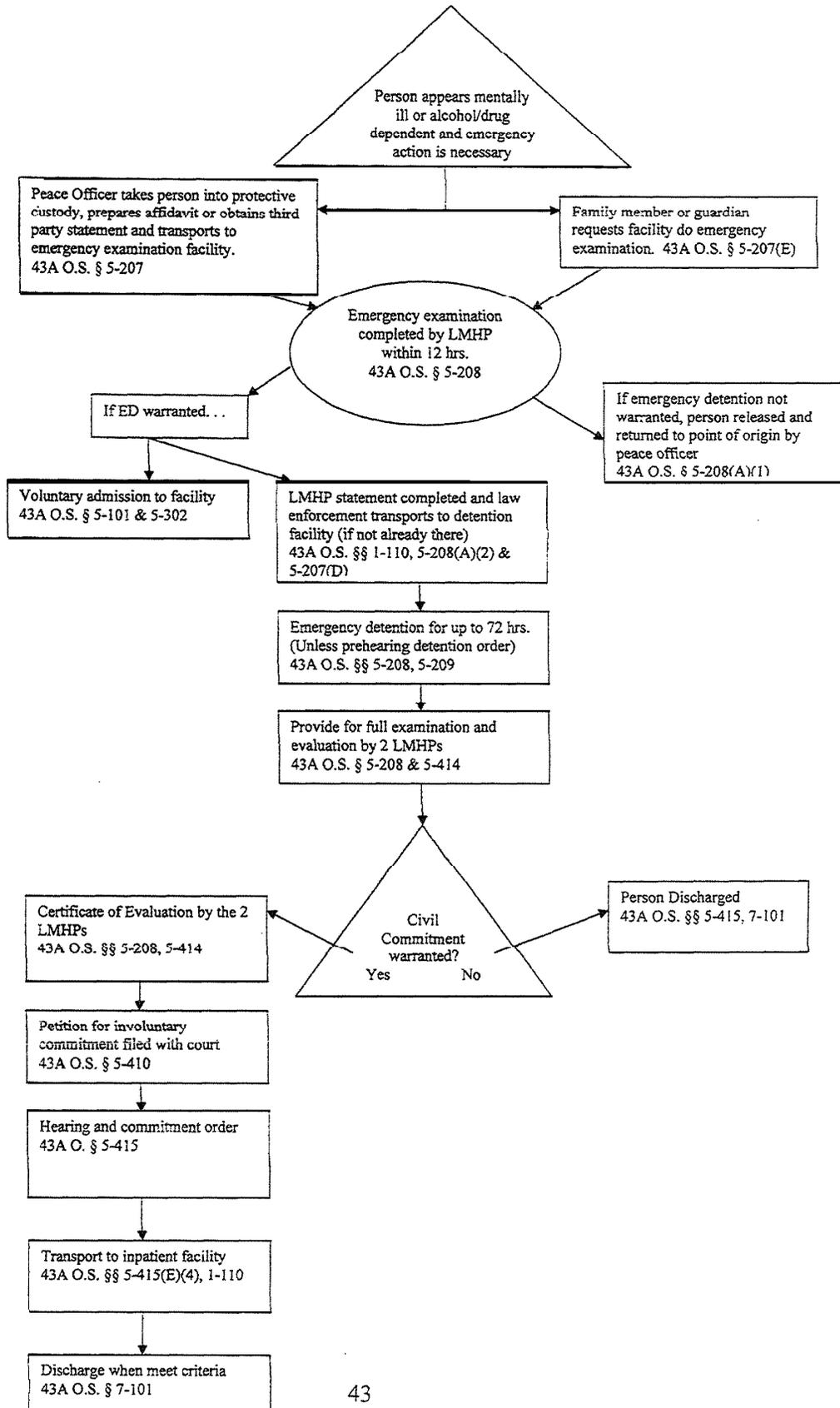
(Date)

(Signature of Authorized Program Official)

APPENDIX D

Flow Chart For Adult ED Process

Typical Adult ED & Commitment Process



APPENDIX E

Typical Order of Events

**TYPICAL ORDER OF EVENTS
FOR
EMERGENCY DETENTION AND COMMITMENT**

I. Protective Custody

- A. Peace Officer takes person who appears mentally ill or alcohol or drug dependent and for whom emergency action is necessary into protective custody.
- B. Prepares statement or obtains third party statement and transports to designated emergency examination facility, (or family or person requests facility do emergency examination).

II. Emergency Examination

LMHP completes examination within 12 hours.

III. Emergency Request Detention

- A. If emergency detention not warranted person is released and returned to point of origin by peace officer
- B. If emergency detention warranted and not voluntary, then LMHP statement completed and law enforcement transports to detention facility (if not already there).
- C. Detained person asked to designate an individual to be notified.
- D. Emergency detention for up to 72 hours (unless prehearing detention order).
- E. Provide for full examination and evaluation by two LMHPs.
- F. Determine if person has advanced directive.

IV. Involuntary Commitment

- A. Petition for involuntary commitment and mental health evaluation by two LMHPs filed with court.
- B. Prehearing Detention Request, if necessary.
- C. Notice to person one day before hearing.
- D. Hearing and commitment order.
- E. Transport to inpatient facility.
- F. Discharge when meet criteria.

APPENDIX F

Forms For ED and Civil Commitment Process For Minors

**APPLICATION FOR ADMISSION
(FOR 16 or 17 YEAR OLD MINOR)**

Applicant Data:

Name: _____ Date of Birth: _____ Gender: Female Male

Address: _____

Name(s) of Parent: _____

Address of Parent(s): _____

Reason for request for admission (describe the activity or incident that causes you to seek voluntary admission for inpatient treatment):

I, the undersigned, have been provided an explanation of the nature and purpose of inpatient treatment, and I knowingly and voluntarily give my consent for my admission for such treatment. I further understand that facility staff will disclose my admission to my parent/legal guardian for the purpose of notifying the parent of my location. My parent/legal guardian will also be given all other treatment information with the exception of any specific substance abuse information. Also, my parent of legal guardian may be contacted in the event that I revoke this consent for voluntary admission.

_____/_____
Minor's Name (16 or 17) (please print) Date

_____/_____
Signature (minor 16 or 17) Date

"Minor in need of treatment" means a minor who either has:

1. A demonstrable mental illness or is drug or alcohol dependent, and as a result of that of that mental illness or dependency can be expected to within the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person, and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation; OR
2. A demonstrable mental illness or drug dependency of sufficient severity to cause substantial impairment or disability in at least two of the following major areas of functioning in the child's life:
 - a. family relations, b. school performance, c. social interactions, d. ability to perform independently the basic tasks of personal hygiene, hydration and nutrition, or e. self protection.

"Minor in need of treatment" does NOT mean a minor afflicted with epilepsy, a developmental disability, autism, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs or who is truant or sexually active unless the minor also meets the criteria for a minor in need of treatment.

**INITIAL ASSESSMENT
(Medical Necessity Review)**

Identifying Patient Data:

Name: _____ Date of Birth: _____ Gender: Female Male

Address: _____

Name(s) and address(es) of the minor's parent(s) or legal guardian: _____

Agency having custody or control of the minor, if applicable: _____

Name(s) of Informants: _____

Relationship of Informants: _____

Supporting documentation: Application for admission 3rd Party Police Affidavit

ASSESSMENT:

Mood _____ Affect _____ Oriented _____ Insight _____ Memory/Concentration _____
 Appearance _____ Cognition/Intellect _____

ON ALL OF THE FOLLOWING MAKE SURE THAT YOU OBTAIN THE DATE IT OCCURRED , MAINLY LAST 24-48 HRS.

Suicidal thoughts <input type="checkbox"/> No <input type="checkbox"/> Yes	Homicidal thoughts <input type="checkbox"/> No <input type="checkbox"/> Yes	Change in sleep <input type="checkbox"/> No <input type="checkbox"/> Yes
Frequency _____	Frequency _____	Change in appetite <input type="checkbox"/> No <input type="checkbox"/> Yes
Duration _____	Duration _____	Thought disorder <input type="checkbox"/> No <input type="checkbox"/> Yes
Intensity _____	Intensity _____	Perceptual Problem <input type="checkbox"/> No <input type="checkbox"/> Yes
Suicidal Plan <input type="checkbox"/> No <input type="checkbox"/> Yes	Homicidal Plan <input type="checkbox"/> No <input type="checkbox"/> Yes	Hallucinations <input type="checkbox"/> No <input type="checkbox"/> Yes
How _____	How _____	Type: _____
When _____	When _____	Anger/Rage <input type="checkbox"/> No <input type="checkbox"/> Yes
Where _____	Where _____	Hopelessness <input type="checkbox"/> No <input type="checkbox"/> Yes
Intent 1-10 _____	Intent 1-10 _____	Anxiety/Panic <input type="checkbox"/> No <input type="checkbox"/> Yes
Availability of method:	Availability of method:	Isolating <input type="checkbox"/> No <input type="checkbox"/> Yes
Preparatory Bx <input type="checkbox"/> No <input type="checkbox"/> Yes	Preparatory Bx <input type="checkbox"/> No <input type="checkbox"/> Yes	Poor <input type="checkbox"/> No <input type="checkbox"/> Yes
Suicidal attempt <input type="checkbox"/> No <input type="checkbox"/> Yes	Homicidal attempt <input type="checkbox"/> No <input type="checkbox"/> Yes	Impulse Control _____
Deliberate <input type="checkbox"/> No <input type="checkbox"/> Yes	Aggression <input type="checkbox"/> No <input type="checkbox"/> Yes	Fire Setting <input type="checkbox"/> No <input type="checkbox"/> Yes
Self Harm _____	Type: _____	Runaway <input type="checkbox"/> No <input type="checkbox"/> Yes
Substance Use <input type="checkbox"/> No <input type="checkbox"/> Yes		Cruelty to animals <input type="checkbox"/> No <input type="checkbox"/> Yes

Story of presenting problem: include evidence of a "minor in need of treatment"* and any current stressors:

Treatment History:

Prior Inpatient: No Yes (give dates and locations) _____

Prior Outpatient No Yes (give dates and locations) _____

Current Treatment: No Yes _____

Hx of diagnosis Axis I: _____ Axis II: _____

Hx, if any, of suicidal or homicidal behaviors:

Ideation: No Yes _____

Threats: No Yes _____

Past Attempts: No Yes , Number _____ Lethality: _____

Medical History:

Currently on medications: No Yes _____

Protective Factors: Please be age aware and include parent guardian factors along with child specific factors

IF THE LMHP IS A LISENCEED MEDICAL DOCTOR OR AN OSTEOPATHIC PHYSICIAN:

The minor, _____, is is not considered medically stable.

Provisional Diagnosis (if any):

Axis I: _____

Axis II: _____

Axis III: _____

Axis IV: _____

Axis V: Current GAF _____ Highest GAF _____

Treatment Recommendations:

Treatment History:

Provisional Diagnosis (if any):

Axis I: _____

Axis II: _____

Axis III: _____

Axis IV: Current GAF _____ Highest GAF _____

Treatment Recommendations:

I have made a personal examination of _____, a minor alleged to be in need of treatment, and do hereby find that this child is is not in need of treatment as a result of alcohol/drug dependency or mental illness as evidenced by the above information. Located at _____, Oklahoma, this _____ day of _____.

Name and credentials of LMHP (please print)

Signature of LMHP

/Date

*"Minor in need of treatment" means a minor who either has:

1. A demonstrable mental illness or is drug or alcohol dependent, and as a result of that of that mental illness or dependency can be expected to within the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person, and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation; OR
2. A demonstrable mental illness or drug dependency of sufficient severity to cause substantial impairment or disability in at least two of the following major areas of functioning in the child's life:
 - a. family relations,
 - b. school performance,
 - c. social interactions,
 - d. ability to perform independently the basic tasks of personal hygiene, hydration and nutrition, or
 - e. self protection.

"Minor in need of treatment" does NOT mean a minor afflicted with epilepsy, a developmental disability, autism, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs or who is truant or sexually active unless the minor also meets the criteria for a minor in need of treatment.

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA
Juvenile Division

IN THE MATTER OF:)

_____,)
a minor alleged to be in need)
of inpatient mental health or)
substance abuse treatment.)

CASE NO. _____

PETITION FOR INVOLUNTARY COMMITMENT

Pursuant to 43A O.S. § 5-509, _____, the duly qualified and acting District Attorney, who prosecutes in the name of and by the authority of the State of Oklahoma, and respectfully represents and states to the Court as follows:

1. That _____, is a minor in need of treatment as defined by 43A O.S. § 5-502(2). A copy of the report of evaluation by a licensed mental health professional finding said minor to be a minor in need of treatment is attached to this petition and incorporated by reference.

2. That said minor appears to have a mental illness or drug or alcohol dependence serious enough to warrant inpatient treatment and is likely to benefit from the treatment.

3. Based upon the following, inpatient treatment is determined to be the least restrictive alternative that meets the needs of the minor (*check one*):

Reasonable efforts have been made to provide for the treatment needs of the minor through the provision of less restrictive alternatives, and such alternatives have failed to meet the treatment needs of the minor, **OR**

After thorough consideration of less restrictive alternatives to inpatient treatment, the condition of the minor is such that less restrictive alternatives are unlikely to meet the treatment needs of the minor.

4. That said minor's date of birth and address is as follows:

Date of birth: _____.

Address: _____.

Name: _____ DOB: _____

Address: _____ of _____ County, State of Oklahoma, is a minor who comes within the purview of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act (43A O.S. § 5-501 et seq.), because based upon the evaluation of a licensed mental health said minor is a minor in need of treatment.

That said minor has a demonstrable mental illness or is drug or alcohol dependent and as a result of that mental illness or dependency can be expected within the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person, and who has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation, **OR**

That said minor has a demonstrable mental illness or is drug or alcohol dependent of sufficient severity to cause substantial impairment or disability in at least two of the following major areas of functioning in the minor's life:

1) family relations; 2) school performance; 3) social interactions, 4) ability to perform independently the basic tasks of personal hygiene, hydration and nutrition, or 5) self-protection.

That inpatient treatment is the least restrictive alternative for said minor based on failure of efforts to provide less restrictive alternatives or that less restrictive alternatives are unlikely to meet the treatment needs of the minor.

That the names, relationships and addresses of the parents, legal guardian, custodian or nearest relatives of said minor are as follows:

Mother: (name/address)
Father: (name/address)
Other: (name/address)
DHS (name/address)

WHEREFORE, Petitioner prays that the Court find by clear and convincing evidence that said minor has a demonstrable mental illness as set forth in Title 43A O.S. § 5-503(2)(a) or (b). Petitioner further prays that said minor be detained in an appropriate mental health facility for inpatient treatment and that hearing be set on this matter within three (3) days.

_____, DISTRICT ATTORNEY
_____, OKLAHOMA

By: _____
Assistant District Attorney

ENDORSEMENT OF WITNESSES;

STATE OF OKLAHOMA, _____ COUNTY, SS:

_____, by and through the undersigned Assistant District Attorney, being first duly sworn, deposes and states that he/she has read and understands the facts and allegations in said Petition contained and that they are true to the best of his/her information and belief.

VERIFIER

Subscribed and sworn to before me this ____ day of _____, 20 ____.

Notary Public

My Commission Expires: _____
My Commission Number: _____

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA
Juvenile Division

IN THE MATTER OF:)
)
)
)
)
)
)
)
)
)
)
A minor alleged to be in need)
of inpatient mental health or)
substance abuse treatment.)

CASE NO. _____

**ORDER SETTING HEARING
AND DIRECTING PREHEARING DETENTION**

A Petition in proper form has been filed alleging that _____ is a minor in need of treatment and requesting this Court enter an order for inpatient treatment.

It is the opinion of the Court that for the protection of the minor or others, the minor should be detained at a mental health facility until a hearing on the Petition in this matter.

IT IS THEREFORE ORDERED that the hearing on the Petition shall be held on the ____ day of _____ 20____, at ____ o'clock __.m., at the following location:
(address)_____.

IT IS FURTHER ORDERED that the minor shall be detained at _____ (facility), and, if necessary, the Sheriff of this County is ordered to take minor into custody and transport minor to said facility until the Petition can be heard and determined by the Court.

IT IS FURTHER ORDERED that the Sheriff of this County transport minor to and from this Court for said hearing if necessary.

Signed this ____ day of _____ 20____.

JUDGE OF THE DISTRICT COURT

IT IS THEREFORE ORDERED that Minor is committed to or shall remain in the custody of Department of Human Services Office of Juvenile Affairs Parent(s) and is to remain at _____ facility.

IT IS FURTHER ORDERED that the County Sheriff is authorized to transport Minor to the treating facility, if necessary, with full power and authority for that purpose.

THIS MATTER IS SET FOR FURTHER HEARING ON THE ____ DAY OF _____, 20____.

Signed this ____ day of _____, 20____.

JUDGE OF THE DISTRICT COURT

APPENDIX G

DMHSAS & DHS Joint Memorandum
regarding mentally ill and mentally
retarded individuals

Inter-Agency Memorandum

To: All Department of Mental Health and Substance Abuse Services and
Department of Human Services healthcare providers and case workers

From: Durand H. Crosby, DMHSAS General Counsel and
John Fears, DHS Assistant General Counsel

Date: 2/3/2004

Re: Admission criteria for DMHSAS operated and DMHSAS contracting facilities¹

Some confusion may exist as to the civil inpatient admission criteria for Department of Mental Health and Substance Abuse Services (DMHSAS) operated facilities and those facilities which have contracted with DMHSAS to provide inpatient services. We have heard reports that DMHSAS facilities are refusing to accept individuals with mental retardation even if they otherwise meet inpatient admission criteria. Conversely, there are reports that employees for the Department of Human Services (DHS) have presented to DMHSAS persons for admission who may be dangerous, but who do not otherwise meet inpatient admission criteria. In addition, some DMHSAS providers claim that after admitting and treating an individual in DHS custody, DHS has refused to accept the individual back into their custody once the mental illness becomes stabilized. Therefore, we have prepared this memorandum in hopes of clarifying who may be admitted and confined for inpatient mental health treatment.

A person may only be admitted for inpatient mental health treatment if he or she is a "person requiring treatment" as defined by Title 43A of the Oklahoma statutes. A "person requiring treatment" is a person with a "mental illness" or who is dependent on drugs and alcohol, and who as a result of the mental illness or substance dependency either: (1) can be expected in the near future to seriously injure self or others; (2) is unable to care for his or her basic physical needs or 3) requires inpatient treatment for schizophrenia, bipolar disorder, or major depression with suicidal intent to prevent more debilitating mental impairment. See 43A O.S. § 1-103. Thus, the person must be mentally ill or substance dependent, as well as dangerous to self or others as the direct result of the mental illness or substance dependency in order to meet civil commitment criteria for inpatient mental health treatment.

"Mental illness" is defined as a "substantial disorder of thought, mood, perception, psychological orientation or memory that significantly impairs judgment, behavior, capacity

¹ The purpose of this memo is to explain when a person can be civilly committed to a DMHSAS facility or to a facility contracting with DMHSAS. It does not address individuals who are committed through the criminal justice system.

to recognize reality or ability to meet the ordinary demands of life.” 43A O.S. § 1-103(3)(emphasis added). DMHSAS regulations specify what qualifies as “substantial” for purposes of this definition. See OAC 450:30-9-3. For practical purposes, to qualify as a mental illness, it is not sufficient that the individual’s symptoms meet the definition of a disorder found in the DSM-IV. Instead, the individual’s symptoms must generally involve a thought, perceptual or mood disorder, suicidal intent, or psychosis. *Id.*

It should be noted that individuals who are solely (a) mentally retarded; (b) whose mental processes have weakened due to advanced years; (c) have a seizure disorder; or (d) have suffered a traumatic brain injury are all excluded from the statutory definition of a “person requiring treatment.” See 43A O.S. § 1-103(13)(b). However, an individual may be mentally retarded and also mentally ill. Consequently an evaluation and determination must be made as to whether the disorder is due solely to mental retardation, dementia or traumatic brain disorder which would not meet admission criteria, or whether the person also has a mental illness or substance abuse disorder. If a person is mentally retarded, but also otherwise meets the inpatient admission criteria for a person requiring treatment as stated above, the person should be admitted to DMHSAS facilities or facilities contracting with DMHSAS to provide inpatient services. Once the mental illness is treated and becomes stabilized to the point that the individual is no longer dangerous to self or others as a result of the mental illness, and the person is capable of surviving safely on his or her own or with the help of willing and responsible family members or friends, the individual must be discharged as they can no longer remain in the custody of DMHSAS. See 43A O.S. § 7-101(B). However, an appropriate discharge plan must be promulgated prior to discharge as set forth in 43A O.S. § 7-102.

Under 43A O.S. § 10-108(A)(1) of the Protective Services for Vulnerable Adults Act, DHS may pursue temporary guardianship whenever there is abuse, neglect, or financial exploitation of the person’s estate, but only after complying with the ward’s due process rights and obtaining a court order. Specifically, if “DHS determines that a person is suffering from abuse, neglect, or exploitation presenting a substantial risk of death or immediate and serious physical harm to the person or financial exploitation of the estate of the person to the extent that an emergency exists, and the vulnerable adult lacks mental capacity to consent to receive protective services and no consent can be obtained, DHS may petition the district court...”

In the event that a petition is filed, notice and an opportunity for a hearing must be provided to the vulnerable adult. Counsel must be appointed by the court for the vulnerable adult before the hearing and prior to a court entering an order appointing the DHS, an interested person, or other organization as temporary guardian. See 43A O.S. §§10-108.C through M.

DMHSAS is committed to serve individuals who are dangerous to self or others as a result of a mental illness or substance abuse dependency. However, confining an individual against his or her will is a significant loss of liberty. *Addington v. Texas*, 406 U.S. 418 (1979). Moreover, committing an individual to a psychiatric hospital who is not mentally ill or suffering from a substance abuse dependency, and dangerous as a result is a violation of

that person's civil rights. *See, e.g., O'Connor v. Donaldson, 422 U.S. 563 (1975).* Therefore, it is vitally important that DMHSAS admit only individuals who meet the statutory inpatient admission criteria.

DHS is committed to protect vulnerable adults under the strict requirements of the Protective Services for Vulnerable Adults Act (PSVAA). Even if the person is MR and not mentally ill, at least one of the three elements (abuse, neglect, or exploitation by another person) must be present before DHS may file a petition seeking temporary emergency guardianship. The fact that a person is found intoxicated on the street or acts violently, standing alone, does not provide a sufficient basis for a guardianship under the Act. Additionally, there must be substantial risk of death or immediate and serious risk of physical harm or exploitation of the estate. If a petition is filed, the person must still be afforded notice and opportunity for a hearing, and appointment of legal counsel, before a court can appoint anyone as temporary guardian whether it is DHS, another person, or another organization. *See, 43A O.S. §10-108(C)-(E).*

Your cooperation, whether a DMHSAS or DHS service provider, in ensuring compliance with these criteria and related state and federal law is needed and greatly appreciated. Please direct any questions you might have to your supervisor.

Acknowledgements

The Oklahoma Department of Mental Health and Substance Abuse Services wishes to acknowledge and thank the following individuals for their time and services in bringing this manual to fruition:

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DMHSAS Central Office

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